

Controversies Surrounding the Constitutional Court's Role as a Positive Legislator

Basuki Kurniawan¹, Sareef Tehtae², Jati Nugroho³, Anis Ibrahim⁴, Asir⁵, Henny Purwanti⁶

¹UIN Kiai Haji Achmad Siddiq Jember, Indonesia

²KISDA Yala University, Thailand

^{3,4,5,6} STIH Jenderal Sudirman Lumajang, Indonesia

Email: basukikurniawan.syariah@uinkhas.ac.id¹, abaesyarif@gmail.com²,
thomasjatinugroho@gmail.com³, anisibrahim1000@gmail.com⁴, asirpurwo@gmail.com⁵,
hennypurwa@gmail.com⁶

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Abstract:

The Constitutional Court's growing involvement in regulatory matters has sparked intense debate, particularly following Decision No. 90/PUU-XXI/2023 on the age requirement for presidential and vice-presidential candidates. Issued near the candidate registration deadline, this ruling raised concerns about the Court's shift from a negative to a positive legislator. Previous studies have not adequately examined this transformation through the lens of classical justice theory, leaving a critical gap in constitutional discourse. This study aims to (1) assess whether the decision constitutes a positive legislator act, (2) evaluate it through classical justice theory, and (3) compare it with similar rulings. Using normative legal research, it adopts statutory, case, and conceptual approaches, with legal reasoning conducted through analogical and deductive interpretations of judicial precedents, constitutional norms, and principles of justice. The analysis reveals that the Court has increasingly assumed regulatory functions, with Decision No. 90 exemplifying this trend. However, it does not align with Platonic ideals of justice, lacking both moral and procedural fairness. The study concludes that the Court's expanded role poses constitutional risks and fuels ongoing debates on judicial activism versus legislative supremacy, while offering a fresh perspective through the application of classical justice theory.

Keywords: *Judicial Activism, Positive Legislator Doctrine, Constitutional Justice in Indonesia*

Abstrak:

Meningkatnya keterlibatan Mahkamah Konstitusi dalam ranah regulasi telah memicu perdebatan yang intens, khususnya setelah Putusan No. 90/PUU-XXI/2023 terkait syarat usia calon presiden dan wakil presiden. Putusan ini dikeluarkan menjelang tenggat waktu pendaftaran calon, sehingga menimbulkan kekhawatiran mengenai pergeseran peran Mahkamah dari legislator negatif menjadi legislator positif. Studi-studi sebelumnya belum secara memadai mengeksplorasi transformasi ini melalui lensa teori keadilan klasik, sehingga menyisakan kekosongan penting dalam diskursus ketatanegaraan. Penelitian ini bertujuan untuk: (1) menilai apakah putusan tersebut merupakan tindakan legislator positif, (2) mengevaluasinya menggunakan teori keadilan klasik, dan (3) membandingkannya dengan putusan-putusan serupa. Dengan menggunakan metode penelitian hukum normatif, studi ini mengandalkan pendekatan perundang-undangan, kasus, dan konseptual, serta penalaran hukum melalui interpretasi analogis dan deduktif terhadap preseden yudisial, norma-norma konstitusional, dan prinsip-prinsip keadilan. Analisis menunjukkan bahwa Mahkamah semakin mengambil peran regulatif, dan Putusan No. 90 mencerminkan tren tersebut. Namun, putusan ini tidak sejalan dengan cita keadilan menurut Plato karena tidak mencerminkan keadilan moral maupun prosedural. Penelitian ini menyimpulkan bahwa

perluasan peran Mahkamah menimbulkan risiko konstitusional dan turut memperkuat perdebatan mengenai aktivisme yudisial versus supremasi legislatif, sembari menawarkan perspektif baru melalui penerapan teori keadilan klasik.

Kata kunci: *Judicial Activism, Doktrin Positive Legislator, Keadilan Konstitusional di Indonesia*

Correspondent basukikurniawan.syariah@uinkhas.ac.id (Basuki Kurniawan)

Author:

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Introduction

One of Indonesia's most pressing legal and constitutional issues is the Constitutional Court's controversial shift from a negative legislator—tasked with annulling unconstitutional laws—to a positive legislator that formulates new legal norms, exemplified by Decision No. 90/PUU-XXI/2023 on the age requirement for presidential and vice-presidential candidates. This phenomenon is critical not only in the context of the 2024 General Election but also for the integrity of Indonesia's constitutional democracy (Divi et al., 2024). Academically, it challenges the boundaries of judicial power and raises questions about the Constitutional Court's legitimacy, neutrality, and adherence to the principle of separation of powers (Trias Politica) (Gozdz-Roszkowski, 2020; Marganda Aritonang, n.d.). Practically, it affects public trust, electoral fairness, and the stability of the legal framework underpinning democratic processes. The urgency to address this phenomenon stems from the potential erosion of institutional accountability, the rise of ultra *petita* judicial practices, and the risk of politicized constitutional interpretation (Fathin & Erliyana, n.d.). Therefore, a scholarly examination of this issue—particularly through the lens of justice theory—is essential to assess whether such judicial activism aligns with Indonesia's foundational legal values and to propose safeguards for preserving constitutional order (Diko, 2024; Faiz, 2009).

In the existing literature on the Constitutional Court of Indonesia, at least three dominant thematic focuses can be identified. First, several studies highlight its doctrinal and normative functions as a negative legislator in accordance with Article 24C of the 1945 Constitution (Asshiddiqie, 2006; Butt, 2011). Second, a growing body of scholarship examines the judicialization of politics, focusing on the Court's increasing intervention in politically sensitive matters (Pompe, 2005; Lindsey, 2008). Third, recent studies discuss judicial activism and ultra *petita* decisions, particularly in the context of electoral law and political rights (Hosen, 2010; Nursholeh, 2022). However, these studies primarily focus on formal-legal analysis and institutional development, while insufficiently addressing the normative implications of the Court's transformation into a positive legislator, particularly through the lens of justice theory and ethical judicial conduct. Moreover, while some research notes the Court's controversial decisions, few provide a systematic evaluation of their impact on constitutional balance, the rule of law, and public trust in judicial impartiality (Anggono, 2016). This gap underscores the need for deeper philosophical and critical

analysis—such as the present study—of Decision No. 90/PUU-XXI/2023, which reshapes legal doctrine and reflects broader constitutional and ethical dilemmas.

The core problem addressed in this study is the Constitutional Court's shift from a negative to a positive legislator, as reflected in Decision No. 90/PUU-XXI/2023, and its implications for constitutional justice and judicial authority (Dongen & Veldhuizen, 2022; Omar & Hiariej, 2021). Existing studies primarily focus on the procedural and formalistic aspects of judicial review but have not sufficiently examined the normative consequences of this shift, particularly through the lens of justice theory and judicial ethics. To address this gap, this research applies a normative-doctrinal approach combined with philosophical reasoning, particularly Plato's theory of justice, to assess the legitimacy of the Court's expanded role (Leibowitz, 2010; Skitka et al., 2009). This paper explores the following research questions: (1) To what extent can the Constitutional Court's decision in Case No. 90/PUU-XXI/2023 be considered an act of a positive legislator? (2) Does the decision align with the principles of moral and procedural justice in Plato's theory of justice? (3) How does this decision compare with other Constitutional Court rulings exhibiting similar characteristics of judicial law-making? The objective of this study is to offer a critical perspective on the Court's normative authority and provide academic and policy-based reflections on maintaining constitutional boundaries in judicial review (Habibi, 2019; Sinaga & Erliyana, 2022).

This paper argues that the Constitutional Court's authority—as exercised in Decision No. 90/PUU-XXI/2023—requires legal and theoretical justification, as its addition of new norms through judicial interpretation marks a shift from its original constitutional mandate as a negative legislator to that of a positive legislator. If left unexamined, this shift may blur the separation of powers, weaken democratic legitimacy, and enable the unchecked expansion of judicial power. The causal relationship examined is that the Court's insertion of new normative content (cause) may lead to constitutional dysfunction and undermine legal certainty (effect), particularly in politically sensitive contexts. The core problem addressed in this research is whether such judicial action remains within constitutional bounds and satisfies the principles of moral and procedural justice. Accordingly, the paper examines the validity and legitimacy of the Constitutional Court's authority to act beyond its designated role, using justice theory as a normative framework to assess the fairness and appropriateness of judicial decision-making. With this in mind, examining the Court's decision from both doctrinal and philosophical perspectives is essential to determine whether it upholds or contradicts the ideals of a rule-of-law-based democratic system (Benjamin Jr. & Crouse, 2002; Sudrajat, 2016).

Over the past decade, academic discourse has increasingly focused on the growing normative activism of constitutional courts across jurisdictions, including Indonesia, particularly their shift from negative to positive legislators. Scholars highlight a trend in which constitutional courts, rather than merely annulling laws, create legal norms—blurring the line between judiciary and legislature—and raising complex debates on judicial legitimacy, democratic accountability, and the boundaries of constitutional authority. Landmark decisions such as MK Decision No. 48/PUU-

IX/2011 and No. 90/PUU-XXI/2023 exemplify this shift. While some view it as a pragmatic response to legislative inertia, others caution that it threatens the separation of powers and generates legal uncertainty. The literature reveals three dominant thematic trends. First, it examines the conceptual and functional limits of judicial power; it examines doctrines such as *Trias Politica* and judicial minimalism. Second, it explores the justice implications of *ultra petita* decisions by assessing their moral legitimacy, procedural integrity, and impact on public trust. Third, it critiques the methodological narrowness of prior studies, which often overlook political context, ethical dilemmas, and comparative judicial behavior (Collins, 2006; Pavlenko, 2024). These gaps highlight the urgent need for a multidimensional evaluative framework that integrates perspectives from constitutional law, legal philosophy, and political science. Although existing studies provide valuable insights, they often fall short of evaluating whether the positive legislator role of constitutional courts ultimately advances or undermines the realization of justice within a constitutional democracy. This study seeks to address that gap by examining Constitutional Court Decision No. 90/PUU-XXI/2023 through the lens of Plato's theory of justice, with the aim of assessing whether the Court's normative activism reinforces Indonesia's constitutional principles or, conversely, disrupts the institutional balance enshrined in the 1945 Constitution (Komarudin, 2020).

Method

The unit of analysis in this study is Constitutional Court Decision No. 90/PUU-XXI/2023, which concerns the age requirement for presidential and vice-presidential candidates in Indonesia. This decision is examined as a legal product that exemplifies the Constitutional Court's shifting role from a negative legislator to a positive legislator (Muhibbin & Irwan, 2023; Sinaga & Erliyana, 2022). In addition to the decision itself, the analysis encompasses the institutional framework of the Constitutional Court, the legal norms embedded in relevant laws (e.g., Law No. 24 of 2003 and its amendments), and doctrinal responses from legal scholars and jurists (Pradana et al., 2021; Yanis & Muhtadi, 2023).

This study adopts a qualitative research design within the framework of doctrinal legal research (normative juridical analysis) (Glassman, 2017; Waruwu, 2023). It aims to systematically interpret legal norms and doctrines rather than measure empirical variables. The academic focus lies on examining the internal coherence, theoretical consistency, and normative implications of legal reasoning, particularly in relation to constitutional justice and Plato's theory of justice (Muhibbin & Irwan, 2023).

The selection of Constitutional Court Decision No. 90/PUU-XXI/2023 as the primary object of analysis is grounded in its contextual urgency and academic significance (Anggono, 2016; Dongen & Veldhuizen, 2022). Issued shortly before the 2024 general elections, this decision sparked widespread legal and political controversy for substantively reinterpreting the candidacy requirements for presidential and vice-presidential candidates. The case is particularly significant as it illustrates the Court's shift from its traditional role as a negative legislator toward actively creating legal norms, raising fundamental questions about judicial authority,

constitutional boundaries, and democratic accountability (Muhtadi, 2019). Despite its constitutional significance, the decision remains underexamined through a justice-theoretical lens, leaving a critical gap in the literature (E. Agustina, 2019).

This research relies on secondary legal data comprising: (1) primary legal materials, including the 1945 Constitution, statutory regulations, and Constitutional Court decisions on judicial authority and electoral law (L. Agustina et al., 2019); (2) secondary legal materials, such as scholarly articles, legal commentaries, and academic treatises on judicial activism, constitutional theory, and normative jurisprudence; and (3) tertiary legal materials, including legal encyclopedias, dictionaries, and indexes used to clarify legal terminology and concepts. Collectively, these sources provide a comprehensive foundation for understanding the legal framework and theoretical context relevant to the study's analysis and interpretation.

To ensure source quality and relevance, the selection follows three criteria: (i) doctrinal authority, emphasizing works by constitutional law scholars and jurists with recognized expertise; (ii) thematic relevance, focusing on materials that address judicial review, the positive legislator doctrine, and classical justice theory; and (iii) recency, prioritizing publications from the past decade, particularly those published after 2011. This year is significant because Constitutional Court Decision No. 48/PUU-IX/2011 marked a key shift in the Court's jurisprudence. These criteria are designed to maintain analytical rigor and ensure alignment with the study's constitutional and theoretical framework.

Data collection employs library research methods involving the systematic identification, classification, and analysis of legal texts and academic literature. Sources are drawn from national and international legal databases, including HeinOnline, JSTOR, and SAGE, as well as official court archives, peer-reviewed journals, and university law libraries. Particular attention is given to scholarly commentaries and monographs that examine constitutional courts' transformation from negative to positive legislators. This focus ensures a comprehensive understanding of the evolving role of constitutional adjudication within legal systems, providing a solid foundation for normative and conceptual analysis (Jacob, 1967; Yahya & Sahidin, 2022).

The analytical process employs a qualitative-descriptive method involving legal interpretation (grammatical, systematic, and teleological), ratio decidendi analysis, and conceptual synthesis. The reasoning model is deductive, applying general principles and doctrines – such as the separation of powers, constitutionalism, and Plato's theory of justice – to assess the constitutional legitimacy of the Court's reasoning in Decision No. 90/PUU-XXI/2023. This enables a normative evaluation of whether the Court's activism aligns with constitutional ideals or threatens the institutional balance envisioned by the 1945 Constitution (Muabezi, 2017).

Result And Discussion

Result

On Monday, October 16th, 2023, the Constitutional Court of Indonesia held a session to deliver rulings on several cases, including a significant one: Case Number

90/PUU-XXI/2023. The case was filed by Almas Tsaqibbiru Re A., a law student at the University of Surakarta, who petitioned for a judicial review of Article 169 letter q of the Election Law. The article in question sets a minimum age requirement of 40 years for presidential and vice-presidential candidates. The petitioner challenged this provision, arguing that it unjustly restricts the political rights of certain citizens (Harry Setya Nugraha, 2022), as illustrated in the image below:

Picture 1

the Constitutional Court of Indonesia



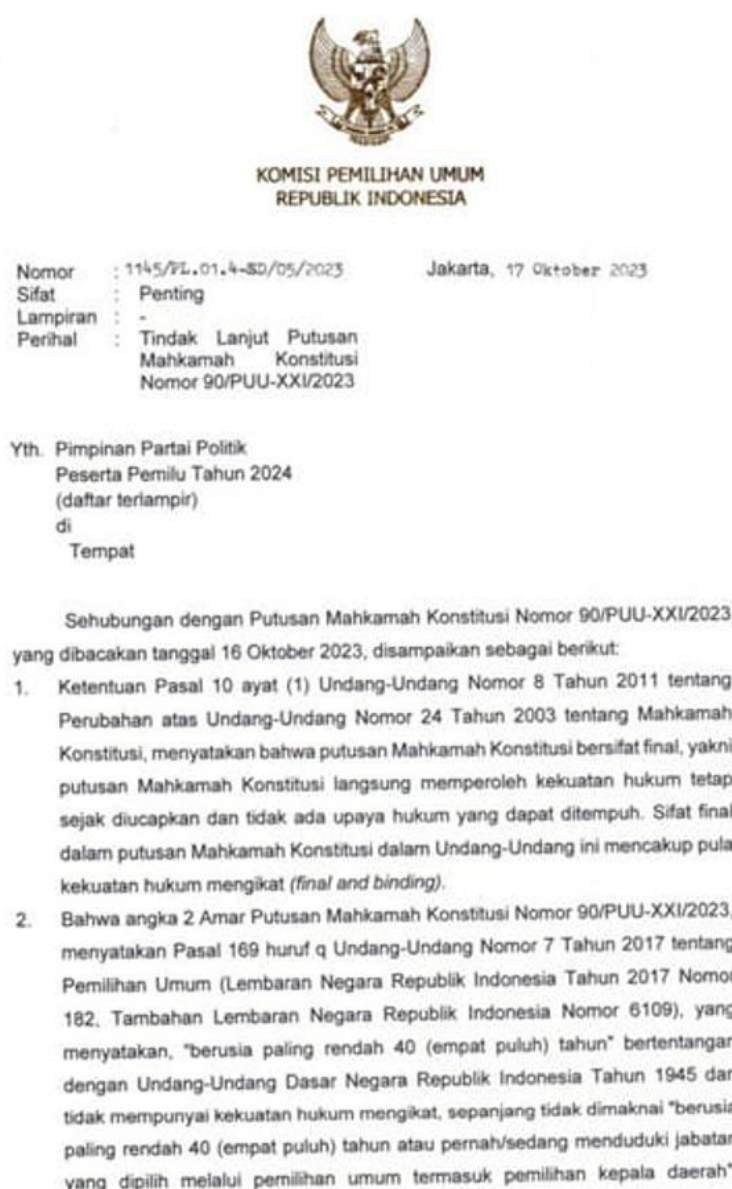
Note. Instagram account @mahkamahkonstitusi

The Constitutional Court ruled that the article in question is inconsistent with the 1945 Constitution if interpreted rigidly. In response, the Court reinterpreted the provision, affirming that the age requirement of 40 remains applicable, except for individuals who have previously or currently held elected public office, such as regional heads. This interpretation effectively allows individuals under 40 to run for president or vice president, provided they have prior experience in elected office. This ruling marks a notable shift in the Court's role—from a negative legislator, which typically nullifies laws, to a positive legislator, which proactively establishes new legal norms through judicial interpretation. The decision reflects an evolving judicial approach that extends the Court's influence in shaping substantive constitutional standards beyond mere review (Pradana et al., 2021).

The ruling includes a concurring opinion from two Constitutional Justices who supported the outcome but based their agreement on different legal reasoning. In contrast, four justices issued dissenting opinions, indicating their disagreement with the majority decision. These differing judicial perspectives underscore the controversial nature of the ruling, both in public discourse and within the Constitutional Court. The concurring and dissenting opinions reflect a significant divide in interpreting constitutional norms and the Court's role in regulatory matters.

This internal division highlights the decision's complexity and sensitivity, particularly given its potential impact on democratic processes and institutional balance. For a comprehensive understanding, the full text of this ruling, along with ten related decisions, is publicly accessible on the Constitutional Court's official website at www.mkri.id. These documents provide valuable insight into the legal reasoning and broader constitutional implications (Sinaga & Erliyana, 2022).

Figure 1
the Constitutional Court



Note. Document of the Republic of Indonesia's General Elections Commission (KPU).

The General Elections Commission (KPU) of the Republic of Indonesia issued an official letter dated October 17, 2023, addressed to the leaders of political parties participating in the 2024 General Election. The letter follows the Constitutional Court Decision Number 90/PUU-XXI/2023, which was announced on October 16th, 2023. The KPU emphasized that, under Article 10, paragraph (1) of Law Number 8 of 2011, which states that Constitutional Court decisions are final and binding, no further legal

remedies are available. Consequently, the decision must be implemented immediately and fully by all relevant parties (Saputra et al., 2018).

The Constitutional Court's ruling addresses the minimum age requirement for presidential and vice-presidential candidates under Law Number 7 of 2017. The Court affirmed that the 40-year age limit remains valid; however, exceptions apply to individuals who currently hold or have previously held elected public office, including regional head positions. Thus, individuals under 40 may run for president or vice president if they have prior experience as elected officials (Indrayana, 2007).

The KPU further instructed all political parties to adjust their candidate nominations in accordance with the Constitutional Court's decision. This step is essential to ensure that the nomination process complies with the applicable legal framework. It also underscores that Constitutional Court decisions have an immediate and direct impact on the implementation of electoral stages, particularly the nomination of presidential and vice-presidential candidates (Permana, 2018).

Table 1

Negative Decision of legislators and Positive Decision of legislators

No.	Negative Decision of Legislators	Positive Decision of Legislators
1.	Decision Number 46/PUU-XIV/2016	Decision Number 90/PUU-XXI/2023
2.	Decision Number 1/PUU-XXI/2023	Decision Number 14/PUU/XI/2013
3.	Decision Number 6/PUU-V/2007	Decision Number 102/PUU-VII/2009
4.	Decision Number 009/PUU-I/2003	Decision Number 110-111-112-113/PUU-VII/2009

Note. Decision of the Constitutional Court of the Republic of Indonesia

The Constitutional Court of Indonesia performs two primary roles in its judicial review function: as a negative legislator and as a positive legislator. As a negative legislator, the Court invalidates legal provisions deemed unconstitutional without introducing any replacement norms. Examples of such decisions include Decision No. 46/PUU-XIV/2016, Decision No. 1/PUU-XXI/2023, Decision No. 6/PUU-V/2007, and Decision No. 009/PUU-I/2003. In these cases, the Court merely removed the unconstitutional provisions without providing new legal content or normative alternatives (Indrayana, 2007).

In contrast, the Court sometimes assumes the role of a positive legislator, going beyond nullification by creating or adding new legal norms with binding force. This role demonstrates the Court's proactive involvement in filling legal gaps or clarifying ambiguous provisions. A notable example is Decision No. 90/PUU-XXI/2023, in which the Court introduced an exception to the age requirement for presidential and vice-presidential candidates. Other significant decisions illustrating this role include Decision No. 14/PUU-XI/2013, Decision No. 102/PUU-VII/2009, and the consolidated Decision Nos. 110-111-112-113/PUU-VII/2009.

The comparison between these two types of rulings highlights the evolving and dynamic nature of constitutional adjudication in Indonesia. The Constitutional Court's role as a positive legislator demonstrates that it goes beyond merely safeguarding the Constitution, actively engaging in the normative aspects of law-making. This expanded function, however, has sparked ongoing legal and political debate regarding

the boundaries of judicial authority and its potential intrusion into the legislative domain. Consequently, careful and critical examination of these decisions is essential to uphold the principle of separation of powers and ensure the continued integrity of Indonesia's constitutional democracy.

Discussion

This research analyzed Constitutional Court Decision Number 90/PUU-XXI/2023, which controversially reinterpreted the age requirement for presidential and vice-presidential candidates by introducing a new norm allowing individuals under 40 to run if they have previously held elected office (Iannicelli, 2022). The study found that this decision marked a significant shift in the Constitutional Court's role, from a negative legislator – limited to annulling unconstitutional norms – to a positive legislator that effectively creates new legal norms. This judicial action raised concerns about overreach of authority and potential violations of the separation of powers (*Trias Politica*), particularly given ethical controversies involving a justice connected to the presidential candidate who benefited from the ruling. Evaluated through Plato's theory of justice, the decision was found to lack both moral and procedural fairness, as it failed to uphold neutrality and balance between rights and obligations through proper legal procedures. The research concludes that, although judicial intervention may be necessary to address legal gaps, the authority of the Constitutional Court must be clearly regulated to prevent undermining democratic legal processes and to ensure it remains within its constitutional mandate as a negative legislator (Latour, 2022).

This research examined Constitutional Court Decision Number 90/PUU-XXI/2023 to assess whether it reflects an overreach of judicial authority and a departure from the Court's constitutional role as a negative legislator. The findings confirm the research hypothesis that, by adding a new normative clause allowing individuals under 40 to run for office if they have held elected positions, the Court acted as a positive legislator – thereby exceeding its judicial mandate. This shift is significant because it disrupts the balance of powers (*Trias Politica*), blurs the separation between judicial and legislative functions, and raises ethical concerns due to the involvement of a justice connected to one of the political beneficiaries (Latour, 2022). The study establishes a logical relationship between the research question and the results by demonstrating that the Court's normative intervention not only lacked a constitutional basis but also failed to meet the standards of moral and procedural justice outlined in Plato's theory. Therefore, the research concludes that, while the decision may have sought to address a legal gap, it ultimately undermines judicial impartiality and supports the hypothesis that the Constitutional Court engaged in judicial law-making beyond its constitutional authority (Prayogo, 2016; Safriadi, 2019).

Compared to previous studies emphasizing the Constitutional Court's function as a negative legislator – such as those by Jimly Asshiddiqie and Maruarar Siahaan – this research provides a novel perspective by directly analyzing Decision No. 90/PUU-XXI/2023 as a concrete example of the Court acting as a positive legislator. While earlier research acknowledged the Court's judicial activism in abstract terms, this study reveals a substantive normative shift, in which the Court not only annulled existing legal provisions but also introduced new norms, thereby entering the legislative domain (E. Agustina, 2019). The inconsistency with previous findings arises from differing socio-political contexts and time frames. Unlike earlier cases, this decision was rendered in the highly politicized environment of the 2024 presidential

election and involved ethical concerns regarding judicial impartiality due to familial ties between a sitting justice and a candidate. By applying Plato's theory of justice as a normative-analytical framework – rarely employed in prior constitutional law studies in Indonesia – this research enriches the discourse by evaluating not only legal validity but also moral and procedural legitimacy. The study's primary contribution lies in its multidimensional critique, which combines doctrinal legal analysis, political ethics, and classical justice theory to examine the boundaries of judicial power in a constitutional democracy (Dalimunthe et al., 2022).

The findings of this research reveal not only a legal anomaly but also broader socio-political and ideological tensions in Indonesia's democratic landscape. Socially, the Constitutional Court's decision in Case No. 90/PUU-XXI/2023 demonstrates how legal mechanisms can be leveraged to accommodate political interests under the guise of constitutional interpretation. The ruling, which indirectly enabled the candidacy of a political figure closely related to the sitting president, occurred amid growing public concerns about the erosion of impartiality in key democratic institutions. This reflects increasing disillusionment with judicial neutrality and a perception that the judiciary is susceptible to elite influence (Pancasila & Konstitusi, n.d.).

From a historical perspective, the decision represents a departure from the original vision of the post-reformasi Constitutional Court as a guardian of constitutionalism and a bulwark against authoritarianism. Initially designed to act as a negative legislator – a role central to Indonesia's effort to separate powers and prevent legal absolutism – the Court's turn toward positive legislating echoes practices observed in prior authoritarian regimes, where law-making was concentrated in few hands without adequate checks and balances (Dosen et al., 2018).

Ideologically, this shift reflects a tension between the rule of law and pragmatic governance. While the Constitutional Court frames its intervention as a means to prevent legal vacuums and promote justice, its normative expansion into legislative territory undermines the foundational liberal-democratic principle of institutional separation. It reflects a broader ideological drift toward judicial populism, in which constitutional reasoning is guided by political utility rather than principled legality. The research underscores the urgent need to reaffirm the ideological boundaries of constitutional interpretation in Indonesia to preserve both judicial integrity and democratic accountability (Muhtadi, 2019).

The findings of this study reveal a critical functional shift in the Constitutional Court's role, from a neutral constitutional reviewer (negative legislator) to a normative lawmaker (positive legislator), as exemplified by Decision No. 90/PUU-XXI/2023. While this may address short-term demands for legal responsiveness, it also generates significant dysfunction by undermining the constitutional balance of powers and judicial impartiality. The decision illustrates how, without clear institutional boundaries, the judiciary can overstep its authority and blur the distinction between legal interpretation and legislation. This shift risks eroding public trust in the Court's neutrality and creates potential for abuse, particularly in politically sensitive cases (Sahlan et al., n.d.).

As a policy response, a series of concrete and technical measures are required to restore clarity and constitutional integrity. First, revising Law No. 24 of 2003 on the Constitutional Court is essential, particularly to clearly delimit the Court's authority in judicial review, reaffirm its role strictly as a negative legislator, and explicitly

prohibit the addition of new normative content. Second, the establishment of an independent constitutional ethics oversight body, separate from the Court's internal mechanisms, is necessary to manage conflicts of interest and prevent ethical violations, such as breaches of the *nemo iudex in causa sua* principle, as observed in this case. Third, the legislature could propose a constitutional amendment or clarification law to codify the limits of judicial interpretation, particularly in *ultra petita* cases, thereby safeguarding democratic law-making processes (Muabezi, 2017).

Finally, at the academic and civil society level, continuous constitutional literacy campaigns should be promoted to educate the public about the roles and limits of each state institution. These measures not only ensure doctrinal consistency in judicial review but also reinforce democratic accountability, prevent judicial overreach, and uphold the principle of separation of powers essential to a constitutional democracy.

Conclusion

This research reveals a significant shift in the Constitutional Court's function – from a negative legislator to a positive legislator – most notably exemplified in Decision No. 90/PUU-XXI/2023. Although the 1945 Constitution and Law No. 24 of 2003 clearly establish the Court's authority as a negative legislator, its growing tendency to introduce new legal norms under the justification of filling legal gaps reflects a profound transformation in its institutional role. Constitutional Court Decision No. 48/PUU-IX/2011 played a pivotal role in facilitating this shift, as it removed normative constraints on the Court's function, enabling greater interpretive activism under the guise of judicial review.

The most striking and concerning finding is the conflict of interest in Decision No. 90/PUU-XXI/2023, in which the Chief Justice's familial relationship with a direct beneficiary of the ruling undermined both moral and procedural justice, as articulated in Plato's theory. This instance not only exposes ethical violations but also demonstrates how constitutional jurisprudence can be instrumentalized in ways that compromise fairness and public trust. Unlike previous studies that focus exclusively on legal reasoning, this research adds a normative-philosophical dimension by connecting judicial conduct to classical theories of justice.

However, this study has certain limitations. Its normative-doctrinal approach, while suitable for theoretical and textual analysis, does not address empirical dimensions such as public perception, political context, or comparative judicial behavior. Moreover, focusing on a single decision – albeit a landmark one – limits the generalizability of the findings across different temporal or institutional contexts. Future research incorporates empirical legal methods, such as case studies, media discourse analysis, or stakeholder interviews, to assess the real-world impact of judicial decisions. Comparative studies of constitutional courts in other jurisdictions – particularly those that have also faced similar tensions between judicial activism and constitutional limits – would further enrich the discourse on judicial accountability and institutional legitimacy.

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