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Waivers of Constitutional Court Decisions by the Supreme Court Regarding Manpower Laws

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Abstract

The judicial review of Law Number 13 of 2003 concerning Manpower (UUK) has been granted by the Constitutional Court in 11 (eleven) requests for UUK testing. Of the 11 (eleven) decisions there were 3 (three) decisions whose follow-up was regulated by the Supreme Court Circular Letter (SEMA), namely SEMA Number 4 of 2014 and SEMA Number 3 of 2015, and gave rise to injustice and legal uncertainty in labor law. This legal research uses normative legal research methods. The data were analyzed qualitatively and are prescriptive. The approach used is a statutory approach (statute approach) and a case approach (case approach). This research is important to do to explain SEMA's position in labor law and the Constitutional Court's decision regarding UUK is erga omnes, the decision is final and binding. The results of the study show that SEMA has no legal standing to further regulate the Constitutional Court's decision because SEMA is not a statutory regulation.

Keywords: Labor Law, Constitutional Court Decision, Supreme Court Circular Letter, Abandonment

1. Introduction

Since the Constitutional Court (MK) was established, there has been a judicial review of Law Number 13 of 2003 concerning Manpower (UUK) 23 (twenty-three) times. Of the 23 (twenty-three) requests for judicial review, 11 (eleven) requests were granted by the Constitutional Court. Of the 11 (eleven) decisions granted by the Constitutional Court, there were 3 (three) decisions whose follow-up was regulated by a Supreme Court Circular Letter (SEMA).

First, the decision of the Constitutional Court Number 12/PUU-I/2003, the judicial review case for testing several articles of the UUK and the Constitutional Court in its decision granted the petition against Article 158, Article 159, Article 160 paragraph (1) as long as it concerns the clause "... not on the employer's complaint..."; Article 170 insofar as it concerns the clause "... except Article 158 paragraph (1), ..."; Article 171 insofar as it concerns

the clause "... Article 158 paragraph (1)..."; Article 186 is all about the clause "... Article 137 and Article 138 paragraph (1)..."; contrary to the 1945 Constitution of the Republic of Indonesia (Sitompol, 2021).

After the Constitutional Court's decision, there were differences in interpretation by the Supreme Court for actions that qualify as in the provisions of Article 158 of the UUK regarding termination of employment (PHK) on the grounds of committing a serious mistake. The Supreme Court issued SEMA Number 3 of 2015 in the Special Civil Code section letter e stating that layoffs can be carried out without having to wait for a criminal decision that has permanent legal force.

The decision of Constitutional Court Number 12/PUU-I/2003 essentially stipulates that layoffs as a result of a worker's gross mistakes must be based on a court decision that has permanent legal force, which means that this authority is not on the employer's side. (Sonhaji, 2019). There is a fundamental difference between the Constitutional Court's decision Number 12/PUU-I/2003 and SEMA Number 3 of 2015.

Table 1: Differences in Norms of Layoffs Due to Serious Mistakes

MK Decision Number 12/PUU-I/2003	SEMA Number 3 of 2015
Layoffs due to serious employee mistakes must be based on a court decision that has permanent legal force	Termination of employment can be carried out without having to wait for a criminal decision with permanent legal force

Source: The data is processed by the researcher.

Second, MK decision Number 37/PUU-IX/2011. The judicial review case was filed with the Constitutional Court for reviewing Article 155 paragraph (2) of the UUK. Article 155 paragraph (2) reads:

"As long as the decision of the industrial relations dispute settlement institution has not been stipulated, both employers and workers must continue to carry out all their obligations"

The Constitutional Court decided that the phrase "has not been stipulated" in Article 155 paragraph (2) of the UUK is contrary to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as long as it does not mean that it does not yet have permanent legal force. (Farianto, 2018; MK Decision Number 37/PUU-IX/2011 Regarding Processing Wages, Sitompol, 2021). With the issuance of this MK decision, Indonesian workers welcomed the process of wages. Layoffs are paid until they have permanent legal force. Process wages are wages received by workers during suspension by employers. There is a very basic difference in the terminology of process wages from the side of employers and workers. The entrepreneur thinks that the process of preprocessing paid for 6 (six) months because the entrepreneur reasoned and refers to Law Number 2 of 2004 concerning Industrial Relations Case Settlement (UUPPHI), namely the bipartite deadline is 30 (thirty) working days, the mediation process is 30 (thirty) working days and during the process at the Industrial Relations Court (PHI) for 50 (fifty) working days. Meanwhile, on the part of the workers, the process of wages is paid until the layoff case is ongoing until it has permanent legal force because the layoff process is a series of processes ranging from bipartite to no further legal remedies. Because the opinion of this worker is the result of the Constitutional Court decision No 37/PUU-IX/2011.

The Constitutional Court's decision stating that process wages during the suspension period must be paid until the decision has legal force is still deemed unfair and burdensome to the entrepreneur (Farianto, 2018). On the other hand, workers who do not comply with the provisions of the Constitutional Court's decision, create confusion, and legal uncertainty and do not do fulfilling justice for workers.

The discourse on process wages between employers and workers took a very long time so the Supreme Court had to resolve the differences of opinion by issuing SEMA Number 3 of 2015, the special civil section letter f stated that after the decision of the Constitutional Court Number 37/PUU-IX/2011, dated 19 September 2011 regarding wages process, the content of the ruling is to punish the entrepreneur to pay process wages for 6 months. Excess time in the PHI process as referred to in UUPPHI is no longer the responsibility of the parties.

Third, MK Decision Number 100/PUU-X/2012 cancels Article 96 UUK, namely:

"Demands for payment of workers' wages and all payments arising from work relations expire after a period of 2 (two) years since the rights arise."

The review of Article 96 UUK which was decided by the MK on 19 September 2013 with its decision granting the petitioner's request entirely and stating that Article 96 UUK is contrary to the 1945 Constitution of the Republic of Indonesia and no longer has permanent legal force (Decision of the Constitutional Court Number 100/PUU-X/2012 Regarding Expiration of Wages Payment). The Petitioner argued that Article 96 UUK impairs his constitutional rights as a citizen because Article 96 UUK impedes his right to prosecute wages and all payments arising from layoffs (August 2020).

In its ruling, the Constitutional Court decided that Article 96 of the UUK was contrary to the 1945 Constitution of the Republic of Indonesia and had no binding legal force. The legal consequence of this MK decision is that demands for payment of wages and all payments arising from work relations do not have an expiration date.

To respond to the Constitutional Court's decision regarding the expiry of the demands for wages under Article 96 UUK, the Supreme Court issued SEMA Number 4 of 2014 which stated "that Article 96 UUK which has been conducted a judicial review based on the Constitutional Court Decision Number 100/PUU-X/2012 dated 19 September 2013 is not issuing new norm. Therefore, deciding on expiration does not reduce the freedom of the judge to consider the sense of justice based on Article 100 of UUPPHI junto Article 5 of Law Number 48 of 2009 concerning Judicial Power.

Article 100 of the UUPHI states that:

"In making a decision, the panel of judges took into account the law, existing agreements, customs, and fairness."

Article 5 of Law 48 of 2009 states that:

"(1). Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society. (2) Constitutional judges and judges must have integrity and personality that is beyond reproach, honest, fair, professional, and experienced in the field of law. (3) Constitutional judges and judges are obliged to comply with the Code of Ethics and the Code of Conduct for Judges.

Article 82 UUPPHI states that a lawsuit by workers for layoffs can be filed only within 1 (one) year of receiving or notifying the decision the employer. There is a phenomenon of legal uncertainty regarding the demand for expired wages as mandated by the Constitutional Court decision Number 100/PUU-X-2013 after the publication of SEMA Number 4 of 2014.

As for some of the findings resulting from other research that has related issues such as research from Antoni Putra (2022) with the title "Final and Binding Nature of Constitutional Court Decisions in Reviewing Laws" which has conclusions related to the implementation of Constitutional Court Decision Number 34/PUU-XI / 2013 which states that a review can be carried out many times. First, at the implementation level, problematic, the application of the Constitutional Court Decision Number 34/PUU-XI/2013 occurred because the Supreme Court preferred to deny this decision by issuing SEMA number 7 of 2014 to limit a review to only be carried out once on the grounds of providing legal certainty. Second, from a legal perspective, ignoring the decision of Constitutional Court Number 34/PUU-XI/2013 by the Supreme Court gave birth to legal uncertainty. Furthermore, research from Rifai Rofiannas (2017) with the title "Abandonment of Constitutional Court Decisions: Analysis of the Constitutionality of SEMA No. 7 of 2014" has the conclusion that the relationship between the Constitutional Court and other governing bodies that coordinate is a legal issue that cannot be given a black-and-white prescription. The most adequate description is to see the context of this relationship as a situation based on the principle of checks and balances with the main agenda being upholding the supremacy of the Constitution, especially in terms of application and interpretation. Based on this theory, the situation of the relationship between the Constitutional Court and other government bodies can be understood more rationally. Sometimes the relationship situation is described in the corridor of judicial supremacy where the Constitutional Court takes the lead in the interpretation of the constitution (when the interpretation of the constitution contains undeniable truth as in the Constitutional Court Decision No. 34/PUU-XI/2013) while on the other hand, the corridor of departmentalism also makes sense

as part of the dynamics of governance based on the principle of checks and balances as implemented by the Supreme Court through Supreme Court Decision No. 39 PK/Pid.sus/2011 and Supreme Court Decision No. 45 PK/Pid.sus/2011. And specifically about SEMA No. 7 of 2014 the author argues that the SEMA is a wrong departmental practice because materially the content of SEMA No. 7 of 2014 contradicts the Constitutional Court Decision No. 34/PUU-XI/2013 whose interpretation of the constitution by the Constitutional Court is correct.

2. Research Method

This type of research is included in the normative research group, namely research conducted by examining primary legal materials, secondary legal materials, and tertiary legal materials or supporting literature.(Soerjono & Mamudji, 2018). Normative research is understood as research to test a norm or applicable provisions(Irwansyah, 2021). Normative or doctrinal legal research is very closely related to research on values, norms, and written regulations so this research is very closely related to libraries. (Taufani, 2018). Researchers collected primary, secondary, and tertiary legal materials. The approaches used in this legal research are statutory approaches and case approaches. This research is important to do to explain SEMA's position in labor law and the Constitutional Court's decision regarding UUK is erga omnes, the decision is final and binding.

3. Results and Discussion

3.1. SEMA's position in Labor Law

Initially, SEMA was formed based on the provisions of Article 12 paragraph (3) of Law Number 1 of 1950 concerning the Composition, Powers, and Procedures of the Supreme Court of Indonesia which reads:

"The conduct of the actions (work) of these courts and the judges in those courts are closely monitored by the Supreme Court. In the interest of the service, for this reason, the Supreme Court has the right to give warnings, reprimands, and instructions deemed necessary and useful to the courts and judges, either in a separate letter or in a circular letter.

The existence of SEMA since 1950 has a constitutional basis of legality so that the contents and instructions outlined in it are binding to be obeyed and applied by judges in court. History records that since 1951 the Supreme Court has issued or published the first SEMA, namely SEMA No. 1 of 1951 dated January 20, 1951. Since then, SEMA has emerged with an average of 5 to 6 pieces each year. (Harahap, 2009).

Law Number 1 of 1950 has been revoked by Law Number 14 of 1985 concerning the Supreme Court and no longer explicitly mentions the authority of the Supreme Court in terms of making circulars. In Law Number 14 of 1985 Article 32 paragraph (4) it is stated that:

"The Supreme Court has the authority to give instructions, reprimands, or warnings as deemed necessary to the Courts in all Judicial Environments"

Based on these provisions, the form of provisions issued by the Supreme Court does not expressly give instructions, reprimands, or warnings to lower courts.

In Law Number 11 of 2012 as amended by Law Number 15 of 2019 concerning Formation of Laws and Regulations (UUPPPU) Article 7 it is stated that the types and hierarchy of laws and regulations consist of the 1945 NRI Law, MPR Decrees, Laws/PERPU, Regulations Government, Presidential Regulation, Provincial Regulation; and Regency/City Regional Regulations. Furthermore, Article 8 paragraph (2) states that the regulations stipulated by the People's Consultative Assembly (MPR), the People's Representative Council (DPR), the Regional Representative Council (DPD), MA, MK, Supreme Audit Agency (BPK), Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level established by law or the Government by order of the law, Provincial DPRDs (DPRD), Governors, Regency/City DPRDs, Regents/Mayors,

If it is related to Article 8 UUPPPU, then SEMA is not included in the system of laws and regulations. Included in the hierarchy of laws and regulations are the Supreme Court Regulations (PERMA), whose formation is based on the authority of the Supreme Court. All regulations made by the Supreme Court constitute the authority granted

by law to the Supreme Court in issuing statutory regulations for guidelines for the implementation and administration of justice under the Supreme Court. (Bakri, 2020). SEMA is a form of circular by the Supreme Court leadership to all levels of the judiciary which contains guidance in administering justice, which is more of an administrative nature (Fajarwati, 2017). SEMA is not a statutory regulation according to UUPPHI provisions, but only a circular letter or *beleidregels*.

Policy regulations "*beleidregels*" are referred to as rules because their content regulates, but the form is not outlined in the form of certain official regulations. A circular letter is a quasi-form of regulation or legislation which cannot be categorized as a regulation, but its contents are regulatory or contain regulation (retelling). Circulars are products of regulations issued by the Supreme Court to carry out the regulatory function of the Supreme Court. SEMA is a form of circular from the Supreme Court leadership to all levels of the judiciary whose contents are guidance in administering justice that is more administrative in nature (Sulaiman, 2017). SEMA is issued by elements of the judiciary leadership in the Supreme Court which are non-technical policies, the structure of which is more like an ordinary letter (Fauzan, 2015). Circulars are regulations issued by state administrative bodies or officials to carry out government activities.

Circulars are a form of policy regulation. Policy regulations only function as part of the operational implementation of government tasks, therefore they cannot change or deviate from laws and regulations. This regulation is a kind of shadow law from UU or *pseudo-wetgeving* (pseudo legislation). (Ridwan, 2018).

In the practice of labor law, the Supreme Court has issued 2 (two) SEMAs to respond to the Constitutional Court's decision, viz SEMA Number 4 of 2014 and SEMA Number 3 of 2015. The following is the difference between the Constitutional Court decision Number 12/PUU-I/2003, the Constitutional Court decision Number 37/PUU-IX/2011, and the Constitutional Court decision Number 100/PUU-X/2012 and with SEMA Number 3 of 2015 and SEMA Number 4 of 2014 as follows:

Table 2: Differences between the Constitutional Court's decision and SEMA

MK Decision Number	SEMA Number 2 of 2004	SEMA Number 3 of 2015
12/PUU-I/2003: ".... <i>not on the employer's complaint...</i> "; Article 170 insofar as it concerns the clause ".... except Article 158 paragraph (1), ..."; Article 171 insofar as it concerns the clause ".... Article 158 paragraph (1)..." contradicts the 1945 Constitution of the Republic of Indonesia	-	In the event of layoffs of workers/laborers due to serious wrongdoing ex. Article 158 UUK (post-Decision of the Constitutional Court Number 12/PUU-1/2003 dated 28 October 2004), then layoffs can be carried out without having to wait for a criminal decision with permanent legal force."
37/PUU-IX/2011: The phrase "has not been stipulated" in Article 155 paragraph (2) of the UUK is contrary to the 1945 Constitution of the Republic of Indonesia in so far as it is not interpreted as having no permanent legal force	-	After the Constitutional Court's decision Number 37/PUU-IX/2011, September 19, 2011, regarding process wages, the contents of the decision order were to sentence employers to pay process wages for 6 (six) months. Excess time in the PHI process as referred to in UUPPHI is no longer the responsibility of the parties.
100/PUU-X/2012; Article 96 of the UUK is contrary to the 1945 Constitution of the Republic of Indonesia and has no permanent	The application of the expiry date to claim severance rights is linked to the Constitutional Court's Decision. The formulation of Article 96 UUK	-

and binding legal force. There is no expiry for payment of wages	which has been judicially reviewed based on the Constitutional Court's Decision Number 100/PUU-X/2012 dated 19 September 2013 did not issue a new norm. Therefore, deciding on expiration does not reduce the freedom of the judge to consider the sense of justice based on Article 100 UUPPHI junction Article 5 Law Number 48 of 2009 concerning Judicial Power.”	
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Source: The data is processed by the researcher.

If you analyze Table number 2 above, there are differences between the Constitutional Court's decision and the SEMA, including:

- a. Decision of the Constitutional Court Number 12/PUU-I/2003 confirms that layoffs with serious errors can be carried out after they have permanent legal force, while SEMA Number 3 of 2015 states that layoffs can be carried out without having to wait for a criminal decision with permanent legal force;
- b. The Constitutional Court Decision Number 37/PUU-IX/2011 confirms that process wages are paid until they have permanent legal force, while SEMA Number 3 of 2015 states that the contents of the decision order are to punish employers for paying process wages for 6 (six) months. Excess time in the PHI process as referred to in UUPPHI is no longer the responsibility of the parties;
- c. The Constitutional Court Decision Number 100/PUU-X/2012 has no expiration date for payment of wages, meaning that wages that have not been paid by employers can become the object of a request for dispute to court even though it has exceeded 2 (two) years while SEMA Number 4 of 2014 gives room to judges to determine the limit the timing of payment of wages in its decisions is based on the principles of justice, legal values and a sense of justice that lives in society, taking into account laws, existing agreements, and customs.

Decisions at the SEMA cassation level serve as a reference and guideline for the Supreme Court in deciding cases at PHI, including:

Table 3: Supreme Court Decision regarding Processing Wages after the issuance of SEMA No. 3 of 2015

No	PHI DECISION	DECISION AMAR	MA DECISION	DECISION AMAR
1	Decision Number 303/Pdt.Sus-PHI/2015/PN.JKT.Pst, April 28, 2016	12 (twelve) months	Decision Number 815 K/Pdt.Sus-PHI/2016, dated 20 October 2016	6 (six) months
2	Verdict Number 15/Pdt.G.PHI/2016/PN.Smg, dated 28 July 2016	January 2015 until the case obtains the permanent legal force	Decision Number 1033 K/Pdt.Sus-PHI/2016, dated 25 January 2017.	6 (six) months
3	Decision Number 34/Pdt.Sus-PHI/2016/PN.PAL, 19 January 2017.	17 (seventeen) months	Decision Number 679 K/Pdt.Sus-PHI/2017, July 31, 2017.	6 (six) months
4	Decision Number 100/Pdt.Sus-PHI/2016/PN Pbr, dated 6 March 2017.	13 (thirteen) months	Decision Number 908 K/Pdt.Sus-PHI/2017, September 28 2017.	13 (thirteen) months
5	Decision Number 66/Pdt.Sus-	12 (twelve) months	Decision Number 1260 K/Pdt.Sus-PHI/2017,	6 (six) months

	PHI/2014/PN.Tpg, July 9, 2015.		November 20 2017.	
6	Decision Number 22/Pdt.Sus-PHI/2017/PN.Pdg, July 22, 2017.	6 (six) months	Decision Number 1324 K/Pdt.Sus-PHI/2017, December 19 2017.	6 (six) months
7	Decision Number 13/Pdt.Sus –PHI /2017/PN Jmb, August 21 2017.	6 (six) months	Decision Number 1436 K/Pdt.Sus-PHI/2017, January 16, 2018.	6 (six) months
8	Decision Number 18/Pdt.Sus-PHI/2018/PN.Ptk, December 12 2018.	6 (six) months	Decision Number 723 K/Pdt.Sus-PHI/2019, September 3 2019.	6 (six) months
9	Decision Number 03/Pdt.Sus-PHI/2019/PN.Jmb, May 8, 2019.	6 (six) months	Decision Number 797 K/Pdt.Sus-PHI/2019, September 4 2019.	6 (six) months
10	Decision Number 45/Pdt.Sus-PHI/2019/PN Smr, September 5, 2019.	6 (six) months	Decision Number 216 K/Pdt.Sus-PHI/2020, 28 February 2020.	6 (six) months

Source: Data processed by researchers.

According to Table 3 above, out of 10 (ten) Supreme Court decisions, only 1 decision only processes wage payments exceeding 6 (six) months and follows the PHI decision which stipulates 13 (thirteen) months. The other 9 (nine) Supreme Court decisions stipulated that process wage payments were the same as SEMA Number 3 of 2015. If we analyze this data, it means that after the issuance of SEMA Number 3 of 2015, the judex Juris panel of judges was consistent in determining process wages of only 6 (six) months and did not comply with the Constitutional Court Decision Number 37/PUU-IX/2011.

Table 4: Supreme Court decision regarding layoffs on the grounds of serious misconduct

No	Parkara number	PHI verdict	Cassation Decision	Settlement of layoffs based on MK Decision Number 12/PUU-I/2003
1	Decision Number 158 K/Pdt.Sus/2007 Petitioner for cassation: PT. Jasa Marga (entrepreneur) Respondent for cassation: Suwanto (employee)	The decision of the PHI District Court Surabaya Number 122/G/2006/PHI.SBY, December 19, 2006: Rejecting the plaintiff's claim; ordered the defendant to return to work for the plaintiff	Granted the cassation request and canceled the PHI decision and decided to lay off the respondent on cassation.	None (the respondent on cassation/previously the defendant in his request for the panel of judges to consider the Constitutional Court's decision Number 12/PUU-I/2003)
2	Decision Number 593 K/Pdt.Sus/2012 Petitioner for cassation/formerly plaintiff: PT.Kurnia Anggun (entrepreneur) Appeal Respondents I & II / formerly Defendants I & II:	PHI Surabaya District Court Decision Number 112/G/2011/PHI-Sby; states the working relationship between the counterclaims and The counterclaim is not interrupted and continues.	Granted the cassation request from the cassation applicant PT.Kurnia Anggun; cancel the PHI decision on the PN Surabaya Number: 112/G/2011/PHI-	None (the respondent on cassation/previously the defendant in his request for the panel of judges to consider the Constitutional Court's decision

	Suwiko and Khomza (employees)		Sby., December 5 2011	Number 12/PUU-I/2003)
3	Decision 550 K/PDT.SUS/2008, An applicant for cassation/formerly the defendant PT.Senayan Sandang Makmur (entrepreneur); Respondent for cassation/previous plaintiff: Daeng Nani Giyanti et al (workers)	Decision of the PHI PN Bandung Number. 44/G/2008/PHI.BDG dated 3 June 2008 reject the interlocutory claims of the plaintiffs in their entirety; stated the actions of the defendant who had carried out the termination of employment on 7 September 2007 without prior decision of PHI is an act of opposites with article 151 paragraph (3) UUK and null and void	Rejecting the cassation request from the Cassation Petitioner: PT. PT. Senayan Sandang Makmur (entrepreneur).	None (however the respondent on cassation requested that the panel of judges consider the Constitutional Court decision Number 12/PUU-I/2003
4	Decision Number 611K /Pdt.Sus/ 2009. Petitioner for cassation/formerly the defendant Fahrizal (worker); The defendant for cassation/formerly the plaintiff PT. Panarub Industry (entrepreneur)	The decision of the PHI PN Serang Number 77/G/2008/PHI.Srg., April 30 2009 decided to grant the plaintiff's claim in its entirety; declared the termination of the employment relationship between the plaintiff and the defendant as of the 30th March 2008 without severance pay	Rejecting the cassation request from the cassation applicant/formerly the defendant Fahrizal and amending the PHI ruling at the District Court Serang Number 77/G/2008/PHI.Srg, April 30 2009.	None (applicant for cassation/formerly the defendant in his request for the panel of judges to consider the decision of the Constitutional Court Number 12/PUU-I/2003)
5	Decision Number 599 K/Pdt.Sus-PHI/2016. An applicant for cassation/formerly plaintiff PT Bank ANK Indonesia (entrepreneur); Respondent for cassation/formerly the defendant Syamsul Nababan (worker).	PHI verdict on Medan District Court Number 194/Pdt.Sus-PHI/ 2015/PN Mdn., dated 18 February 2016 decided to partially grant the Plaintiff's claim; state the termination action taken plaintiff to the defendant is not valid according to the provisions of the law apply.	Granted the cassation request from the cassation applicant PT Bank ANZ Indonesia decided canceling the PHI Decision on the Medan District Court Number 194/Pdt.Sus-PHI/2015/PN Mdn., February 18 2016 and stated that the working relationship between the plaintiff and the defendant was broken due to	None (applicant for cassation/formerly the defendant in his request for the panel of judges to consider the decision of the Constitutional Court Number 12/PUU-I/2003)

			violated the provisions of Article 161 UUK, since judex fact verdict pronounced;	
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Source: Data processed by researchers

Based on Table 4 above, it can be concluded that the panel of judges at the cassation level did not consider Constitutional Court Decision Number 12/PUU-I/2003 in deciding the PPHI case. Of the 5 (five) decisions that were sampled, 4 (four) whose verdicts stated the termination of the employment relationship between workers and employers.

According to researchers, the application of SEMA No. 4 of 2004 and SEMA No. 3 of 2015 in employment law creates legal uncertainty and injustice for workers who fight for their normative rights. The two SEMAs again obscured the mandate of the Constitutional Court's decision.

3.1. Position of the Constitutional Court Decision Regarding UUK

UUK's position with the Constitutional Court's decision is equal because the touchstone for testing UUK is the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision is final and binding and is erga omnes, meaning that the Constitutional Court's decision regarding UUK must be obeyed by all elements of the Indonesian nation, and the decision is no longer allowed to be translated differently by other laws and regulations that are of a lower degree than the Law, especially by a SEMA which does not have a statutory hierarchy according to the UUPPPU.

The Supreme Court is one of the institutions or organs of the state which is also bound by the results of the review of laws against the Constitution by the Constitutional Court. Because, in adjudicating a case, the Supreme Court will of course base the examination process and its decision on certain laws. If the law that is used as a guideline for examining cases has been annulled by the Constitutional Court, then the Supreme Court is obliged to guide it (Isra, 2015).

According to Alec Stone Sweet, the scope of binding decisions that are erga omnes in nature means that decisions are not only seen in terms of the attachment to the subject (address) of the decision which consists of all individuals, state institutions, and public officials or authorities. The scope of binding power and legal consequences of decisions also covers the entire area or field of law which is arranged in stages and hierarchically under the basic law or constitution as the highest law. (Suroso, 2018; Sweet, 2000).

According to Fajar Laksono Suroso, the Constitutional Court's decision is binding and there are no other legal remedies because the final and binding decision of the Constitutional Court is attached to the essence of the position of the 1945 Constitution of the Republic of Indonesia as the highest law. And there is no other law that is higher than it and is final in nature that the Constitutional Court's decision is an attempt to maintain the authority of the constitutional judiciary (Mahfud, 2009; Suroso, 2018). According to Sri Soemantri, final decisions must be binding and cannot be annulled by any institution. (Huda, 2018).

4. Conclusion

Based on the discussion above, it can be concluded that SEMA has no legal standing to further regulate the Constitutional Court's decision because SEMA is not a statutory regulation according to UUPPPU. SEMA is only a policy regulation (beleidsregel) while the Constitutional Court's decision regarding the UUK is final and binding and binds all citizens because the Constitutional Court's decision has the same position as the UUK. The implementation of the Constitutional Court's decision is not in line with what is interpreted by the Constitutional Court's decision. SEMA Number 4 of 2014 has annulled the Constitutional Court decision Number 100/PUU-X/2012 regarding the expiration of wage payments, SEMA Number 3 of 2015 annulled the decision of the

Constitutional Court Number 12/PUU-I/2003 regarding termination of employment with serious reasons, and the decision of the Constitutional Court Number 37/PUU-IX/2011 concerning process wages. Since the release of the SEMA, there has been legal uncertainty in labor law and the elimination of workers' rights. For the Constitutional Court's decision regarding UUK to have legal certainty, it is proposed that a new article be made in the body of the UUK or Labor Cluster UUCK which generally states that: and/or parts of the law apply and become an integral part of this law and the implementation arrangements are further regulated by a ministerial regulation”.

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