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# Limitations on the Authority of the Constitutional Court in Forming Legal Norms on the Testing of Laws against the 1945 Constitutional Law of the Republic of Indonesia

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## ABSTRACT

*The Constitutional Court of Indonesia, formed as a result of the 1945 Constitution amendments, is an essential part in protecting constitutional supremacy and thereby advancing justice and democratic governance. However, its double role as both a judicial and quasi-legislative organ has raised arguments of judicial overreach and the erosion of separation of powers. The research intended to emphasize the importance of limiting the authority of the Constitutional Court in an attempt to maintain a balance in the system of governance of Indonesia and explores possible conceptions of such limitation. This paper adopts a normative legal research type, where both statutory and conceptual approaches are used. Legal principles, regulations, and decisions of the courts will be included, along with secondary and tertiary law materials. These findings bring to the forefront the need for judicial self-restraint in avoiding new legal norm-creation, how such powers may be effectively checked and balanced with the mechanisms of amendment to legislation, and increased coordination within institutions. The reforms advanced on this count aim to firm the Constitutional Court into a guardian of constitutional integrity with preservation of democratic principles like the separation of powers and the rule of law.*

**Keywords:** *Constitutional Court of Indonesia, Constitutional supremacy, Judicial overreach, Judicial restraint, Separation of powers.*

## I. INTRODUCTION

The Constitutional Court of Indonesia represents a pivot in the development of Indonesia's constitutional system, and it came into being by virtue of the third and fourth amendments to the 1945 Constitution of the Republic of Indonesia, UUD NRI 1945, in the years 2001–2002. It was established under Article 24, paragraph (2), of the UUD NRI 1945, to be responsible for

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the Constitution as the highest legal document within the country, ensuring that the principles of the constitution are respected in all areas of governance, whether political, social, or economic. Alongside the Supreme Court, it stands as one of the key judicial actors responsible for maintaining justice and constitutional supremacy in Indonesia's legal framework<sup>3</sup>.

The Constitutional Court will fundamentally assume key responsibilities, including the judicial review of legislation in relation to the Constitution, the resolution of conflicts among state institutions, the disbandment of political parties, the adjudication of electoral disputes, and the handling of impeachment proceedings involving the President and Vice-President. This is outlined in Article 24C of the 1945 Constitution of the Republic of Indonesia, with further elaboration provided in Law No. 24 of 2003 (as amended), places the Court in a strategic position within the Indonesian legal architecture for the purpose of democratically fostering human rights standards.

During the 21 years of the Constitutional Court's existence, it has been acclaimed for progressive jurisprudence. Mechanisms like judicial review provide ways in which citizens, community groups, and other interested parties can participate actively in the legal system through challenges against laws perceived as unconstitutional. This practice strengthens not only the rule of law but also gives more ability to individuals to assert constitutional rights<sup>4</sup>. According to Article 2 of the Constitutional Court Procedural Law, judicial review has both formal and material reviews. A formal review examines the legislative process, while a material review scrutinizes the substantive content of legislation to ensure alignment with constitutional mandates<sup>5</sup>.

Despite these remarkable results, the Constitutional Court has not been able to avoid controversy. Decisions have been criticized, for example, for overreaching the judicial role in a way that places the Court as a positive legislator. With this expression, one designates those cases in which the Court creates new legal norms or develops existing ones, a role given to the legislature. For example, some consider that the decision of the Court in Case Number 90/PUU-XXI/2023 added new provisions to the Presidential Election Law, exceeding its authority and violating the principle of separation of powers. Other decisions, such as Case No. 112/PUU-XX/2022 and Case No. 23/PUU-XIX/2021, show how the Court was similarly busy with

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<sup>3</sup>Soelistyo, L. T. D. (2019). Perkembangan Baru Tentang Konstitusi Dsn Konstitusionalisme dalam Teori dan Praktik. *Mimbar Keadilan*, 12(2), 272–277. <https://doi.org/10.30996/MK.V12I2.2389>

<sup>4</sup>Idris, M., & Umar, K. (2020). Dinamika Mahkamah Konstitusi Dalam Memutus Perkara Judicial Review. *SIYASATUNA: JURNAL ILMIAH MAHASISWA SIYASAH SYAR'IIYYAH*, 1(2), 263–277

<sup>5</sup>Rustam, R., Marlina, T., & Handoko, D. (2022). SEJARAH PEMBENTUKAN DAN KEWENANGAN MAHKAMAH KONSTITUSI DALAM SISTEM KETATANEGARAAN INDONESIA. *JURNAL DIMENSI*, 11(2), 270–281. <https://doi.org/10.33373/dms.v11i2.3973>

rewriting legislative boundaries, thus debating its position within Indonesia's democratic architecture.

These controversies bring into focus the need for a balanced approach to the Court's judicial activism. While the interventions of the Court have occasionally advanced the causes of justice and equity, they have also raised concerns about the possibility of judicial overreach. Some critics further argue that the tendency of the Court to behave like a legislature erodes separation of power and thus may place authority in the hands of one institution. The tension hence calls for reassessment of the role of the Court within its constitutional limits for an effective mandate as the guardian of the Constitution<sup>6</sup>.

Separation of powers, which was inspired by the theories of Montesquieu, is elaborated as the division of government authority into three branches: executive, legislative, and judicial. This framework is designed to prevent the accumulation of power and safeguard democratic governance. In the Indonesian context, the involvement of the Constitutional Court in legislative matters raised debates on the balance of power, and the need for clear demarcation between judicial and legislative functions was urged<sup>7</sup>. For example, those decisions that modify or complement legislative provisions are, in the eyes of some legal scholars, alien to the Court's role as a negative legislator, whose task is limited to annulling unconstitutional laws without creating new ones.

These debates have become the driving force for this research, which tries to answer two important questions: first, the urgency of limiting the authority of the Constitutional Court for the purpose of maintaining the balance of power within Indonesia's governance system; and second, what model can be applied for such limitation. Answering these questions demands a deep understanding of the judicial philosophy of the Constitutional Court, its historical trend, and the impact that every decision has on both the legal and political climate in Indonesia.

The other approach would be further to consolidate the Court's role as a negative legislator through clear demarcation of its mandate by way of legislative changes and providing more effective machinery for oversight to ensure the observance of constitutional limits. For instance, the amendments to the Constitutional Court Law could be used to determine the limits of judicial review and prohibit the Court from creating new legal norms. More coordination

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<sup>6</sup>Tohadi, T., & Prastiwi, D. E. (2022). Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks And Balances. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 11(1), 19–36. <https://doi.org/10.33331/rechtsvinding.v11i1.849>

<sup>7</sup>Hofi, M. A. (2021). JUDICIAL REVIEW SATU ATAP DI MAHKAMAH KONSTITUSI SEBAGAI REFLEKSI TERHADAP PROBLEMATIKA DAN TANTANGAN KEKUASAAN KEHAKIMAN DI INDONESIA. *HUKMY: Jurnal Hukum*, 1(2), 221–234. <https://doi.org/10.35316/hukmy.2021.v1i2.221-234>

between the judiciary and the legislature might further overcome ambiguities in legal interpretation and reduce the possibility of judicial overreach<sup>8</sup>.

The establishment of checks and balances between institutions that would forestall the ills from judicial activism remains another alternative consideration. Such mechanisms for reviewing Court decisions involve a constitutional council or advisory body consisting of legal scholars and all three branches of government representatives. Such actions may establish an opportunity for deliberation, where consensus building can occur on issues that uphold democratic values in keeping with principles of the separation of power<sup>9</sup>.

The Constitutional Court holds a crucial position within the legal framework of Indonesia. The guardian of the supremacy of the constitution has played an important role so far: protecting basic rights, offering justice, and strengthening democratic governance. But, its twin identity as judicial and quasi-legislative holds great challenges that must be managed. Addressing these challenges through targeted reforms and collaborative governance, Indonesia can ensure the consolidation of democratic institutions and that the Constitutional Court continues to serve as a pillar of justice and constitutional integrity.

#### (A) **Research Methods**

The normative legal approach employed in this research emphasizes a logical examination of legal theories, principles, and doctrines to address the issues presented<sup>10</sup>. This study employs two distinct approaches: the statutory approach and the conceptual approach. The statutory approach involves an analysis of relevant laws and regulations, legal principles, and hierarchy of regulations relevant to the legal issues being studied<sup>11</sup>. This approach looks for a logical and ontological basis for the birth of those regulations<sup>12</sup>. Meanwhile, the conceptual approach uses the views of legal experts and legal doctrines to understand legal issues in depth, as well as to answer the challenges of legal dynamics in society<sup>13</sup>.

The legal materials utilized in this study are categorized into primary, secondary, and tertiary sources. The primary legal materials comprise statutes and judicial rulings, specifically the 1945 Constitution of the Republic of Indonesia, the Law on Judicial Power, the Law on the

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<sup>8</sup>Tohadi, T., & Prastiwi, D. E. (2022). Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks And Balances. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 11(1), 19–36. <https://doi.org/10.33331/rechtsvinding.v11i1.849>

<sup>9</sup>Vicenzo, R., & Sitabuana, T. H. (2022). Kedudukan dan peranan Mahkamah Konstitusi dalam sistem kenegaraan. *Prosiding Serina*, 2(1), 139–146. <https://doi.org/10.24912/PSERINA.V2I1.18520>

<sup>10</sup>Marzuki, M. (2017). *Penelitian hukum: Edisi revisi*. Prenada Media

<sup>11</sup>Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*

<sup>12</sup>Ibrahim, J. (2006). *Teori dan metodologi penelitian hukum normatif*. Malang: Bayumedia Publishing, 57(11)

<sup>13</sup>Rahardjo, S. (2000). *Ilmu Hukum*, Bandung, Citra Aditya Bakti. Cetakan Ke-V

Constitutional Court, and various decisions from the Constitutional Court pertinent to the aforementioned issues. Secondary legal materials encompass books, academic journals, and prior research that provide a theoretical framework to bolster the primary legal materials. Tertiary legal materials consist of legal dictionaries and additional resources that elucidate the primary and secondary legal materials<sup>14</sup>.

The technique for collecting legal materials involves tracing the relevant laws and regulations that pertain to the legal issues encountered. Besides that, this research also uses literature study to collect secondary legal materials in the form of law books, articles, and other publications both from online and offline media.

Legal materials analysis in this study was done in a normative prescriptive approach with methods of interpretation, harmonization, systematization, and legal discovery. This is intended to provide an assessment of a legal event based on legal truth and to compile prescriptive solutions that conform to the studied legal problems. With this approach, it is expected that the research could provide an answer to the legal problems being the focus of the research comprehensively.

## **II. DISCUSSION**

### **(A) The Urgency of Limiting the Authority of the Constitutional Court in Indonesia**

The amendment of the 1945 Constitution of the Republic of Indonesia in 2001 led to the establishment of the Constitutional Court (MK), as outlined in Article 24, paragraph (2). This provision positions the MK as a key institution within the judicial power framework, alongside the Supreme Court. The role of the MK is significant within the constitutional framework, encompassing the authority to review laws for their conformity with the 1945 Constitution, adjudicate disputes among state institutions, determine the dissolution of political parties, and resolve electoral disputes.

One of the significant responsibilities of the Constitutional Court (MK) is to address proposals for the dismissal of the President and/or Vice President that are submitted by the People's Consultative Assembly (DPR). This procedure is outlined in Article 7B of the 1945 Constitution of the Republic of Indonesia, which stipulates that the DPR may present the proposal to the People's Consultative Assembly (MPR) following a decision from the MK. For this process to advance, it requires the endorsement of at least two-thirds of the members present during the plenary session. The MK is mandated to reach a decision within a maximum timeframe of 90

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<sup>14</sup>Marzuki, M. (2017). *Penelitian hukum: Edisi revisi*. Prenada Media

days regarding whether the President and/or Vice President have been found to have committed legal violations, including treason, corruption, or other serious offenses.

Article 24C of the 1945 Constitution of the Republic of Indonesia stipulates that one of the powers of the Constitutional Court is to adjudicate cases at both the initial and conclusive levels, with its decisions being definitive. The Constitutional Court is one form of legal mechanism through which the community or institutions can make their complaint to law products that conflict with the Constitution. It offers legal certainty, settles disputes among state institutions, and puts an end to protracted disputes. This function then positions the Constitutional Court at the core in the stability of the Indonesian constitutional system and protection of the constitutional rights of the community.

*a. Limitation of the Authority of the Constitutional Court as a Negative Legislator*

The Constitutional Court (MK) serves as a judicial body in Indonesia, empowered to evaluate the compatibility of laws with the 1945 Constitution of the Republic of Indonesia, as stipulated in Article 10 of Law Number 24 of 2003. A decision of the Constitutional Court is final and immediately has permanent legal force. Testing of laws by the Constitutional Court is carried out in two forms, namely formal and material testing. Formal testing is related to the procedural aspect of the law's formation, while material testing refers to the substance that touches upon laws that are held to be in conflict with the 1945 Constitution of the Republic of Indonesia.

Law Number 8 of 2011, which superseded Law Number 24 of 2003, imposes limitations on the Constitutional Court as a negative legislator, as outlined in Article 57 paragraph (2a). This article explicitly prohibits the Constitutional Court from creating new norms or directives for lawmakers. However, the Constitutional Court invalidated this provision through Decision Number 48/PUU-IX/2011, arguing that such a prohibition prevents the Court from addressing legal gaps. Consequently, this ruling allows the Constitutional Court to function as a positive legislator, enabling it to introduce new norms aimed at safeguarding constitutional justice.

For example, in Decision Number 90/PUU-XXI/2023, the Constitutional Court maintained the minimum age provisions for presidential and vice-presidential candidates in Article 169 letter q of the Election Law but added a new norm that allows candidates who have previously or are currently holding elected office. Besides, through Decision Number 112/PUU-XX/2022, the Constitutional Court altered the stipulations on the age and the term of office applicable to the KPK leadership. Meanwhile, Decision Number 23/PUU-XIX/2021 related to the bankruptcy law inserted a norm on cassation legal remedies in cases of postponement of debt payment

obligations.

These decisions have caused controversy because the Constitutional Court is considered to have exceeded its authority and reduced the role of the DPR as a lawmaker. As a positive legislator, the Constitutional Court possesses the capacity to create discord among state institutions, as the power to enact laws is a legislative prerogative established by the 1945 Constitution of the Republic of Indonesia. Without a definitive amendment to the Constitutional Court Law that delineates the boundaries of the Court's authority, its actions may be perceived as undermining the legislative role in the development of legal norms.

***b. Deviations in the Power Sharing System in Indonesia***

In a state with a democratic constitutional nature, laws and regulations are substantial in regulating national life. Through the 1945 Constitution of the Republic of Indonesia, the DPR and President of the Republic of Indonesia are obliged to be the legislator. Article 20 paragraph of the 1945 Constitution states that the right to establish laws shall be a right of the DPR which must be approved together with the President. Legal products resulting from this, despite having been enacted, often have the potential to harm the constitutional rights of the community, so that the Constitutional Court plays an important role in testing the constitutionality of such legal products.

However, since the abolition of Article 57 paragraph (2a) of Law Number 8 of 2011 concerning the Constitutional Court, the institution has often been considered to have taken on a legislative role. It could be shown, among others, through some Constitutional Court decisions: Number 90/PUU-XXI/2023; Number 112/PUU-XX/2022; and Number 23/PUU-XIX/2021 indicate such an addition of norms contradictory to the role at a constitutional position. Still, it is also explained that the Constitutional Court does not just perform judicial functions, but legislative ones, also contrary to the good conduct order of the state authority ordered within the 1945 Constitution.

Based on the principle of the separation of powers, the Constitutional Court should only function in a judicial manner, meaning testing the law without adding norms. Norm addition by the Constitutional Court's decisions runs contrary to the checks and balances principle intended to prevent any single institution from the concentration of power. By playing the role of legislator, the Constitutional Court is considered to have violated this principle, because it blurs the boundaries of authority between the judiciary and the legislature. This potentially creates an imbalance in the state system in which the Constitutional Court holds two authorities, namely judging and forming laws, which should be separated by the mandate of the 1945 Constitution.

## **(B) Constitutional Court Limitation Model**

### **a. *Constitutional Limitations on the Authority of the Constitutional Court***

The Constitutional Court plays a crucial role in upholding the supremacy of the constitution by exercising its primary authority to evaluate laws in relation to the 1945 Constitution of the Republic of Indonesia. In fulfilling this responsibility, the Constitutional Court must be mindful of the constraints imposed by constitutional norms to ensure it does not exceed the powers conferred upon it. In principle, the Constitutional Court can only handle concrete legal problems that are relevant to the constitution and may not create new norms. This means that the principle of the negative legislator is kept, whereby the Court does not annul norms which are contrary to the Constitution, without taking on a lawmaking role or becoming a positive legislator.

However, in recent years, several decisions of the Constitutional Court have been criticized by the public and legal scholars due to their overreach and, even worse, showing the tendency to act as if they were a legislator. A notable example is a ruling by the Constitutional Court that establishes further criteria for presidential and vice-presidential candidates. Such cases contradict Article 24C of the 1945 Constitution, which restricts the Court's powers to the annulment of unconstitutional provisions.

Limitations of authority, in this case, should be in place to guarantee a balance of power between state institutions. Any state institution, including the Constitutional Court, has to be subject to constitutional limitations for the sake of integrity in the legal system and as a check against abuse of authority. In this context, limitation does not mean weakening the Court; rather, it would make the Court stronger as an independent and integral institution. This limitation aims to ensure legal certainty, avoid conflict and overlapping with other institutions in authority, and the principles of checks and balances in the state system.

Legal certainty that can be achieved through such limitation is very important in creating legal stability. Precisely by ensuring that such authority is in accordance with constitutional norms, the probability of a conflict of authority with the legislative or executive institution will be reduced. This limitation, on the other hand, also ensures that the Court still performs its function within the judiciary and not intruding into the realms of legislation. As a part of the principle of checks and balances, this is one of the mechanisms where dominance by one institution against another will be prevented.

On the other hand, the internal guidelines of the Constitutional Court, such as Constitutional Court Regulation Number 2 of 2021, have legal loopholes. Although this regulation has stipulated the procedure for judicial review of laws, several important aspects have not been

expressly regulated. First, this regulation does not stipulate that the Court is prohibited from creating new norms. Therefore, the Court can argue to fill the legal vacuum and act beyond its authority. For instance, in Decision Number 90/PUU-XXI/2023, the Court added a new norm related to presidential and vice-presidential candidate requirements, even though this action exceeded its function as a negative legislator.

Second, the Constitutional Court Regulation has not clearly narrowed the scope of material review. In some decisions, the Court does not only rule whether the norms are constitutional or unconstitutional but also gives an order to the lawmakers to formulate new norms. Such acts have been seen as an intervention by the Court in the legislative area, which should be a prerogative of the DPR.

Third, there is no mechanism for reviewing or assessing the decisions of the Constitutional Court. As an institution whose decisions are final and binding, the Court does not have a mechanism to review or evaluate decisions that are considered to exceed the authority of the Court. This raises concerns about deviations in the implementation of the functions of the Court.

To close the legal loophole, several steps can be taken as a solution. First, it requires revision of the Constitutional Court Regulation in an effort to underline that the Court cannot create a new norm or provide legislative directions. The regulation should also re-emphasize the materials and formal testing to ensure that the Court is able to test only constitutional and unconstitutional norms and cannot give any normative solution.

Second, the principle of judicial restraint may be included in the regulations of the Court as a guideline to the constitutional judges so that their decisions remain within the bounds of constitutional competence and do not extend to making new policies, which is a job for the legislature.

Thirdly, it is necessary to develop a system for internal or external assessment of the impact of decisions of the Constitutional Court as such a corrective step might contribute to preventing the Court from overstepping its authority and ensure compliance with the principle of division of powers.

Without strong, clear limitations and enough means for checking mechanisms, the Constitutional Court could not carry out such a role as guardian of the constitution without disturbing state institutions' mutual balance of power. Therefore, it will increase legal certainty, the supremacy of law, and the integrity of a democratic governmental system in Indonesia.

#### ***b. Judicial Restraint Mechanism as a Normative Solution***

In the discussion previously, the author has described the principle of Judicial Restraint as an effort to ensure the institution of judicial power, especially the Constitutional Court (MK), to keep performing its judicial function within the limits of authority stipulated by the constitution. This principle plays a crucial role in preserving equilibrium or Checks and Balances among the various state institutions within the Indonesian constitutional framework. The mechanism of limitation on the authority of the Constitutional Court is aimed so that the institution does not act beyond the authority given by the constitution in order to avoid a conflict of interest between one state institution with other state institutions.

***c. Affirmation of Legislation related to Authority of the Constitutional Court***

Law Number 24 of 2003 concerning the Constitutional Court has defined the powers of the Constitutional Court in accordance with Article 24C of the 1945 Constitution, which explicitly provides the authority of the Constitutional Court as a negative legislator, namely the authority to revoke laws which are not in harmony with the constitution. However, with the establishment of Law Number 8 in 2011, considerable changes were made and declared regarding the authority of the Constitutional Court: this change removes the inclusion of Article 57 paragraph (2a) - which had previously rejected new norms created by the Constitutional Court. The existence of this article is very important to prevent the Constitutional Court from acting as a positive legislator, namely an institution that can create or change norms in its decisions.

The annulment of this article has received criticism from constitutional law experts because it opens up opportunities for the Constitutional Court to act beyond its authority, namely to create new legal norms that are supposed to be the duty of the legislative institution. Thus, the contents of Article 57 paragraph (2a) need to be restored so as not to let the Constitutional Court play the role of a positive legislator. The Constitutional Court should only have the authority to annul unconstitutional norms, without adding or creating new norms.

It is also important that the legal consequences be specified in case of violation by the Constitutional Court of this principle of Judicial Restraint. Revisions to the Constitutional Court Law need to include due sanctions, which may include such a removal of legal force regarding Constitutional Court decisions in violation of this principle, so these decisions cannot be implemented or have binding legal force.

***d. Operational Guidelines for Judicial Restraint for Constitutional Institutions***

The principle of Judicial Restraint can only be implemented if the Constitutional Court as a large institution has more operational guidelines. Such operational guidelines mean setting a clear boundary within which the Constitutional Court can exercise its authority. These

guidelines will be an internal mechanism to ensure that the Constitutional Court does not exceed its authority and adheres to the principles of Judicial Restraint.

It is to be noted that certain important points are required to be included within the operational guidelines, such as affirming that the Constitutional Court has powers only to deal with concrete cases and not cases which are hypothetical. The Constitutional Court should not create new norms or provide an interpretation of the laws so as to develop legislative policies. With respect to the testing laws, the Constitutional Court is able to only determine whether the norm is in accordance with or in violation of the constitution without adding or altering the norm. Thus, these operational guidelines can prevent the Constitutional Court from the risk of acting as a positive legislator and ensure this institution continues to function in accordance with its constitutional mandate.

***e. Mechanism Strengthening Evaluation and Supervision for Constitutional Court Decisions***

Even though the decisions of the Constitutional Court are final and binding, it does not preclude the existence of a mechanism for evaluating these decisions. This evaluation is directed so that every decision of the Constitutional Court is in accordance with the principle of Judicial Restraint and does not exceed its authority.

One mechanism that can be applied is through academic supervision. In this case, every decision of the Constitutional Court could be valued by the universities that have a study center of constitutionalism. It can be used as a consideration to improve or revise the existing regulation. Public participation is also very vital in monitoring decisions made by the Constitutional Court. Discussion groups can be established amongst the public to go through the decisions of the Constitutional Court and give their own recommendations on the limits to this institution's authority.

It also has to be taken into consideration that the decision-making process of the Constitutional Court needs to be transparent. For every decision taken by the Constitutional Court, a proper explanation of the legal basis and the reasons for such a decision should be clearly outlined. This would make it easier for the public to understand the decision, but also to have it within a clear constitutional framework.

***f. Revision of the Constitutional Court Authority Regulation***

The revision of the regulation related to the authority of the Constitutional Court is one of the strategic steps toward restoring and emphasizing the limits within which this body's powers should be exercised. The revision that is very necessary is the restoration of Article 57

Paragraph (2a) in Law Number 8 of 2011 concerning the Constitutional Court, which was abolished in the previous amendment. This article prohibits the Constitutional Court from creating new norms, and this is very important to ensure that the Constitutional Court does not act as a positive legislator.

The other amendment is to insert provisions which will clearly bind the Constitutional Court to the principle of Judicial Restraint in each of its decisions. The decisions made by the Constitutional Court shall only be able to declare null and void certain norms that are in contradiction to the constitution, not making new norms that might invade the authority of the legislative institution.

In addition, the revision should incorporate attempts at harmonization of regulations regarding the authority of the Constitutional Court, such as the Election Law and the Political Party Law, so that there will be no conflict among state institutions. For instance, the Constitutional Court in an election dispute must decide based on legal facts, without providing instructions or directions with regard to legislation related to the election.

The revision of this law enables the Constitutional Court-as a negative legislator with a function of cancelling only those laws which are opposite to the constitution-to be performed properly without any attempt at the abuse of discretion, which also means upholding the principle of Judicial Restraint and sustaining an Indonesian state system by operating correctly and fairly.

### **III. SUGGESTIONS**

Based on the results of the writing that have been described by the author, the author submits the following suggestions:

#### **(A) For Constitutional Judges**

- Constitutional Judges should be more careful in making decisions that have the potential to be considered as positive actions of legislators. Constitutional Judges need to ensure that the decisions taken remain within the constitutional framework without adding new norms that are the authority of the law makers.
- It is necessary to improve the understanding and application of the principle of judicial restraint so that the decisions issued do not affect the system of division of powers and continue to respect the function of the legislative institution.
- Constitutional Judges should be more transparent and accountable in explaining the legal basis and implications of each decision, so as to avoid controversy.

(B) For the Government and the Parliament (DPR)

- The government and DPR need to be more careful in drafting and perfecting laws, so as not to cause potential violations of the constitution that trigger judicial review requests to the Constitutional Court.
- The government and DPR must strengthen communication and coordination with the judiciary, especially the Constitutional Court, to ensure synchronization of legal policies in accordance with the principle of checks and balances
- Conduct periodic evaluations of laws and regulations to ensure their compliance with the constitution and avoid norms that harm the constitutional rights of citizens.
- The government together with the DPR need to revise Law Number 7 of 2020 concerning the Constitutional Court. The revision is to emphasize the role of Constitutional Justices as negative legislators. This affirmation is important so that Constitutional Justices focus on formal and material testing of laws against the constitution, without going beyond the limits by creating new norms.

(C) For the Community

- The community is expected to be more active in overseeing the performance of the Constitutional Court and understand the limitations and authorities of this institution, so that it can play a role in ensuring the implementation of a healthy checks and balances function.
- Legal education needs to be improved, especially regarding constitutional rights and judicial review mechanisms, so that the public is more aware of its role in guarding justice and the supremacy of law.
- The public is also expected to submit constructive input through legal channels or public discussions if there is a Constitutional Court decision that is considered inconsistent with the principles of justice and democracy.

(D) For Further Researchers

- For further researchers, they should study and explore the issue of judicial activism in order to balance this research in terms of limiting the authority of the Constitutional Court in the future.
- The results of this research are used as comparative material and reference for conducting further research related to the models that can be used in efforts to limit the

authority of the Constitutional Court so that it does not become an institution that is considered a super body.

#### **IV. CONCLUSION**

In light of the analysis in the preceding chapter, conclusions are underlined which note that limitation of the authority of the Constitutional Court of Indonesia is a pressing necessity to ensure the balanced division of power. This development of new norms in several decisions increases the possibility of committing an abuse of authority and/or a threat of institutional pre-eminence. For that reason, these issues need to be addressed through strategic policies regarding the limitation of powers exercised by the Constitutional Court while preserving the checks and balances, the rule of law, and the protection of constitutional rights.

From a normative perspective, this indicates that the limitation enhances the Court's role in reviewing laws solely in relation to their constitutionality, as stipulated by Article 42C, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. A viable solution could involve implementing a mechanism of judicial restraint that prevents the Constitutional Court from establishing new legal norms through its rulings, which would allow it to continue serving as the guardian of the constitution and protect its supremacy within the limits of the constitutionally prescribed powers.

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