

## Constitutional Parameters of Judicial Activism in the Indonesian Constitutional Court

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### ABSTRACT

This study examines the evolving role of Indonesia's Constitutional Court, specifically the tension between its constitutional mandate as a negative legislator and instances of judicial activism approaching positive legislation. Using normative legal research methodology, the research analyzes two landmark decisions, No. 90/PUU-XXI/2023 and No. 62/PUU-XXII/2024, to distinguish between legitimate constitutional review and potential judicial overreach. The findings reveal that while judicial activism can strengthen constitutional checks and balances when properly constrained, it risks undermining democratic legitimacy when extending to the creation of new legal norms. The study proposes a five-parameter framework emphasizing constitutional supremacy, compelling justification, substantive justice conditions, procedural integrity, and institutional restraint to guide judicial interpretation within constitutional boundaries. This framework contributes to resolving the fundamental challenge of balancing judicial independence with democratic accountability in Indonesia's evolving constitutional landscape, ensuring the Court can effectively safeguard constitutional rights without compromising democratic processes.

### Keywords:

judicial activism;  
constitutional court;  
negative legislator;  
positive legislator;  
separation of powers.

### INTRODUCTION

The Indonesian Constitutional Court plays a central role in maintaining constitutional supremacy by exercising judicial review as guaranteed under Article 24C of the 1945 Constitution (M. Lutfi Chakim, 2020). Since its establishment during the Third Constitutional Amendment, the MK has increasingly shaped national legal and political landscapes, extending its influence beyond mere norm annulment to decisions that indirectly or directly affect legislation (Negara, et al., 2022; Schroeder, 2022). As Hans Kelsen argued, constitutional courts are primarily intended to serve as *negative legislators*, whose role is to invalidate unconstitutional laws without engaging in normative construction (Lars Vinx, 2015; Brewer-Carías, 2017).

However, empirical studies indicate that the MK has gradually transcended this boundary. In 45 criminal law cases between 2003–2020, the Court introduced new normative content in its rulings, signaling a *de facto* shift toward a *positive legislator* role (Agustine, et al., 2023). This trend gained formal expression when, in Decision No. 48/PUU-IX/2011, the MK annulled Article 57(2a)(c) of Law No. 8/2011, effectively granting itself the authority to add norms where necessary (AL-Dulaimi, 2018). The absence of procedural constraints for such activism raises risks of judicial overreach, especially in matters with significant political consequences (A. Prabowo & Manfaluthfi, 2018).

This institutional ambiguity becomes more evident when comparing two recent landmark decisions. In Decision No. 90/PUU-XXI/2023, the MK amended Article 169q of Law No. 7/2017 concerning presidential candidacy, introducing an exception that allowed individuals with prior elected office to bypass the minimum age requirement of 40 years (Subandri, 2024). This move effectively created a new legal norm, traditionally the purview of the legislature, highlighting the Court's transition into a

positive legislator. The applicant, who lacked direct constitutional harm, was nonetheless granted standing on speculative grounds (Rizky, et al., 2024), diverging from previous thresholds such as those set in Decision No. 006/PUU-III/2005. Furthermore, the justification of “intolerable injustice” appeared disproportionate, as the limitation merely deferred, rather than denied, political participation (Ibrahim, 2023a). Critics argue that this ruling blurred the line between adjudication and legislation, undermining democratic safeguards (Jati, et al., 2024).

In contrast, Decision No. 62/PUU-XXII/2024 exemplifies the Court’s potential to uphold constitutional justice within the limits of its negative legislator function. By annulling Article 222 of the Election Law, which imposed a 20% presidential threshold, the MK responded to longstanding critiques about the exclusionary nature of the provision, particularly its effects on political diversity and democratic fairness (Abdur Rozaq, et al., 2024). Unlike in Decision 90, the Court did not create new norms, instead returning the task of regulation to the legislature. This decision, while activist in spirit, respected constitutional boundaries and aligned with principles of judicial restraint, legal certainty, and checks and balances (Saragih, et al., 2025).

Internationally, the evolution of judicial activism has also been contested. The Czech and Turkish constitutional courts have pursued limited activism to safeguard democratic values while maintaining institutional restraint et al., 2023; Hazama, 2023). Meanwhile, concerns over populist instrumentalization of constitutional courts, as noted by (Kovalčík, 2022), underscore the risks of unchecked judicial authority.

Despite growing literature on MK’s activism, few studies systematically evaluate how the Court can balance its activist role with constitutional boundaries. Previous analyses tend to either justify or reject activism wholesale, rather than interrogate its legitimacy based on the Court’s foundational design and comparative international experience (Ardhanariswari, et al., 2023).

This study, therefore, contributes to bridging this gap by examining the evolving constitutional parameters of judicial activism in Indonesia. Through the comparative analysis of Decisions No. 90/PUU-XXI/2023 and No. 62/PUU-XXII/2024, it explores how the MK’s activist decisions can either reinforce or undermine its institutional integrity. The article seeks to establish a normative framework to distinguish between justified positive and negative judicial activism and offers parameters for when and how the Court may exercise such roles without compromising the doctrine of separation of powers. By doing so, it aims to reinforce judicial accountability and democratic resilience within the Indonesian constitutional system.

## METHOD

This study used is normative legal research, which examines legal principles, statutory provisions, and doctrinal interpretations as its main sources of analysis (Benuf & Azhar, 2020). The goal of this research is prescriptive in nature intended to critically analyze and articulate the constitutional limits of judicial authority, especially as they pertain to the role of the Constitutional Court in judicial activism, both as a negative and positive legislator (Peter Mahmud Marzuki, 2010). To structure the enquiry, this study applies methodological approaches: the statutory approach, the conceptual approach, and the case-based approach. The statutory approach and the case approach are used to dissect judicial reasoning, as this includes an analysis of Constitutional Court Decisions No. 90/PUU-XXI/2023, and No. 62/PUU-XXII/2024,

each of which represents a pivotal moment in the trajectory of judicial activism in Indonesia. By focusing on rulings that hold final and binding force, the research evaluates how judicial interpretation either conforms to or diverges from constitutional mandates (Irwansyah, 2021).

## RESULTS AND DISCUSSION

### 1. Legal and Constitutional Basis of the Constitutional Court's Position

The Constitutional Court of Indonesia is firmly established in the 1945 Constitution, specifically under Article 24C paragraph (1), which explicitly authorizes the Court to review laws against the Constitution. This authority positions the Court as a negative legislator, meaning it can annul laws that are deemed unconstitutional but cannot formulate new legal norms. Further elaboration is provided in Law Number 24 of 2003 concerning the Constitutional Court, which stipulates that only laws enacted after the amendments to the 1945 Constitution can be subjected to judicial review. Moreover, Law Number 8 of 2011, through Article 57 paragraph (2a) letter c, emphasizes that the Constitutional Court's decisions must not create new legal norms to replace the annulled ones. Nevertheless, in Decision Number 48/PUU-IX/2011, the Court declared this provision unconstitutional, reasoning that it hampers the Court's duty to uphold the constitutionality of legal norms and to fill the legal vacuum when a provision is invalidated, particularly considering the lengthy legislative process required to amend or replace such norms (Mahkamah Konstitusi, 2011).

The emergence of judicial review, particularly the review of legislation against the Constitution, can be traced back to the discussions surrounding the Judicial Power Bill, which later materialized as Law No. 14 of 1970. The major constitutional reforms following Indonesia's 1998 Reformasi era shifted the system from the supremacy of the MPR to the supremacy of the Constitution. This transformation necessitated the creation of independent institutions such as the Constitutional Court to resolve inter-branch disputes and uphold constitutional governance within a checks and balances framework (Darmadi, 2020).

The original intent behind the establishment of the Court, as reflected in the comprehensive drafting records of the Third Amendment to the 1945 Constitution, was to maintain its passive character to avoid friction with legislative bodies (Tim Penyusun Naskah Komprehensif, 2010). The method of original intent interpretation demands that the Constitutional Court's interpretative authority remain anchored to the spirit and values of the Constitution and Pancasila. While constitutional judges possess significant discretion in interpretation, this power must be exercised within the constraints of objectivity, shielding judicial decision-making from political or personal biases (Harvelian, Safa'at, Widiarto, & Qurbani, 2020).

Indonesia formally adheres to the doctrine of separation of powers, yet materially implements a model of mutual checks and balances among the legislative, executive, and judiciary (R, Hamidi, & Anshari, 2018). Within this structure, the Constitutional Court stands as a pivotal actor, endowed with unique judicial review powers distinct from those of the Supreme Court. The essential goal of the separation of powers is to prevent the concentration of excessive authority in any single branch, a concern that an effective checks and balances system addresses by ensuring continuous oversight and accountability (Mardian Wibowo, 2018).

However, the Court's authority must be exercised strictly within constitutional boundaries. It is not permitted to appropriate legislative or executive powers by crafting new legal norms or altering constitutional provisions through its decisions. Such actions would constitute a pathological exercise of judicial review, undermining the separation of powers (Allan R. Brewer-Carías, 2010). Judicial review by the Court is thus intended as a mechanism of constitutional control, reinforcing the supremacy of the Constitution by allowing the judiciary to invalidate laws that conflict with constitutional mandates. (Radian Salman, 2018).

Moreover, the Constitutional Court's relationship with the rule of law and the system of checks and balances is vital. From a legal perspective, the Court ensures that all state actions, especially legislative actions, conform to constitutional supremacy. Hans Kelsen emphasized that a constitutional court is necessary to safeguard constitutional supremacy by annulling statutes that deviate from constitutional norms (Kelsen, 2006). Constitutional supremacy not only demands that all laws align with the Constitution; it also constrains state actions, prohibiting any governmental authority from acting beyond constitutional limit (Muchamad Ali Safa'at, 2014).

From a political standpoint, the Court's role is to supervise and control legislative and administrative decisions, preventing any abuse of power. This complex relationship between judges and legislators strengthens the promotion of the rule of law, ensures the protection of individual rights, and helps develop a consistent body of constitutional jurisprudence (Hutchinson, 2017).

In practice, the Court's decisions, which are final and binding (*erga omnes*), significantly influence not only Indonesia's legal framework but also its political dynamics. The finality of its rulings ensures the protection of constitutional rights and upholds the supremacy of the Constitution (Ningrum, Al Khanif, & Antikowati, 2022). Through its judicial review authority, the Court functions as an external counterweight to the legislature, guarding against potential abuses and ensuring that laws are not tools of oppression but instruments of justice and constitutional order (Asmal, 1991).

The Constitutional Court's role as a negative legislator, therefore, serves not merely as a passive annulment mechanism but as an active protector of constitutional governance. Its restraint from legislating new norms reinforces its position as the guardian of constitutional supremacy, essential for maintaining the balance of power among state institutions and upholding democratic resilience (Jimly Asshiddiqie, 2017). By ensuring that all legal products and governmental actions stay within the constitutional corridor, the Constitutional Court fulfills its critical duty of protecting the rule of law and preserving Indonesia's democratic constitutional order (Pompe, 2005).

## **2. Judicial Activism in Indonesia's Constitutional Court: Authority, Boundaries, and Democratic Implications**

Judicial activism in Indonesia's Constitutional Court has been a subject of debate, with implications for democratic processes and the balance of powers. The Court has applied judicial activism in various decisions, prioritizing substantive justice over procedural considerations (Faiz, 2016). This approach has led to controversies, particularly in high-stakes political cases like the 2019 presidential election dispute (Hadi, 2020). While judicial activism can protect constitutional rights, critics argue it may overstep the Court's authority and undermine democratic legitimacy (Sundariwati, 2024). The development of judicial independence in Indonesia has been gradual, with



significant progress made during the Reformation era (Lamijan & Tohari, 2022). However, concerns persist about the potential for judicial overreach and the emergence of a "juristocracy" that could subordinate democratically elected institutions (Sundariwati, 2024). Balancing judicial independence with democratic principles remains a challenge in Indonesia's evolving constitutional landscape.

Judicial activism in Indonesia's Constitutional Court has triggered a complex discourse on its role in safeguarding constitutional supremacy while balancing democratic legitimacy. The Court's assertiveness in interpreting constitutional norms has at times elevated its position from a negative to a de facto positive legislator, especially in politically sensitive rulings such as the resolution of the 2019 presidential election dispute (Hadi, 2020).

Research shows that the MK consistently emphasizes substantive justice, often expanding constitutional interpretation beyond the textual confines of the law. While this approach enhances the protection of citizens' constitutional rights, it has drawn criticism for overstepping the intended judicial boundaries (Faiz, 2016). highlights this tension by characterizing such judicial activism as a double-edged sword: on one hand, it defends constitutional supremacy, but on the other, it risks transitioning the judiciary toward a "juristocracy." (Sundariwati, 2024). Further analysis examines cases where the Court has interpreted the 1945 Constitution in ways that substantively altered its meaning, thereby contributing to the growing perception of the Court as a dominant institutional actor. Particularly problematic is the Court's use of conditionally constitutional rulings to inject new legal provisions, a practice that effectively circumvents the legislative process (Prasetianingsih, 2020).

The post-Reformation era has granted the MK substantial independence, which studies note has improved judicial autonomy while simultaneously increasing the potential for judicial overreach.(LAMIJAN & TOHARI, 2022) When courts exceed their mandate by crafting policy-like rulings, they risk undermining both the principle of separation of powers and public trust in democratic institutions (Sundariwati, 2024).

Comparative legal scholarship offers important perspectives on this phenomenon. While judicial activism may advance social justice, it becomes problematic when it usurps legislative authority (Sinha, 2024). proposes that judicial interventions must be framed within objective constitutional parameters such as fundamental rights and respect for democratic values. In this light, judicial activism must operate with restraint to prevent destabilizing the institutional balance of powers (Muñoz Mendiola, 2020).

The dangers of an overly ambitious judiciary attempting to assume executive or legislative functions are emphasized in scholarship, warning that unchecked judicial enthusiasm may erode constitutional structures (Kumar, 2014). Judicial activism has evolved from strict legalism to a broader sociopolitical tool for rights protection a noble aim that nonetheless requires disciplined procedural boundaries (Roux, 2021). Research identifies the growing tendency of courts to cross constitutional boundaries under the guise of activism, asserting that exceptional judicial powers should remain reserved for exceptional circumstances (Ka, 2020).

The Indonesian Constitutional Court, while positioned as a guardian of the constitution, must continually navigate the fine line between necessary intervention and overreach. It plays a vital role in maintaining democratic integrity, yet its growing influence necessitates greater reflection on institutional boundaries. To this end,

judicial activism in Indonesia should be guided by a commitment to interpretative restraint, constitutional fidelity, and democratic accountability.

Discussion of judicial activism within the Constitutional Court becomes increasingly relevant when confronted with the dichotomy of its role as a positive legislator versus a negative legislator. This phenomenon merits in-depth examination given its significant implications for the balance of power and democratic integrity of the nation, where the boundary between interpreting the constitution and creating new legal norms often becomes blurred in contemporary Indonesian constitutional adjudication practices. In this case study, two Constitutional Court decisions will be analyzed that reflect characteristics of judicial activism, both those functioning as a negative legislator (nullifying legal norms that contradict the constitution) and those trending toward becoming a positive legislator (creating new legal norms).

a. Judicial Activism as a Negative Legislator: Constitutional Court Decisions Number 90/PUU-XXI/2023

The Constitutional Court's Decision No. 90/PUU-XXI/2023 marked a critical turning point in the judicial activism landscape in Indonesia. In this case, the Court amended Article 169q of Law No. 7/2017 concerning presidential candidacy by adding an exception to the age requirement. While the law originally mandated a minimum age of 40 years, the Court ruled that individuals who hold or have held elected regional positions could also qualify. This addition effectively created a new legal norm—an act typically within the legislative domain—signaling the Court's role as a *de facto* positive legislator (Subandri, 2024).

The applicant in this case, Almas Tsaqibbirru, lacked demonstrable constitutional harm, presenting only speculative injury. Despite this procedural flaw, the Court granted standing by accepting his argument that his right to vote for younger candidates was infringed (Rizky et al., 2024). This represents a departure from established standards such as Decision No. 006/PUU-III/2005, which requires clear, present harm to establish standing.

Furthermore, the justification for the Court's intervention, framed as preventing "intolerable injustice," was unconvincing. The political rights of younger voters were delayed, not denied, making the use of this concept disproportionate (Ibrahim, 2023). The decision raises concerns about the blurring of judicial boundaries, as it represents an extension of judicial power into policy-making, a role constitutionally assigned to the legislature (Jati et al., 2024). This judicial assertiveness is especially troubling considering the Court's previous rulings, which had classified the age requirement as an open legal policy under the purview of lawmakers. The sudden reversal in interpretation, without a compelling constitutional justification, suggests inconsistency and potentially signals external influence (Fikriya, et al., 2024; Rohmah, 2024).

The dissenting opinions within the bench highlight internal disagreement and raise alarms about the judicial process. One judge criticized the decision's logic and the rapid shift in institutional position, indicating that such activism may not be entirely grounded in legal reasoning but in extralegal or political considerations (Sundariwati, 2024).

The Court's traditional self-characterization as a negative legislator, following Kelsenian thought, prohibits it from modifying or drafting legal norms. Its constitutional mandate is limited to annulling norms inconsistent with the Constitution. By adding a

new provision, the Court arguably assumed legislative power, infringing on the doctrine of separation of powers (Butt, 2015).

Compounding these issues were procedural irregularities. The participation of the Chief Justice, despite a declared conflict of interest, contravened the *nemo iudex in causa sua* principle and Article 17 of the Judicial Powers Law. Furthermore, decisions in similar cases (Nos. 29, 51, and 55/PUU-XXI/2023) had previously dismissed challenges to the same article, reinforcing the view that this decision represented a substantive inconsistency (Apriansyah, 2024).

Adding to the legal complexity, the Court failed to consolidate similar petitions, thereby bypassing the *ne bis in idem* principle. This procedural oversight allowed for fragmented adjudication on identical constitutional issues. More robust procedural rules are urgently needed to guide the Court in cases involving repeat or related challenges to the same statutory provisions (Situmeang, et al., 2024).

Substantively, the Court's reasoning deviates from Ronald Dworkin's ideal of "law as integrity," wherein judicial decisions must reflect a consistent moral framework. By prioritizing individual affiliations over institutional duty, the Court's approach lacks the coherence and integrity expected of a constitutional guardian. This concern is further validated by the ruling of the Honorary Council of the Constitutional Court (MKMK) in Case No. 02/MKMK/L/2023, which sanctioned the Chief Justice for ethical breaches (Furqon, et al., 2024).

Ultimately, this decision has sparked public and academic concern over the erosion of the checks and balances system. The appearance of judicial partiality and political influence threatens the foundational principles of democratic governance. To mitigate future risks, it is essential to reassess the Constitutional Court's authority, clarify the boundaries of judicial activism, and institutionalize stronger external oversight mechanisms. Reforms in the 1945 Constitution and Constitutional Court procedural law are critical to preserving constitutional integrity and ensuring the Court fulfills its role as a neutral guardian of democracy (Raga & Baskoro, 2023).

b. Judicial Activism as a Negative Legislator: Analysis of Constitutional Court Decision No. 62/PUU-XXII/2024

In Decision No. 62/PUU-XXII/2024, the Indonesian Constitutional Court exemplified judicial activism in its negative legislator capacity by annulling Article 222 of the Election Law, which had mandated a 20% threshold for presidential nominations. The Court declared the provision unconstitutional and thus non-binding. Although the norm was part of what is often classified as open legal policy, the Court emphasized that such provisions must still adhere to the principles of morality, rationality, and tolerable justice. When a law leads to structural injustice, the Court reserves the authority to strike it down (Constitutional Court Decision No. 62/PUU-XXII/2024, 2024).

This judgment was rooted in the Court's observation that the threshold created imbalances in the democratic process, severely restricting the ability of new and smaller political parties to nominate candidates. Consequently, it limited voter choice and undermined political inclusivity. The Court further noted that, in the context of simultaneous elections, the 20% threshold had become irrational and inconsistent with democratic values. Numerous candidates, although democratically selected within their parties, were barred from running due to insufficient political backing. Thus, Article 222 had effectively institutionalized political exclusivity and curtailed the

participatory nature of elections (Constitutional Court Decision No. 62/PUU-XXII/2024, 2024).

Scholarly critiques support this position. Studies have shown that the threshold infringes on political parties' rights to nominate presidential candidates, limits internal democracy, and fosters inequality among political parties. Fifteen registered political parties in the 2024 election cycle, for example, were effectively excluded from nominating presidential candidates (Dani Setidayanti, 2025). Moreover, the provision fosters political oligarchy, hindering democratic consolidation in Indonesia's multiparty presidential system (Sukmawan & Pratama, 2023).

From a representation standpoint, the presidential threshold contradicts Indonesia's pluralistic social composition. In such a diverse society, the public should have access to a broad range of candidates that reflect their demographic and ideological diversity (B. S. Prabowo, 2022). Furthermore, Article 6A(2) of the 1945 Constitution makes no mention of a nomination threshold, reinforcing the legal argument for its unconstitutionality (Rannie, et al., 2024).

Legal scholars have proposed that future constitutional adjudication should involve a more nuanced classification of open legal policy into absolute and relative categories. Both should be subject to constitutional review, using broader interpretive frameworks, including references to the Preamble of the Constitution and Pancasila. Such approaches could potentially justify further reforms, including the complete removal of the threshold (Gazali, et al., 2024).

It is worth noting that the Court had previously rejected similar judicial review petitions 36 times before issuing this landmark ruling. While the Court's intervention into a legislative domain may seem to indicate judicial activism, it remains within the scope of negative legislation, as no new norms were introduced. The Court merely annulled unconstitutional provisions, aligning with its mandate to uphold the Constitution. This activism is justified by the urgency of addressing systemic electoral inequality (Rohmah, 2024).

While judicial activism has indeed expanded the Constitutional Court's interpretive and moral authority, its role must remain constitutionally grounded. Judicial activism can enhance the checks and balances framework and ensure government accountability, but only if guided by constitutional morality. This concept emphasizes that the authority granted to any branch of government, including the judiciary, must operate within predefined constitutional boundaries (Salsabila, et al., 2024).

Furthermore, as some scholars argue, although the Court has transitioned beyond a strictly negative legislator, this does not permit unrestricted judicial expansion. The Court must carefully consider the democratic, legal, and moral implications before adopting a more assertive role, especially as a positive legislator (Ardhanariswari, et al., 2023b). Decision No. 62/PUU-XXII/2024 demonstrates a form of measured judicial activism that upholds constitutional principles while responding to pressing democratic deficits.

## **Discussion**

Decision No. 90/PUU-XXI/2023 embodies problematic "positive legislator" activism by amending Article 169q of Law No. 7/2017 to create an exception to the 40-year presidential age requirement for individuals with regional elected experience. This intervention created a new legal norm, encroaching upon legislative authority. The Court granted standing despite speculative constitutional harm and justified its



decision by applying the "intolerable injustice" doctrine disproportionately. Significant procedural irregularities further undermined the decision's legitimacy, including the Chief Justice's participation despite a declared conflict of interest and inconsistency with prior rulings on similar matters.

Conversely, Decision No. 62/PUU-XXII/2024 represents legitimate "negative legislator" activism by annulling Article 222 of the Election Law, which imposed a 20% threshold for presidential nominations. The Court maintained its constitutional role by eliminating, rather than creating, a legal norm it deemed unconstitutional. This judgment was substantiated by empirical evidence showing that the threshold created democratic imbalances by restricting smaller parties' participation, effectively excluding fifteen parties from the 2024 presidential nomination process. The Court emphasized that even open legal policy must adhere to principles of morality, rationality, and tolerable justice.

The fundamental distinction lies in their constitutional implications, while Decision No. 90/PUU-XXI/2023 threatens separation of powers by usurping legislative functions and appears motivated by individual accommodation rather than constitutional principles, Decision No. 62/PUU-XXII/2024 upholds constitutional values by addressing systemic electoral inequality without exceeding judicial authority. The first decision compromises institutional integrity through apparent conflicts of interest and procedural flaws; the second strengthens democratic consolidation by enhancing political inclusivity within constitutional boundaries.

These contrasting approaches illustrate that judicial activism as a negative legislator represents a more legitimate exercise of constitutional authority than activism that creates new legal norms. This comparison underscores the critical need for clearer boundaries between judicial intervention and legislative prerogative to maintain constitutional integrity in Indonesia's evolving democracy.

The expanding scope of judicial activism in Indonesia demands clear parameters to ensure it strengthens rather than undermines constitutional checks and balances. Without defined boundaries, judicial intervention risks encroaching upon legislative authority and destabilizing democratic governance structures essential to constitutionalism. The Indonesian Constitutional Court's evolution from negative to positive legislator necessitates a framework that balances judicial independence with institutional restraint. Martitah's research identifies three key requirements for the Constitutional Court (MK) to act as a positive legislator: (1) the fulfillment of justice and tangible benefits for society; (2) the presence of urgent conditions to prevent violations of constitutional rights and legal vacuum (*rechtvacuum*), which could lead to legal uncertainty and instability (Martitah, 2016).

The Constitutional Court's ongoing practice of judicial activism strongly supports principles of judicial independence and progressive legal approaches. Progressive jurisprudence acknowledges the value of written law while maintaining flexibility to move beyond normative constraints when pursuing justice. Rather than being rejected, judicial activism within the Constitutional Court should be recognized as strengthening checks and balances, providing essential oversight of other governmental branches. The subjective and abstract qualities inherent in judicial activism require objective validation, often achieved through virtue jurisprudence principles. While judicial activism has transformed the Constitutional Court beyond its original negative legislation role, this evolution has limitations. The Court must

carefully assess specific circumstances before acting as a positive legislator, as routinely assuming this position in all cases would risk inappropriately overlapping with the authority of other institutions (Ardhanariswari, et al., 2023b). Constitutional morality represents the essence of the Constitution, embodying its fundamental moral values. This concept defines what is reasonable and appropriate according to constitutional moral principles, with the justification that outcomes aligned with these principles are inherently good and right. Constitutional morals establish the understanding that governments formed by and for the people must operate under specific limitations (Annisa Salsabila et al., 2024).

To ensure judicial activism strengthens rather than undermines constitutional checks and balances, the following comprehensive parameters should guide the Constitutional Court's interpretive function:

1. Constitutional Supremacy, judicial intervention must be firmly grounded in the constitutional text, values, and foundational principles. The Court should maintain interpretive fidelity to the normative hierarchy, with the 1945 Constitution and Pancasila positioned as the supreme legal and philosophical foundations. This principle aligns with the original intent behind the establishment of the Constitutional Court as the guardian of constitutionalism and the rule of law.
2. Compelling Constitutional Justification, when the Constitutional Court adopts an assertive interpretive stance, particularly one with policy implications, it must articulate a comprehensive and well-reasoned constitutional rationale. This includes demonstrating a clear violation of constitutional provisions or principles. Superficial or politically motivated reasoning must be avoided to preserve institutional legitimacy.
3. Substantive Justice Condition, following Martitah's doctrinal framework, the Court may justifiably assume a positive legislator role only when the following criteria are met:
  - a. The intervention promotes substantive justice and delivers clear societal benefit.
  - b. There is an urgent need to protect constitutional rights from imminent or ongoing violations.
  - c. The absence of judicial intervention would result in a legal vacuum (*rechtvacuum*) that undermines legal certainty and disrupts the rule of law.
4. Procedural Integrity, all judicial activism must adhere strictly to procedural safeguards to ensure due process and preserve public trust. This includes:
  - a. Strict compliance with standing requirements, particularly proof of clear and present constitutional harm.
  - b. Elimination of judicial bias by avoiding conflicts of interest.
  - c. Consistent application of legal precedent to uphold judicial coherence.
5. Institutional Restraint, The Court must recognize and respect the boundaries between judicial review and legislative policy-making. Matters classified under "open legal policy" must remain primarily within the legislative domain. Judicial intervention is warranted only when such policy decisions clearly contravene constitutional standards of morality, rationality, or tolerable justice. Even then, the Court should refrain from formulating new norms, thereby upholding its identity as a negative legislator.

## CONCLUSION

This analysis has examined the evolving role of Indonesia's Constitutional Court, particularly focusing on the tension between its constitutional mandate as a negative legislator and its judicial activism that occasionally approaches the domain of positive legislation. By comparing two landmark rulings, Decision No. 90/PUU-XXI/2023 and Decision No. 62/PUU-XXII/2024, this study highlights critical distinctions between legitimate constitutional review and potential judicial overreach. The findings demonstrate that while judicial activism can strengthen constitutional checks and balances when properly constrained, it risks undermining democratic legitimacy and the separation of powers when it extends to the creation of new legal norms.

The proposed five-parameter framework, emphasizing constitutional supremacy, compelling justification, substantive justice conditions, procedural integrity, and institutional restraint, offers a balanced approach to guide judicial interpretation within constitutional boundaries.

This study acknowledges certain limitations that should be addressed in future research. Comparative investigations examining how constitutional courts in other emerging democracies manage similar tensions could provide valuable insights. The core challenge lies in striking the right balance between judicial independence and accountability, enabling the Court to effectively safeguard constitutional rights without compromising democratic processes. Future research should explore how institutional reforms might enhance procedural safeguards against unwarranted judicial expansion while preserving the Constitutional Court's essential role in constitutional governance.

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