

The Shift of The Constitutional Court's Role from A Negative Legislator to A Positive Legislator in Testing Laws: Constitutional Problems and Reconstruction of The Limits of Authority

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Abstract. *The practice of judicial review by the Constitutional Court of the Republic of Indonesia shows a significant shift from its initial design as a negative legislator to a role characterized by a positive legislator. This shift is evident in the widespread use of conditional constitutional and conditional unconstitutional rulings, the formulation of new norms in rulings, the postponement of the enactment of laws accompanied by orders for the formation of laws, and rulings that redesign the architecture of the state system. This study aims to analyze the constitutional basis for this shift in role and formulate limiting parameters that can maintain a balance between constitutional supremacy and democratic legitimacy. The study uses a normative juridical method with a statutory approach, a conceptual approach, a case approach, and a historical approach, which are analyzed qualitatively prescriptively. The results of the study show three main findings. First, there is no textual prohibition in Article 24C of the 1945 Constitution of the Republic of Indonesia against the positive role of the legislature, and the legislative restrictions previously formulated in Article 45A and Article 57 paragraph (2a) of Law Number 8 of 2011 have in fact been declared unconstitutional by the Court itself. Second, although not formally prohibited, the practice of positive legislature gives rise to three constitutional problems: the blurring of the boundaries of the separation of powers, a deficit in democratic legitimacy (counter-majoritarian difficulty), and the risk of judicial instrumentalization for short-term political interests, as reflected in Decision Number 90/PUU-XXI/2023. Third, the reconstruction of the boundaries of authority is necessary through five cumulative parameters: direct connection to constitutional rights, the absence of less restrictive alternative solutions, clarity of constitutional basis, respect for open legal policy space, and methodological transparency in legal reasoning. This study recommends regulating the typology of rulings in the revision of the Constitutional Court Law, accompanied by strengthening ethical mechanisms and the establishment of more participatory procedural law.*

Keywords: *Constitutional; Judicial-Review; Separation.*

1. Introduction

The idea of testing the constitutionality of laws stems from the most fundamental premise of a constitutional rule of law, namely that the constitution is the supreme law binding all branches of state power, including the branch that makes laws. This premise found its classic articulation in the *Marbury v. Madison* (1803) decision, when the United States Supreme Court affirmed that declaring what is law is the authority and obligation of the judicial branch. In the Continental European tradition, Kelsen (1942) formulated a different model through the establishment of a centralized constitutional court, positioning the court as a negative legislator—an organ that does not create new norms, but only has the authority to abolish norms that conflict with the constitution.

Indonesia adopted the Kelsenian model through the Third Amendment to the 1945 Constitution of the Republic of Indonesia in 2001, which gave birth to the Constitutional Court as a separate constitutional organ. Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia gives the Court the authority to test laws against the Constitution at the first and final levels, the decision of which is final. Asshiddiqie (2010) places the birth of this institution as the culmination of the post-reform constitutionalization process of state power, namely a systematic effort to ensure that no branch of power is beyond the reach of constitutional control.

In practice over two decades, the Constitutional Court's role has evolved far beyond the simple negative portrayal of legislators. This development did not occur all at once, but rather gradually through the accumulation of precedents. The Court initially introduced conditionally constitutional and conditionally unconstitutional rulings, rulings that do not invalidate a norm entirely but instead tie its validity to a specific interpretation formulated by the Court. From there, practice evolved into more interventionist forms: the formulation of substitute norms in rulings, the postponement of the enactment of laws with deadlines for revisions for lawmakers, and even rulings that effectively redesigned the architecture of the national election system.

Several decisions between 2021 and 2025 clearly demonstrate the intensity of this shift. Decision Number 91/PUU-XVIII/2020 declared Law Number 11 of 2020 concerning Job Creation conditionally unconstitutional, gave a two-year deadline for revision, and suspended strategic and far-reaching actions or policies (Mastur & Irawan, 2023). Decision Number 90/PUU-XXI/2023 added a new phrase to the age requirements for presidential and vice-presidential candidates—an action Fikriya et al. (2024) considers the most blatant manifestation of the legislator's positive role. Decision Number 168/PUU-XXI/2023 ordered lawmakers to draft a new labor law separate from the Job Creation Law. Decision Number 62/PUU-XXII/2024 eliminated the presidential nomination threshold and provided constitutional engineering guidelines for lawmakers. Ultimately, Decision Number 135/PUU-XXII/2024 separated the implementation of national general elections from regional general elections, a decision that changed the overall design of the electoral system and sparked widespread debate regarding the limits of the Court's authority.

This shift in role has been evident since the first decade of the Court's existence. Butt (2015) notes that the Indonesian Constitutional Court has taken a more expansive path from the outset than its counterparts in other new democracies, particularly through the development of unconstitutional conditional ruling techniques. This expansion initially garnered widespread public support as it was seen as a correction to poor legislative quality, but at the same time established a precedent that later proved difficult to control (Butt, 2015; Hendrianto, 2018).

This shift occurs amidst a growing burden of judicial review cases. Data compiled by the Center for Democracy, Constitutional, and Human Rights Studies, Faculty of Law, Gadjah Mada University, shows that throughout 2025, there were 284 registered judicial review cases and 263 decisions rendered, consisting of 246 material review decisions, 14 formal review decisions, 2 combined decisions, and 1 interlocutory decision. These figures indicate that the Constitutional Court has become the primary forum for resolving legislative issues, while also indicating that the lawmaking process in the legislative body has not yet fully produced legal products that meet constitutional standards.

The problem becomes increasingly complex because positive legislative practices in Indonesia are based on a normative foundation that is not entirely solid. Lawmakers have attempted to limit the Court's scope of action through Article 45A and Article 57 paragraph (2a) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, which prohibit *ultra petita* decisions and prohibit decisions from containing the formulation of substitute norms and orders to lawmakers. However, these provisions were declared to be in conflict with the 1945 Constitution of the Republic of Indonesia through Decisions Number 48/PUU-IX/2011 and Number 49/PUU-IX/2011. Thus, a paradoxical situation has emerged: the limitations on the Court's authority have been removed by the Court itself, so that the determination of the limits of authority ultimately depends on the self-control of the institution concerned.

This situation raises serious constitutional questions. On the one hand, the Court's passive stance could lead to the annulment of norms, creating a legal vacuum that is more detrimental to citizens' constitutional rights than maintaining flawed norms. On the other hand, excessive intervention has the potential to shift the legislative function from an electorally mandated body to nine judges who are not directly elected by the people—a problem known in constitutional literature as counter-majoritarian difficulty (Bickel, 1962). This tension becomes even more apparent when the quality of reasoning and the integrity of the decision-making process are questioned, as occurred following Decision Number 90/PUU-XXI/2023, which culminated in Decision of the Constitutional Court's Honorary Council Number 2/MKMK/L/11/2023.

Previous studies have explored this phenomenon from several perspectives. Mahanani (2020) positions positive legislative decisions as a manifestation of legal progressivity in legal discovery by judges, while Fikriya et al. (2024) highlight the tension between judicial and legislative powers within a democratic government. Mastur and Irawan (2023) focus their

analysis on the impact of conditional unconstitutional rulings on legal certainty in the investment and employment sectors. However, these studies generally focus on evaluating one or two specific decisions and do not offer a systematic, cross-case-applicable parameter framework. The novelty of this research lies in its attempt to develop a comprehensive typology of positive legislative decisions between 2003 and 2025 and to formulate cumulative and operational limiting parameters.

Based on this description, this study formulates three questions. First, how is the normative construction of the Constitutional Court's judicial review authority, and to what extent does this construction allow for a positive legislative role? Second, what are the typology and constitutional problems of Constitutional Court decisions that are characterized by positive legislature? Third, what parameters can be used to limit this role to ensure it remains within the constitutional framework?

2. Research Methods

This research is a normative legal research or doctrinal legal research, namely research that places legal norms as the main object of study and aims to discover legal rules, legal principles, and legal doctrines to address the legal issues faced (Marzuki, 2017). The choice of this method is based on the nature of the problem being studied, which relates to the interpretation of constitutional norms, doctrinal consistency, and the coherence of the legal system, rather than on empirical behavioral measurements.

The research uses four complementary approaches. The statute approach is used to examine the 1945 Constitution of the Republic of Indonesia, particularly Article 24C, and Law Number 24 of 2003 concerning the Constitutional Court and all its amendments. The conceptual approach is used to build an analytical framework based on the doctrine of separation of powers, the concepts of negative and positive legislators, and the theory of constitutional judicial legitimacy. The case approach is used to analyze the legal considerations (*ratio decidendi*) in the Constitutional Court decisions that are the object of the study. The historical approach is used to trace the development of the idea of judicial review, both in a comparative context and in the minutes of amendments to the 1945 Constitution of the Republic of Indonesia.

The legal materials used consist of three categories. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, as amended several times, most recently by Law Number 7 of 2020, Law Number 7 of 2017 concerning General Elections, Law Number 11 of 2020 concerning Job Creation, and relevant decisions of the Constitutional Court and the Constitutional Court's Honorary Council. Secondary legal materials include books, reputable scientific journal articles, and previous research results. Tertiary legal materials include legal dictionaries and legal encyclopedias.

The legal materials were collected through literature review and electronic document searches on the official website of the Constitutional Court of the Republic of Indonesia and

scientific journal databases. The collected legal materials were analyzed qualitatively using grammatical, systematic, historical, and teleological interpretations. The analysis was prescriptive, meaning it did not stop at describing the current legal situation but instead focused on formulating arguments regarding what the legal situation should be (Soekanto & Mamudji, 2015).

The case objects were selected through purposive sampling with the following criteria: (a) the decision relates to the judicial review of a law; (b) the decision contains elements of norm formation, suspension of validity, or orders to other organs; and (c) the decision has a significant impact on the state system. Based on these criteria, six main decisions were selected as the focus of the analysis.

3. Results and Discussion

3.1. Normative Construction of the Authority to Test Laws and the Negative Doctrine of Legislators

a. Constitutional Basis for Testing Laws

The Constitutional Court's authority to review laws stems directly from Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the Constitutional Court has the authority to adjudicate at the first and final level, with its decisions being final, to review laws against the Constitution. This formulation is important to note because it contains three characteristics at once. First, this authority is original and singular, meaning it is not shared with other judicial institutions. Second, the decision is final, so that there are no ordinary or extraordinary legal remedies available against it. Third, the object of the review is limited to laws in the formal sense, while the review of statutory regulations below the law is the authority of the Supreme Court based on Article 24A paragraph (1).

Butt and Lindsey (2012) refer to this separation of jurisdictions as split jurisdiction, a division of judicial review authority that creates a systemic loophole because implementing regulations that conflict with the constitution cannot be tested directly against the constitution. This loophole, in turn, encourages the Constitutional Court to formulate more expansive rulings so that its decisions effectively reach the implementation level—a dynamic that must be taken into account when assessing the legislature's positive tendencies.

Doctrinally, Article 24C must be read within the framework of Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (2) affirms that sovereignty rests with the people and is exercised according to the Constitution, while Article 1 paragraph (3) states that Indonesia is a state of law. The combination of these two provisions shows that democracy and the state of law are not positioned hierarchically, but rather as two principles that limit each other. Ferejohn and Pasquino (2003) call this relationship a productive tension: constitutional testing is justified not because judges are wiser than representatives of the people, but because democracy requires a mechanism that maintains the conditions for its own sustainability.

b. Negative Legislator Doctrine and Its Limits

The concept of negative legislature stems from Hans Kelsen's thinking when designing the Austrian Constitutional Court in 1920. Kelsen (1942) argued that the annulment of a law is essentially a negative legislative act, namely the act of nullifying a norm. Because it is nullifying rather than creating a norm, this act can be entrusted to a judicial organ without violating the logic of the separation of powers. Within this framework, the constitutional court functions as a gatekeeper: it rejects norms that fail the constitutional test, but does not determine which norms should replace them.

However, as the development of constitutional justice in various countries demonstrates, the dichotomy between nullifying and creating is not as stark as one might imagine. Ginsburg (2003) notes that constitutional courts in new Asian democracies almost always develop decision-making techniques that fall into a gray area, as total nullification of norms often leads to unintended consequences. Tushnet (2008) distinguishes between strong-form and weak-form judicial review, positing the dialogic model—in which court decisions open up space for legislative response—as a middle ground between parliamentary and judicial supremacy. Dixon (2007) develops this idea, emphasizing that the primary value of the dialogic model lies in its ability to correct legislative blind spots and inertia without permanently locking down the political process.

In the Indonesian context, this dialogical framework has particular relevance. The final nature of the Constitutional Court's decision under Article 24C paragraph (1) precludes the possibility of correction through legal remedies, but does not preclude the possibility of a legislative response in the form of new legislation. Thus, theoretically, Indonesia adheres to strong-form review in the procedural dimension, but still leaves room for dialogue in the substantive dimension. The problem is, this space for dialogue narrows when the Court not only annuls a norm but also establishes a detailed replacement norm.

c. Failure of Legislative Restrictions

Lawmakers have attempted to explicitly close off the positive legislative space. Law Number 8 of 2011 contains at least two limiting provisions. Article 45A prohibits Constitutional Court decisions from containing rulings other than those requested by the applicant or exceeding the request, except for certain matters related to the main point of the request. Article 57 paragraph (2a) prohibits decisions from containing formulations of norms that replace norms declared to be in conflict with the Constitution and prohibits decisions from containing orders to lawmakers.

Both provisions were declared contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force through Decision Number 48/PUU-IX/2011 and Decision Number 49/PUU-IX/2011. The Court's argument essentially stated that constitutional authority derived directly from the Constitution cannot be reduced by law, and that such restrictions have the potential to paralyze the Court's function as guardian of the constitution.

From a normative hierarchy perspective, this argument is defensible. The law cannot narrow the powers granted by the constitution. However, from a governance perspective, the ruling had far broader consequences: the loss of the only external normative instrument limiting the form of the Court's rulings. From that point on, the limits of the Court's authority to formulate rulings were entirely determined by the Court itself through the precedents it established. This situation is seen by some as the root of the escalation of positive legislative practices in the following decades.

Thus, the answer to the first question can be formulated as follows: textually, Article 24C of the 1945 Constitution of the Republic of Indonesia neither prohibits nor explicitly justifies the positive role of legislators. This space constitutes an area of constitutional silence, the content of which depends on the interpretation of the Court. The absence of a textual prohibition does not equate to unlimited freedom, as restrictions can still be systematically derived from the principles of separation of powers and popular sovereignty, which also stem from the same constitution.

3.2. Typology of Positive Legislature Decisions and Their Constitutional Problems

Based on an analysis of the rulings and legal considerations of the Constitutional Court's decisions, positive legislative practices in Indonesia can be grouped into four types with gradually increasing degrees of intervention.

a. First Type: Conditional Decision

This type includes conditional constitutional and conditionally unconstitutional rulings. In a conditional constitutional ruling, a norm is declared valid as long as it is interpreted according to the Court's interpretation. In a conditional unconstitutional ruling, a norm is declared contrary to the constitution unless interpreted according to a specific interpretation. Technically, both forms are the result of interpretation, and therefore can still be maintained as part of the judicial function.

Criticism of this method primarily concerns legal certainty. The interpretations established by the Court are not incorporated into the text of the law, so readers of the law cannot understand the true meaning of the norms without consulting the Court's ruling. Mahanani (2020) views this technique as a progressive form of legal discovery necessary to avoid legal vacuums. Conversely, from a legal certainty perspective, this practice creates a layer of norms invisible to the formal legal system and burdens law enforcement officials and the public.

b. Second Type: Formulation of New Norms in Amar

This type occurs when the Court goes beyond interpreting and adds normative elements not previously included in the article's formulation. Decision Number 90/PUU-XXI/2023 is the most widely discussed example. In that decision, the Court declared the minimum age requirement of 40 years for presidential and vice-presidential candidates, as stipulated in Law Number 7 of 2017 concerning General Elections, unconstitutional unless interpreted to

include individuals who have held or are currently holding elected positions, including regional head elections.

There are three prominent constitutional issues in this ruling. First, the addition of the phrase creates a new qualification never discussed in the legislative process, thus substantively constituting a norm-forming measure. Second, the age requirement is essentially an open legal policy under the authority of the legislators, and the Court has consistently rejected similar requests on this basis in several previous rulings. Third, there is a problem with the integrity of the process, as later confirmed in the Constitutional Court's Honorary Council Decision Number 2/MKMK/L/11/2023, which found the Chief Justice of the Constitutional Court guilty of serious violations of the code of ethics and conduct for constitutional judges and imposed the sanction of dismissal from his position.

Fikriya et al. (2024) positioned this ruling as a turning point, demonstrating that the positive role of legislators is not always oriented toward protecting constitutional rights but can instead be exploited for short-term political gain. This phenomenon aligns with Landau's (2013) warning regarding abusive constitutionalism, namely the use of formally legitimate constitutional mechanisms and institutions to undermine the substance of democracy. Scheppele (2018) calls a similar pattern autocratic legalism, while Sadurski (2019) documents how the instrumentalization of the constitutional court is a key stage in constitutional decline.

c. Third Type: Suspension of Enforcement and Order of Establishment of Law

This type of ruling is characterized by a decision that does not immediately revoke a norm, but rather suspends the legal consequences of the revocation while ordering legislators to make improvements within a specific deadline. Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law is a paradigmatic example. The Court declared the law conditionally unconstitutional, set a two-year deadline for revision, declared the law to remain in effect during the revision period, and suspended all strategic and far-reaching actions or policies, as well as the issuance of new implementing regulations (Mastur & Irawan, 2023).

A similar pattern emerged in Decision Number 168/PUU-XXI/2023, which partially granted the petition for judicial review of the employment cluster in the Job Creation Law and ordered lawmakers to draft a separate new employment law, with a deadline of two years from the date of the decision.

This technique has strong functional justification. Immediate repeal of large-scale legislation would create a legal vacuum and much more detrimental uncertainty. Within Tushnet's (2008) framework, this technique actually approaches a dialogical model because it returns substantive decisions to the legislative body while establishing a constitutional framework. However, two objections remain relevant. First, setting a deadline is a policy choice without a clear constitutional basis—why two years rather than one or three? Second, the concept of "strategic and far-reaching policies" lacks an operational definition, thus creating significant uncertainty for both government officials and business actors.

d. Fourth Type: Redesign of the State System

This type is the most far-reaching form of intervention, where a decision not only corrects a single norm but also changes the system's architecture. Two decisions in the 2025 period clearly illustrate this type.

Decision Number 62/PUU-XXII/2024 stated that the threshold provisions for proposing presidential and vice-presidential candidate pairs as stipulated in Article 222 of Law Number 7 of 2017 are contrary to the 1945 Constitution of the Republic of Indonesia. Interestingly, the Court did not stop at annulment, but included constitutional engineering guidelines for lawmakers in drafting new regulations, including directions so that the drafting of norms does not result in an excessive number of candidate pairs and so that political parties that do not propose candidate pairs are subject to certain sanctions. These kinds of guidelines are materially legislative policy directions.

Decision Number 135/PUU-XXII/2024 went further by separating the implementation of national general elections—which include the election of the president and vice president, the People's Representative Council, and the Regional Representative Council—from regional general elections, which include the election of members of the Regional People's Representative Council and regional heads, with a certain time interval between the two. This decision sparked widespread debate because it had implications for the terms of office of state officials in the regions, required adjustments to several laws, and touched on issues previously considered within the realm of open legal policy. Some circles in the legislative body also questioned the Court's consistency, considering that in previous decisions, simultaneous elections were declared a legitimate constitutional choice.

From Hirschl's (2004) perspective, this fourth type is a manifestation of what is known as juristocracy, namely the shift of decision-making on fundamental political issues from the electoral to the judicial arena. This shift is not always the result of a power grab by the courts; it is often facilitated by political elites who benefit from the transfer of political responsibility to the judiciary.

e. Three Constitutional Problems

Based on this typology, three fundamental constitutional problems can be identified.

First, the blurring of the boundaries of the separation of powers. The post-amendment 1945 Constitution of the Republic of Indonesia adheres to a separation of powers with a mechanism of checks and balances, not a blending of powers. When the Court formulates norms, sets deadlines, and directs the substance of legislative policy, there is an accumulation of testing and formative functions within a single organ. The problem becomes more serious because the Court's decisions are final, thus lacking the institutional correction mechanisms that typically apply to legislative products.

Second, a democratic legitimacy deficit. Constitutional judges do not receive a direct electoral mandate and are not politically accountable to voters. Bickel (1962) formulated this problem

as the counter-majoritarian difficulty, while Waldron (2006) raised a more pointed objection, stating that in a society with well-functioning democratic institutions, there is no sufficient reason to leave the resolution of fundamental moral disagreements to the judiciary. Waldron's argument is not fully applicable to the Indonesian context given the problematic quality of the legislative process, but it serves as a reminder that the legitimacy of constitutional justice is earned, not inherent, and depends heavily on the quality of the legal reasoning displayed in its decisions.

Third, the risk of instrumentalization. When the authority to formulate norms is not limited by clear parameters, it becomes vulnerable to being used as a means to achieve political goals that cannot be achieved through the ordinary legislative process. The series of events that began with Decision Number 90/PUU-XXI/2023 and culminated in Decision of the Constitutional Court's Honorary Council Number 2/MKMK/L/11/2023 demonstrates that this risk is not merely a theoretical concern. Hendrianto (2018) emphasized that the continued authority of the Constitutional Court in Indonesia depends heavily on judicial leadership that is able to distance itself from practical political interests, and that the capital of public trust built over many years can be destroyed by a single decision perceived as partisan.

3.3. Reconstruction of Authority Boundaries: Five Cumulative Parameters

Completely rejecting the role of positive legislature is neither realistic nor wise. In some situations, revoking a norm without a corresponding interpretation will create a legal vacuum that further harms citizens' constitutional rights. What is needed is not a ban, but rather discipline through clear and openly testable parameters. Based on the analysis above, this study proposes five cumulative parameters—meaning all must be met before the Court can issue a positive legislature ruling.

The first parameter: direct connection with constitutional rights. A norm-forming ruling is only justified if it is intended to restore a clearly violated constitutional right, not to improve a policy design deemed less than ideal. The distinction between "violating constitutional rights" and "policy-inappropriate" must be explicitly stated in the legal reasoning. This parameter serves to filter out requests that are truly motivated by political dissatisfaction.

Second parameter: absence of lighter solution alternatives. The Court must first examine whether the constitutional objective can be achieved through a simpler ruling, such as a pure annulment or minimal interpretation. This principle embodies the principle of proportionality in the realm of constitutional remedies: choose the instrument that interferes with the authority of other organs to the least extent while still effectively restoring rights.

The third parameter: clarity of the constitutional basis for the formulated norms. The norms added by the Court must be logically derived from specific constitutional provisions, not from considerations of expediency or policy preferences. If a formulation is only one of several equally constitutional options, then the choice between these options rests with the legislator's discretion. This parameter directly addresses the weaknesses apparent in Decision Number 90/PUU-XXI/2023.

The fourth parameter: respect for open legal policies. The open legal policy doctrine must be applied consistently and not used selectively. This consistency is crucial for legitimacy, as changing the doctrine without adequate explanation will create the impression that decisions are determined by extralegal factors. If the Court wishes to deviate from precedent, the deviation must be accompanied by a clear explanation of the reasons for the change of position (explicit overruling).

The fifth parameter: methodological transparency and institutional dialogue. Every positive legislative decision should contain an explicit description of the interpretative method used, the alternative rulings considered and the reasons for their rejection, as well as anticipated implementation implications. Furthermore, rulings with systemic implications should be drafted within a dialogic framework: establishing constitutional corridors and leaving the details to legislators, with a review mechanism in place if deadlines are not met (Dixon, 2007).

These five parameters require institutional support to ensure they remain a moral imperative. There are at least three institutional recommendations that can be implemented.

First, the regulation of the typology of rulings in the revision of the Constitutional Court Law. This regulation must be formulated carefully so as not to repeat the error of Article 45A and Article 57 paragraph (2a) of Law Number 8 of 2011 which are absolute prohibitions. A more appropriate approach is a procedural regulation, namely requiring the Court to outline the fulfillment of certain parameters when issuing rulings that form norms, without prohibiting such rulings. This kind of procedural obligation does not reduce constitutional authority, but rather strengthens the accountability of reasoning.

Second, Strengthening ethical mechanisms. The experience of the Constitutional Court's Honorary Council Decision No. 2/MKMK/L/11/2023 shows that ethical mechanisms can function, but their ad hoc nature and limited authority reduce their preventive effectiveness. Strengthening the Constitutional Court's Honorary Council into a permanent institution with clear authority, including over the regulation of conflicts of interest and the obligation to recusal, is an urgent need.

Third, strengthening meaningful participation in judicial review procedures. If the Court is to formulate norms with systemic impacts, affected parties should be given the opportunity to adequately express their views. Expanding the use of amicus curiae, interdisciplinary expert testimony, and more open examinations will strengthen the quality of information used as the basis for decisions and strengthen their legitimacy. Isra (2010) has long demonstrated that the problem of legislative quality in Indonesia lies not solely in the formulation of norms, but in the process of their formation—and this observation also applies to the process of norm formation through court decisions.

The application of these institutional parameters and supports is expected to place the Constitutional Court in the right position: strong enough to correct legislative products that violate the constitution, but restrained enough not to take over functions that are constitutionally assigned to an organ with a popular mandate. As Asshiddiqie (2011)

emphasized, constitutionalism is essentially the idea of limiting power, and these limitations apply to every state organ without exception—including the organ tasked with safeguarding the constitution itself.

4. Conclusion

Based on the above description, three conclusions can be drawn. First, Article 24C of the 1945 Constitution of the Republic of Indonesia does not contain a textual prohibition on the positive role of legislators, so that this space is an area of constitutional silence. The efforts of lawmakers to limit this space through Article 45A and Article 57 paragraph (2a) of Law Number 8 of 2011 have been declared unconstitutional through Decision Number 48/PUU-IX/2011 and Decision Number 49/PUU-IX/2011, so that determining the limits of authority ultimately depends on the Court's own self-control. *Second*, Positive legislative practices can be grouped into four types with increasing degrees of intervention: conditional decisions, the formulation of new norms in rulings, the suspension of enforcement accompanied by an order to establish laws, and the redesign of the state system. These practices give rise to three constitutional problems: the blurring of the boundaries of the separation of powers, a deficit in democratic legitimacy, and the risk of instrumentalizing the judiciary for short-term political interests. *Third*, the necessary restrictions are not absolute prohibitions, but rather discipline through five cumulative parameters: direct connection with constitutional rights, the absence of lighter alternative solutions, clarity of constitutional basis for the formulated norms, respect for open legal policies, as well as methodological transparency and institutional dialogue.

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