The Normative Effects of Conditional and Additive Rulings in Indonesia's Constitutional Adjudication

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Abstract

This study examines the normative effects of conditional and additive rulings in the judicial review practice of the Constitutional Court of the Republic of Indonesia. It employs normative legal research using statutory, conceptual, and case approaches. The primary legal materials comprise the 1945 Constitution, legislation governing the Constitutional Court, and selected decisions that employ conditional interpretation or add normative elements. The findings show that both forms of ruling do more than invalidate unconstitutional provisions. Conditional rulings alter the conditions under which a provision remains valid and applicable, while additive rulings expand subjects, rights, exceptions, or alternatives that were not previously formulated by the legislature. Their effects are general and binding, and they may relocate part of the legislative policy space to constitutional judges. This study proposes four assessment parameters: a constitutional anchor, remedial necessity, restraint toward open legal policy, and the ruling's implementability. Conditional and additive rulings may be justified when they are required to protect constitutional rights or prevent a legal vacuum. Their legitimacy weakens, however, when they create a new policy choice without a strong constitutional basis.

Keywords: conditional rulings; additive rulings; Constitutional Court; normative effects; judicial review

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Introduction

The Constitutional Court was established to uphold the supremacy of the 1945 Constitution through the authority to review statutes. This position makes the Court a tribunal of first and final instance whose decisions are final and binding [25], [26]. Judicial review was initially understood primarily as the invalidation of statutory provisions that conflict with the Constitution. In practice, however, the Court does not always stop at declaring a provision constitutional or unconstitutional. It may prescribe a permissible interpretation, alter the provision's scope, postpone the effects of invalidation, or add an element that was not expressly written by the legislature. This development strengthens the Court's role in guarding democracy, but it also raises questions about the limits of judicial authority [20].

A conditional ruling preserves a statutory provision only insofar as it is interpreted or applied according to conditions determined by the Court. It may take the form of a conditionally constitutional or conditionally unconstitutional ruling. Although these forms operate in opposite directions, both generate normative guidance that binds the legislature, executive bodies, courts, and the public [11]-[14]. Unlike pure invalidation, a conditional ruling does not remove the entire provision from the legal order. Instead, it controls the permissible meaning while excluding interpretations that the Court considers unconstitutional.

An additive ruling goes further by adding a normative element through the operative order or legal reasoning. The addition may expand the protected subject, open a channel for candidacy, create an exception, or introduce an alternative requirement. On the one hand, this technique can promptly restore constitutional rights and prevent a legal vacuum. On the other hand, it may shift the Court's function from reviewing legislation to creating norms. Indonesian scholarship describes this shift through the debate between the negative and positive legislator concepts [15], [16], [19].

This issue is inseparable from the legal politics of legislation. Statutes are produced through institutional choices, political deliberation, public participation, and procedures that provide democratic legitimacy [5], [6]. Studies by scholars from Universitas Pembangunan Panca Budi demonstrate that legal politics shapes both the creation and enforcement of law, including electoral design and relations among state institutions [7], [8]. Public constitutional awareness is also necessary so that Constitutional Court decisions are understood not merely as dispute settlements, but as instruments for controlling public power [9].

In constitutional law, previous works have examined the presidential nomination threshold, emergency regulations, and the allocation of defense powers as matters requiring constitutional limits and interbranch oversight [2]-[4]. These findings are relevant because conditional and additive rulings also affect matters initially designed through a political process. When the Court changes candidacy requirements, expands legal subjects, or directs institutional design, its rulings create consequences not only for the applicant but also for public policy and institutional relations.

Earlier studies have explained the characteristics of conditional rulings, the Court's movement toward norm creation, institutional responses to its decisions, and the need for legislative compliance [11]-[18], [21]. A remaining need is to examine conditional and additive rulings within a single framework of normative effects. This study does not merely ask whether the Court creates a new norm. It asks how a ruling changes the status, scope, temporal operation, and implementation of a norm, and what parameters can assess the legitimacy of those changes. Accordingly, this study analyzes the normative effects of conditional and additive rulings and formulates constitutional parameters for controlling their use.

Literature Review

The negative legislator theory begins with the proposition that a constitutional court may remove norms that conflict with the Constitution, while the creation of positive norms remains a legislative function [23]. In Indonesia, this proposition relates to Article 20 of the 1945 Constitution, which places legislative power in the House of Representatives, and Article 24C,

which authorizes the Constitutional Court to review statutes against the Constitution [25]. Constitutionalism requires limits on the legislature, but it equally requires judicial power to operate within accountable boundaries [24].

The line between invalidation and norm creation is not always clear. An invalidating decision may produce a legal vacuum, revive an older rule, or compel the legislature to adopt a new policy. Conversely, an interpretation that formally preserves a provision may substantially transform its content. The term positive legislator should therefore not function only as a criticism of judicial activism. It is more useful as an analytical concept for measuring the extent to which the Court produces rules that are general, prospective, and not directly found in the reviewed text [15], [16].

A conditional ruling is a constitutional remedy that maintains a provision subject to an authoritative interpretation. Rahman and Wicaksono explain that conditionally constitutional and conditionally unconstitutional rulings developed because the conventional options in the operative order were not always adequate to resolve constitutional defects [11], [12]. Further research shows that conditional techniques have also been applied in formal review, raising questions about their legal basis, remedial deadlines, and implementation certainty [13]. In comparative terms, conditional decisions can protect constitutional supremacy without immediately invalidating an entire statute [14], [22].

Indonesian procedural law does not formally use the expression additive ruling. The term describes a ruling that introduces a normative component needed to cure a constitutional violation. The Court may expand a phrase, include a new category, or establish an alternative that did not previously exist. Constitutional Court Regulation No. 2 of 2021 provides general forms of operative orders, but the Court's practice is more varied [29]. That variation can be seen in decisions concerning the civil status of a child born outside marriage, independent candidates in regional elections, party officials seeking DPD membership, former convicts seeking elected office, and the age requirement for presidential candidates [30]-[34].

Normative effects in this study refer to changes produced by a ruling in the content, subjects, conditions of validity, and implementation of a norm. This meaning differs from broader social or political impacts. Constitutional Court decisions operate erga omnes, meaning that an interpretation formulated in one case becomes binding guidance for all parties. Institutional responses to Decision No. 30/PUU-XVI/2018 show that disagreement about the temporal effect of a decision can generate conflict among the Constitutional Court, Supreme Court, election administrators, and supervisory bodies [17]. A decision may also contain a judicial order that emphasizes the duty to comply and treats disregard of constitutional decisions as constitutional disobedience [18].

Assessing normative effects requires attention to legal certainty, justice, and institutional limits. Normative legal research must not only organize legal sources hierarchically, but also examine the rationality, truth, and justice underlying interpretation [10]. At the same time, the duty to obey a constitutional decision should be accompanied by a follow-up mechanism that preserves the legislature's responsibility [21]. The legitimacy of conditional and additive rulings therefore depends on the relationship among constitutional justification, remedial necessity, the degree of displacement of policy choices, and implementability.

Research Methodology

This study employs normative legal research to examine coherence among constitutional norms, legislation, doctrine, and judicial decisions [1], [10]. It uses statutory, conceptual, and case approaches. The statutory approach covers the 1945 Constitution, legislation governing the Constitutional Court, judicial power, legislative drafting, and the procedural rules for judicial review [25]-[29].

The case approach examines Constitutional Court Decisions No. 46/PUU-VIII/2010, 5/PUU-V/2007, 30/PUU-XVI/2018, 4/PUU-VII/2009, and 90/PUU-XXI/2023 as the principal cases [30]-[34]. Decisions No. 14/PUU-XI/2013 and 97/PUU-XI/2013 serve as comparators because they have systemic and transitional effects but do not fully correspond to conditional

or additive rulings [35], [36]. Cases were selected based on three criteria: the presence of an interpretive condition or additional element, generally binding effects, and a demonstrable influence on legal design after the decision.

The legal materials were analyzed qualitatively in four stages. First, the study identified the statutory norm before the ruling. Second, it compared that norm with the operative order and the Court's legal reasoning. Third, it classified the resulting normative change. Fourth, it assessed the change according to its constitutional anchor, remedial necessity, displacement of policy choices, and implementability. The analysis produced both a mapping of decisions and a legitimacy test.

Results and Discussion

4.1 Conceptual Distinction between Conditional and Additive Rulings

The findings show that conditional and additive rulings both transform norms, but they do so through different techniques. A conditional ruling operates through a formula of validity. The statutory provision remains within the legal order but is constitutional only if it is interpreted according to the Court's prescribed condition. If the condition is disregarded, the application of the provision becomes unconstitutional. The central normative effect therefore lies in changing the boundary of meaning and the condition of application.

An additive ruling operates through expansion. The Court introduces a subject, right, requirement, exception, or alternative that the statutory text did not contain. A decision may use a conditional formula while producing an additive effect. Decision No. 90/PUU-XXI/2023, for example, maintained the minimum age of forty while adding an alternative based on experience in an elected office [34]. The technique is conditional, but the substantive effect is additive.

This distinction matters because the wording of an operative order does not necessarily indicate the degree of judicial intervention. A ruling using the phrase 'insofar as interpreted' may merely clarify an ambiguous rule, but it may also create a complete new requirement. Assessment must therefore focus on the difference between the norm before and after the ruling. The more the ruling introduces elements that cannot be directly derived from constitutional text and principles, the more it relocates policy space from the legislature to the Court.

The findings also indicate that not every normative addition is constitutionally improper. In certain circumstances, pure invalidation may preserve injustice or create a harmful legal vacuum. The decisive question is not whether judges exercise creativity, but whether the creativity constitutes a necessary remedy and remains anchored in the Constitution.

4.2 Mapping the Normative Effects of Selected Decisions

The five principal cases demonstrate different normative effects. The decisions on children born outside marriage and independent candidates expand legal subjects and channels of political rights. The decisions on DPD candidates and former convicts prescribe conditions of application. The presidential age decision introduces an alternative candidacy requirement. Table 1 summarizes the mapping.

Table 1. Mapping of conditional and additive rulings

Decision	Issue	Form	Normative effect
46/PUU-VIII/2010 [30]	Child born outside marriage	Additive	Civil relations extend to a biological father whose paternity can be legally proven.
5/PUU-V/2007 [31]	Independent regional candidates	Additive	Political parties no longer monopolize access to regional candidacy.
30/PUU-XVI/2018 [32]	Party officials as DPD candidates	Conditional and additive	The phrase other work includes political party officials and creates a conflict-of-interest standard.

Decision	Issue	Form	Normative effect
4/PUU-VII/2009 [33]	Political rights of former convicts	Conditionally unconstitutional	An absolute ban becomes a restriction subject to time, disclosure, and non-recidivism conditions.
90/PUU-XXI/2023 [34]	Age of presidential candidates	Conditional and additive	The age of forty receives an alternative based on experience in an elected office.

Decision No. 46/PUU-VIII/2010 extended the civil relationship of a child born outside marriage to a man who can be proven to be the biological father [30]. Before the decision, Article 43(1) of the Marriage Law limited the civil relationship to the mother and her family. After the decision, the class of persons bearing civil responsibility expanded. The decision did not merely remove discrimination; it established a new basis for civil relations. Because the addition is closely connected to child protection and equality before the law, it can be understood as a remedy for an inadequately protected constitutional interest.

Decision No. 5/PUU-V/2007 opened access for independent candidates in regional head elections [31]. It transformed a nomination design that had depended on political parties. The effect was additive because the Court not only invalidated statutory restrictions but also opened a new channel that required subsequent legislative regulation. From a democratic perspective, the addition broadened the right to stand for election. Institutionally, however, it entered an area of electoral design ordinarily determined by legislation.

Decision No. 30/PUU-XVI/2018 interpreted the phrase other work in the qualifications for DPD candidates to include political party officials [32]. The previous text did not expressly state that prohibition. The Court connected the DPD's character as territorial representation with the need to avoid conflicts of interest. The normative result was a new incompatibility standard and corresponding adjustments to the candidate registration process. The subsequent disagreement over its temporal operation demonstrates why clarity about effective dates forms part of a decision's legal quality [17].

Decision No. 4/PUU-VII/2009 converted an absolute ban on former convicts into a restriction subject to several conditions [33]. The Court considered the elected nature of the office, the period following completion of a sentence, public disclosure, and the absence of repeated offending. The ruling illustrates how a conditional remedy can balance political rights with the public interest in official integrity. Its normative effect consisted of criteria that the legislature had not comprehensively formulated.

Decision No. 90/PUU-XXI/2023 involved the strongest degree of intervention because it introduced an alternative to the age requirement for presidential and vice-presidential candidates [34]. Experience in an office filled through an election cannot be directly found in the original wording of Article 169(q) of the Election Law. The decision immediately affected the nomination process and national political competition. Compared with the other cases, the link between the addition and a necessary constitutional remedy is more contested, particularly because age and experience requirements are generally matters of open legal policy.

For comparison, Decision No. 14/PUU-XI/2013 transformed the election schedule into a simultaneous system, while Decision No. 97/PUU-XI/2013 temporarily preserved the Court's authority over regional election disputes during a transition [35], [36]. Their effects are substantial, but they are better classified as systemic and transitional decisions. The comparison confirms that normative effects do not always take the form of added text. A decision may reshape institutional design through its temporal operation, follow-up orders, and alteration of relations among legal norms.

4.3 Four Layers of Normative Effects

First, there is an effect on normative content. A conditional ruling narrows or directs meaning, while an additive ruling expands content. This effect is direct because the statutory text can no longer be applied independently of the Constitutional Court's decision. In practice,

the statute and the operative order form a single normative reference for public officials and courts.

Second, there is an effect on legal subjects and the distribution of rights. Extending the civil relationship of a child born outside marriage adds a party who may bear responsibility. Opening independent candidacy adds persons who can exercise a political right. Constitutional adjudication can therefore redistribute rights and obligations generally, rather than only redress the applicant's individual injury.

Third, there is an institutional effect. When the Court determines candidacy requirements or a conflict-of-interest standard, the policy space of the House of Representatives, the President, and election administrators becomes narrower. Such an effect is not necessarily inconsistent with separation of powers because constitutional review is intended to constrain the legislature. The problem arises when a decision moves beyond defining a constitutional boundary and selects one detailed policy among several constitutionally permissible alternatives. At that point, correction becomes substitution. A checks-and-balances approach requires compliance with the decision while preserving legislative responsibility for follow-up regulation [21].

Fourth, there is a temporal and implementation effect. A decision may operate immediately, be postponed, or require legislative action. Uncertainty about its effective date can produce conflicting implementation, as occurred after Decision No. 30/PUU-XVI/2018 [17]. Comparative experience indicates that decisions declaring statutory nonconformity should establish a clear relationship between judicial remedies and the legislative process [22]. The Court should therefore identify the responsible addressee, the required action, and a reasonable period, without taking over the entire substance of legislation.

These layers demonstrate that binding force is not the only measure of a decision's effects. A formally final ruling may remain difficult to implement if its formulation is ambiguous, its addressee is uncertain, or it depends on an unavailable policy framework. Conversely, a concise decision may produce broad institutional consequences when it directly changes political participation requirements.

4.4 Parameters of Constitutional Legitimacy

On the basis of the mapping, this study proposes four cumulative parameters. They are not intended to eliminate judicial discretion, but to provide reviewable reasons when the Court chooses a conditional or additive remedy.

Table 2. Legitimacy test for conditional and additive rulings

Parameter	Assessment question	Indicator of legitimacy
Constitutional anchor	Can the new element be derived from constitutional text, structure, rights, or principles?	The argumentative link is clear and does not rest only on policy preference.
Remedial necessity	Is pure invalidation insufficient to restore rights or prevent a legal vacuum?	The addition is confined to what is strictly necessary.
Policy restraint	Does the Court select one option within open legal policy?	The ruling defines constitutional boundaries and leaves policy details to the legislature.
Implementability	Are the addressee, effective date, and follow-up action identifiable?	The order is operational, consistent, and avoids new jurisdictional conflict.

The first parameter requires a traceable constitutional anchor. General references to justice or utility are insufficient because those values may support more than one policy choice. The Court must show how the added element follows from constitutional text, structure, rights, or

foundational principles. Transparent reasoning also helps distinguish legal judgment from political preference.

The second parameter is remedial necessity. An additive ruling should be used when pure invalidation cannot stop the violation of rights or would create a harmful legal vacuum. Any addition should employ the least extensive means. This can be described as minimum remedial necessity. The Court need not design an entire policy where constitutional protection can be achieved by defining a boundary or general principle.

The third parameter concerns open legal policy. Where several options are equally consistent with the Constitution, the selection of policy detail should remain with the legislature. The Court may identify a boundary that cannot be crossed, but it should not replace political, budgetary, or administrative assessments requiring public participation. This parameter is especially important when a ruling concerns electoral design, eligibility for public office, or the allocation of institutional authority.

The fourth parameter is implementability. A decision should state its legal consequences consistently across the reasoning and operative order. If follow-up action is required, the addressee and period must be identifiable. Clarity prevents competing interpretations by interested institutions and preserves the self-executing character of a decision when immediate implementation is possible [18].

Applying the four parameters indicates that Decision No. 46/PUU-VIII/2010 has a strong remedial foundation, while Decision No. 90/PUU-XXI/2023 presents a more serious policy-restraint concern. Decision No. 30/PUU-XVI/2018 offers an understandable institutional justification, but its implementation history reveals weakness in temporal clarity. The differences confirm that conditional and additive rulings should not be assessed uniformly.

Conclusion

Conditional and additive rulings generate normative effects that extend beyond the invalidation of statutes. A conditional ruling changes the conditions of constitutionality and application, while an additive ruling introduces a subject, right, exception, or alternative that the legislature did not previously formulate. In some cases, both techniques operate within the same decision. Their effects occur at four levels: normative content, the distribution of rights and obligations, institutional relations, and the timing and method of implementation.

The use of conditional or additive techniques is not inherently unconstitutional. They may be justified where necessary to restore constitutional rights, prevent a legal vacuum, or ensure that a statutory norm is applied consistently with the 1945 Constitution. Legitimacy weakens, however, when the Court adds a policy option without a strong constitutional foundation, displaces legislative choice in an area of open legal policy, or formulates a remedy that cannot be implemented with legal certainty.

This study proposes four parameters for assessing legitimacy: a constitutional anchor, remedial necessity, restraint toward open legal policy, and implementability. The Court should explain why a particular remedial form is selected and confine any normative addition to the constitutional minimum. The legislature should also respond to decisions in a timely manner so that court-created formulations do not substitute for legislation indefinitely. Further research may test the consistency of this framework across a larger body of Constitutional Court decisions.

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