

The Constitutional Court's Purity as a Pillar of the Rule of Law

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Abstract: The Constitutional Court has four primary areas of authority as stipulated in the 1945 Constitution, namely, reviewing legislation against the constitution, resolving disputes of authority among state institutions, dissolving political parties, and determining the results of general elections. Although the MK serves as the guardian and enforcer of the constitution, concerns have arisen that it may overstep its authority by acting as a positive legislator, a role that should be reserved for the legislative and executive branches. The importance of the separation of powers and a system of checks and balances is emphasized to prevent the MK from making unconstitutional decisions. Furthermore, the constitution should be understood as a living law within society, capable of evolving alongside social and political developments. Thus, the MK must adhere to its established authority to avoid disrupting the legal order and justice in Indonesia. This article aims to provide insight into the challenges faced by the MK in preserving the purity and integrity of Indonesia's legal system.

Keywords: Constitutional Court; rule of law; checks and balances

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Introduction

The Constitutional Court (MK) is one of the judicial bodies within the judiciary (Ilham 2024). It has four main areas of authority as outlined in the 1945 Constitution: first, reviewing laws against the constitution; second, resolving disputes over the authority of state institutions whose powers are granted by the constitution; third, ruling on the dissolution of political parties; and fourth, deciding on general election results. The MK constitutes one branch of power among two others, namely the executive and legislative branches (Asshidiqie 2016). The executive branch holds the highest administrative authority in national governance, while the legislative branch represents the rights vested by the people (Asshidiqie 2016). This structure aligns with the principle of checks and balances adopted by our nation, whereby each of the three branches (executive, legislative, and judicial) holds a degree of mutual oversight and control over the others. This control, as referred to by the author, includes the correction of ambiguous or contradictory legal norms within legislation by referencing the Constitution.

The MK's function is thus emphasized to remain limited to executing its authority as mandated by the constitution (Rahman, Rosidin, and Ramdani 2024)—no more, no less. The authority to create laws is assigned to the legislative body, which collaborates with the executive branch, represented by the President, in this regard. Therefore, the appropriate designation for the law-making authority belongs to the legislature in conjunction with the President. From the author's perspective, the legislature and the President are the true legislators, meaning that no institution outside these bodies has the right to create laws. Ideally, the checks and balances system would be fully realized within the Indonesian state. The positive legislator represents the rights of the people, entrusted to the legislature. If the MK were to act as a positive legislator, then which body would have the authority to

review laws against the constitution? Moreover, if the MK were to receive authority beyond the four primary roles stated above, it would ultimately end up adjudicating its legal products.

The MK in the Perspective of Power Distribution

The state divides power into three primary branches: the Executive, which holds the authority to implement laws; the Legislative, responsible for creating laws; and the Judicial, which acts as an oversight body for the other two branches to ensure they do not exceed their respective authorities (Alder 2002). This concept, known as the separation of powers, is often associated with the trias politica theory. At its core, the separation of powers is intended to prevent absolute state power (Miriam Budiardjo 2009). Originally proposed by John Locke (Anstey 2011), an English philosopher, the idea was further developed by Montesquieu in his work *"L'Esprit des Lois"* (Agu 2024; Krause 2000). Other literature traces the origins of this concept back to John Calvin (1509-1564), who proposed dividing political power among various institutions to minimize its misuse, such as through the aristocracy, lower estates, or magistrates, within a system of checks and balances (Calvin 2019). While the specific structures or branches may differ, the essential goal of this division of powers is to establish a system of checks and balances to prevent abuse of power.

The MK itself falls within the Judicial branch, endowed with authority from the 1945 Constitution of the Republic of Indonesia as stipulated in Article 24C. Its powers include adjudicating at the first and final instance with final decisions on reviewing legislation against the constitution, resolving disputes concerning the authority of state institutions vested by the constitution, ruling on the dissolution of political parties, and deciding on electoral disputes.

The origins of the MK in Indonesia can be traced to the adoption of the MK concept during constitutional amendments

made by the People's Consultative Assembly (MPR) in 2001. Following the enactment of the third amendment to the 1945 Constitution (subsequently referred to as UUD NRI 1945), the MPR temporarily assigned the Supreme Court (MA) to perform the functions of the Constitutional Court until its formal establishment, as outlined in Article III of the Transitional Provisions of the fourth amendment. Subsequently, the House of Representatives (DPR) and the government drafted and jointly passed Law No. 24 of 2003 on the Constitutional Court on August 13, 2003. Within the 1945 Constitution, the Constitutional Court is endowed with the authority of a "Negative Legislator," primarily empowered to annul legal norms it deems unconstitutional. The term "Negative Legislator" refers to the Constitutional Court's power to invalidate laws against the 1945 Constitution or to allow norms enacted by the legislative body to remain in effect, using the original intent of the 1945 Constitution as its benchmark.

The MK in the Perspective of Constitutionalism

Constitutionalism is a concept originating from the West, spreading globally, including to Asia, as a means of disseminating the rule of law doctrine (Carothers 1998). The term "constitution" derives from the Latin *constituo* or *constitutum*, with a dual meaning that varies depending on interpretation. Broadly defined, it can refer to organizational structures, conventions, customs, or even a fundamental legal framework (Ayittey 2024). In this sense, the constitution is a collection of official state documents with a privileged position, whether written or unwritten (Jimly Asshiddiqie 2010).

According to Herman Heller, a constitution is broader than a fundamental law, and he categorizes it into three meanings (Bookbinder 1987):

1. The constitution reflects the political life within a society as a reality (*die Politische Verfassung als Gesellschaftliche Wirklichkeit*) and is not yet a legal constitution (*ein*

Rechtsverfassung), meaning it remains a sociological or political concept rather than a legal one.

2. The constitution gains legal status once its legal elements, derived from the societal constitution, are unified as law, thus forming what is known as *Rechtsverfassung*.
3. Finally, the constitution may be codified in a text as the supreme law governing a state.

Today, in the context of constitutionalism, a constitution is perceived as the law that lives within society and is positive, allowing people to observe, experience, and interpret each phrase and word within a state's constitution. The constitution is dynamic, evolving in tandem with the social and political developments of a society. Accordingly, a constitution can be amended in line with social and political changes, except for the fundamental principles that embody the nation's spirit and serve as the nation's guide.

The MK is inherently tied to the state's constitution, which grants it authority primarily to adjudicate ambiguities, conflicts, and gaps between laws and the constitution, which is the living law and serves as a state guide. This is the extent of the MK's authority. However, if the MK's decision generates a new rule, this can be considered unconstitutional because it would be acting beyond the authority granted by the Constitution. We can imagine the implications if the MK issued new laws through its rulings and then reviewed these laws itself as a judicial reviewer.

In current reality, the MK has assumed a role akin to that of a Positive Legislator—a brief lawmaker—despite such responsibilities traditionally falling under the jurisdiction of the DPR and the government, as specified in Law No. 24 of 2003. This law, along with its amendments, does not define the scope of the MK's judicial review authority, often resulting in the MK overstepping its jurisdiction, which led to the issuance of Law No. 8 of 2011, Article 57, Paragraph (2a), which states that: The

Constitutional Court's decisions shall not contain: a) Any mandate beyond those referred to in paragraphs (1) and (2); b) Orders directed at lawmakers; and c) Norm formulations replacing norms from laws declared contrary to the 1945 Constitution of the Republic of Indonesia.

Article 57, Paragraphs (1) and (2) of Law 8/2011 stipulates:

1. In a ruling by the Constitutional Court that states that the substance of a paragraph, article, and/or part of a law is contrary to the 1945 Constitution of the Republic of Indonesia, that substance shall no longer have binding legal force.
2. In a ruling by the Constitutional Court declaring that a law's formulation does not meet the requirements of law-making as mandated by the 1945 Constitution of the Republic of Indonesia, that law shall no longer have binding legal force.

This provision limits the MK from positioning itself as a lawmaker, a role that belongs to the DPR. However, its applicability was contested in MK Decision 48/PUU-XI/2011, which permitted the MK to address legal gaps arising from a declaration that a norm violates the 1945 Constitution, given the lengthy legislative process. This, however, raises another issue: How can an institution that determines a norm's unconstitutionality also participate in norm formulation? If the norm created by this institution is later considered unconstitutional by the public, who has the authority to review it? For this reason, further boundaries and general guidelines are needed as foundational aspects of this issue.

Criticism of the Constitutional Court's role as a "Positive Legislator" reflects a fundamental tension between judicial and legislative functions in a democratic system. Allegations that the Constitutional Court exceeds its authority by creating new legal norms are often raised, but it is crucial to understand and justify

these actions. The Constitutional Court's role cannot be entirely separated from existing institutional dynamics, including weaknesses in the legislative process within the DPR and the government. As the guardian of the Constitution, the Court has a mandate to ensure constitutional supremacy, protect human rights, and uphold the principles of the rule of law (Aritonang 2013; Beitz 2009; Krause 2000). The annulment of legal norms without providing further guidance can create a legal vacuum detrimental to legal certainty and public interests. Therefore, when the Court fills this vacuum through its decisions, such actions are often based on the urgent need to maintain legal stability and prevent greater negative impacts. The Constitutional Court's actions can be seen as an attempt to perform its judicial functions adaptively, in line with societal needs and evolving legal dynamics.

However, criticism of the Constitutional Court's role as a positive legislator also needs to be examined from another perspective. The Court's filling of legal vacuums is not driven by institutional ambition to overstep its authority but rather as a response to legislative system weaknesses. The legislative process, which is often slow, unresponsive, and influenced by specific political interests, has created a situation where the Constitutional Court must take an active role to ensure legal continuity. The Court's actions should not be perceived as a threat to the democratic system but as an institutional responsibility to ensure the functioning of the legal system. These actions have significant implications for the principle of constitutional supremacy. Rather than undermining constitutional supremacy, the Court's role in addressing legal gaps can be viewed as an effort to strengthen the Constitution as the supreme law (Qamar and Rezah 2023). When legislative institutions fail to fulfill their constitutional duties, the Constitutional Court serves as the last safeguard to ensure that the law remains aligned with the Constitution. To some extent, this

supports the principle of checks and balances by providing necessary legal solutions when other branches of power are unable to act effectively (Kurnia 2024; Alam 2024).

Nonetheless, the Constitutional Court's actions must be restrained by the principle of caution and must not threaten the balance of power. In every decision, the Court must ensure that the norms it creates remain rooted in constitutional principles and societal needs. Transparency and accountability in the decision-making process are crucial to ensuring that the Court's actions do not violate the limits of judicial authority. Criticism of the Constitutional Court's role as a positive legislator must be understood within the complex legal and political system of Indonesia. Instead of evaluating the Court's actions unilaterally, a more comprehensive analysis is needed to understand the root causes and justifications of these actions. This approach is essential to ensure that such criticism does not merely focus on the Court's shortcomings but also offers solutions that strengthen Indonesia's legal system and democracy.

Conclusion

The MK is a judicial institution with the authority to review laws that are not in accordance with the Constitution (UUD). Acting as a corrective and supervisory body over the executive and legislative branches, the MK has the power of a negative legislator, responsible for nullifying norms deemed contrary to the Constitution. However, the current reality shows that the MK also actively engages in law-making by establishing new legal norms. The decisions issued by the MK should comply with the provisions of the Constitution and must not exceed the authority defined by it. The limitation of the MK lies in not positioning itself as a legislative body, as this role belongs to the DPR. However, if the MK's ruling identifies an unconstitutional norm, that norm must undergo a lengthy legislative process for formal establishment. To reduce potential conflicts that may arise within

the judicial system, there is a need for improved public understanding and awareness of legislative regulations, as well as communication and cooperation between the judiciary and the community. The authority granted to the MK by the Constitution is limited to reviewing laws against the Constitution, adjudicating disputes of authority between institutions whose powers are derived from the Constitution, ruling on the dissolution of political parties, and resolving disputes concerning electoral results. Therefore, decisions that exceed this authority can be interpreted as an abuse of power. There is a need for institutions outside the MK that are permanent and hierarchically superior to the MK.

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