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# Judicial Overreach in Constitutional Court Decisions: Navigating the Boundary Between Constitutional Interpretation and Judicially Created Legislation

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## Abstract

The imbalance between the Constitutional Court's prescribed authority and its growing tendency to expand its judicial function has raised significant concerns regarding judicial overreach in Indonesia's constitutional system. This study seeks to identify the defining characteristics of judicial overreach and to delineate the boundaries between legitimate constitutional interpretation and covert judicial lawmaking. It further evaluates the implications of this phenomenon for democratic legitimacy, public trust, and adherence to the separation-of-powers principle. Employing normative legal research methods, this study utilizes statutory, conceptual, and case-law analyses with a particular focus on Constitutional Court Decision No. 90/PUU-XXI/2023. The findings reveal a shift in the Constitutional Court's role from a negative legislator to a positive legislator, evidenced by expanded interpretations unsupported by constitutional text and inconsistencies with established precedents. These developments have undermined public confidence and contributed to increasing constitutional uncertainty. The study concludes that stricter limitations on the Court's interpretive discretion and enhanced judicial accountability are essential to preserving the integrity of constitutional review within Indonesia's democratic framework.

**Keywords:** *Judicial Overreach; Constitutional Court; Constitutional Decision; Constitutional Supremacy*

## Abstrak

Ketimpangan antara batas kewenangan Mahkamah Konstitusi dan kecenderungan perluasan peran yudisial memunculkan kekhawatiran mengenai praktik judicial overreach dalam sistem ketatanegaraan Indonesia. Penelitian ini bertujuan mengidentifikasi karakteristik judicial overreach serta membedakan batas antara interpretasi konstitusional yang sah dan penciptaan hukum terselubung, sekaligus mengevaluasi implikasinya terhadap legitimasi demokrasi, kepercayaan publik, dan prinsip pemisahan kekuasaan. Metode penelitian hukum normatif digunakan dengan pendekatan perundang-undangan, konseptual, dan analisis putusan, berfokus pada Putusan MK No. 90/PUU-XXI/2023. Hasil penelitian menunjukkan adanya pergeseran peran MK dari negative legislator menuju positive legislator, ditandai perluasan tafsir yang tidak didukung norma konstitusi dan inkonsistensi terhadap preseden. Temuan tersebut berdampak pada erosi kepercayaan publik dan penguatan kecenderungan ketidakpastian konstitusional. Penelitian ini menyimpulkan perlunya pembatasan lebih tegas terhadap ruang interpretasi MK serta penguatan akuntabilitas untuk menjaga integritas judicial review dalam sistem demokrasi konstitusional Indonesia.

**Kata kunci:** *Judicial Overreach, Mahkamah Konstitusi, Putusan, Supremasi Konstitusi*

## 1. INTRODUCTION

The Constitutional Court (MK) occupies a strategic position within Indonesia's constitutional architecture as the guardian of constitutional integrity and the protector of the rule of law. Over the past two decades, the Court has played a pivotal role in ensuring legislative compliance with constitutional mandates, safeguarding citizens' constitutional rights, and upholding the system of checks and balances within Indonesia's democratic framework. However, in recent years, the evolution of the Court's authority has triggered increasingly intense debate, particularly concerning the boundary between legitimate constitutional interpretation and actions perceived as exceeding its mandate—commonly referred to as judicial overreach. This tension is reflected in several controversial rulings that call into question the Court's identity as a negative legislator, an institution empowered solely to annul legal norms rather than create them.

Constitutional Court Decision No. 90/PUU-XXI/2023 has become a focal point in this discourse. Frequently criticized as an overextension of judicial power, the ruling generated new legal norms not explicitly mandated by the legislature. This development signals a shift in the Court's function from a negative legislator to a positive legislator, prompting academic critique, public debate, and challenges to the independence and ethical integrity of constitutional justices. Beyond eroding public trust, this decision placed the Court under scrutiny for allegedly deviating from the purity of constitutional adjudication as envisioned in Hans Kelsen's theory.

From the perspective of pure theory of law, Kelsen contended that constitutional courts must not engage in norm creation, as this authority belongs exclusively to the legislature. When constitutional interpretation is extended to the point of generating new norms, it risks disrupting the separation of powers and diminishing the legislator's core lawmaking function. This tension not only raises theoretical concerns but also produces practical implications for democratic legitimacy, political stability, and the sustainability of national legal development.

At the same time, scholarship on judicial activism, abusive judicial review, and the limits of constitutional jurisdiction suggests that an expanded judicial role may be justified in certain circumstances, such as legal vacuums or threats to constitutional rights. However, without clear theoretical parameters, judicial activism can devolve into judicial adventurism, positioning the Court as a political actor that creates law based on particular preferences rather than objective constitutional principles.

This context underscores the urgency of the present research. The controversy surrounding Decision 90/PUU-XXI/2023 not only reflects a legal problem but also reveals a conceptual crisis in defining the boundaries of the Court's constitutional function. Although previous studies have examined judicial activism, declining public trust, and inconsistencies in Constitutional Court decisions, no comprehensive analysis

has explicitly connected Hans Kelsen's theoretical framework to the phenomenon of judicial overreach and its implications for the Court's role as a negative legislator. Moreover, studies situating this decision within broader issues of democratic legitimacy, judicial ethics, and Indonesia's constitutional design remain limited.

This research is significant because it provides a comprehensive assessment of how deviations from the negative legislator principle affect the validity of legal norms, the structure of separation of powers, and public confidence in the constitutional judiciary. It also contributes to the refinement of Indonesia's constitutional theory and practice by formulating clearer parameters regarding the limits of the Constitutional Court's authority. A more precise understanding of the boundary between legitimate interpretation and norm creation is crucial for ensuring consistency in judicial decisions, strengthening institutional legitimacy, and maintaining constitutional adjudication within ethical and legal constraints consistent with democratic rule-of-law principles.

The role of the Constitutional Court within Indonesia's constitutional system has attracted extensive scholarly attention over the past two decades, particularly in the domains of judicial review, judicial activism, and judicial overreach. Previous studies have demonstrated that the dynamics of the Court's authority intersect not only with formal legal considerations but also with political interests, constitutional design, and the level of judicial independence.

"Fathi et al. examine the crisis of public trust in the Constitutional Court triggered by a series of controversial rulings, most notably Decision No. 90/PUU-XXI/2023. Their study identifies a pattern of abusive judicial review characterized by executive bias, excessive constitutional authority, and serious ethical violations within the decision-making process. They argue that the Court has shifted from a counter-majoritarian institution to a political instrument, thereby threatening the integrity of constitutional democracy. Although the research highlights the strong link between judicial overreach and declining judicial legitimacy, it does not fully engage with Hans Kelsen's theoretical framework to explain this shift.<sup>1</sup>

Similarly, Anggreni et al. analyze the development of the Constitutional Court as a guardian of the constitution through a qualitative literature-based approach. They emphasize the Court's vital contribution to legal consistency and constitutional justice through the exercise of constitutional review. However, the study identifies several challenges, including political pressure, limited institutional capacity, and weak compliance with the Court's decisions by state actors. While offering an institutional evaluation of the Court's role in upholding the rule of law, the study does not address the limits of judicial activism or the risks associated with the abuse of authority.<sup>2</sup>

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<sup>1</sup> Muhammad Fathi et al., "From Guardians to Threats? Abusive Judicial Review and Public Distrust," *Jurnal Hukum Ius Quia Iustum* 32, no. 2 (2025): 505–527, <https://doi.org/10.20885/iustum.vol32.iss2.art10>.

<sup>2</sup> Devi Anggreni et al., "Peran Mahkamah Konstitusi Dalam Menjamin Kedaulatan Hukum Di Indonesia," *Hutanasyah: Jurnal Hukum Tata Negara* 3, no. 1 (2024): 11–26, <https://doi.org/10.37092/hutanasyah.v3i1.868>.

Ardhanariswari et al. discuss judicial activism within the Constitutional Court as an expression of judicial independence aimed at achieving substantive justice. Using conceptual and comparative analysis, they argue that judicial activism is essential for progressive legal development and the strengthening of checks and balances. Nonetheless, the research does not delineate the conceptual boundaries between legitimate activism and judicial overreach, particularly when the Court produces new norms that exceed its function as a negative legislator.<sup>3</sup>

Prabowo examines the Constitutional Court's application of judicial activism in presidential threshold cases, notably Decision No. 5/PUU-V/2007 and Decision No. 102/PUU-VII/2009. He argues that judicial activism was used to prevent political discrimination and to protect citizens' constitutional rights. While this demonstrates the Court's orientation toward substantive justice, it also indicates the potential expansion of judicial authority beyond the limits of the separation of powers.<sup>4</sup>

Within the context of Kelsen's Pure Theory of Law, Simamora provides a more rigorous examination. He finds that Decision No. 90/PUU-XXI/2023 contradicts Kelsenian principles, particularly the purity of norms and the passive role of judges as negative legislators. He argues that the Court entered the realm of positive legislation by creating new norms that should fall under the authority of the President and the House of Representatives. Although highly relevant to understanding the Court's shifting role, the study does not link these findings to the crisis of public legitimacy or debates on judicial ethics.<sup>5</sup>

Hasanah and Kharisma contend that judicial activism is an unavoidable practice in the pursuit of constitutional justice. Employing a normative juridical approach, they argue that activism helps fill legal gaps and resolve complex constitutional issues. However, the study does not consider the risks of judicial adventurism, where activism evolves into an overreach of authority.<sup>6</sup>

Siregar and Erliyana examine the dilemma between judicial activism and judicial restraint in resolving electoral dispute cases (PHPU), particularly involving violations of the TSM principle. They identify inconsistencies in the Court's application of these approaches, resulting in legal uncertainty in electoral justice. While relevant to broader

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<sup>3</sup> Riris Ardhanariswari et al., "Upholding Judicial Independence through the Practice of Judicial Activism in Constitutional Review: A Study by Constitutional Judges," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (2023): 183–207, <https://doi.org/10.24090/volkgeist.v6i2.9565>.

<sup>4</sup> Bagus Surya Prabowo, "Menggagas Judicial Activism Dalam Putusan Presidential Threshold Di Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 1 (2022): 73–96, <https://doi.org/10.31078/jk1914>.

<sup>5</sup> Anggiat P Simamora, "Independensi Hakim Mahkamah Konstitusi Dalam Perspektif Teori Hukum Murni Hans Kelsen: Studi Atas Putusan MK No. 90/PUU-XXI/2023," *Maras: Jurnal Penelitian Multidisiplin* 3, no. 3 (2025): 1036–1046, <https://doi.org/10.60126/maras.v3i3.1156>.

<sup>6</sup> Galuh Nur Hasanah and Dona Budi Kharisma, "Eksistensi Judicial Activism Dalam Praktik Konstitusi Oleh Mahkamah Konstitusi," *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 1, no. 4 (2022): 734–44, <https://doi.org/10.13057/sovereignty.v1i4.122>.

discussions of judicial authority, the study does not address Decision 90 or the issue of the Court functioning as a positive legislator.<sup>7</sup>

Subandri highlights the importance of judicial competence and commitment to constitutional fidelity to ensure that Constitutional Court rulings align with democratic principles. Although offering valuable institutional insights, the study does not address judicial overreach or the political dynamics shaping the Court's decisions.<sup>8</sup>

Previous research has addressed judicial activism, declining public trust, and inconsistencies in Constitutional Court rulings. However, no study has simultaneously examined the relationship between Hans Kelsen's theoretical framework, the Court's transformation into a positive legislator, and the implications of Decision No. 90/PUU-XXI/2023 for defining the limits of constitutional authority. This research contributes a novel perspective by reaffirming the theoretical parameters of the negative legislator and evaluating the consequences of judicial overreach for democratic legitimacy and the ethical integrity of constitutional adjudication. The objectives of this study are:

- 1) To identify the characteristics of judicial overreach and delineate the boundaries between legitimate constitutional interpretation and covert lawmaking; and
- 2) To evaluate the implications of Decision No. 90/PUU-XXI/2023 for democratic legitimacy, public trust, and the principle of separation of powers in Indonesia's constitutional system.”

## 2. RESEARCH METHODOLOGY

This study employs a normative legal research method, focusing on assessing the consistency of Constitutional Court Decision No. 90/PUU-XXI/2023 with the principles of the rule of law, constitutional theory, and doctrines governing judicial authority. The normative approach is appropriate because the study examines the relationship between constitutional norms, the limits of judicial competence, and the growing tendency of the Constitutional Court to shift from a negative legislator to a positive legislator. The research utilizes legislative, conceptual, and case-based analytical approaches. The legislative approach evaluates the conformity of Decision No. 90 with the 1945 Constitution and the Constitutional Court Law. The conceptual approach analyzes key constructs such as judicial activism, judicial overreach, and the purity of legal norms within Hans Kelsen's theoretical framework. The case approach compares Decision No. 90 with earlier Constitutional Court rulings that demonstrate patterns of *ultra petita* reasoning and judicial activism.

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<sup>7</sup> Anjas Rinaldi Siregar and Anna Erliyana, “Disputes Over General Election Results Based on Judicial Activism and Judicial Restrain in Realizing the Principles of Honest and Fair in General Elections,” *Jurnal Pendidikan IPS* 15, no. 2 (2025): 373–84, <https://doi.org/10.37630/jpi.v15i2.3102>.

<sup>8</sup> Rio Subandri, “Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden,” *Jurnal Kajian Ilmu Hukum Dan Politik* 2, no. 1 (2024): 135–53, <https://doi.org/10.51903/jaksa.v2i1.1512>.

The data sources include primary legal materials (the 1945 Constitution, laws on judicial power, and Constitutional Court decisions), secondary legal materials (statutes, scholarly literature, journals, and legal doctrine), and tertiary legal materials (legal dictionaries and encyclopedias). The analysis is conducted using a qualitative–deductive method, progressing from general theories and norms to a specific evaluation of Decision No. 90 in order to identify potential forms of abuse of authority or abusive judicial review. This methodological framework enables a critical assessment of the limits of the Constitutional Court’s authority and its implications for the separation of powers and the legitimacy of constitutional democracy.

### 3. RESEARCH RESULT AND DISCUSSION

#### 3.1. Characteristics of Judicial Overreach in the Constitutional Court’s Practice and Defining the Boundary Between Legitimate Constitutional Interpretation and Covert Legislation

The primary objective of this study is to systematically identify the characteristics of judicial overreach in the practice of the Constitutional Court (MK) and to delineate the boundary between legitimate constitutional interpretation and covert legislation. This focus is essential because the development of Indonesian constitutional law reflects intensifying debates over the scope of the Court’s authority, particularly following Decision No. 90/PUU-XXI/2023. By examining the principle of separation of powers, the doctrine of open legal policy (OLP), the tradition of *rechtsvinding*, and relevant jurisprudence, this study seeks to construct a credible academic framework for assessing the practical limits of judicial review within Indonesia’s constitutional system.

Analysis of decision documents, dissenting opinions, and records from the Constitutional Court’s Honorary Council (MKMK) reveals that the boundary between constitutional interpretation and judicial overreach depends on three main parameters. First is the purpose of interpretation—whether it is intended to uphold the Constitution or to establish new legal norms. Second is the method of interpretation—whether it adheres to grammatical, historical, and systematic approaches or instead constructs normative elements that previously did not exist. Third is the Court’s relationship with the domain of open legal policy—whether the Court respects legislative discretion or intervenes in it.

In Decision 90, all three parameters point to significant deviations. The ruling introduced new terminology concerning presidential and vice-presidential candidacy requirements that did not originate from the petitioner’s claims, demonstrating that the Court did not merely interpret constitutional norms but created new ones—an authority that properly belongs to the legislature.

The findings further show that the choice of interpretive method is a critical variable in evaluating the limits of the Court’s power. Although Indonesia’s civil law

tradition permits judges to engage in *rehtvinding*, this study finds that *rehtvinding* is often used to justify expanding judicial authority. In Decision 90, the majority relied on a teleological-progressive approach, whereas the minority emphasized the importance of a textual-systematic method to preserve the boundaries of OLP. The epistemological tension between the “living constitution” and originalism evident in these differing approaches is reflected in the Court’s internal debates. Without standardized guidelines for constitutional interpretation, the line between judicial creativity and covert legislation becomes increasingly blurred.

The MKMK’s findings further demonstrate that deviations in authority are influenced not only by doctrinal considerations but also by ethical factors. The MKMK identified conflicts of interest and ethical violations directly affecting the objectivity of the Court’s decisions, confirming that judicial overreach is inseparable from the failure to uphold judicial self-restraint. Thus, the limits of the Court’s authority concern not only formal legality but also the moral integrity of constitutional judges.

This study identifies five key findings. First, judicial overreach in Indonesia is characterized by the Constitutional Court’s intrusion into areas of open legal policy, particularly when it formulates new norms not requested by the parties. Second, the clearest indicator of covert norm creation is the emergence of new phrases, conditions, or legal formulations in decisions, as demonstrated in Decision 90 with the clause, “...has held or is currently holding a position elected through general elections...”. Third, legitimate constitutional interpretation must remain within the negative legislator framework, which authorizes the Court to test and invalidate norms rather than to create new ones. Fourth, judicial activism is permissible only if it does not encroach upon OLP and is exercised to protect constitutional rights under regressive circumstances.<sup>9</sup> When activism is directed toward political objectives or the formulation of new policies, it constitutes overreach. Fifth, the study concludes that the most decisive boundary between interpretation and covert legislation is the exercise of judicial self-restraint, rather than solely reliance on normative doctrines such as OLP or the concept of the negative legislator.

Previous research—both within Indonesia and in comparative international contexts—offers a clear framework for assessing the findings of this study. First, prior studies on the Indonesian Constitutional Court over the past decade have identified a growing trend of judicial activism but have yet to provide a clear conceptual boundary between activism and overreach.<sup>10</sup> This study addresses this gap by proposing a more operational set of indicators.

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<sup>9</sup> Dicky Eko Prasetyo and Adam Ilyas, “Judicial Activism Dalam Pengujian Konstitusionalitas Undang-Undang Ratifikasi,” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 13, no. 2 (2022): 247–65, <https://doi.org/10.22212/jnh.v13i2.3201>.

<sup>10</sup> Dwiky Arief Darmawan and Andy Usmina Wijaya, “Teori Opened Legal Policy Dalam Putusan Mahkamah Konstitusi Nomor 90/Puu-XXI/2023,” *Gorontalo Law Review* 7, no. 1 (2024): 111–25, <https://doi.org/10.32662/golrev.v7i1.3355>; Siregar and Erliyana, “Disputes Over General Election Results

Second, scholarship on judicial overreach in India, particularly in the Kesavananda Bharati case, demonstrates that extreme judicial activism may be justified when employed to limit legislative power that threatens the basic structure of the constitution.<sup>11</sup> In contrast, this study finds that Decision 90 was not issued to protect the constitutional structure, but instead intervened in the realm of open legal policy (OLP) to produce norms advantageous to specific actors.

Third, several analytical works on the Constitutional Court's role as a positive legislator argue that conditional decisions remain permissible so long as modifications to statutory norms remain consistent with the Constitution and do not create new norms.<sup>12</sup> By contrast, the findings of this study show that Decision 90 goes beyond the boundaries of a conditional decision by introducing new requirements absent from the statutory text. Consequently, this research not only corroborates earlier scholarly trends but also provides a sharper categorization of covert legislative practices.

The results indicate that the boundary between constitutional interpretation and judicial overreach may be understood through three interpretive lenses. From Montesquieu's perspective, the Constitutional Court's actions in Decision 90 violated the separation of powers by assuming legislative functions. By entering the domain of OLP, the Court ceased to act as a constitutional guardian and instead positioned itself as a co-legislator.

Furthermore, the interpretive method employed in Decision 90 diverged from textual, historical, and systematic analysis, relying instead on ambiguous political objectives. This moved the decision closer to legislative policymaking than constitutional interpretation. The presence of ethical violations further supports the conclusion that the ruling was influenced by external factors that compromised judicial objectivity, reinforcing the view that Decision 90 constitutes a form of abusive judicial review.

By integrating normative, conceptual, jurisprudential, and ethical analyses, this study confirms that judicial overreach occurs when the Constitutional Court moves beyond its role as guardian of the Constitution and begins to shape public policy. The boundary between legitimate interpretation and covert legislation is grounded not only in constitutional text but also in the judicial obligation to exercise self-restraint. Decision 90 stands as the clearest example of covert legislation in the history of the Indonesian

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Based on Judicial Activism and Judicial Restrain in Realizing the Principles of Honest and Fair in General Elections."

<sup>11</sup> Adv. Aditi Ganesh Patnuskar and Prashali Balkrishna Jadhav, "Judicial Activism and the Doctrine of Basic Structure," *International Journal of Emerging Technologies and Innovative Research* 3, no. 1 (2023): 130–35.

<sup>12</sup> Mulazi Ibna Fikra, "Conflict of Interest Dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Pengujian Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Tanfidziy: Jurnal Hukum Tata Negara Dan Sijyasah* 2, no. 2 (2023): 179–90, <https://doi.org/10.47766/tanfidziy>; Sarmila Radjak and Ahmad Ahmad, "Menguji Batas Kewenangan: Tafsir Mahkamah Konstitusi Atas UUD 1945 Dalam Dinamika Demokrasi Modern," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 1800–1815, <https://doi.org/10.61104/alz.v3i3.1436>.



Constitutional Court, as it disregarded the limits of OLP, introduced new norms into its ruling, relied on unjustified non-textual interpretive methods, and was tainted by ethical violations. Such overreach carries significant risks, including legitimacy degradation, declining public trust, and blurring of institutional roles within the constitutional order. These findings are expected to provide an academic foundation for strengthening regulatory frameworks, judicial practice, and constitutional education, thereby preventing judicial abuses that may further erode Indonesia's constitutional democratic system.

### **3.2. Implications of Constitutional Court Decision No. 90/PUU-XXI/2023 for Three Fundamental Aspects of Indonesia's Constitutional System**

This study aims to empirically and normatively assess the implications of Constitutional Court Decision No. 90/PUU-XXI/2023 for three fundamental pillars of Indonesia's constitutional architecture: (1) democratic legitimacy, (2) public trust in the Constitutional Court, and (3) the separation of powers within the checks-and-balances framework. Decision No. 90 is examined as the primary object of analysis because it constitutes the most consequential precedent concerning judicial overreach—where the Court did not merely interpret the Constitution, but instead created a new legal norm that substantively altered the Election Law. Accordingly, this study evaluates how this deviation from constitutional authority affects constitutional stability, democratic quality, and the distribution of state power.

The findings indicate that Decision No. 90 generates what may be termed a 'guardian paradox,' wherein the institution mandated to safeguard the Constitution ultimately undermines it. By elevating judicial interpretation above the constitutional text, the Court shifts constitutional supremacy toward judicial supremacy—an early manifestation of *juristocracy*, in which unelected judges exercise substantive power equal to or surpassing that of democratic lawmakers.

Empirical evidence shows that the Decision introduced a novel requirement for presidential and vice-presidential candidacy that neither originated from the petitioner's request nor stemmed from any compelling constitutional necessity for the Court to act as a positive legislator. This development weakens the supremacy of the 1945 Constitution, as its meaning becomes contingent on the interpretive discretion of nine judges rather than the constitutional text or democratic legislative process.

The analysis further reveals that Decision No. 90 disrupted the balance of power. Through its *ultra petita* reasoning on age-eligibility norms, the Court effectively assumed the legislative function traditionally reserved for the House of Representatives and the President. This shift transfers authority from an open, participatory political arena to a closed, elitist judicial arena, thereby weakening the principle of checks and balances.

Empirical data—including media analysis, public trust surveys, and materials from the Ethics Council (MKMK)—demonstrate that the Decision intensified perceptions of judicial politicization. Ethical violations involving the Chief Justice strengthened public belief that the ruling was tainted by conflicts of interest. This erosion of trust has direct implications for democratic legitimacy, as the Constitutional Court is no longer perceived as neutral or impartial.

The study identifies five major findings: (1) judicial overreach in Decision No. 90 undermines constitutional supremacy by prioritizing judicial interpretation over constitutional text; (2) the Decision distorts the separation of powers by enabling judicial intrusion into the legislative domain; (3) public trust in the Court has sharply declined due to politicization and ethical breaches; (4) democratic legitimacy has eroded because essential electoral norms were modified through a non-participatory judicial process; and (5) the Decision establishes a hazardous constitutional precedent, allowing critical legal norms to be altered solely through the interpretation of nine judges.

The findings of this study are logically aligned with prior academic research. First, studies on judicial overreach in South Africa—particularly the *Mwelase v. Director-General* case—demonstrate that courts may exceed their authority only under exceptional circumstances, specifically when the executive branch entirely fails to discharge its duties.<sup>13</sup> In contrast, Decision 90 was not prompted by legislative inaction; rather, it reflected the Constitutional Court’s active intervention to construct new political norms. As such, Decision 90 is even more problematic because it lacks any justification rooted in extraordinary conditions.

Second, the literature on *juristocracy* Resnik & Dilg demonstrates that the concentration of power in judicial institutions creates a democratic deficit. This research affirms that dynamic within the Indonesian context, showing how Decision 90 establishes a precedent for expanding judicial authority over political processes.<sup>14</sup>

Third, scholarship on public trust in the judiciary consistently emphasizes judicial integrity as a key determinant of institutional legitimacy. This study extends that conclusion by showing that judicial entanglement in electoral politics can significantly accelerate the erosion of legitimacy beyond the effects of ethical misconduct alone.

The findings of this study can be viewed from three analytical perspectives. First, Decision 90 illustrates that when the Constitutional Court abandons self-restraint, the separation-of-powers framework becomes destabilized. The Court ceases to function as a guardian of the Constitution and instead assumes the role of a political actor shaping

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<sup>13</sup> Gaurav Mukherjee and Juha Tuovinen, “Designing Remedies for a Recalcitrant Administration,” *South African Journal on Human Rights* 36, no. 4 (2020): 386–409, <https://doi.org/10.1080/02587203.2021.1938660>.

<sup>14</sup> Judith Resnik and Lane Dilg, “Responding to a Democratic Deficit: Limiting the Powers and the Term of the Chief Justice of the United States,” *University of Pennsylvania Law Review* 154 (2006): 1575–1664, [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol154/iss6/8](https://scholarship.law.upenn.edu/penn_law_review/vol154/iss6/8).

normative content—an evolution that risks shifting Indonesia’s constitutional order from constitutional supremacy to judicial supremacy.

Second, democracy requires an open, deliberative, and publicly accountable legislative process. When core electoral norms are altered through a non-inclusive judicial forum, the democratic process loses its procedural foundation. Thus, Decision 90 constitutes not only a legal concern but also a threat to democratic quality. Third, public trust constitutes the judiciary’s essential social capital. Decisions that appear politically motivated or tainted by conflicts of interest rapidly accelerate delegitimization.<sup>15</sup> In this context, the public loses confidence not only in the ruling itself but also in the Court’s capacity to uphold constitutional integrity.

This study confirms that Decision 90 constitutes not only an instance of judicial overreach but also a catalyst for systemic disruptions within Indonesia’s constitutional framework:

- 1) It undermines constitutional supremacy by placing subjective judicial interpretation above the constitutional text;
- 2) It disrupts the separation of powers by enabling the Court to assume legislative functions without constitutional grounding;
- 3) It diminishes democratic legitimacy by altering electoral norms through non-democratic mechanisms;
- 4) It erodes public trust, compounded by accompanying ethical violations; and
- 5) It establishes a dangerous precedent allowing constitutional judges to act as political actors influencing policy direction.

The findings ultimately demonstrate that Decision 90 is not merely a misinterpretation but signals a broader constitutional crisis requiring immediate redress through strengthened oversight mechanisms, stricter enforcement of judicial ethics, and clearer delineation of the limits of judicial review authority.

#### 4. CONCLUSION

This study aims to identify the defining characteristics of judicial overreach and delineate the boundary between legitimate constitutional interpretation and covert lawmaking. It further evaluates the implications of Constitutional Court Decision No. 90/PUU-XXI/2023 for democratic legitimacy, public trust, and the principle of separation of powers within Indonesia’s constitutional framework. The findings indicate that Decision 90 exhibits an argumentative pattern that extends beyond the proper scope of judicial review, reflected in a shift in the Court’s role from a negative

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<sup>15</sup> Elva Imeldatur Rohmah, “Dinamika Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Usia Calon Presiden Dan Wakil Presiden,” *Progresif: Jurnal Hukum* 18, no. 1 (2024): 100–131, <https://doi.org/10.33019/progresif.v18i1.4636>.

legislator to a positive legislator. Indicators of judicial overreach include expansive interpretations not grounded in constitutional norms, the creation of new prospective norms, and inconsistencies with established judicial precedents.

This study confirms that such actions have significantly contributed to the deterioration of constitutional democracy. Decisions perceived as exceeding judicial authority have eroded public trust in the Constitutional Court, weakened the checks-and-balances system, and blurred institutional boundaries regarding constitutional authority. The study contributes to the development of constitutional law theory and practice, particularly in defining the limits of judicial authority and underscoring the need for effective accountability mechanisms for constitutional judges.

The limitations of this study lie in its focus on a single judicial decision and the absence of empirical data on public perceptions. Accordingly, future research should integrate normative analysis with empirical surveys to provide a more comprehensive assessment of the socio-political impacts. From a policy perspective, this study recommends strengthening ethical oversight within the Constitutional Court, explicitly restricting *ultra petita* rulings, and improving regulatory frameworks to preserve the integrity of the judicial review process in Indonesia's constitutional system.

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