



The Constitutional Court as Positive Legislator: Rethinking Checks and Balances Considering Decision No. 60/PUU-XXII/2024

Imelda Ayu Juwita Putria¹, Bachrul Amiq², Anastasia Kayla Ruwiyanto³

¹²Faculty of Law, Universitas Negeri Surabaya, Indonesia

³Faculty of Law, Universitas Surabaya, Indonesia

Corresponding E-mail: imelda.22114@mhs.unesa.ac.id

Abstract

This study analysed the evolving role of the Constitutional Court in Decision Number 60/PUU-XXII/2024, which not only annuls legal norms but also establishes new norms regarding regional head candidacy requirements. This condition raises debates concerning the shift of the Constitutional Court's function from a negative legislator to a positive legislator and its implications for the principle of checks and balances within Indonesia's constitutional system. Unlike prior studies, which have remained largely conceptual or focused on the technical implementation of regional elections, this research offers novelty through a critical analysis of the constitutional legitimacy of the Constitutional Court's role in formulating new norms, examined specifically through the lens of checks and balances an angle that remains underexplored in the existing literature. This research aims to analyze the juridical construction of the decision and examine its impact on the balance of power among state institutions. The research employs a normative legal method using statutory, case, and conceptual approaches. The legal materials consist of primary sources, such as legislation and Constitutional Court decisions, and secondary sources, including legal literature and scholarly doctrines, analyzed prescriptively to assess the decision's conformity with the principles of constitutional supremacy and the separation of powers. The findings indicate that Decision Number 60/PUU-XXII/2024 reflects the Constitutional Court's tendency to act as a positive legislator by formulating new candidacy threshold norms a move that, while contributing to democratization, also poses risks of legal uncertainty and a shifting balance of power. These findings reinforce the theoretical argument that the transformation of the Constitutional Court's role necessitates a reformulation of the constitutional limits on judicial authority within a checks-and-balances framework, while opening avenues for strengthening constitutional dialogue between the judiciary and the legislature in Indonesia.

Keywords: Constitutional Court, Positive Legislator, Judicial Review, Constitutional Adjudication, Checks and Balances.

INTRODUCTION

The idea of popular sovereignty is the principal foundation of a democratic system of government, in which supreme authority originates from, is carried out by, and is intended for the people.¹ Within the framework of constitutional democracy, every citizen has the right to participate in political processes, including through mechanisms of general elections conducted in a free, honest, and fair manner.² The State, acting as the holder of constitutional mandate, is obliged to implement a democracy that is fair and dignified, distancing itself from the formalism of democracy that is merely procedural without substantive content.³

In the context of constitutional review of legislation, Indonesia follows the centralized model, which places the authority of judicial review in the Constitutional Court (Mahkamah Konstitusi, MK) as the sole institution authorized to examine laws against the Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945). This model—initially introduced in Austria by Hans Kelsen—asserts that the Constitutional Court's role is essentially that of a negative legislator; that is, an institution that may only annul norms that conflict with the Constitution, rather than create new norms.⁴ The power to formulate norms remains the domain of the legislative branch as a positive legislator, in accordance with the separation of powers principle developed by Montesquieu.⁵

However, in its practical development, Indonesia's Constitutional Court has frequently issued decisions that exceed the limits of a negative legislator. Decisions of a conditionally constitutional nature, conditionally unconstitutional decisions, as well as decisions that formulate new norms within the provisions under review, reflect a tendency for the MK to act as a positive legislator.⁶ This tendency has intensified and reached its peak in Constitutional Court Decision No. 60/PUU-XXII/2024.

¹ Noviyanti Hananto Widodo, Muh. Ali Masnun, Intan Lovisonnya, Dicky Eko Prasetyo, "Legal Reconstruction of Strengthening the Function of Regional Representation in Indonesia," *Journal of Law and Legal Reform* 7, no. 2 (2026): 517-54, <https://doi.org/https://doi.org/10.15294/jllr.v7i2.43520>.

² Alexander Seran, "Demokrasi, Kedaulatan Rakyat, Dan Pemilu Refleksi Atas Hubungan Antara Teori Dan Praksis," *Respons: Jurnal Etika Sosial* 21, no. 01 SE-Articles (2016): 29-49, <https://doi.org/10.25170/respons.v21i01.524>.

³ Riski Febria Nurita, "Kajian Filsafat Hukum Tentang Demokrasi Di Indonesia," *Jurnal Cakrawala Hukum* 6, no. 1 (2015): 89-98.

⁴ Jimly Asshiddiqie, *Model-Model Pengujian Konstitusional Di Berbagai Negara* (Jakarta: Konstitusi Press, 2005).

⁵ Anajeng Esri Edhi Mahanan, "Impresi Putusan Mahkamah Konstitusi Bersifat Positive Legislature Ditinjau Dari Progresivitas Hukum Dan Teori Pemisahan Kekuasaan," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 54, no. 2 SE-Articles (2020): 421-41, <https://doi.org/10.14421/ajish.v54i2.920>.

⁶ Muhammad Alief Farezi Efendi, Muhtadi Muhtadi, and Ahmad Saleh, "Putusan Positive Legislature Oleh Mahkamah Konstitusi: Positive Legislature Decisions by the Constitutional Court," *Jurnal Konstitusi* 20, no. 4 (2023): 622-39.

Decision No. 60/PUU-XXII/2024 was prompted by an application for constitutional review of Law No. 10 of 2016 concerning the Election of Governors, Regents, and Mayors (the Regional Head Election Law, UU Pilkada). Article 40 paragraph (1), which governs the nomination threshold for regional heads. The application was submitted by the Labour Party (Partai Buruh) and the Gelora Party (Partai Gelora), challenging the high minimum requirements of 20% of seats in the regional parliament (DPRD) or 25% of valid votes as a condition for nominating candidate pairs for regional heads. The Constitutional Court not only annulled the norm deemed contrary to the Constitution, but also actively established new parameters for the nomination threshold – ranging approximately from 6.5% to 10%, depending on the number of the voters' permanent voter list (Daftar Pemilih Tetap) in each region. This step has clearly positioned the MK in a functionally equivalent role to the lawmaking authority.

The legal problem arising from this decision is multidimensional. On the one hand, the decision serves as a signal of strengthening democratization by opening broader access for political parties to nominate candidate pairs for regional heads. On the other hand, the MK's formulation of new norms without delegation from the lawmaking body raises serious questions regarding the boundaries of the MK's authority within Indonesia's constitutional system. In his dissenting opinion, Constitutional Judge Daniel Yusmic emphasized that the Constitutional Court should not create new norms related to the nomination threshold requirements.⁷ This issue becomes increasingly crucial given that Indonesia adopts the principle of checks and balances, requiring each state institution to operate within the confines of its respective powers.

Prior studies regarding the MK's role as a positive legislator have generally been conceptual in nature and have not specifically examined Decision No. 60/PUU-XXII/2024 in terms of its implications for the checks and balances principle in Indonesia. Existing studies have more often addressed MK decisions in the context of elections generally, without providing a deep juridical analysis of the normative construction of the decision in relation to the MK's constitutional authority under the UUD NRI 1945 and Law No. 24 of 2003 on the Constitutional Court (UU MK). This constitutes a legal gap that provides a compelling basis for conducting this research. In particular, there has been no comprehensive study that connects the juridical construction of Decision No. 60/PUU-XXII/2024 with the parameters of positive legislator behavior, while simultaneously analyzing the concrete impact on institutional balance within Indonesia's constitutional system.

Based on the aforementioned formulation of legal issues and problems, this study aims to: first, analyze the juridical construction of Constitutional Court Decision No. 60/PUU-XXII/2024 within the framework of the MK's authority as a negative legislator and its tendency toward acting as a positive legislator, grounded in the UUD NRI 1945 and the UU MK; and second, examine the implications of this decision for

⁷ Roxenny Massiel Bruno Bonilla et al., "Physician-Assisted Suicide in Europe: Comparative Legal Perspectives and the Emerging Role of Italian Regional Legislation," *Legal Medicine* 82 (April 2026): 102821, <https://doi.org/10.1016/j.legalmed.2026.102821>.

the checks and balances principle in Indonesia's constitutional system, particularly in the post-decision relationship among state institutions.

To demonstrate the originality of this research, several relevant prior studies within the last five years are presented as follows.

First, a study by Zakiyyah Maulida (2025) from Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto entitled "The Role of the Constitutional Court as a Positive Legislator in Election Regulation (A Study of Constitutional Court Decisions on the 2024 Election)."⁸ This research examines the MK's role in forming or interpreting election norms, especially the role of constitutional judges who move beyond the realm of interpretation toward the formulation of new norms. The similarity with this study lies in the shared focus on the MK's tendency to act as a positive legislator. The difference is that Zakiyyah's research is general in the context of the 2024 elections, whereas this study specifically analyzes Decision No. 60/PUU-XXII/2024 and its constitutional legitimacy in the context of the nomination requirements for candidate pairs for regional heads.

Second, research by ⁹ entitled "The Implications of Constitutional Court Decision No. 60/PUU-XXII/2024 for the Regional Election (Pilkada) System in Indonesia." This study analyzes the impact of Decision No. 60/PUU-XXII/2024 on the regional head election system as a whole. The similarity lies in the same object of study, namely Constitutional Court Decision No. 60/PUU-XXII/2024. The difference is that their study places greater emphasis on the technical aspects of implementing the regional elections, while this research focuses on juridical analysis of the construction of the decision and its relation to positive legislator behavior from the perspective of checks and balances.

Third, research by ¹⁰ entitled "The Constitutional Court between Negative and Positive Legislators in Decisions on the Constitutional Review of Laws." This study examines conceptual debates regarding the boundaries of the MK's role as a negative legislator and its tendency to become a positive legislator in various decisions on constitutional review of legislation. The similarity with this study lies in the conceptual study of the dual role of the MK. The difference lies in the focus of this research, which explicitly connects these findings to Decision No. 60/PUU-XXII/2024 and analyzes the systemic impact on the principle of separation of powers and checks and balances within Indonesia's constitutional governance.

Fourth,¹¹ , in their juridical analysis of Constitutional Court Decision No. 90/PUU-XXI/2023 on the minimum age requirement for presidential and vice-

⁸ Zakkiyah Maulida, "Peran Mahkamah Konstitusi Sebagai Positive Legislator Dalam Pengaturan Pemilu (Studi Putusan Mahkamah Konstitusi Tentang Pemilu 2024)" (Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, 2025).

⁹ Arif Firmansyah, "Implikasi Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024 Terhadap Sistem Pilkada Di Indonesia," *Jurnal Hukum Dan Demokrasi* 3 (2025): 45-62.

¹⁰ Muhammad Algufran Yadjitala, "Mahkamah Konstitusi: Antara Negative Legislature Dan Positive Legislature, Dilema Atau Dinamika?," *Jurnal Konstitusi Dan Demokrasi* 19, no. 1 (2025): 286-91.

¹¹ Muhammad Daffa Fadhillah and Ridham Priskap, *ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI TERKAIT BATAS USIA PENCALONAN PRESIDEN DAN WAKIL PRESIDEN*, n.d.;

presidential candidates, found that the decision potentially exceeded the MK's judicial authority by creating a new norm rather than merely testing an existing one – blurring the boundary between judicial and legislative functions and risking legal uncertainty and conflicts of interest ahead of elections. Although this study concerns a different decision, it demonstrates a recurring pattern of MK norm-formation beyond constitutional review, reinforcing the theoretical relevance of the present study.

Fifth,¹² examined the same Decision No. 90/PUU-XXI/2023 concerning presidential candidacy, focusing on legal certainty theory, the rule-of-law state, and the hierarchy of legislation. Their findings highlighted procedural irregularities – the addition of new norms, dissenting opinions, and an unusual adjudication process – that potentially undermined the principles of legal certainty and justice, further evidencing the MK's growing propensity toward positive legislator behavior in politically sensitive decisions.

Sixth,¹³ analyzed Constitutional Court Decision No. 23/PUU-XIX/2021 concerning limited cassation against suspension-of-debt-payment (PKPU) rulings, finding that the MK's decision functioned as a win-win solution balancing debtor protection with the principle of speedy trial. Although situated in a different area of law, this study affirms that MK decisions formulating new procedural mechanisms are a broader, cross-sectoral phenomenon within Indonesia's constitutional adjudication practice, not confined to electoral matters alone.

Seventh¹⁴, a conceptual study entitled "The Constitutional Court between Negative and Positive Legislators in Decisions on the Constitutional Review of Laws" examined the theoretical boundaries of the MK's dual role without linking these findings to a specific decision or to the checks and balances principle

Taken together, these seven studies reveal a consistent pattern: Indonesia's Constitutional Court has repeatedly exercised positive legislator functions across multiple domains electoral law, presidential candidacy requirements, and bankruptcy procedure suggesting that this tendency is systemic rather than incidental to Decision No. 60/PUU-XXII/2024 alone. The comparative study by Al-Dulaimi (2018) further shows that this phenomenon is not unique to Indonesia, but forms part of a broader global trend in the evolving role of constitutional courts provided such authority is exercised within legitimate and clearly bounded limits. However, none of these studies specifically integrates a comparative constitutional perspective with a juridical

Fadhillah and Priskap, *ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI TERKAIT BATAS USIA PENCALONAN PRESIDEN DAN WAKIL PRESIDEN*.

¹² Muhdar Muhdar, *Analisis Yuridis Putusan Mahkamah Konstitusi Tentang Penetapan Pasangan Calon Presiden dan Wakil Presiden Terhadap Penegakan dan Kepastian Hukum di Indonesia*, n.d.

¹³ Miranda Lufti Nasution, Sunarmi Sunarmi, and Robert Robert, "Analisis Yuridis Putusan Mahkamah Konstitusi dalam Upaya Hukum Kasasi Terhadap Putusan Penundaan Kewajiban Pembayaran Utang (Studi Putusan No. 23/PUU-XIX/2021)," *Recht Studiosum Law Review* 2, no. 2 (November 2023): 20–37, <https://doi.org/10.32734/rslr.v2i2.12105>.

¹⁴ Ahmed Oudah Al-Dulaimi, "From Negative to Positive Legislator? Response to Unconstitutional Legislative Omission As a Case Study in the Changing Roles of Constitutional Courts," with Griffith University and Alexander Brown, preprint, Griffith University, August 2018, <https://doi.org/10.25904/1912/3526>.

construction analysis of Decision No. 60/PUU-XXII/2024, nor do they connect this specific decision to the checks and balances principle within Indonesia's constitutional governance system. Existing Indonesia-specific studies on the MK's positive legislator role (Maulida, 2025; Fadhillah et al., 2024; Muhdar & Susilowati, 2023) remain either conceptual, confined to other decisions, or focused on technical implementation, without situating their findings within comparative constitutional scholarship or a systematic checks and balances framework. This constitutes the legal and theoretical gap that the present research addresses: a comprehensive study connecting the juridical construction of Decision No. 60/PUU-XXII/2024 to internationally grounded theoretical parameters of positive legislator behavior, while simultaneously analyzing its concrete impact on institutional balance within Indonesia's constitutional system.

In the Indonesian legal system, one of the instruments for upholding administrative justice is the State Administrative Court (PTUN), which has the authority to review and resolve disputes between citizens and public administration officials.¹⁵ Every court decision that has permanent legal force (*inkracht van gewijsde*) is final and binding as a form of legal certainty, so that all parties, including government agencies, are obliged to comply with it.¹⁶ The implementation of PTUN decisions in practice often faces complex obstacles. Decisions that are legally final and binding are often not effectively implemented at the implementation level due to regulatory limitations, weak institutional support, and low compliance among officials who are supposed to implement these decisions. The issue of the execution of PTUN decisions is often referred to as *quaestio vexata*, which is an issue that continues to be debated and has not yet found an effective solution.¹⁷ This condition shows that without certainty of implementation, court decisions only remain a formality without providing real relief.

The complexity of administrative law enforcement is evident in the case of nine civil servants in East Kutai Regency who were found guilty of committing acts defined as criminal acts of corruption in the legislation. The nine civil servants, namely Ahmadi, S.T., Andi Sulpadli, Durrahman, S.E., Andriyani, S.E., Hermansyah, S.E., Awang Ari Jusnanta, S.Sos., Raden Irawan Prasetya Adi, S.T., Shinta Fhensylavia Prihastuty, S.T., and Rusdiyanto, S.E., were legally and convincingly found guilty of the criminal act of "aiding and abetting corruption" and were sentenced to one year in prison. The defendants were not proven to have committed the criminal acts as charged in the primary indictment, but were only proven guilty through the alternative (secondary) indictment. The nine civil servants have served their sentences and, after their release,

¹⁵ Muh. Ali Masnun, Dicky Eko Prasetyo, Eny Sulistyowati, Mohd Badrol Awang, "Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realize Substantive Justice," *Journal of Law and Legal Reform* 5, no. 3 (2024): 891-912.

¹⁶ Dicky Eko Prasetyo et al., "The Construction Of The Lex Sportiva Principle In Indonesia's Sports Law: Implications And Future Arrangements," *UUM Journal of Legal Studies* 16, no. 2 (July 31, 2025): 58-69, <https://e-journal.uum.edu.my/index.php/uumjls/article/view/24580>.

¹⁷ Firzhal Arzhi Jiwantara, "Hambatan-hambatan pelaksanaan putusan PTUN dalam sengketa perangkat desa di Kab. Lombok timur," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 10, no. 1 (February 2024): 1, <https://doi.org/10.29210/020232037>.

have been reinstated as civil servants and even received civil service benefits such as promotions and periodic salary increases.

The situation changed after the issuance of the Joint Decree of the Minister of Home Affairs, the Minister of Administrative and Bureaucratic Reform, and the Head of the State Civil Service Agency Number 182/6597/SJ, Number 15 of 2018, and Number 153/KEP/2018 dated September 13, 2018 (Joint Decree of Three Ministers), which mandates the dishonorable dismissal of civil servants proven to have committed criminal acts related to their positions based on a court decision that has permanent legal force, as well as the imposition of sanctions on civil service officials who fail to implement these provisions. Based on this policy, the State Civil Service Agency (BKN) instructed civil service officials at the central and regional levels to implement the Joint Decree, which then served as the basis for the Regent of East Kutai to issue a decision on the dishonorable dismissal of Ahmadi, S.T., et al.

Ahmadi, S.T., et al. objected to the decision and took legal action by filing a lawsuit with the Samarinda Administrative Court (PTUN), in which each plaintiff filed a case individually, rather than collectively. The PTUN's decision is now legally binding (*inkracht*). In the nine rulings, the Panel of Judges declared the Regent's Decree invalid and ordered its revocation, as well as requiring the rehabilitation of the plaintiffs' rights and the restoration of their positions as civil servants as before. The East Kutai Regency Government has followed up on the ruling requiring the Defendant to rehabilitate the Plaintiffs by restoring their rights and status as civil servants to their original conditions by reinstating Ahmadi, S.T., et al. as civil servants. The East Kutai Regency Government has also submitted the files of Ahmadi, S.T., et al. to the Education and Training Civil Service Agency for processing. Subsequently, the files were forwarded by the BKPP to the BKN through Letter Number 800/025/BKPP/SIK - AA/II/2020 regarding the submission of the East Kutai Regency Head's Decree on the reinstatement of Ahmadi, S.T., et al. as civil servants, who had previously been removed from the database.¹⁸

The State Civil Service Agency (BKN) through Letter Number FII-26-30/KOL 37-7/55 stated in its response that Ahmadi, S.T., and friends were proven to have committed criminal acts of corruption through a court decision that had permanent legal force (*inkracht van gewijsde*) and based on Law -Law Number 5 of 2014, so that the reactivation of the Employee Identification Number (NIP) that had previously been deleted from the database cannot be carried out, and requested the reissuance of a letter of dishonorable dismissal to the nine civil servants concerned.¹⁹

In response to this issue, the Regent of East Kutai then submitted a request for a legal opinion to the Ministry of Home Affairs. The Ministry of Home Affairs, through Letter Number 180/216/legal bureau, argued that Article 87 paragraph (4) letter d of

¹⁸ Pemerintah Kabupaten Kutai Timur, "Penyampaian Persyaratan Pengaktifan Kembali Dalam Sistem Aplikasi Pelayanan Kepegawaian (SPAK) Badan Kepegawaian Negara," 2020.

¹⁹ Badan Kepegawaian Negara, "Pengaktifan Kedudukan Hukum A.n. Ahmadi, ST, Dkk (7 Orang)," 2020.

Law Number 5 of 2014 could not be applied to Ahmadi, S.T., et al. because the court's verdict only imposed a sentence of 1 (one) year in prison and a fine, while the minimum criminal requirement is two (2) years. Thus, the East Kutai Regency Government is still obliged to implement the verdict of the Samarinda Administrative Court based on the principles of justice and legal certainty.²⁰

Based on these circumstances, legal certainty regarding the status of civil servants Ahmadi, S.T., and colleagues has not been fully realized, as the State Civil Service Agency (BKN) has not reactivated their Employee Identification Numbers (NIP). This situation creates legal uncertainty and contradicts the principle of legal certainty and the Principles of Good Governance (AUPB), which require government agencies to comply with final and binding court decisions.²¹ Failure to implement these rulings undermines public trust in the legal system and weakens the rule of law, potentially hindering the public from seeking justice through the State Administrative Court.²²

Previous studies on administrative law generally focus either on the execution of Administrative Court decisions or on the principle of legal certainty within the framework of good governance. However, limited attention has been given to examining the erga omnes effect as a binding normative mechanism that obligates administrative bodies that are not parties to the dispute, such as the State Civil Service Agency, to comply with final and binding Administrative Court decisions.

Previous studies on administrative law generally focus either on the execution of Administrative Court decisions or on the principle of legal certainty within the framework of good governance, but rarely examine the erga omnes effect as a binding normative mechanism for non-litigant administrative bodies.

Based on this research gap, this study examines the authority of the State Civil Service Agency in implementing Administrative Court decisions despite not being a defendant, as well as the legal consequences of failing to reactivate the Employee Identification Number following a final and binding Administrative Court decision, reviewed from the principle of legal certainty within the framework of the General Principles of Good Governance (AUPB). Accordingly, this research is entitled "Erga Omnes and Legal Certainty in the Execution of Administrative Court Decisions".

RESEARCH METHODS

This study is a normative legal research, that is, research focusing on the examination of applicable legal norms within the legislative and regulatory framework, as well as court decisions.²³ This study is conducted to analyze the juridical construction of Constitutional Court Decision No. 60/PUU-XXII/2024 from

²⁰ Kementrian Dalam Negeri, "Permintaan Pendapat Hukum," 2021.

²¹ Abdur Rahim et al., "Relevansi Asas Kepastian Hukum dalam Sistem Penyelenggaraan Administrasi Negara Indonesia," *JlIP - Jurnal Ilmiah Ilmu Pendidikan* 6, no. 8 (August 2023): 5806-11, <https://doi.org/10.54371/jlrip.v6i8.2575>.

²² Ahmad Rayhan and Sakti Krisna Wijaya, *Efektifitas Pengadilan Tata Usaha Negara dalam Menyelesaikan Putusan Sengketa Tata Usaha Negara*, 1 (2023).

²³ Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

the perspective of constitutional law and its implications for the principle of checks and balances.

The approaches used in this research include the statute approach, the case approach, and the conceptual approach. The statute approach is employed to examine various regulations relevant to the authority of the Constitutional Court, such as the Constitution of the Republic of Indonesia of 1945 (UD NRI 1945), the Law on the Constitutional Court, and regulations concerning the election of regional heads (head of regional government). The case approach is used to analyze Constitutional Court Decision No. 60/PUU-XXII/2024 as the primary object of the study. Meanwhile, the conceptual approach is applied to analyze legal concepts, including negative legislator, positive legislator, as well as the principles of separation of powers and checks and balances.²⁴

The legal materials utilized in this study consist of primary legal materials and secondary legal materials. Primary legal materials include the UUD NRI 1945, the Law on the Constitutional Court, the Law on the Election of Regional Heads, and Constitutional Court Decision No. 60/PUU-XXII/2024. Secondary legal materials comprise relevant legal literature, scholarly journals, books, and the opinions of experts related to the research topic.²⁵

The collection technique for legal materials is conducted through library research (studies of literature), by gathering and reviewing various legal materials related to the research problem. The collected materials are then classified, organized systematically, and analyzed according to the needs of the study.

The legal materials analysis technique applied in this research is prescriptive analysis—an analysis aimed at providing an assessment of a legal issue and offering arguments regarding the most appropriate solution based on the prevailing legal norms. This analytical framework is operationalized through three interrelated steps. First, constitutional interpretation is used to determine the meaning and scope of the constitutional provisions invoked in Decision No. 60/PUU-XXII/2024, particularly those concerning the separation of powers and the Constitutional Court's authority to review legislation, applying grammatical, systematic, and teleological methods of interpretation. Second, proportionality analysis is employed to assess whether the Court's formulation of a new candidacy threshold—an act that shifts its position from a negative legislator toward a positive legislator—constitutes a measure that is suitable, necessary, and proportionate in the strict sense to the constitutional objective it seeks to protect. Third, an evaluation of the Court's legal reasoning (*ratio decidendi*) is conducted to examine the coherence, consistency, and justificatory adequacy of the arguments underlying the decision, including whether that reasoning sufficiently

²⁴ Anajeng Esri et al., "Impresi Putusan Mahkamah Konstitusi Bersifat Positive Legislature Ditinjau Dari Progresivitas Hukum Dan Teori Pendahuluan Pasal 24 Ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Mengatur Bahwa Mahkamah Konstitusi Merupakan Salah Satu," *Asy-Syir'ah* 54, no. 2 (2020).

²⁵ Roxenny Massiel Bruno Bonilla et al., "Physician-Assisted Suicide in Europe: Comparative Legal Perspectives and the Emerging Role of Italian Regional Legislation," *Legal Medicine* 82 (April 2026): 102821, <https://doi.org/10.1016/j.legalmed.2026.102821>.

addresses the doctrinal boundary between judicial and legislative functions, as reflected in the dissenting opinion. Through these three steps, this analysis is carried out by examining the conformity of Constitutional Court Decision No. 60/PUU-XXII/2024 with the principles of constitutional supremacy, legal certainty, and the theory of separation of powers within Indonesia's constitutional governance system.

RESULTS AND DISCUSSION

A. The Juridical Construction of Constitutional Court Decision No. 60/PUU-XXII/2024 within the Constitutional Court's Authority under the 1945 Constitution and the Law on the Constitutional Court in the Framework of the Positive Legislator

1. Constitutional Authority of the Constitutional Court and Its Limits

Authority of the Constitutional Court (Mahkamah Konstitusi) to review statutes against the Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945) is a manifestation of the principle of constitutionality of law, which ensures that every legislative product enacted by the law-making body remains in conformity with the Constitution. This authority is explicitly stipulated in Article 24C paragraph (1) of the UUD NRI 1945, namely that the Constitutional Court shall have the authority to adjudicate at the first and final level, by final and binding decisions, to test statutes against the Constitution. The Court's position as the sole interpreter of the constitution and simultaneously as the guardian of the constitution has made a significant contribution to strengthening the process of democratization and upholding constitutional supremacy in Indonesia.²⁶

Normatively, the exercise of this authority is regulated by Law No. 24 of 2003 on the Constitutional Court, as amended by Law No. 7 of 2020. Articles 56 and 57 of the Constitutional Court Law (UU MK) provide that the Court's judgments consist of three types: a petition dismissed as inadmissible, a petition granted, and a petition rejected.²⁷ In carrying out its functions, the Court seeks to uphold substantive justice through judgments that not only bind the parties to the case, but also apply generally to all citizens (*erga omnes*). Consequently, if a legal norm is declared contrary to the Constitution, that norm loses its general validity and cannot be enforced.

Within the construction of its constitutional authority, the Constitutional Court is essentially positioned as a negative legislator, as conceptualized by Hans Kelsen. Under that theory, the Court is only authorized to annul norms that are inconsistent

²⁶ Ramlani Lina Sinaulan and Rahmat Saputra, *The Constitutional Court as a Positive Legislative through the Living Constitution Approach*, 2023.

²⁷ Fakhrian Yudiansyah et al., "Perkembangan Konstitusi Di Indonesia Melalui Peran Mahkamah Konstitusi Dalam Penegakan Hukum Konstitusi Di Kaji Menurut Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi," *Jembatan Hukum: Kajian Ilmu Hukum, Sosial Dan Administrasi Negara* 1, no. 2 (2024): 223-37.

with the constitution, without having the authority to create new norms.²⁸ This doctrine is grounded in the principle of separation of powers, which is also influenced by Montesquieu's idea of *trias politica*, emphasizing that each branch of power should not interfere with the affairs of the others.²⁹ In the Indonesian context, this limitation is affirmed through Article 57 paragraph (2a) of the UU MK, which states that Constitutional Court decisions may not contain the formulation of norms as a substitute for the statute norms declared unconstitutional.

However, in modern constitutional practice, the Constitutional Court's function does not always stop at annulling norms. Since the post-amendment era of the 1945 Constitution, the Court has frequently issued decisions that are conditionally constitutional or conditionally unconstitutional, which in essence contain the formulation of new norms. This tendency reflects that, in the dynamics of constitutional review, the Constitutional Court sometimes acts as a positive legislator—that is, it formulates new norms as the substance of its decision. This development carries significant theoretical and practical consequences for Indonesia's constitutional system, particularly in relation to the principle of separation of powers.

2. Juridical Construction of Decision No. 60/PUU-XXII/2024

Decision of the Constitutional Court No. 60/PUU-XXII/2024 was prompted by a petition for judicial review filed by the Labour Party (Partai Buruh) and the People's Wave Party (Gelora or Partai Gelombang Rakyat Indonesia) against Article 40 paragraphs (1) and (3) of Law No. 10 of 2016 on the Election of Governors, Regents, and Mayors.³⁰

Although both parties had been determined as election participants for the 2024 general elections, they had no seats in the national House of Representatives (DPR RI) or in any provincial or regency/city regional legislatures (DPRD). The Labour Party obtained 972,910 votes (approximately 0.64%), while Gelora received 1,281,991 votes (approximately 0.84%) in the 2024 elections. As a result, neither party met the parliamentary threshold.³¹

²⁸ Hans Kelsen, "Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution," *The Journal of Politics* 4, no. 2 (June 1942): 183–200, <https://doi.org/10.2307/2125770>.

²⁹ Esri et al., "Impresi Putusan Mahkamah Konstitusi Bersifat Positive Legislature Ditinjau Dari Progresivitas Hukum Dan Teori Pendahuluan Pasal 24 Ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Mengatur Bahwa Mahkamah Konstitusi Merupakan Salah Satu."

³⁰ Edwin Herlambang and Hwian Christanto, *Kewenangan Mahkamah Konstitusi Pada Putusan Nomor: 60/Puu-Xxii/2024 Sebagai Positive Legislator Yang Melampaui Batas (The Authority Of The Constitutional Court In Decision Number: 60/Puuxxii/2024 As A Positive Legislator That Exceeds Its Bounds)*, 2026.

³¹ Agung Budi Laksono and Ferry Anggriawan, "Analisis Yuridis Kewenangan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Bhirawa Law Journal* 6, no. 1 (2025).

The petitioners argued that Article 40 paragraph (3) of the Regional Elections Law (UU Pilkada) creates discriminatory treatment. The provision allows only political parties that hold seats in the DPRD to use the number of valid votes as the basis for nominating candidates for regional heads, whereas parties that do not hold DPRD seats—even if they obtained valid votes in the DPRD elections—cannot utilize those votes. Such a normative construction was considered to be inconsistent with Article 1 paragraphs (2) and (3), Article 18 paragraph (4), and Article 27 paragraph (1) of the 1945 Constitution, because it disregards electoral legitimacy actually obtained directly from the people.

In its decision, the Court granted part of the petition. The Court held that Article 40 paragraph (3) of the UU Pilkada is contrary to the 1945 Constitution and therefore has no binding legal force. More significantly, the Court did not stop at merely annulling the unconstitutional norm. Instead, it actively formulated new parameters for the candidacy threshold for regional heads, structured in a proportional and tiered manner based on the number of the Permanent Voter List (DPT). For the nomination of governors, the thresholds are set as follows: 10% for provinces with a DPT of up to 2,000,000 voters; 8.5% for DPT of more than 2,000,000 up to 6,000,000 voters; 7.5% for DPT of more than 6,000,000 up to 12,000,000 voters; and 6.5% for DPT of more than 12,000,000 voters.³² Similar provisions apply proportionally to the nomination of regents and mayors, based on the DPT figures in each regency/city.³³

By clearly formulating these new threshold parameters, the Court's action goes beyond the limits of the negative legislator role as conceptualized by Kelsen. The Court not only removed the unconstitutional norm, but also filled the normative vacuum with new substantive provisions that previously fell within the exclusive domain of the law-making body. Such action places the Court in a functionally equivalent position to the legislative function, making it a positive legislator in the true sense.³⁴

3. Constitutional Basis and Analysis of the Proportionality Test

The Court based the formulation of these new norms on arguments aimed at protecting citizens' constitutional rights.³⁵ Article 28D paragraph (1) of the 1945 Constitution guarantees the right to recognition, security, protection, and fair legal

³² Kadimuddin Baehaki, "Implikasi Politik Putusan Mahkamah Konstitusi Nomor: 60/PUU-XXII/2024 Terkait Ambang Batas Pencalonan Kepala Daerah," *Yustisi* 11, no. 3 (2024): 451–60.

³³ Hanuring Ayu, Lahmuddin Zuhri, and Putu Sekarwangi Saraswati, "ANALISIS PUTUSAN MA DAN PUTUSAN MK TENTANG PERSYARATAN CALON KEPALA DAERAH DALAM PILKADA 2024," *Verstek* 13, no. 2 (2024): 211–29.

³⁴ Ridzky Wahyu Nugroho, A. Heru Nuswanto, and Sukimin Sukimin, "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 60/Puu-Xxii/2024 Tentang Ambang Batas Pencalonan Kepala Daerah," *Semarang Law Review (SLR)* 6, no. 2 (2025): 299–310.

³⁵ Hasim Hartono, "Urgensi Putusan MK Nomor 60/PUU-XXII/2024 Terhadap Penyelenggaraan Pilkada Tahun 2024," *Jurnal Intelek Dan Cendikiawan Nusantara* 1, no. 4 (2024): 5374–83.

certainty, while Article 28D paragraph (3) guarantees every citizen's right to obtain equal opportunity in government. The Court assessed that an excessively high threshold—namely 20% of DPRD seats or 25% of valid votes—has the potential to create indirect discrimination against smaller parties that, in fact, have already obtained electoral legitimacy from the people.³⁶

Within the construction of its decision, the Court implicitly applied the proportionality test by examining whether the objective of simplifying political parties is proportionate to the restriction of constitutional rights caused by the threshold. The Court concluded that the existing restriction is no longer proportional in the context of local democracy, which requires open and inclusive competition. Lowering the threshold was regarded as a more constitutionally balanced measure between the goal of political stability and the guarantee of citizens' political rights.³⁷ This approach indicates that the Court is not only conducting a formal review of the constitutionality of a norm, but also carrying out a substantive assessment of the socio-political impact of the norm being reviewed³⁸.

This decision has concrete effects that are directly felt in local political contests. The case of the Special Capital Region of Jakarta (DKI Jakarta) is the clearest illustration: based on data from the Central Statistics Agency (Badan Pusat Statistik), Jakarta's population reaches approximately 10.68 million people. Consequently, political parties or coalitions are required to obtain a minimum of 7.5% of valid votes. The Indonesian Democratic Party of Struggle (PDI Perjuangan), which had previously faced the threat of being unable to nominate candidates because it was not part of a large coalition, was ultimately able to nominate candidates independently. This was because its share of valid votes in the 2024 DPRD elections reached 14.01%, exceeding the new threshold set by the Court.³⁹

Even so, the Court's action in formulating a new norm has not been free from criticism. Constitutional Justice Daniel Yusmic, in his dissenting opinion, emphasized that the Court should not be creating new norms regarding the requirements for the candidacy threshold for regional heads. This view aligns with the theoretical

³⁶ Sultoni Fikri, "Analisis Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024 Terhadap Hak Politik Dalam Perspektif Teori Kontrak Sosial," *Amsir Law Journal* 6, no. 1 (2024): 40–55.

³⁷ Hartono, "Urgensi Putusan MK Nomor 60/PUU-XXII/2024 Terhadap Penyelenggaraan Pilkada Tahun 2024."

³⁸ Geofani Milthree Saragih, Mirza Nasution, and Eka N. A. M. Sihombing, "Judicial Review Oleh Mahkamah Konstitusi: Judicial Activism vs. Judicial Restraint Dalam Perspektif Kebebasan Kehakiman: 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.

³⁹ Hasiholan Hasiholan, "Analysis Of The Decision Of The Constitutional Court The Decision Of The Constitutional Court Of The Republic Of Indonesia Number 60/PUU-XXII/2024 On The Threshold Of Candidacy For Regional Heads In The 2024 Regional Elections Leads To Legal Uncertainty F," *Jurnal Hukum Sehasen* 11, no. 1 (2025): 129–36.

argument that when the Court formulates a replacement norm, a fundamental question arises: who has the authority to review the norm that the Court itself has formulated? The absence of a control mechanism over the norm constructed through judicial decisions may create a gap in accountability within the constitutional governance system.⁴⁰

B. Implications of Decision No. 60/PUU-XXII/2024 for the Principle of Checks and Balances

1. Dimensions of Strengthening Checks and Balances

The implications of Decision No. 60/PUU-XXII/2024 for the checks and balances principle are dualist in nature: it simultaneously strengthens constitutional oversight and has the potential to shift the balance of power. On the first dimension, this decision clearly strengthens the Constitutional Court's role in supervising the constitutionality of legislative products enacted by the House of Representatives (DPR) and the President. The judicial review exercised through this decision proves to be an effective instrument for correcting discriminatory and disproportionate policies, and it compels the legislative and executive branches to comply with constitutional values.⁴¹ The threshold norm that had previously provided structural advantages to large parties has been corrected through the judicial review mechanism, demonstrating the Court's effectiveness as a counterweight to legislative dominance.

From the perspective of constitutional democracy, the decision also produces significant positive effects. By lowering the candidacy threshold for regional head elections, it opens greater opportunities for small and medium parties to participate in local election contests without having to first build coalitions that are not based on shared visions and programs. This is directly correlated with an improvement in the quality of local democracy, where more open competition is expected to yield regional leaders who genuinely reflect the will of the people.⁴²

The decision also reinforces the Court's position as an institution capable of intervening in legislative policies that may create **electoral oligarchy**, a situation in which only structurally established parties – typically major parties – are able to nominate candidates for regional head offices. By annulling Article 40 paragraph (3) of the Regional Elections Law (UU Pilkada) and formulating a new, proportional threshold,

⁴⁰ Rismawati Nur, "Analisis Perubahan Ambang Batas Pencalonan Kepala Daerah Dalam Perspektif Utilitarianisme: Analysis of the Changing Threshold for Regional Head Candidacy from a Utilitarian Perspective," *Jurnal Konstitusi* 22, no. 3 (2025): 508–27.

⁴¹ Dewi Sulastris and Abu Sanmas, "IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI SEBAGAI POSITIF LEGISLATOR TERHADAP PRINSIP CHECK AND BALANCE: Mahkamah Konstitusi Sebagai Positive Legislator: Implikasi Putusan Terhadap Prinsip Checks and Balances Di Indonesia," *LITIGASI* 26, no. 2 (2025): 272–315.

⁴² Mochamad Rizky Ferdiansyah Ramadhani, Catur Wido Haruni, and Fitria Esfandiari, "Legal Analysis of the Constitutional Court Decision Number 60/PUU-XXII/2024 on the Threshold for Regional Head Candidates Reviewed from the Principles of Democracy," *Proceedings of the 6th International Conference on Law Reform (INCLAR 2025)*, 2025, 284.

the Constitutional Court carries out its corrective function as a guardian of inclusive democracy.⁴³

2. The Risk Dimension of Institutional Imbalance

in the second dimension, when the Court formulates new norms through its ruling, there is a serious potential for a shift in the balance of power toward judicial supremacy. The positive legislative function exercised by the Court in this ruling not only impacts the substance of regional election norms but also the framework of institutional relations between branches of government. When the Court is authorized to formulate new norms to replace revoked statutory norms, the boundaries between judicial and legislative functions become increasingly blurred. This situation is dangerous if allowed to develop without clear boundaries, as it could erode the democratic legitimacy of lawmakers.

The principle of legal certainty is also significantly impacted by this ruling. Changes to norms made through a Court ruling without prompt legislative follow-up can lead to multiple interpretations in their technical implementation. Without comprehensive regulatory harmonization between the new norms formulated by the Court and the technical provisions for regional election implementation stipulated in KPU regulations, legal uncertainty is inevitable.⁴⁴ This situation has the potential to harm the constitutional rights of political parties and candidates in the registration process, due to the unclear applicable norms.

Furthermore, in terms of political stability, lowering the threshold has the potential to increase the number of candidate pairs contesting in regional elections. On the one hand, this enriches voter choices and deepens the democratic process.⁴⁵ On the other hand, an excessive proliferation of candidate pairs can trigger extreme vote fragmentation, which in turn can result in regional heads being elected with very little support from the overall electorate. The quality of governability and effectiveness of regional government can potentially be impacted if elected regional heads lack a sufficiently strong base of support.⁴⁶

3. Towards Dialogic Constitutional Relations

⁴³ Raihan Muhammad, "Peranan Dan Problematika Mahkamah Konstitusi Sebagai Positive Legislature Di Tengah Regresi Demokrasi Indonesia," *Lex Renaissance* 10, no. 1 (2025): 65–93.

⁴⁴ Maulida, "Peran Mahkamah Konstitusi Sebagai Positive Legislator Dalam Pengaturan Pemilu (Studi Putusan Mahkamah Konstitusi Tentang Pemilu 2024)."

⁴⁵ Ekaitz Irujo-Compains, Javier Encina-Morentin, and Belén Gutiérrez-de-Rozas, "From Judicial Compliance to Social Inclusion: A Systematic Review of the Effects of Sport in Juvenile Justice," *Children and Youth Services Review* 187 (August 2026): 109056, <https://doi.org/10.1016/j.childyouth.2026.109056>.

⁴⁶ Syafarina Husna Harahap, "Implikasi Putusan Mahkamah Konstitusi Nomor: 60/PUU-XXII/2024 Terhadap Sistem Pilkada Di Indonesia" (2025).

Within the framework of a democratic state governed by law, the transformation of the Constitutional Court's role from a negative legislator to a positive legislator is, to some extent, an unavoidable necessity, as long as it is carried out proportionally to uphold the supremacy of the constitution and the constitutional rights of citizens. The relationship between the branches of government in a modern constitutional system is not a rigid and subordinate one, but rather a corrective and dialogical one. Constitutional Court decisions should be viewed as triggers for legislative review, not as permanent replacements for the legislative function, which can only be performed by the House of Representatives (DPR) and the President.

In this context, the DPR and the government have an urgent constitutional obligation to immediately undertake a comprehensive revision of the Regional Election Law, particularly the provisions regarding the requirements for regional head candidacy. The new norms formulated by the Court through Decision Number 60/PUU-XXII/2024 must be immediately adopted and harmonized into the technical regulations for regional elections to avoid a legal vacuum.⁴⁷

The concept of constitutional dialogue, which places the Constitutional Court and the DPR in a position of mutual complementarity and mutual correction, is the most appropriate model to describe the ideal relationship between the branches of government following this decision. The Constitutional Court (MK) plays a role in establishing constitutional boundaries that cannot be overstepped by lawmakers, while the House of Representatives (DPR) plays a role in filling the substance of norms within these boundaries based on more comprehensive democratic considerations.⁴⁸

Overall, Constitutional Court Decision No. 60/PUU-XXII/2024 sets an important precedent in the development of Indonesian constitutional law. This decision not only reconstructs the threshold norm for regional head candidacy but also reinforces the theoretical debate regarding the limits of the Constitutional Court's authority as a positive legislator in a constitutional system that upholds the principles of separation of powers and checks and balances. The implications are dynamic: strengthening constitutional control over legislation while simultaneously demanding clarity on the limits of judicial authority to prevent it from exceeding the democratic legitimacy of legislators. Within the framework of a democratic state governed by the rule of law, these two interests must always be managed proportionally, with

⁴⁷ Sulastris and Sanmas, "IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI SEBAGAI POSITIF LEGISLATOR TERHADAP PRINSIP CHECK AND BALANCE: Mahkamah Konstitusi Sebagai Positive Legislator: Implikasi Putusan Terhadap Prinsip Checks and Balances Di Indonesia."

⁴⁸ Muhammad, "Peranan Dan Problematika Mahkamah Konstitusi Sebagai Positive Legislature Di Tengah Regresi Demokrasi Indonesia."

the constitution serving as the foundation and ultimate limit for all branches of state power.⁴⁹

CONCLUSION

1. Constitutional Court Decision Number 60/PUU-XXII/2024 places the Court in a positive legislative position, going beyond its conventional function as a negative legislator. Based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Articles 56-57 of the Constitutional Court Law, the Court should only have the authority to declare the constitutionality of a norm, without formulating a replacement norm. However, the Court not only annulled Article 40 paragraphs (1) and (3) of Law Number 10 of 2016, but also actively formulated a threshold for regional head candidacy between 6.5%-10% based on the number of permanent voter lists (DPT), reflecting the positive role of a functional legislator. This action is based on the argument of constitutional rights protection – that the high threshold discriminates against non-parliamentary parties with electoral legitimacy, violating Article 1 paragraph (2), Article 28D paragraphs (1) and (3), and Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Substantively, lowering the threshold from 20% of DPRD seats or 25% of valid votes to 6.5%-10% constitutes a constitutional correction that prevents electoral oligarchy and strengthens inclusive democracy. However, this construction is at odds with the principle of separation of powers, as the formation of norms through judicial decisions is not accompanied by a democratic accountability mechanism equivalent to the legislative process. This raises the question of who has the authority to review norms formulated by the Court itself, as questioned in Judge Daniel Yusmic's dissenting opinion.

The ruling's implications for the principle of checks and balances are dualistic. On the one hand, the ruling strengthens the Court's constitutional oversight function as a guardian of the constitution, compelling the legislative and executive branches to comply with constitutional values. On the other hand, when the Constitutional Court formulates new norms, there is a risk of shifting the balance of power toward judicial supremacy, potentially eroding the democratic legitimacy of lawmakers. Without a comprehensive revision of the Regional Election Law by the House of Representatives (DPR) and the government, this ruling could create legal uncertainty in the implementation of regional elections, harming the constitutional rights of election participants and organizers. Therefore, the relationship between the Constitutional Court and lawmakers within the framework of checks and balances should be a constitutional dialogue. The Constitutional Court's ruling should trigger legislative review, not replace the legislative function. The House of Representatives (DPR) and the government have an urgent constitutional obligation to immediately adopt and harmonize the new norms into the technical regulations for regional elections, to ensure legal certainty and institutional balance. The Court's transformation from a negative legislator to a positive legislator is inevitable in a modern democratic state governed by the rule of law, but it must always be placed within the constitutional framework, balanced by

⁴⁹ Harahap, "Implikasi Putusan Mahkamah Konstitusi Nomor: 60/PUU-XXII/2024 Terhadap Sistem Pilkada Di Indonesia."

the principle of proportionality, and accompanied by a responsible legislative response.

REFERENCES

- al-Dulaimi, Ahmed Oudah. "From Negative To Positive Legislator? Response To Unconstitutional Legislative Omission As A Case Study In The Changing Roles Of Constitutional Courts." With Griffith University And Alexander Brown. Preprint, Griffith University, August 2018. <https://doi.org/10.25904/1912/3526>.
- Asshiddiqie, Jimly. *Model-Model Pengujian Konstitusional Di Berbagai Negara*. Jakarta: Konstitusi Press, 2005.
- Ayu, Hanuring, Lahmuddin Zuhri, And Putu Sekarwangi Saraswati. "Analisis Putusan Ma Dan Putusan Mk Tentang Persyaratan Calon Kepala Daerah Dalam Pilkada 2024." *Verstek* 13, No. 2 (2024): 211-29.
- Baehaki, Kadimuddin. "Implikasi Politik Putusan Mahkamah Konstitusi Nomor: 60/Puu-Xxii/2024 Terkait Ambang Batas Pencalonan Kepala Daerah." *Yustisi* 11, No. 3 (2024): 451-60.
- Bruno Bonilla, Roxenny Massiel, Giacomo Madeo, Aida Montanari, Francesco Baldari, Paola Kildani, Rosario Schepisi, And Mario Gabbrielli. "Physician-Assisted Suicide In Europe: Comparative Legal Perspectives And The Emerging Role Of Italian Regional Legislation." *Legal Medicine* 82 (April 2026): 102821. <https://doi.org/10.1016/J.Legalmed.2026.102821>.
- — —. "Physician-Assisted Suicide In Europe: Comparative Legal Perspectives And The Emerging Role Of Italian Regional Legislation." *Legal Medicine* 82 (April 2026): 102821. <https://doi.org/10.1016/J.Legalmed.2026.102821>.
- Efendi, Muhammad Alief Farezi, Muhtadi Muhtadi, And Ahmad Saleh. "Putusan Positive Legislature Oleh Mahkamah Konstitusi: Positive Legislature Decisions By The Constitutional Court." *Jurnal Konstitusi* 20, No. 4 (2023): 622-39.
- Esri, Anajeng, Edhi Mahanani, Universitas Pembangunan, Nasional Veteran, And Jawa Timur. "Impresi Putusan Mahkamah Konstitusi Bersifat Positive Legislature Ditinjau Dari Progresivitas Hukum Dan Teori Pendahuluan Pasal 24 Ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Mengatur Bahwa Mahkamah Konstitusi Merupakan Salah Satu." *Asy-Syir'ah* 54, No. 2 (2020).

- Fadhillah, Muhammad Daffa, And Ridham Priskap. *Analisis Yuridis Putusan Mahkamah Konstitusi Terkait Batas Usia Pencalonan Presiden Dan Wakil Presiden*. N.D.
- Fikri, Sultoni. "Analisis Putusan Mahkamah Konstitusi Nomor 60/Puu-Xxii/2024 Terhadap Hak Politik Dalam Perspektif Teori Kontrak Sosial." *Amsir Law Journal* 6, No. 1 (2024): 40-55.
- Firmansyah, Arif. "Implikasi Putusan Mahkamah Konstitusi Nomor 60/Puu-Xxii/2024 Terhadap Sistem Pilkada Di Indonesia." *Jurnal Hukum Dan Demokrasi* 3 (2025): 45-62.
- Hananto Widodo, Muh. Ali Masnun, Intan Lovisonnya, Dicky Eko Prasetyo, Noviyanti. "Legal Reconstruction Of Strengthening The Function Of Regional Representation In Indonesia." *Journal Of Law And Legal Reform* 7, No. 2 (2026): 517-54. <https://doi.org/10.15294/jllr.v7i2.43520>.
- Harahap, Syafarina Husna. "Implikasi Putusan Mahkamah Konstitusi Nomor: 60/Puu-Xxii/2024 Terhadap Sistem Pilkada Di Indonesia." 2025.
- Hartono, Hasim. "Urgensi Putusan Mk Nomor 60/Puu-Xxii/2024 Terhadap Penyelenggaraan Pilkada Tahun 2024." *Jurnal Intelek Dan Cendikiawan Nusantara* 1, No. 4 (2024): 5374-83.
- Hasiholan, Hasiholan. "Analysis Of The Decision Of The Constitutional Court The Decision Of The Constitutional Court Of The Republic Of Indonesia Number 60/Puu-Xxii/2024 On The Threshold Of Candidacy For Regional Heads In The 2024 Regional Elections Leads To Legal Uncertainty F." *Jurnal Hukum Sehasen* 11, No. 1 (2025): 129-36.
- Herlambang, Edwin, And Hwian Christanto. *Kewenangan Mahkamah Konstitusi Pada Putusan Nomor: 60/Puu-Xxii/2024 Sebagai Positive Legislator Yang Melampaui Batas (The Authority Of The Constitutional Court In Decision Number: 60/Puuxxii/2024 As A Positive Legislator That Exceeds Its Bounds)*. 2026.
- Irujo-Compains, Ekaitz, Javier Encina-Morentin, And Belén Gutiérrez-De-Rozas. "From Judicial Compliance To Social Inclusion: A Systematic Review Of The Effects Of Sport In Juvenile Justice." *Children And Youth Services Review* 187 (August 2026): 109056. <https://doi.org/10.1016/j.childyouth.2026.109056>.
- Kelsen, Hans. "Judicial Review Of Legislation: A Comparative Study Of The Austrian And The American Constitution." *The Journal Of Politics* 4, No. 2 (June 1942): 183-200. <https://doi.org/10.2307/2125770>.

- Laksono, Agung Budi, And Ferry Anggriawan. "Analisis Yuridis Kewenangan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Bhirawa Law Journal* 6, No. 1 (2025).
- Lufti Nasution, Miranda, Sunarmi Sunarmi, And Robert Robert. "Analisis Yuridis Putusan Mahkamah Konstitusi Dalam Upaya Hukum Kasasi Terhadap Putusan Penundaan Kewajiban Pembayaran Utang (Studi Putusan No. 23/Puu-Xix/2021)." *Recht Studiosum Law Review* 2, No. 2 (November 2023): 20-37. <https://doi.org/10.32734/Rslr.V2i2.12105>.
- Mahanan, Anajeng Esri Edhi. "Impresi Putusan Mahkamah Konstitusi Bersifat Positive Legislature Ditinjau Dari Progresivitas Hukum Dan Teori Pemisahan Kekuasaan." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 54, No. 2 Se-Articles (2020): 421-41. <https://doi.org/10.14421/Ajish.V54i2.920>.
- Marzuki, Mahmud. *Penelitian Hukum: Edisi Revisi*. Prenada Media, 2017.
- Maulida, Zakkiyah. "Peran Mahkamah Konstitusi Sebagai Positive Legislator Dalam Pengaturan Pemilu (Studi Putusan Mahkamah Konstitusi Tentang Pemilu 2024)." Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, 2025.
- Muh. Ali Masnun, Dicky Eko Prasetyo, Mohd Badrol Awang, Eny Sulistyowati. "Reconstructing Indonesia's Trademark Registration System Through The Lens Of General Principles Of Good Governance To Realize Substantive Justice." *Journal Of Law And Legal Reform* 5, No. 3 (2024): 891-912.
- Muhammad, Raihan. "Peranan Dan Problematika Mahkamah Konstitusi Sebagai Positive Legislature Di Tengah Regresi Demokrasi Indonesia." *Lex Renaissance* 10, No. 1 (2025): 65-93.
- Muhdar, Muhdar. *Analisis Yuridis Putusan Mahkamah Konstitusi Tentang Penetapan Pasangan Calon Presiden Dan Wakil Presiden Terhadap Penegakan Dan Kepastian Hukum Di Indonesia*. N.D.
- Nugroho, Ridzky Wahyu, A. Heru Nuswanto, And Sukimin Sukimin. "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 60/Puu-Xxii/2024 Tentang Ambang Batas Pencalonan Kepala Daerah." *Semarang Law Review (Slr)* 6, No. 2 (2025): 299-310.
- Nur, Rismawati. "Analisis Perubahan Ambang Batas Pencalonan Kepala Daerah Dalam Perspektif Utilitarianisme: Analysis Of The Changing Threshold For

- Regional Head Candidacy From A Utilitarian Perspective.” *Jurnal Konstitusi* 22, No. 3 (2025): 508–27.
- Nurita, Riski Febria. “Kajian Filsafat Hukum Tentang Demokrasi Di Indonesia.” *Jurnal Cakrawala Hukum* 6, No. 1 (2015): 89–98.
- Prasetio, Dicky Eko, Muh. Ali Masnun, Fradhana Putra Disantara, And Noviyanti Noviyanti. “The Construction Of The Lex Sportiva Principle In Indonesia’s Sports Law: Implications And Future Arrangements.” *Uum Journal Of Legal Studies* 16, No. 2 (July 31, 2025): 58–69. <https://doi.org/10.32890/Uumjls2025.16.2.4>.
- Ramadhani, Mochamad Rizky Ferdiansyah, Catur Wido Haruni, And Fitria Esfandiari. “Legal Analysis Of The Constitutional Court Decision Number 60/Puu-Xxii/2024 On The Threshold For Regional Head Candidates Reviewed From The Principles Of Democracy.” *Proceedings Of The 6th International Conference On Law Reform (Inclar 2025)*, 2025, 284.
- Saragih, Geofani Milthree, Mirza Nasution, And Eka N. A. M. Sihombing. “Judicial Review Oleh Mahkamah Konstitusi: Judicial Activism Vs. Judicial Restraint Dalam Perspektif Kebebasan Kehakiman: 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.
- Seran, Alexander. “Demokrasi, Kedaulatan Rakyat, Dan Pemilu Refleksi Atas Hubungan Antara Teori Dan Praksis.” *Respons: Jurnal Etika Sosial* 21, No. 01 Se-Articles (2016): 29–49. <https://doi.org/10.25170/Respons.V21i01.524>.
- Sinaulan, Ramlani Lina, And Rahmat Saputra. *The Constitutional Court As A Positive Legislative Through The Living Constitution Approach*. 2023.
- Sulastri, Dewi, And Abu Sanmas. “Implikasi Putusan Mahkamah Konstitusi Sebagai Positif Legislator Terhadap Prinsip Check And Balance: Mahkamah Konstitusi Sebagai Positive Legislator: Implikasi Putusan Terhadap Prinsip Checks And Balances Di Indonesia.” *Litigasi* 26, No. 2 (2025): 272–315.
- Yadjitala, Muhammad Algufran. “Mahkamah Konstitusi: Antara Negative Legislature Dan Positive Legislature, Dilema Atau Dinamika?” *Jurnal Konstitusi Dan Demokrasi* 19, No. 1 (2025): 286–91.
- Yudiansyah, Fakhrian, Eneng Rika, Laela Sari, Tegar Wahyu Hidayat, And Yeli Yana. “Perkembangan Konstitusi Di Indonesia Melalui Peran Mahkamah Konstitusi Dalam Penegakan Hukum Konstitusi Di Kaji Menurut Undang-Undang Nomor

24 Tahun 2003 Tentang Mahkamah Konstitusi." *Jembatan Hukum: Kajian Ilmu Hukum, Sosial Dan Administrasi Negara* 1, No. 2 (2024): 223-37.