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Constitutional Disobedience in the Practice of Concurrent Office-Holding by Deputy Ministers: Non-Compliance with Constitutional Court Decision No. 80/PUU-XVII/2019 and a Proposed Compliance Oversight Mechanism

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Abstract: Constitutional Court Decision No. 80/PUU-XVII/2019 established in its legal reasoning that the prohibition against concurrent office-holding applicable to ministers also extends to deputy ministers. Nevertheless, the government failed to implement this interpretation, relying on the position that the binding legal force of Constitutional Court decisions is confined to their operative provisions. Several years later, Constitutional Court Decision No. 128/PUU-XXIII/2025 expressly incorporated this prohibition into its operative provisions while reaffirming the binding legal force of the reasoning articulated in Decision No. 80/PUU-XVII/2019. This article examines the normative relationship between these two decisions, analyzes the government's non-compliance during the 2020–2025 period through the lens of constitutional disobedience, and proposes an oversight mechanism to strengthen compliance with Constitutional Court decisions. Employing normative juridical research, this study adopts statutory, case-based, and conceptual approaches. The findings reveal three principal conclusions. First, the legal reasoning underpinning Decision No. 80/PUU-XVII/2019 constitutes a binding ratio decidendi. Accordingly, Decision No. 128/PUU-XXIII/2025 primarily serves to reaffirm the existing constitutional norm and eliminate interpretive ambiguities rather than establish a new legal obligation. Second, the government's conduct demonstrates a pattern of constitutional non-compliance that is more appropriately characterized as non-compliance grounded in unilateral legal interpretation than as overt defiance of the Constitutional Court's authority. Third, the absence of adequate institutional instruments to ensure the implementation of Constitutional Court decisions underscores the need for a comprehensive compliance oversight mechanism encompassing systematic monitoring, mandatory reporting obligations, and graduated sanctions.

Keywords: Constitutional Disobedience, Concurrent Office-Holding, Deputy Ministers, Constitutional Court Decisions, Judicial Compliance

INTRODUCTION

In Indonesia's presidential system of government, the appointment and regulation of ministerial positions fall within the President's authority to administer the government. However, the regulation regarding the position of deputy minister raises its own constitutional issues, as the 1945 Constitution does not explicitly provide for such a position (*Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation*, 2022). Normatively, the existence of deputy ministers is based on Article 10 of Law No. 39 of 2008 on State Ministries, while Article 17(3) of the 1945 Constitution states that each minister is responsible for specific affairs within the government (*Law No. 39 of 2008 on State Ministries*, 2008).

The issue arises because Article 23 of Law No. 39 of 2008 only prohibits ministers from concurrently holding positions as other state officials, commissioners or directors at state-owned or private companies, or leaders of organizations funded by the State Budget (APBN) and/or the Regional Budget (APBD). This provision does not explicitly mention deputy ministers. This issue was highlighted in Constitutional Court Decision No. 80/PUU-XVII/2019, issued on August 27, 2020. The case challenged Article 10 of Law No. 39 of 2008 and resulted in a ruling that the challenge was inadmissible. However, in its reasoning, the Court emphasized that since the appointment and dismissal of deputy ministers are the President's prerogative, deputy ministers hold the status of state officials; therefore, all prohibitions on holding concurrent positions that apply to ministers also apply to deputy ministers (Constitutional Court Decision No. 80/PUU-XVII/2019, 2019). During the hearing of the case, the petitioner revealed that two deputy ministers of state-owned enterprises held concurrent positions as commissioners at Pertamina and Bank Mandiri.

These legal considerations were not acted upon. The government maintained the position that only the operative part of the decision is legally binding. On June 3, 2025, the Head of the Presidential Communications Office stated that Decision No. 80/PUU-XVII/2019 did not include such a prohibition in its operative part, but only in its legal considerations. The Speaker of the People's Consultative Assembly (MPR) expressed a similar view on July 23, 2025. Meanwhile, according to the petitioner's arguments in a subsequent case, at least 30 deputy ministers at that time held positions as commissioners in state-owned enterprises.

The Court subsequently clarified this issue through Decision No. 128/PUU-XXIII/2025, which was rendered on August 28, 2025. In that decision, Article 23 of Law No. 39/2008 was declared conditionally unconstitutional to the extent that it is not interpreted as covering deputy ministers. The Court also affirmed that the legal reasoning in Decision No. 80/PUU-XVII/2019 has binding legal force and should have been implemented as soon as it was issued. Nevertheless, the Court granted a transition period of no more than two years. Thus, Decision No. 128/PUU-XXIII/2025 highlights an issue of non-compliance with legal considerations that had previously been declared binding (Constitutional Court Decision No. 128/PUU-XXIII/2025, 2025).

Disregard for the Court's decisions is not a new issue. The Court summarized the petitioner's arguments regarding the importance of *constitutional obedience* to the Court's final and binding decisions. In 2020, Constitutional Justice Wahiduddin Adams stated that the Court's research found that 22.01 percent of its decisions were not complied with by state institutions, while the Court lacked adequate mechanisms to reprimand or enforce those decisions. In line with this, Nggilu argues that defiance of the Court's rulings results in legal uncertainty and delays in constitutional justice (Nainggolan et al., 2026).

Research on the prohibition against deputy ministers holding concurrent positions has garnered attention in constitutional law studies, particularly regarding the binding force of Constitutional Court rulings and the government's compliance with them. Sari et al. (2023), in an article titled *"Disregard of the Constitutional Court's Ruling Regarding the Prohibition on*

Deputy Ministers Holding *Concurrent Positions*," published in *the Journal of the Constitution,* examined the disregard for the legal reasoning in Constitutional Court Decision No. 80/PUU-XVII/2019. This study reveals issues regarding the government's compliance with the Constitutional Court's constitutional interpretation concerning restrictions on deputy ministers holding concurrent positions. However, this analysis was conducted prior to the issuance of Decision No. 128/PUU-XXIII/2025; thus, it does not address the shift in the legal status of the prohibition on concurrent positions—from a legal consideration in the previous decision to a provision explicitly stated in the subsequent decision's operative part.

Another study was conducted by Moeslim et al. (2026) in an article titled *"The Prohibition on Deputy Ministers Holding Multiple Positions in Constitutional Court Decision No. 128/PUU-XXIII/2025: A Siyasah Qadhaiyyah Perspective*." This study discusses the prohibition on concurrent office for deputy ministers from the perspective *of siyasah qadhaiyyah*, focusing on the legal basis for the ruling and its alignment with the principles of the exercise of power and justice. Although it offers a normative perspective on the prohibition on holding concurrent positions, the study has not specifically examined the relationship between Decision No. 80/PUU-XVII/2019 and Decision No. 128/PUU-XXIII/2025 as a basis for evaluating the government's compliance during the 2020–2025 period. Furthermore, issues regarding the criteria for disregarding constitutional rulings and the mechanisms for overseeing the implementation of Constitutional Court rulings still require a more systematic discussion (Maha, 2026).

Based on previous research, the novelty of this study lies in a comparative analysis of the status and binding force of the legal considerations in Constitutional Court Decision No. 80/PUU-XVII/2019 versus the operative part of Decision No. 128/PUU-XXIII/2025, particularly in determining the government's constitutional obligations regarding the prohibition on deputy ministers holding concurrent offices. This study also examines government practices from 2020 to 2025 to assess whether actions or inaction regarding the holding of concurrent positions can be classified as *constitutional disobedience*, taking into account the difference in legal force between the legal reasoning and the operative part of the decision, as well as the effective date of the constitutional obligation. Furthermore, this study aims to formulate mechanisms for monitoring compliance through interagency coordination, monitoring the implementation of rulings, and strengthening the accountability of public officials. Thus, the study's contribution lies not only in explaining the normative relationship between the two rulings but also in developing a framework for evaluating constitutional noncompliance and designing oversight mechanisms that can support the effective implementation of Constitutional Court rulings.

METHODS

This study is of a normative legal nature. A statutory analysis was conducted on the 1945 Constitution, Law No. 39 of 2008 on State Ministries, the Law on the Constitutional Court, and the Law on the Formation of Legislation. The case study approach examines Decision No. 79/PII-IX/2011, Decision No. 80/PUU-XVII/2019, and Decision No. 128/PUU-XXIII/2025, with other decisions related to Article 23 of the Law on State Ministries used as supporting context. The conceptual approach utilizes the concepts of the final and binding nature of rulings, *ratio decidendi, obiter dictum,* and *constitutional disobedience*. The legal materials are analyzed qualitatively and prescriptively.

RESULTS AND DISCUSSION

The Binding Nature of Legal Considerations in Constitutional Court Decisions No. 80/PUU-XVII/2019 and No. 128/PUU-XXIII/2025

Decision No. 80/PUU-XVII/2019 reviewed Article 10 of Law No. 39 of 2008, not Article 23, and resulted in a ruling of "dismissed" because the petitioner lacked *legal* standing. This is where the debate over the binding nature of legal considerations began. The government interpreted the Court's statement regarding Article 23 as an additional, non-binding legal reasoning. In fact, the petitioner in the 2025 case acknowledged that this interpretation was understandable because the reasoning was considered an *obiter dictum*. Conversely, in Decision No. 128/PUU-XXIII/2025, the Court affirmed that a decision consists of the identification, the facts of the case, the legal reasoning, and the ruling, as well as the trial transcript, which form a single, unified whole. On that basis, the Court classified the reasoning in Decision No. 80/PUU-XVII/2019 as *the ratio decidendi* containing *the judicial order*. Interestingly, the two justices who issued *dissenting opinions* in Decision No. 128/PUU-XXIII/2025 also did not dispute the character of *the ratio decidendi* of those legal considerations. Both noted that the nine justices in the 2020 case had reached a consensus on those considerations. However, they argued that follow-up action should be taken by the House of Representatives and the President through legislative amendments (Aritonang et al., 2024; Sastra, 2026).

Comparison of Rulings

Table 1. Comparison of Rulings

Aspect	Decision No. 80/PUU-XVII/2019	Decision 128/PUU-XXIII/2025
Provision Under Review.	Article 10 of Law No. 39 of 2008 on State Ministries (position of deputy minister).	Article 23 of Law No. 39 of 2008 on State Ministries (prohibition on holding concurrent offices).
Ruling.	The petition is inadmissible.	Partially granted: Article 23 is conditionally unconstitutional to the extent that it is not interpreted as covering deputy ministers.
The scope of the prohibition for deputy ministers.	Legal Considerations.	Judgment and Legal Rationale.
Status of the reasoning.	Debated (*obiter* or *ratio*).	Declared binding upon pronouncement.
Adjustment period.	None.	No longer than two years from August 28, 2025.

In the author's view, the government's interpretation lacks a sufficient legal basis. First, the Constitutional Court is the final interpreter of its own decisions, and through Decision No. 128/PUU-XXIII/2025, the Court has reaffirmed the status of the legal considerations in Decision No. 80/PUU-XVII/2019. Second, Decision No. 128/PUU-XXIII/2025 does not create a new obligation but rather reaffirms that the legal considerations in the 2020 decision should have been implemented as soon as it was issued. The prohibition on holding concurrent positions for deputy ministers is also consistent with the provisions of laws and regulations governing state-owned enterprises (SOEs), which prohibit commissioners from holding other concurrent positions as stipulated in applicable laws and regulations. Third, the inclusion of this prohibition in the operative part of Decision No. 128/PUU-XXIII/2025 can be understood as an effort to reinforce the norm while closing the interpretive loopholes that have long been exploited by *those subject to* the norm. This indicates that legal considerations, although legally binding, do not necessarily ensure effective compliance in practice. When legal considerations

are disregarded without adequate consequences, the formulation of a more explicit ruling becomes essential to strengthen legal certainty and the effectiveness of the Court's decisions.

Qualifying *"Constitutional Disobedience"* Regarding Practices from 2020 to 2025

Nggilu uses the term *"constitutional disobedience"* to describe defiance of constitutional principles and values, including noncompliance with Constitutional Court rulings as the guardian of the Constitution. According to him, because the Court's rulings are final and binding on all parties, noncompliance with these rulings constitutes a form of disloyalty to the Constitution (Nggilu, 2019). Forms of defiance he noted include reviving norms that have been invalidated, circumventing rulings by renaming invalidated institutions such as the change of BP Migas to SKK Migas via a presidential regulation and court rulings that disregard the Constitutional Court's decisions. The practice of deputy ministers holding concurrent positions exhibits distinct characteristics, namely the disregard of obligations explicitly stated in the legal reasoning, coupled with a narrow interpretation that only the operative part of the ruling possesses binding force (Batu Bara et al., 2023).

To assess whether this practice can be classified as constitutional disobedience, this journal proposes four indicators. First, the existence of a clear legal obligation for *the addressee* of the norm. Second, the *addressee's* knowledge of that obligation. Third, the existence of an act or omission that contradicts that obligation. Fourth, the absence of a valid legal basis for deviating from that obligation. These four indicators constitute the author's analytical framework, developed based on Nggilu's concept, rather than a standardized formulation proposed by him (Arini, 2022).

Regarding the first indicator, the obligation was deemed to have existed since August 27, 2020, as the Court subsequently affirmed that its legal considerations are binding and should have been implemented as soon as they were issued. Relevant *addressees* include the President, as the party who appoints deputy ministers, as well as those authorized to appoint or designate commissioners at state-owned enterprises. Regarding the second indicator, awareness of this obligation is reflected in the government's statement acknowledging the inclusion of a description of the prohibition on holding concurrent positions in the legal reasoning of the ruling. However, in 2020, the then-Minister of State-Owned Enterprises stated that he was not yet fully aware of the details of the issue and would study it further. Regarding the third indicator, the practice of holding concurrent positions serves as an indication of non-compliance with these obligations (Sanyasa et al., 2026). According to the petitioner's arguments in the 2025 case, the number of deputy ministers who also served as commissioners reached 30. As for the fourth indicator, the government's argument that only the operative part of a ruling is binding can no longer be upheld after the Court affirmed the legal standing of such considerations in Decision No. 128/PUU-XXIII/2025.

Nevertheless, the author argues that the most appropriate term to describe the practice throughout 2020–2025 is non-compliance based on a unilateral interpretation, rather than open defiance. Before Decision No. 128/PUU-XXIII/2025 was issued, there was still room for debate regarding the binding nature of the legal considerations because the prohibition had not yet been explicitly stated in the operative part of the decision. After the Court affirmed the standing of these legal considerations, that argument lost its basis. However, the Court granted a transition period of up to two years to allow the government to bring concurrent positions into compliance with applicable regulations. During this transition period, ongoing concurrent positions cannot automatically be deemed in violation of the operative part of Decision No. 128/PUU-XXIII/2025. On the other hand, the granting of this adjustment period creates its own set of issues because it provides additional time to fulfill obligations that, according to the Court's affirmation, have existed since 2020. Thus, assessing compliance with the ruling's

mandate becomes increasingly relevant after the adjustment period ends on August 28, 2027. Evaluations of its implementation must be based on the most recent data from official sources.

The Concept of a Compliance Monitoring Mechanism

This case highlights three weaknesses in the mechanism for implementing Constitutional Court rulings. First, the Court lacks adequate enforcement tools to ensure compliance with its rulings. Second, follow-up on rulings is left to the legislature, given that the law provides that the substance of legislation may include measures to implement the Court's rulings. However, this mechanism is not utilized optimally. In a dissenting opinion, it was noted that when Law No. 39 of 2008 was amended by Law No. 61 of 2024, the provisions of Article 23 remained unchanged. Consequently, the amendment to the law was not used to clarify the prohibition on dual office-holding for deputy ministers. Third, there are no legal consequences specifically designed to address non-compliance *by the addressees* with the Court's rulings, so their implementation risks depending on the legal awareness of the parties concerned. This situation aligns with the findings of other studies regarding obstacles to the follow-up of Constitutional Court rulings through legislative mechanisms (Hayyanudin et al., 2026; Sakdi et al., 2026).

Based on these issues, the author proposes a multi-layered mechanism to strengthen the implementation of Constitutional Court rulings. This proposal is still conceptual in nature and requires an adequate legal foundation, including through amendments to the law on the Constitutional Court.

1) Monitoring the implementation of rulings.

   Nggilu proposes the establishment of a unit or *auxiliary body* tasked with ensuring that the Court's decisions are implemented, drawing an analogy to the role of bailiffs within the judicial system under the Supreme Court. Alternatively, monitoring functions could be strengthened within the Court's internal structure without the need to establish a new institution. Another option is to involve the Ombudsman of the Republic of Indonesia in the administrative monitoring of the follow-up to rulings, particularly if there are allegations of maladministration by state officials or state-owned enterprises (SOEs). However, the Ombudsman's involvement must be aligned with the limits of its authority as defined by law. The Ombudsman cannot directly assume the function of enforcing the Court's rulings. Therefore, the selection of a monitoring model must take into account institutional needs, the effectiveness of oversight, coordination mechanisms, and the consequences of establishing additional institutions (Putri & Mahanani, 2022).

2) Reporting obligations.

   In rulings that require follow-up or grant a grace period, *the addressee* is required to submit periodic reports to the Court and the House of Representatives regarding the steps that have been taken. In the context of deputy ministers holding dual positions, this mechanism can encourage the government to publicly report on the progress of adjustments to commissioner positions during the transition period until August 2027. These reports can also serve as a basis for the House of Representatives to carry out its oversight functions (Pratama & Khalid, 2025).

3) Implementation of tiered sanctions.

   Nggilu proposed two alternatives: expanding the application of the concept *of contempt of court* or imposing a fine (*dwangsom*) on the responsible party, with payment to be drawn from personal funds rather than the state treasury. However, Nggilu also acknowledged that the use of the *contempt of court* mechanism carries its own risks.

   In this context, the author believes that the formulation of sanctions must take into account the principles of separation of powers, legal certainty, and proportionality. Administrative sanctions and fines can be considered as alternatives, while the imposition

of criminal sanctions should be reserved as a last resort, with strict, clear, and limited provisions. Thus, enforcement mechanisms should not only aim to promote compliance but must also ensure that their implementation remains within the framework of the rule of law (Sumodiningrat, 2023).

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

First, the legal reasoning articulated in Constitutional Court Decision Number 80/PUU-XVII/2019 was affirmed as the *ratio decidendi* possessing binding legal force through Constitutional Court Decision Number 128/PUU-XXIII/2025. The latter decision did not establish a new legal obligation but reaffirmed an obligation that, according to the Court, had existed since 27 August 2020, while explicitly clarifying the prohibition on concurrent office-holding by deputy ministers in the operative part of the judgment. Second, the practice of concurrent office-holding among deputy ministers during the 2020–2025 period indicates potential non-compliance with the Court's legal reasoning, which this study characterizes as non-compliance arising from unilateral legal interpretation, given that the government justified its actions on the premise that only the operative provisions of judicial decisions possess binding legal force. Following the Court's explicit affirmation of the binding authority of its legal reasoning, this interpretative justification can no longer be sustained. Nevertheless, any assessment of compliance with Constitutional Court Decision Number 128/PUU-XXIII/2025 must account for the transitional period granted by the Court, with further evaluation undertaken upon its expiration. Third, the implementation of Constitutional Court decisions continues to face institutional challenges, particularly the absence of effective enforcement instruments, inadequate legislative follow-up mechanisms, and the lack of specifically prescribed legal consequences for non-compliance. Addressing these deficiencies requires a multilayered compliance framework incorporating systematic monitoring of judicial decisions, mandatory periodic reporting, and the graduated imposition of sanctions, while ensuring adherence to the principles of legal certainty, proportionality, and the separation of powers.

Recommendations

First, the President and the authorities responsible for appointing commissioners to state-owned enterprises should ensure that the necessary adjustments concerning deputy ministers concurrently serving as commissioners are completed before the expiration of the transitional period on 28 August 2027. The government should also publicly disclose progress in implementing these adjustments as a means of ensuring transparency and public accountability. Second, lawmakers should review and clarify Article 23 of Law Number 39 of 2008 concerning State Ministries to ensure that the prohibition on concurrent office-holding explicitly encompasses deputy ministers. Consideration should also be given to establishing mechanisms for monitoring, reporting, and enforcing compliance with Constitutional Court decisions through amendments to the legislation governing the Constitutional Court. Such monitoring mechanisms could be developed by strengthening the Court's internal institutional functions or, within the limits of its statutory authority, involving the Ombudsman of the Republic of Indonesia in overseeing relevant administrative aspects. Any sanctions for non-compliance should be clearly defined, proportionate, and consistent with the principles of the rule of law. Third, the Constitutional Court should consider formulating more explicit operative provisions specifying the obligations imposed on the *addressees* of its decisions, particularly where the legal reasoning establishes or reaffirms obligations that may give rise to divergent interpretations during implementation. Greater clarity in this regard is essential to minimizing disputes concerning the binding force of Constitutional Court decisions and strengthening legal certainty, without diminishing the significance of judicial reasoning within

the overall structure of constitutional judgments. Fourth, future research should examine the extent of compliance with Constitutional Court Decision Number 128/PUU-XXIII/2025 following the expiration of the transitional period, drawing on official data concerning its implementation. Further comparative research should also investigate mechanisms for monitoring and enforcing constitutional court decisions in other jurisdictions to develop an institutional compliance framework compatible with Indonesia's constitutional system.

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