

Controversy of Constitutional Court's Role as Positive Legislator in Decision 90/PUU-XXI/2023

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Abstract:

The increasing involvement of the Constitutional Court in regulatory matters has sparked intense debate, especially after Decision No. 90/PUU-XXI/2023 concerning the age requirement for presidential and vice-presidential candidates. Issued close to the candidate registration deadline, this ruling raised concerns over the Court's shifting role from a negative to a positive legislator. Previous studies have not sufficiently explored 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 using classical justice theory, and (3) compare it with similar rulings. Employing normative legal research, the study uses statutory, case, and conceptual approaches, with legal reasoning conducted through analogical and deductive interpretations of judicial precedents, constitutional norms, and justice principles. The analysis reveals that the Court has increasingly adopted regulatory functions, with Decision No. 90 reflecting this trend. However, it fails to align with Platonic justice ideals, lacking moral and procedural fairness. The study concludes that the Court's expanded role poses constitutional risks and contributes to ongoing debates on judicial activism versus legislative supremacy, offering a fresh perspective by applying 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.

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INTRODUCTION

One of the most pressing legal and constitutional issues currently unfolding in Indonesia is the controversial shift in the Constitutional Court's role from a negative legislator – tasked with annulling unconstitutional laws – to a positive legislator that actively formulates new legal norms, as exemplified in Decision No. 90/PUU-XXI/2023 regarding the age requirement for presidential and vice-presidential candidates. This phenomenon is not only critical in the context of the 2024 General Election but also poses serious implications for the integrity of Indonesia's constitutional democracy (Desai, n.d.; Divi et al., 2024). Academically, it challenges the boundaries of judicial power and raises questions about the Constitutional Court's legitimacy, neutrality, and fidelity to the principle of separation of powers (*Trias Politica*) (Gozdz-Roszkowski, 2020; Marganda Aritonang, n.d.). Practically, it impacts public trust, electoral fairness, and the stability of the legal framework guiding democratic processes. The urgency to discuss this phenomenon lies in the potential erosion of institutional accountability, the emergence 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 evaluate 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 body of literature on the Constitutional Court of Indonesia, there are at least three dominant thematic focuses. First, several studies emphasize the doctrinal and normative functions of the Constitutional Court as a negative legislator in accordance with Article 24C of the 1945 Constitution (Asshiddiqie, 2006; Butt, 2011). Second, another stream of scholarship explores the judicialization of politics, examining how the Court has increasingly intervened in politically sensitive matters (Pompe, 2005; Lindsey, 2008). Third, recent works have begun to discuss judicial activism and ultra *petita* decisions, particularly in the context of electoral law and political rights (Hosen, 2010; Nursholeh, 2022). However, these studies tend to focus more on formal-legal analysis and institutional development, while insufficiently addressing the normative implications of the Court's transformation into a positive legislator, particularly from the lens of justice theory and ethical judicial conduct. Moreover, while some research notes the Court's controversial decisions, few offer a systematic evaluation of how those decisions affect constitutional balance, rule of law principles, and public trust in judicial impartiality (Anggono, 2016). This gap underscores the need for a deeper philosophical and critical analysis – such as the present study – of Decision No. 90/PUU-XXI/2023, which not only reshapes the legal doctrine but also reflects broader constitutional and ethical dilemmas.

The core problem addressed in this study is the shifting function of the Constitutional Court from a negative legislator to a positive legislator, as reflected in Decision Number 90/PUU-XXI/2023, and its implications for constitutional justice and the integrity of judicial authority (Dongen & Veldhuizen, 2022; Omar & Hiariej, 2021). Existing studies tend to 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 seeks to respond by applying a normative-doctrinal approach combined with philosophical reasoning, especially Plato's theory of justice, to assess the legitimacy of the Court's expanded role (Leibowitz, 2010; Skitka et al., 2009). This paper specifically explores the following research questions: (1) To what extent can the Constitutional Court's decision in case 90/PUU-XXI/2023 be considered an act of a positive legislator? (2) Does the decision conform to the principles of moral and procedural justice as formulated in Plato's theory of justice? (3) How does this decision compare with other Constitutional Court rulings that exhibit similar characteristics of judicial law-making? The objective of this study is to offer a critical perspective on the normative authority of the Court and propose academic and policy-based reflections on maintaining constitutional boundaries in judicial review (Habibi, 2019; Sinaga & Erliyana, 2022).

This paper is based on the argument that the Constitutional Court's authority – as exercised in Decision Number 90/PUU-XXI/2023 – requires legal and theoretical validation because its action of adding new norms through judicial interpretation constitutes a shift from its original constitutional mandate as a negative legislator to that of a positive legislator. This shift, if left unexamined, might blur the separation of powers, weaken democratic legitimacy, and allow judicial power to expand without sufficient checks and balances. The causal relationship being examined is that the Court's insertion of new normative content (cause) may lead to constitutional dysfunction and undermine legal certainty (effect), particularly when such decisions occur 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 justice, both morally and procedurally. Thus, the paper tries to test the validity and legitimacy of the Constitutional Court's authority to act beyond its designated role, especially through the lens of 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 becomes essential to determine whether it upholds or contradicts the ideals of a rule-of-law-based democratic system (Benjamin Jr. & Crouse, 2002; Sudrajat, 2016).

In the last decade, academic discourse has increasingly focused on the growing normative activism of constitutional courts across jurisdictions, including Indonesia, particularly regarding their shift from negative to positive legislators. Scholars highlight a trend where constitutional courts, rather than merely annulling laws, engage in the creation of 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, which some view as a pragmatic response to legislative inertia, while others

caution that it threatens the separation of powers and introduces legal uncertainty. The literature reveals three dominant thematic trends: first, inquiries into the conceptual and functional limits of judicial power based on doctrines like *Trias Politica* and judicial minimalism; second, the justice implications of ultra *petita* decisions assessed through moral legitimacy, procedural integrity, and public trust; and third, critiques of the methodological narrowness of prior studies that often neglect political context, ethical dilemmas, and comparative judicial behavior (Collins, 2006; Pavlenko, 2024). These gaps underscore the urgent need for a multidimensional evaluative framework that integrates constitutional law, legal philosophy, and political science. While existing works offer important insights, they often fail to assess whether positive legislator behavior advances or undermines justice in a constitutional democracy. This study addresses that gap by examining Constitutional Court Decision No. 90/PUU-XXI/2023 through the lens of Plato's theory of justice, aiming to determine whether the Court's normative activism upholds Indonesia's constitutional principles or disrupts the institutional balance mandated by the 1945 Constitution (Komarudin, 2020).

METHOD

The unit of analysis in this research is Constitutional Court Decision No. 90/PUU-XXI/2023 concerning the age requirement for presidential and vice-presidential candidates in Indonesia. This decision is analyzed as a legal product that reflects the shifting role of the Constitutional Court from a negative legislator to a positive legislator (Muhibbin & Irwan, 2023; Sinaga & Erliyana, 2022). In addition to the decision itself, the analysis includes 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 applies a qualitative research design within the framework of doctrinal legal research (Glassman, 2017; Waruwu, 2023). This study applies a qualitative research design within the framework of doctrinal legal research (normative juridical analysis), aiming to interpret legal norms and doctrines systematically rather than measuring empirical variables. The academic focus lies on the internal coherence, theoretical consistency, and normative implications of legal reasoning – particularly in relation to constitutional justice and Plato's theory of justice (Butterworth, n.d.; Muhibbin & Irwan, 2023).

The selection of Constitutional Court Decision No. 90/PUU-XXI/2023 as the central object of analysis is based on both 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 due to its substantive reinterpretation of candidacy requirements for presidential and vice-presidential candidates. The case is particularly salient because it exemplifies the Court's increasing departure from the traditional role of a negative legislator toward the active creation of legal norms – raising fundamental questions about judicial authority, constitutional boundaries, and democratic accountability (Muhtadi, 2019). Despite its constitutional importance, the decision remains underexplored through a justice-theoretical lens, creating a pressing gap in the existing literature (E. Agustina, 2019).

This research is based on secondary legal data, consisting of: primary legal materials, including the 1945 Constitution, statutory regulations, and Constitutional Court decisions related to judicial authority and electoral law (L. Agustina et al., 2019); secondary legal materials, such as scholarly articles, legal commentaries, and academic treatises addressing judicial activism, constitutional theory, and normative jurisprudence; and tertiary legal materials, including legal encyclopedias, dictionaries, and indexes used to clarify legal terminology and concepts. These sources collectively support a comprehensive understanding of the legal framework and theoretical context relevant to the study's analysis and interpretation.

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

Data collection uses 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 such as HeinOnline, JSTOR, and SAGE, as well as official court archives, peer-reviewed journals, and university law libraries. Particular focus is given to scholarly commentaries and monographs examining constitutional courts' transformation from negative to positive legislators. This approach 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 follows a qualitative-descriptive method, involving legal interpretation (including grammatical, systematic, and teleological interpretation), ratio decidendi analysis, and conceptual synthesis. The reasoning model is deductive, whereby general principles and doctrines—such as the separation of powers, constitutionalism, and Plato's theory of justice—are operationalized to interpret 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 poses risks to the institutional balance envisaged 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. This case was filed by Almas Tsaqibbirru Re A., a law student from 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 unfairly limits the political rights of certain citizens (Harry Setya Nugraha, 2022), as illustrated in the image below:

Picture 1: the Constitutional Court of Indonesia

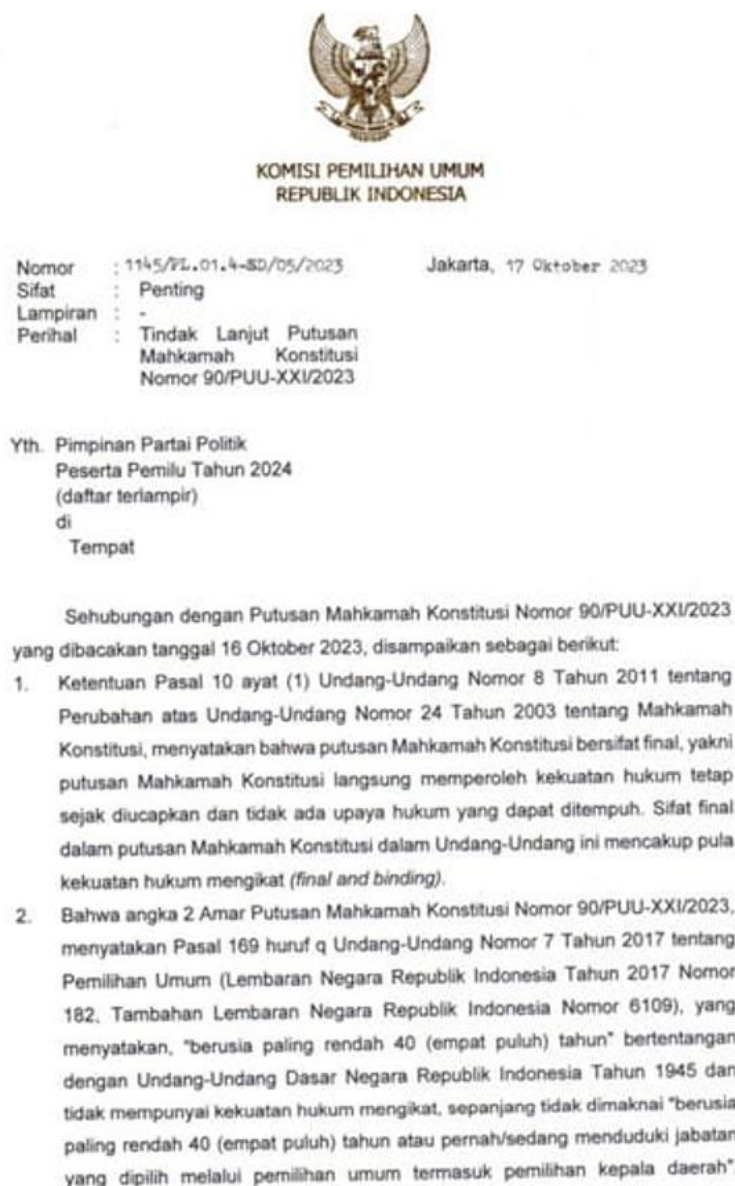


The Constitutional Court ruled that the article in question is inconsistent with the 1945 Constitution if interpreted rigidly. In response, the Court offered a reinterpretation, affirming that the age requirement of 40 years remains applicable, except for individuals who have previously or currently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

The ruling features 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, signaling their disagreement with the majority decision. These differing judicial perspectives underscore the controversial nature of the ruling, not only in public discourse but also within the Constitutional Court itself. Both 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 further reference and a comprehensive understanding, the full text of this ruling, along with ten related decisions, is publicly accessible through the official website of the Constitutional Court 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



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. This letter is a follow-up to the Constitutional Court Decision Number 90/PUU-XXI/2023, which was read on October 16th, 2023. The KPU emphasized that based on Article 10 paragraph (1) of Law Number 8 of 2011, which states that Constitutional Court decisions are final and binding, there are no further legal remedies available. Consequently, the decision must be implemented immediately and fully by all relevant parties (Saputra et al., 2018).

The Constitutional Court's ruling concerns the minimum age requirement for presidential and vice-presidential candidates under Law Number 7 of 2017. In its judgment, the Court declared that the 40-year age limit remains valid; however, exceptions apply to individuals who are currently holding or have previously held elected public office, including regional head positions. It means that someone under

the age of 40 can still run for president or vice president if they have experience as an elected official (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 crucial to ensure that the nomination process complies with the applicable legal framework. It also highlights 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

The Constitutional Court of Indonesia exercises 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 that are 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 simply removed the unconstitutional provisions without offering 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 reflects 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 that demonstrate 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 indicates that it extends beyond merely safeguarding the Constitution, actively participating in the normative aspects of law-making. This expanded function, however, has ignited ongoing legal and political discourse concerning the boundaries of judicial authority and its potential intrusion into the legislative domain. As such, careful and critical examination of these decisions is vital to uphold the principle of separation of powers and to ensure the continued integrity of Indonesia's constitutional democracy (Snyder, n.d.).

Discussion

This research analyzed the 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 that allows individuals under 40 years old to run if they have 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 regarding the overreach of authority and violation of the separation of powers (*Trias Politica*), especially given ethical controversies surrounding the involvement of a justice related to the presidential candidate benefitting 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 it from undermining democratic legal processes, and to ensure it remains within its constitutional mandate as a negative legislator (Latour, 2022).

This research examined the Constitutional Court's Decision Number 90/PUU-XXI/2023 to assess whether it reflects an overreach of judicial authority and a departure from its constitutional role as a negative legislator. The findings confirm the research hypothesis that the Court, by adding a new normative clause allowing individuals under 40 to run for office if they have held elected positions, acted as a positive legislator – thus overstepping 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 related to one of the political beneficiaries (Latour, 2022). The study establishes a logical relationship between the research question and the results by showing that the Court's normative intervention not only lacked a constitutional basis but also failed to meet standards of moral and procedural justice as defined in Plato's theory. Therefore, the research concludes that while the decision may have attempted to address a legal gap, it ultimately undermines judicial impartiality and confirms the hypothesis that the Constitutional Court has engaged in judicial law-making beyond its constitutional authority (Prayogo, 2016; Safriadi, 2019).

Compared to previous studies that emphasize the Constitutional Court's function as a negative legislator – such as those by Jimly Asshiddiqie and Maruarar Siahaan – this research offers a novel perspective by directly analyzing Decision No. 90/PUU-XXI/2023 as a concrete manifestation 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, where the Court not only annulled existing legal provisions but also added new norms, thus stepping into the legislative domain (E. Agustina, 2019). The inconsistency with previous findings arises due to 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 over 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 – something 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 main contribution lies in its multidimensional critique that combines doctrinal legal analysis, political ethics, and classical justice theory to challenge 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 reflect broader socio-political and ideological tensions in Indonesia's democratic landscape. In a social context, 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 increasing public concerns about the erosion of impartiality in key democratic institutions. This suggests a growing disillusionment with judicial neutrality and a perception that the judiciary is vulnerable 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 deeply rooted in Indonesia's effort to separate powers and prevent legal absolutism—the Court's turn toward positive legislating echoes practices seen in prior authoritarian regimes where law-making was concentrated in few hands without sufficient checks and balances (Dosen et al., 2018).

Ideologically, this shift indicates a tension between rule of law and pragmatic governance. While the Constitutional Court justifies its intervention as a means to prevent legal vacuums and promote justice, its normative expansion into legislative territory disrupts the foundational liberal-democratic ideal of institutional separation. It reflects a broader ideological drift toward judicial populism, where constitutional reasoning is shaped by political utility rather than principled legality. The research thus underscores an 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 demonstrated in Decision No. 90/PUU-XXI/2023. While this may fulfil short-term demands for legal responsiveness, it also poses a significant dysfunction in terms of 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 line between legal interpretation and legislation. This shift risks weakening public trust in the Court's neutrality and opens potential for abuse, especially in politically sensitive cases (Sahlan et al., n.d.).

As a policy response, a series of concrete and technical actions are required to restore clarity and constitutional integrity. First, the revision of Law No. 24 of 2003 on the Constitutional Court is essential, especially in clearly delimiting the Court's authority in judicial review, reaffirming its role strictly as a negative legislator, and explicitly prohibiting the addition of new normative content. Second, the establishment of a constitutional ethics oversight body, independent from the Court's

internal mechanisms, is needed to handle conflicts of interest and prevent ethical violations such as the *nemo iudex in causa sua* breach observed in this case. Third, a constitutional amendment or clarification law could be proposed by the legislature to codify the limits of judicial interpretation, especially in *ultra petita* cases, thus safeguarding democratic law-making processes (Muabezi, 2017).

Finally, at the academic and civil society level, continuous constitutional literacy campaigns should be encouraged to educate the public about the roles and limits of each state institution. These steps 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 in a constitutional democracy.

CONCLUSION

This research reveals an important shift in the Constitutional Court's function – from a negative legislator to a positive legislator – marked most significantly in Decision No. 90/PUU-XXI/2023. Although the 1945 Constitution and Law No. 24 of 2003 firmly establish the Court's authority as a negative legislator, the Court's increasing tendency to insert new legal norms under the justification of filling legal gaps reflects a profound transformation in its institutional role. The Constitutional Court Decision No. 48/PUU-IX/2011 played a pivotal role in enabling this shift, as it removed normative constraints on the Court's function, allowing for more 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, where the Chief Justice's familial relationship with a direct beneficiary of the ruling undermined both moral and procedural justice, as defined by Plato's theory. This instance not only reveals ethical violations but also demonstrates how constitutional jurisprudence can be instrumentalized in ways that compromise fairness and public trust. Unlike previous studies that focus solely on legal reasoning, this research adds a normative-philosophical layer by linking judicial conduct to classical theories of justice.

However, this study is not without its limitations. Its normative-doctrinal approach, while suitable for theoretical and textual analysis, does not engage with empirical dimensions such as public perception, political context, or comparative judicial behavior. Moreover, the focus on a single decision – albeit a landmark one – limits the generalizability of the findings across different temporal or institutional settings. Future research could benefit from incorporating empirical legal methods, such as case studies, media discourse analysis, or stakeholder interviews, to assess the real-world impact of judicial decisions. Comparative studies between constitutional courts in other jurisdictions – particularly those that have also experienced similar tensions between judicial activism and constitutional boundaries – would also enrich the discourse on judicial accountability and institutional legitimacy.

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