



**TECHNIUM**  
SOCIAL SCIENCES JOURNAL

[www.techniumscience.com](http://www.techniumscience.com)



**Vol. 68/2025**  
**A New Decade for Social Changes**

**PLUS**  
**COMMUNICATION P**



**International**  
Communication & PR

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

**Yodika Sputra, Tomy Michael**

Universitas 17 Agustus 1945 Surabaya

[ghodriyahyodika@gmail.com](mailto:ghodriyahyodika@gmail.com), [tomy@untag-sby.ac.id](mailto:tomy@untag-sby.ac.id)

**Abstract.** The Constitutional Court is the result of developments in the state system in Indonesia after the renewal of the New Order. The birth of the Constitutional Court is a product of third and fourth amendments to the 1945 Constitution of the Republic Indonesia (hereinafter referred to as the 1945 Constitution of the Republic Indonesia) in 2001-2002. Article 24 paragraph (2) the 1945 Constitution of the Republic Indonesia, reads: "judicial power is exercised by the Supreme Court and judicial bodies under it in the general court environment, the military court environment, the state administrative court environment, and by a Constitutional Court". Based on these provisions, the Constitutional Court is one of actors judicial power in Indonesia besides the Supreme Court. *Juridicial review* application is an attempt to re-read a legal product that has been formed and ratified by the President as a correction to the legal formation institution (Rustam Rustam, 2022). In other words, the testing carried out by the Constitutional Court can be in the form of material and formal testing. According to Article 2 (3) of the Constitutional Court Regulation Number 2 of 2021 concerning the Procedures for Testing Laws, it reads "formal testing is testing of the process of forming laws or perppu that do not meet the provisions for forming laws or perppu as referred to in the 1945 Constitution", while Article 2 (4), reads "material testing is testing relating the content of material, in paragraphs, articles and/or parts of laws or perpu that are considered to be in conflict with the 1945 Constitution". The addition of new norms in several decisions has caused controversy and concerns about the potential for abuse of power, so that limiting authority is a strategic step to prevent the dominance of the institution. Limiting the Authority of the Constitutional Court is needed to ensure the realization of a balance of power in a system of division of power in Indonesia. The Constitutional Court as part of the perpetrators of power should continue to act as a negative legislator in order to maintain the supremacy of law, the sovereignty of constitutional rights and maintain the principle of checks and balances.

**Keywords.** constitutional; court; authority

## Introduction

The Constitutional Court is the result of developments in the state system in Indonesia after the renewal of the New Order. The birth of the Constitutional Court is a product of third and fourth amendments to the 1945 Constitution of the Republic Indonesia (hereinafter referred to as the 1945 Constitution of the Republic Indonesia) in 2001-2002. Article 24 paragraph (2) the 1945 Constitution of the Republic Indonesia, reads: "judicial power is exercised by the

Supreme Court and judicial bodies under it in the general court environment, the military court environment, the state administrative court environment, and by a Constitutional Court". Based on these provisions, the Constitutional Court is one of actors judicial power in Indonesia besides the Supreme Court.[1]

*Juridicial review* application is an attempt to re-read a legal product that has been formed and ratified by the President as a correction to the legal formation institution (Rustam Rustam, 2022). In other words, the testing carried out by the Constitutional Court can be in the form of material and formal testing. According to Article 2 (3) of the Constitutional Court Regulation Number 2 of 2021 concerning the Procedures for Testing Laws, it reads "formal testing is testing of the process of forming laws or perppu that do not meet the provisions for forming laws or perppu as referred to in the 1945 Constitution", while Article 2 (4), reads "material testing is testing relating the content of material, in paragraphs, articles and/or parts of laws or perppu that are considered to be in conflict with the 1945 Constitution".

Although the process of making laws has been carried out according to the procedure for forming laws and regulations, it does not rule out the possibility of finding some content that can harm the constitutional rights of each citizen, thus having implications for laws and regulations that are unconstitutional or inconsistent with the constitution (Hofi, 2021). In other words, every citizen, indigenous community unit, legal entity, or state institution whose rights have been violated can file a *judicial review* of the law against the 1945 Constitution of the Republic Indonesia. Therefore, judicial review in several cases must be carried out because in reality many materials in the Law are found to be inconsistent with the 1945 Constitution of the Republic Indonesia.

The Constitutional Court has issued several decisions regarding the application for judicial review of the Law against the 1945 Constitution of the Republic of Indonesia, however, there are several decisions of the Constitutional Court that are considered as proud achievements by the public because they are able to take more progressive, more advanced steps and provide justice. However, the Constitutional Court does not always get support from the public because there are several decisions that are considered to act as *positive legislators*, thus giving rise to pros and cons among legal experts.

Pros and cons occur because the results of the Constitutional Court's decisions are considered not to be in favor of democratization efforts which are then considered by legal experts as a step backwards for the Constitutional Court itself. The decision that is considered a positive legislator, namely Decision Number 90/PUU-XXI/2023, still maintains the phrase Article 169 letter q of Law Number 7 of 2017 concerning General Elections which requires "Presidential Candidates and Vice Presidential Candidates must be 40 years old", but the Constitutional Court also added a new phrase/norm, namely "or have/are currently holding a position elected through general elections including regional head elections".

Decision Number 112/PUU-XX/2022 decided that Article 29 letter e of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, which originally read, "at least 50 (fifty) years old and at most 65 (sixty-five) years old during the election process", where the Constitutional Court is of the opinion that Article 29 letter e is contrary to the 1945 Constitution of the Republic of Indonesia.

On the other hand, the Constitutional Court also stated that "as long as it is not interpreted as, "at least 50 (fifty) years old or experienced as a KPK Leader, and at most 65 (sixty-five) years old during the election process and Article 34 which originally read, "The Leader of the Corruption Eradication Commission holds office for 4 (four) years and can be re-

elected for only one term of office" is contrary to the 1945 Constitution of the Republic of Indonesia, but the Constitutional Court also added a norm to be as long as it is not interpreted, "The Head of the Corruption Eradication Commission holds office for 5 (five) years and can only be re-elected for a further term of office."

Constitutional Court Decision Number 23/PUU-XIX/2021, states "Article 235 paragraph (1) and 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations are contrary to the 1945 Constitution of the Republic of Indonesia and are not legally binding", but the Constitutional Court also added "as long as it is not interpreted, "the cassation appeal against the decision to suspend the Debt Payment Obligation submitted by the creditor and the rejection of the debtor's peace offer is permitted".

As is known, a study has a goal that the author wants to achieve, so this study has the following objectives: (1) to find out and analyze the urgency of restrictions on the Constitutional Court in order to ensure a balance of power in the system of division of powers in Indonesia and (2) to find out and analyze the model of restrictions that must be carried out on the Constitutional Court.

### **Research Method**

The type of research used in this study is normative legal research.[2]

### **Result and Discussion**

#### ***Checks and Balances***

#### **Limitation of the Authority Constitutional Court in Indonesia by Forming Legal Norms for Testing of Laws Against the 1945 Constitution of the Republic Indonesia**

The Trias Politica concept has now become a fairly popular concept of government used by several countries in the world. The basic concept of trias politica is that in a country, power is not only delegated for one supreme power, but rather the power is divided into several institutions that are organized within the government structure an country. This aims to avoid abuse of power by only one institution. Because in maintaining the basic rights of citizens to be more secure, the adoption of trias politica concept is needed as a mechanism of control and limitation (Checks and Balances) of the branches power. [3]

Based on this, it can be said that checks and balances are a principle of state administration where the legislative, executive and judicial institutions have equal power so that they are able to control each other. Therefore, a country that has power in every line of life within the scope of the state must be regulated, limited and divided into several parts so that such great power is not focused on one ruler who is vulnerable to abusing that power. In other words, the mechanism of checks and balances in a country that adheres to democracy is something that is normal and even very necessary to avoid the abuse of power, either for personal interests or for certain groups or institutions that can dominate, because a mechanism like this is able to suppress the occurrence of undesirable things so that control between institutions can run as it should in Indonesia.

#### **Restrictions on Norms Through Article 24C of the 1945 Constitution Republic Indonesia**

Article 24C of the 1945 Constitution of the Republic of Indonesia explains that the Constitutional Court has one of the authorities, namely to conduct judicial review of laws against the constitution. In other words, the Constitutional Court is not allowed to create new norms for laws that are being tested. According to Article 24C of the 1945 Constitution of the

Republic of Indonesia, the Constitutional Court has the authority as a negative legislator, not as a positive legislator. Because, the Constitutional Court was found to have added norms to the decision on the judicial review of a law against the constitution, then this is more directed at the authority to create new norms which can potentially take over the function of the legislative institution as the maker of laws in Indonesia.[4]

Basically, the authority of Constitutional Court must remain within the limits regulated by the constitution. Every state institution has its authority determined in the constitution, including the judicial institution, especially the Constitutional Court. The Constitutional Court may not exceed the scope of authority that has been determined by the constitution where the authority of Constitutional Court only includes; judicial review, dispute resolution between state institutions, and special courts such as election disputes and/or the dissolution of political parties.

The limitation on the Constitutional Court institution is not actually intended to weaken the position of Constitutional Court institution as an institution that guards the constitution. In fact, the limitation of authority is actually intended to support the position of institution itself as an independent institution with integrity. The purpose of the limitation by the authority of Constitutional Court is none other than to guarantee legal certainty, maintain the balance of power and prevent abuse in authority between institutions.[5]

This Constitutional limitation is a very important mechanism in maintaining the balance of power state institutions and ensuring that judiciary continues to operate within the constitutional framework. With limitation of the authority Constitutional Court on the function of Negative Legislator principle, this limitation is so that a judicial institution is protected from domination over other branches of power, and vice versa. The implementation of Constitutional limitations also contributes to legal certainty, constitutional supremacy, and the integrity of democratic government system in Indonesia.[6]

### **Preparation of Internal Norms to Limit Interpretations that are of a New Legal Creation Nature.**

In addition to the law, the Constitutional Court institution in carrying out its authority is guided internally by the institution. The guidelines for the Constitutional Court institution are Constitutional Court Regulation Number 2 of 2021 which is an internal guideline for the institution that regulates the procedure for testing laws against the 1945 Constitution of the Republic Indonesia. Basically, Constitutional Court Regulation Number 2 of 2021 has been able to strengthen the position of the Constitutional Court institution as the guardian of the constitution by providing clearer and more comprehensive guidelines in handling cases of testing laws. However, although the Constitutional Court regulation has clearly stated the authority of the institution itself, it does not rule out the possibility that there are still legal loopholes that allow the institution to act beyond its authority in carrying out its duties and obligations so that it acts as a negative legislator. Finally, it is possible that these loopholes are used to legitimize the actions of the Constitutional Court institution which creates new norms or can provide legislative directions which should be authority of the legislative institution[4].

There are loopholes in Constitutional Court Regulation Number 2 of 2021, namely as follows;

1. Lack of Firmness on Negative Legislator Limits
2. Lack of Firmness in Limiting Material Testing
3. Absence of Correction Mechanism for Deviations from Constitutional Court Decisions

### Conclusion

The addition of new norms in several decisions has caused controversy and concerns about the potential for abuse of power, so that limiting authority is a strategic step to prevent the dominance of the institution. Limiting the Authority of the Constitutional Court is needed to ensure the realization of a balance of power in a system of division of power in Indonesia. The Constitutional Court as part of the perpetrators of power should continue to act as a negative legislator in order to maintain the supremacy of law, the sovereignty of constitutional rights and maintain the principle of checks and balances.

As a normative solution, this limitation involves affirming that the Constitutional Court only has the authority to test the Constitutionality of a Law against Article 42C paragraph (1) of the 1945 Republic of Indonesia Law as the constitution of the Republic Indonesia. The model of limiting the authority of the Constitutional Court can be carried out through the *judicial restraint* mechanism, which limits the Constitutional Court from creating new legal norms in its decisions. Thus, the Constitutional Court can continue to function as a guardian of the constitution without exceeding its constitutionally regulated role.

### References

- [1] N. Nurwigati, "Harmonization Of State Administrative Court Law And Other Laws Concerning The State Administrative Courts Exclusive Authority," *Prophetic Law Review*, vol. 4, no. 2, 2022, doi: 10.20885/plr.vol4.iss2.art6.
- [2] T. Michael, "Kewajiban Asasi Manusia Sebagai Efektivitas Menuju Indonesia Emas 2045," *Future Academia : The Journal of Multidisciplinary Research on Scientific and Advanced*, vol. 3, no. 1, pp. 160–172, Jan. 2025, doi: 10.61579/FUTURE.V3I1.324.
- [3] V. D. Tifoni and T. Michael, "Putusan No.454/Pid.B/2024/PN.Sby Tentang Kasus Pembunuhan Berdasarkan Perspektif Prinsip Hak Asasi Manusia," *Policies On Regulatory Reform Law Journal* , vol. 1, no. 2, pp. 58–75, Jan. 2025, doi: 10.59066/PRLJ.V1I2.932.
- [4] S. Rizaldi, S. Suhartono, S. Hadi, and T. Michael, "Role of head of states at G20 High Level Conference in utilizing environmental of sustainable development on electricity in Indonesia," *Technium Social Sciences Journal*, vol. 38, pp. 197–203, Dec. 2022, doi: 10.47577/TSSJ.V38I1.7850.
- [5] Ahmad Shahjahan Naeem, "Separation of Power: An Elusive Dream," *Zakariya Journal of Social Science*, vol. 1, no. 2, pp. 18–26, Jan. 2023, doi: 10.59075/zjss.v1i2.105.
- [6] I. Stewart, "Men Of Class: Aristotle, Montesquieu and Dicey on 'Separation of Powers' and 'The Rule of Law,'" *Macquarie Law Journal*, vol. 4, 2004.