



Judicial Law-Making and the Limits of Constitutional Adjudication: Reassessing Judicial Power in Indonesia after Decision No. 92/PUU-XXII/2024

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ABSTRACT

This article examines the implications of Constitutional Court Decision No. 92/PUU-XXII/2024 for the limits of judicial authority and Indonesia's constitutional design. The decision not only reviews the constitutionality of Article 118(e) of the Village Law but also formulates an operational norm through conditional interpretation, signaling a functional shift of the Court from its classical role as a negative legislator toward judicial law-making. Employing a doctrinal legal approach with conceptual analysis and limited comparison, the study analyzes the decision, relevant legislation, and constitutional theory literature using qualitative content analysis within the theoretical frameworks of Hans Kelsen, Alec Stone Sweet, Ran Hirschl, and Mark Tushnet. The findings demonstrate that the Court's normative intervention operates as a corrective mechanism to address legal uncertainty and to protect constitutional rights, while simultaneously generating structural tensions with the principles of separation of powers and democratic accountability. The article argues that the normalization of the Court's role as a positive legislator risks incrementally altering the institutional balance without sufficient democratic legitimacy. The study's main contribution lies in integrating national doctrinal analysis with global constitutional debates on the limits of judicial law-making in constitutional democracies, particularly in developing countries with unstable legislative dynamics.

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1. Introduction

Constitutional courts across contemporary democratic systems have increasingly exhibited an expansion of interpretative authority in reviewing the constitutionality of legislation.¹ Although judicial review is normatively designed to safeguard constitutional supremacy, protect fundamental rights, and restrain the dominance of political majorities, this expansion has generated serious debates concerning institutional legitimacy and democratic accountability.² In modern practice, constitutional adjudication no longer merely annuls statutory provisions deemed unconstitutional, but also actively constructs new normative frameworks through creative judicial interpretation.³ This development has raised concerns regarding the blurring of boundaries between judicial and legislative powers.⁴ Consequently, the tension between constitutional protection and the principles of representative democracy has emerged as a central issue in constitutional law and comparative constitutional scholarship.

Within classical constitutional theory, particularly as influenced by Hans Kelsen's thought, constitutional courts are conceptualized as negative legislators, whose authority is confined to invalidating unconstitutional norms without assuming the law-making function reserved for the legislature.⁵ However, evolving constitutional practices reveal a discernible shift toward a positive legislator role, whereby courts formulate new legal norms to fill regulatory gaps, correct legislative inertia, or respond to urgent demands for rights protection.⁶ This shift has given rise to complex theoretical challenges, including the dichotomy between judicial activism and judicial restraint, the counter-majoritarian difficulty, and the limits of legitimate constitutional interpretation.⁷ Excessive judicial activism risks eroding the principle of popular sovereignty and obscuring mechanisms of democratic accountability,⁸ whereas overly rigid restraint may render constitutional

¹ B Banaszak, "Constitutional Tribunals' Judicial Review of Public Power in Poland," in *Ius Gentium*, vol. 61, 2017, 243–57, https://doi.org/10.1007/978-3-319-55186-9_13; K Trykhlil, "Law-Making Activity in the Case Law of the Constitutional Court of Ukraine," *International and Comparative Law Review* 19, no. 2 (2019): 27–75, <https://doi.org/10.2478/iclr-2019-0014>.

² O V Augustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?," *International Journal of Human Rights* 27, no. 4 (2023): 772–88, <https://doi.org/10.1080/13642987.2023.2185608>.

³ Labib Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 10, no. 1 (2025), <https://doi.org/https://doi.org/10.15294/jils.v10i1.13494>.

⁴ Keenan D. Kmiec, "The Origin and Current Meanings of 'Judicial Activism,'" *California Law Review* 92, no. 5 (2004): 1441–77, <https://doi.org/10.2307/3481421>.

⁵ A Tsekov, "The Bulgarian Constitutional Court as a Positive Legislator," in *Rule of Law in Crisis: Constitutionalism in a State of Flux*, 2022, 256–69, <https://doi.org/10.4324/9781003349501-17>.

⁶ Tsekov.

⁷ G M Saragih, M Nasution, and E.N.A.M. Sihombing, "Judicial Review by the Constitutional Court: Judicial Activism vs. Judicial Restraint in the Perspective of Judicial Freedom," *Jurnal Konstitusi* 22, no. 1 (2025): 39–65, <https://doi.org/10.31078/jk2213>.

⁸ J Waltman, *Principled Judicial Restraint: A Case against Activism, Principled Judicial Restraint: A Case Against Activism*, 2015, <https://doi.org/10.1057/9781137486967>.

protection ineffective when political institutions fail to discharge their constitutional responsibilities.⁹

Indonesia represents a particularly significant laboratory within this broader debate, as its Constitutional Court despite being a relatively young institution has exercised substantial influence over the development of constitutional norms. Since its establishment, the Court has not only performed a norm-annulling function but has also progressively constructed constitutional meaning through decisions of a constructive and corrective nature.¹⁰ Certain rulings have even generated transitional norms, conditional interpretations, and novel normative formulas that exert direct influence on public policy design. While such practices have strengthened constitutional protection, they have simultaneously attracted criticism concerning potential judicial overreach and imbalances in inter-branch relations. The absence of clearly articulated doctrinal limits on the legitimacy of norm creation by constitutional judges has contributed to legal uncertainty and heightened institutional tension.

The Constitutional Court Decision Number 92/PUU-XXII/2024 concerning the judicial review of Article 118 letter e of Law Number 3 of 2024 on Villages represents a critical juncture in this dynamic.¹¹ Through the technique of a conditionally unconstitutional decision, the Court declared that the provision has no binding legal force insofar as it is not interpreted as being inapplicable to villages that have conducted the election of village heads under the previous statutory regime, thereby substantively constructing a new normative framework that alters the configuration of the prevailing legal regulation.¹² At the same time, the Court reaffirmed the importance of limiting judicial authority in the review of statutes. The contradiction between the affirmation of the doctrine of limited judicial authority and the practice of norm creation gives rise to a significant conceptual tension, while simultaneously raising fundamental questions concerning the consistency of constitutional reasoning, institutional legitimacy, and the long-term implications for the principle of separation of powers.

Academic studies on Constitutional Court decisions in Indonesia are generally dominated by a descriptive-doctrinal approach and tend to focus on normative compliance

⁹ Waltman.

¹⁰ M Mietzner, "Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court," *Journal of East Asian Studies* 10, no. 3 (2010): 397–424, <https://doi.org/10.1017/S1598240800003672>.

¹¹ Article 118 letter e of Law Number 3 of 2024 on the Second Amendment to Law Number 6 of 2014 on Villages stipulates: "Village Heads whose terms of office expire up to February 2024 may be extended in accordance with the provisions of this Law." This provision constitutes the object of constitutional review in Constitutional Court Decision Number 92/PUU-XXII/2024.

¹² Mahkamah Konstitusi RI, Putusan Mahkamah Konstitusi Nomor 92/PUU-XXII/2024 (2024). (The Constitutional Court's Decision Number 92/PUU-XXII/2024)

with statutory texts and the Constitution.¹³ Although a number of studies have addressed judicial activism, such analyses are often not sufficiently integrated with constitutional theory, democratic legitimacy, and comparative international perspectives.¹⁴ Scholarly works that systematically and critically evaluate the constitutional limits of norm creation by the Constitutional Court remain relatively limited, particularly in assessing the long-term institutional implications and constitutional governance. Accordingly, there remains a significant research gap in understanding how the practice of judicial lawmaking affects the structure of power and the quality of constitutional democracy in Indonesia.

This study seeks to address that gap by critically examining the constitutional rationality and limits of the Constitutional Court's authority in Decision No. 92/PUU-XXII/2024. The analysis extends beyond the substantive outcome of the ruling to encompass the coherence of legal reasoning, doctrinal consistency, and the institutional implications produced by the decision. Employing a juridical-analytical approach supported by constitutional theory and comparative perspectives, this article evaluates whether the Court's shift toward a positive legislator role can be constitutionally justified or instead signals an unchecked expansion of judicial authority. By situating the Indonesian case within a global constitutional discourse, the study aims to offer insights that transcend purely local concerns.

Theoretically, this article contributes to clarifying the conceptual boundaries between the negative legislator and positive legislator functions in constitutional adjudication. Empirically, it provides an in-depth analysis of a recent decision with structural implications for village governance and judicial authority. Furthermore, the article enriches comparative constitutional law scholarship by offering reflections from a developing democracy confronting analogous dilemmas. Based on this framework, the study advances two principal research questions: (1) to what extent are the Constitutional Court's legal considerations in Decision No. 92/PUU-XXII/2024 consistent with its constitutional mandate as a negative legislator in judicial review proceedings? and (2) how does the decision reshape the boundaries of judicial authority and what are its implications for the separation of powers and democratic legitimacy in Indonesia? These questions are designed to generate a critical analysis rather than a merely normative description.

¹³ Esty Maulana et al., "Legal Implications of the Constitutional Court Decision No. 18/PUU-XI/2013 on Simplifying Birth Certificate Registration Procedures in Indonesia," *Constitutional Law Review* 3, no. 1 (May 30, 2024): 19–37, <https://doi.org/10.30863/clr.v3i1.5602>; Pipit Somefotorono and Besse Sari, "Constitutional Implications of Constitutional Court Decision No. 105 / PUU-XXII / 2024 on Freedom of Expression and Defamation in Indonesia," *Constitutional Law Review* 4, no. 2 (2025): 117–31, <https://doi.org/https://doi.org/10.30863/clr.v4i2.5951>.

¹⁴ Zainal Arifin Mochtar, "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes," *Constitutional Review* 11, no. 1 (2025), <https://doi.org/https://doi.org/10.31078/consrev1112>; Murti Ayu Hapsari, "The Dimension of Judicial Activism of Incorporating Constitutional Complaint: An Overview on Judicial Independence," *Constitutional Review* 11, no. 2 (2025), <https://doi.org/https://doi.org/10.31078/consrev1124>.

2. Legal Material and Methods

This study employs a juridical-analytical approach with a normative-critical orientation to examine the constitutional limits of the Indonesian Constitutional Court's authority in the exercise of judicial review. Rather than merely assessing formal conformity between judicial decisions and constitutional norms, this approach is designed to evaluate the rationality of constitutional reasoning, doctrinal coherence, and the theoretical justifications underlying judicial norm creation. The analysis centers on Constitutional Court Decision No. 92/PUU-XXII/2024 as the primary case study, which is treated not as an object of descriptive exposition but as an analytical entry point for exploring the dynamics of judicial law-making and the problem of constitutional legitimacy within Indonesia's constitutional system. To reinforce this normative analysis, the study integrates constitutional theory and a comparative constitutional perspective. Theoretical frameworks concerning the functions of the constitutional court as a negative legislator and a positive legislator, the tension between judicial activism and judicial restraint, and the counter-majoritarian difficulty are employed as analytical tools to assess the internal consistency and institutional implications of the decision under review. The comparative perspective is not intended to provide a comprehensive cross-jurisdictional comparison, but rather to situate the Indonesian experience within the broader global discourse on the legitimate boundaries of constitutional adjudication. Through this methodological design, the study seeks to produce a critical analysis capable of explaining how judicial norm creation reshapes inter-branch power relations and influences the quality of constitutional democracy.

3. Results and Discussion

3.1. The Limits of Constitutional Authority and Judicial Norm Creation in Decision No. 92/PUU-XXII/2024)

In classical constitutional theory, constitutional courts are institutionally designed as negative legislators, a concept most prominently articulated by Hans Kelsen in his original model of constitutional adjudication. Under this framework, the core function of a constitutional court is limited to annulling unconstitutional norms,¹⁵ rather than producing new, generally binding legal rules. This functional limitation serves a dual purpose: preserving the coherence of the separation of powers and safeguarding the democratic legitimacy of the legislative process.¹⁶ Within this paradigm, constitutional judges act as

¹⁵ H Kelsen, *General Theory of Law and State, General Theory of Law and State* (Taylor and Francis, 2017), <https://doi.org/10.4324/9780203790960>.

¹⁶ A Tarnowska, "Constitutional Courts and Representative Democracy- a Kelsenian Perspective," *Comparative Law Review* 25 (2019): 277–98, <https://doi.org/10.12775/CLR.2019.010>.

guardians of the normative hierarchy,¹⁷ not as policymakers. Any judicial expansion into the domain of norm creation must therefore be regarded, at least theoretically, as a deviation from the court's foundational institutional mandate. Nonetheless, developments in contemporary constitutional practice increasingly demonstrate that this demarcation has become blurred.¹⁸

Alec Stone Sweet conceptualizes this transformation as part of the broader phenomenon of the judicialization of politics, whereby constitutional courts progressively enter arenas of decision-making traditionally reserved for political actors.¹⁹ In such contexts, courts no longer merely resolve normative disputes but actively shape public policy through creative constitutional interpretation. Stone Sweet's model of constitutional dialogue illustrates how interactions between courts and legislatures may facilitate dynamic normative evolution. At the same time, however, this dialogical process creates opportunities for judicial authority to expand beyond its corrective function.²⁰ Where institutional mechanisms of political response or recalibration are weak, courts risk assuming a dominant role in norm production. This analytical lens is particularly relevant for understanding the trajectory of the Indonesian Constitutional Court in several strategic decisions, including Decision No. 92/PUU-XXII/2024.

Decision No. 92/PUU-XXII/2024 demonstrates how the Court moved beyond a conventional assessment of the constitutionality of Article 118(e) of the Village Law and instead constructed a new operational normative framework. The Court's reasoning transformed abstract constitutional principles into concrete and generally binding legal rules. This pattern reflects a shift from constitutional interpretation toward judicial norm creation. From a Kelsenian perspective, such practice positions the Court beyond its corrective function and into the terrain of implicit legislation. Consequently, the normative legitimacy of the decision rests not solely on constitutional supremacy but increasingly on judicial discretion that lacks a direct democratic mandate.

Ran Hirschl's concept of juristocracy offers a critical framework for assessing this expansion of judicial power.²¹ Juristocracy describes a structural condition in which political authority systematically migrates from representative institutions to judicial bodies. Constitutional courts, in this setting, become central sites of strategic norm

¹⁷ Jimly Asshiddiqie and Ali Safaat, *Teori Hans Kelsen Tentang Hukum, Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006).

¹⁸ M Cartabia and E Lamarque, "The Constitutional Justice in Europe (1920-2020)," *Quaderni Costituzionali* 40, no. 4 (2020): 799–813, <https://doi.org/10.1439/99323>.

¹⁹ Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe*, Oxford University Press, 2000, 1, <https://doi.org/https://doi.org/10.1093/0198297718.001.0001>.

²⁰ K Kuswanto and T S Kurnia, "ABOLISHING THE CONSTITUTIONAL COURT'S ROLE AS POSITIVE LEGISLATURE: A PRELIMINARY STUDY," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 164–78, <https://doi.org/10.22373/petita.v10i1.775>.

²¹ Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*, Harvard University Press (Harvard University Press, 2004), <https://doi.org/10.2307/j.ctv15d81nb>.

production, particularly in socially and politically sensitive areas. While often justified through the rhetoric of rights protection and constitutionalism, this shift may, in structural terms, constrain democratic deliberation.²² Applied to the Indonesian context, the Court's norm-creating posture in this decision may be read as an early indication of juristocratic consolidation. The primary risk lies not in the isolated outcome of a single case, but in the normalization of judicial practices that expand authority without a commensurate framework of accountability.²³

From Mark Tushnet's perspective, this tension aligns with the debate between judicial supremacy and weak-form constitutionalism.²⁴ Under judicial supremacy, courts function as the final and dominant interpreters of constitutional meaning. By contrast, weak-form constitutionalism preserves space for substantive correction and dialogue between judicial and political institutions.²⁵ Where constitutional courts consistently generate new binding norms that are difficult for legislatures to revise or contest, the constitutional system gravitates toward judicial supremacy.²⁶ This trajectory risks limiting democratic flexibility in responding to evolving social conditions. In the context of Decision No. 92/PUU-XXII/2024, the critical issue is therefore not merely whether the newly articulated norm is substantively just, but whether its mode of production aligns with the principles of democratic constitutionalism.

Normatively, Article 24C of the 1945 Constitution and the Constitutional Court Law do not confer an explicit mandate upon the Court to create new legal norms.²⁷ The Court's authority is confined to constitutional review and the resolution of specific constitutional disputes. When judicial practice exceeds these parameters, tension emerges between adjudicative activity and constitutional institutional design.²⁸ Such tension may undermine legal certainty, generate normative fragmentation, and provoke jurisdictional conflicts among state institutions. From an institutional theory perspective, the expansion of judicial authority without corresponding institutional recalibration poses a risk of structural imbalance within the constitutional order.

²² Hirschl.

²³ Kuswanto and Kurnia, "ABOLISHING THE CONSTITUTIONAL COURT'S ROLE AS POSITIVE LEGISLATURE: A PRELIMINARY STUDY."

²⁴ M Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*, 2009, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84924102337&partnerID=40&md5=edf32e2cc9b7a1f0095f4f2f8afbbd19>.

²⁵ Tushnet.

²⁶ Tushnet.

²⁷ Jumriani Nawawi and Irfan Amir, "Integration of Constitutional Law and Human Rights: A Comparative Study between Indonesia and South Africa," n.d.

²⁸ Andi Sugirman et al., "Balancing Individual Political Rights and Institutional Integrity in an Islamic Constitutional Perspective on Party Switching in Indonesia," *El-Mashlahah* 15, no. 2 (2025): 369–92, <https://doi.org/10.23971/el-mashlahah.v15i2.9995>.

By integrating the theoretical perspectives of Kelsen, Stone Sweet, Hirschl, and Tushnet, this analysis demonstrates that the norm-creating practice evident in Decision No. 92/PUU-XXII/2024 reflects a discernible shift in the Indonesian Constitutional Court's role—from a negative legislator toward a more dominant normative actor. While this shift may be pragmatically justified on grounds of rights protection and legal effectiveness, it remains problematic from the standpoint of democratic legitimacy and the limitation of power. The core issue, therefore, lies not merely in the substantive outcome of the decision, but in its structural implications for Indonesia's constitutional architecture. This theoretical framework provides the foundation for examining the broader institutional consequences and future trajectory of the Court's authority in the subsequent subsection.

3.2. Implications of the Decision for the Doctrine of Judicial Power Limitation and Indonesia's Constitutional Design

Constitutional Court Decision No. 92/PUU-XXII/2024 does not merely affect the concrete resolution of disputes concerning the term of office of village heads, but also generates systemic consequences for the doctrine limiting judicial power within Indonesia's constitutional framework.²⁹ When the Court constructs operational norms through its decisions, the judicial function shifts from a mechanism of constitutional control toward an actor engaged in normative policy-making. This shift raises fundamental questions regarding the limits of judicial legitimacy within a constitutional democratic system. From the perspective of constitutional design, systemic stability is determined not solely by the substantive quality of judicial decisions, but by the consistency of authority distribution among state institutions. Accordingly, the implications of this decision must be examined from a long-term institutional perspective rather than through a purely casuistic evaluation.

In comparative constitutional scholarship, Mark Tushnet emphasizes that the expansion of judicial authority toward judicial supremacy risks eroding spaces for democratic deliberation and policy flexibility.³⁰ When courts become final decision-makers that are not readily subject to political correction, the risks of institutional stagnation and accountability deficits increase. The model of weak-form constitutionalism advanced by Tushnet instead underscores the importance of sustained dialogue between judicial and legislative institutions as a mechanism of reciprocal correction.³¹ In the Indonesian context, the Constitutional Court's tendency to formulate new norms through its decisions has the

²⁹ Hapsari, "The Dimension of Judicial Activism of Incorporating Constitutional Complaint: An Overview on Judicial Independence."

³⁰ J Agresto, *The Supreme Court and Constitutional Democracy*, *The Supreme Court and Constitutional Democracy*, 2016, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85056689283&partnerID=40&md5=717bc3c5e3a342f048464adb1caa0115>.

³¹ M Tushnet, "The Relation Between Political Constitutionalism and Weak-Form Judicial Review," *German Law Journal* 14, no. 12 (2013): 2249–63, <https://doi.org/10.1017/S2071832200002753>.

potential to narrow this dialogical space. As a result, constitutional policy correction increasingly depends on judicial discretion rather than representative democratic processes.

Ran Hirschl conceptualizes the expansion of judicial power as part of the consolidation of juristocracy, in which courts become central sites of strategic decision-making with far-reaching political and social consequences.³² Within this framework, the strengthening of judicial authority is often accompanied either explicitly or implicitly by the weakening of political institutions.³³ Decision No. 92/PUU-XXII/2024 may be read as a concrete illustration of this tendency, insofar as the Court not only corrected an existing norm but simultaneously redesigned a normative configuration that directly affects the structure of village governance. If such practices become recurring precedents, there is a risk of gradual transformation of constitutional design without formal amendment processes. Such transformations may shift the balance of power in an uncontrolled manner.³⁴

From Alec Stone Sweet's perspective, this dynamic can be understood as an intensification of constitutional dialogue that exceeds the boundaries of institutional symmetry. Ideally, constitutional dialogue is reciprocal, whereby courts correct legislation and legislators respond through policy reformulation.³⁵ However, when courts directly produce binding operational norms, dialogue is transformed into a hierarchical relationship. Under such conditions, the legislative function is reduced to implementing judicial decisions rather than acting as an equal deliberative partner. This implication affects not only institutional relations but also the quality of democratic legitimacy underpinning public policies produced through such processes.³⁶

Normatively, Indonesia's constitutional design positions the Constitutional Court as the guardian of the Constitution rather than as a co-legislator.³⁷ Article 24C of the 1945 Constitution and its organic statutes limit the Court's authority to judicial review of

³² E Martínez-Barahona, "Constitutional Courts and Constitutional Change: Analysing the Cases of Presidential Re-Election in Latin America*," in *New Constitutionalism in Latin America: Promises and Practices*, 2016, 289–309, <https://doi.org/10.4324/9781315597904-24>.

³³ R Hirschl, "The Global Expansion of Judicial Power," in *The Oxford Handbook of Comparative Judicial Behaviour*, 2023, 65–88, <https://doi.org/10.1093/oxfordhb/9780192898579.013.3>.

³⁴ Kuswanto and Kurnia, "ABOLISHING THE CONSTITUTIONAL COURT'S ROLE AS POSITIVE LEGISLATURE: A PRELIMINARY STUDY."

³⁵ S Benhabib, "Dialogic Constitutionalism and Judicial Review," *Global Constitutionalism* 9, no. 3 (2020): 506–14, <https://doi.org/10.1017/S204538172000012X>.

³⁶ J De Fine Licht, M Agerberg, and P Esaiasson, "It's Not Over When It's Over" - Post-Decision Arrangements and Empirical Legitimacy," *Journal of Public Administration Research and Theory* 32, no. 1 (2022): 183–99, <https://doi.org/10.1093/jopart/muab023>.

³⁷ Ahmad Nur Fajri and Irfan Amir, "Penegakan Hak Konstitusional Melalui Constitutional Question Serta Relevansinya Terhadap Negara Hukum Pancasila," *Constitutional Law Review* 1, no. 1 (2022): 39–56.

legislation and the resolution of specific constitutional disputes. When judicial practice exceeds this design, tensions arise between constitutional text and constitutional practice. Such tensions risk generating legal uncertainty, fragmentation of authority, and inconsistencies in the application of the principle of checks and balances.³⁸ In the long term, these dynamics may obscure lines of public accountability in the formation of legal norms.

Nevertheless, it cannot be ignored that the expansion of the judicial role is often driven by weaknesses in legislative capacity, slow legal reform processes, and urgent needs to protect constitutional rights.³⁹ In certain circumstances, judicial intervention may function as a corrective mechanism in response to political stagnation and legal vacuums.⁴⁰ However, such pragmatic justifications cannot serve as a permanent basis for normalizing the court's role as a positive legislator. Without clear conceptual and institutional boundaries, this practice risks generating precedents that are difficult to control.⁴¹ Accordingly, firm normative parameters are required to distinguish exceptional judicial intervention from systemic expansion of judicial authority.

The principal implication of Constitutional Court Decision No. 92/PUU-XXII/2024 is the need to reassess the design of judicial power limitations within Indonesia's constitutional system. The reformulation of relations between the Constitutional Court and the legislature should be directed toward strengthening balanced mechanisms of constitutional dialogue rather than unilateral dominance. Academically, this finding contributes to the global debate on the limits of legitimate judicial law-making in constitutional democracies within developing states. Practically, the decision calls for judicial caution in constructing precedents so as to avoid incrementally reshaping constitutional design without adequate democratic legitimacy. Thus, this study underscores that the central challenge lies not in the Court's willingness to enforce substantive justice, but in maintaining an appropriate balance between effective rights protection and the integrity of constitutional design.

³⁸ R Jaya, "URGENSI CHECKS AND BALANCES KETATANEGARAAN INDONESIA DAN ISLAM," *Juris: Jurnal Ilmiah Syariah* 18, no. 2 (2019): 221–32, <https://doi.org/10.31958/juris.v18i2.1740>.

³⁹ Proborini Hastuti, "Shifting the Character of the Constitutional Court Decision Influenced by Political Constellation in Indonesia," *Constitutional Review* 5, no. 2 (2019), <https://doi.org/https://doi.org/10.31078/consrev526>.

⁴⁰ Mochtar, "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes"; Irfan Amir, "Disqualification of the Candidate Pair for the Elected Regional Head of Sabu Raijua Regency" 5, no. 2 (2021): 196–213, <https://doi.org/10.35673/al-bayyinah.v4i2.1830>.

⁴¹ Labib Muttaqin et al., "Constitutional Court vs. Lawmakers: Positive Legislature, Decision Implementation, and Balance of Authority," *SIGn Jurnal Hukum* 7, no. 2 (2026): 1040–57.

4. Conclusion

This study demonstrates that Constitutional Court Decision No. 92/PUU-XXII/2024 represents a functional shift in the Court's role from its classical position as a negative legislator toward a practice of corrective and operational norm creation. Through the formulation of a conditional norm concerning Article 118 letter (e) of the Village Law, the Court not only reviewed the constitutionality of the provision but simultaneously reconstructed its normative meaning in order to ensure the protection of constitutional rights, legal certainty, and substantive justice. These findings underscore the existence of a structural tension between the Constitution's textual mandate and contemporary judicial practice, while also illustrating how pragmatic demands for rights protection may drive the expansion of judicial discretion. From a theoretical perspective, this study enriches the discourse on the limits of legitimate judicial law-making in constitutional democracies, particularly in developing states characterized by legislative dynamics that remain institutionally fragile.

At the same time, the institutional implications of this decision highlight the urgency of recalibrating the relationship between judicial authority and the legislature within a more balanced framework of checks and balances. In the absence of clear normative parameters, the normalization of positive legislation by courts risks undermining democratic accountability and generating long-term uncertainty in constitutional design. Accordingly, this study recommends strengthening mechanisms of constructive constitutional dialogue between the Constitutional Court and the legislature, accompanied by the development of firm doctrinal boundaries delineating constitutionally justifiable forms of judicial intervention. The principal contribution of this article lies in its integration of national doctrinal analysis with global constitutional theory, thereby offering a more comprehensive evaluative framework for the development of Indonesian constitutional law and for international debates on the restructuring of judicial power

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