

Constitutional Limits of the Constitutional Court's Interpretation Between Negative Legislators and Positive Legislators

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Abstract

This article examines the constitutional limits of the Constitutional Court's interpretation, from negative to positive legislative perspectives. The main issue raised is the blurring of the line between norm testing and norm creation when the Court uses conditional, additive, or substitutive decisions. The goal is to formulate legitimate operational parameters to ensure judicial corrections remain within the framework of the 1945 Constitution while providing certainty for legislative follow-up.

The method used is a normative juridical approach with a statute approach, a case approach, and a conceptual-comparative approach. The study results present four parameter clusters: necessity, proportionality, systemic coherence, and accountability. The necessity cluster examines constitutional flaws and the risk of legal vacuum. The proportionality cluster assesses the adequacy of less intrusive remedies that are minimal and temporary. The systemic coherence cluster examines the integration of the ruling with the authority architecture and normative hierarchy. The accountability cluster requires deadlines, institutional division of duties, and public monitoring mechanisms.

The application of parameters demonstrates a clearer distinction. In the case of systemic procedural defects, a conditional decision can be used to maintain certainty without shifting the role of lawmakers. In the case of substantial defects involving rights, outright annulment is more appropriate, unless minimal transitional arrangements are necessary to protect rights. In the realm of technical and polycentric policies, judicial restraint should be prioritized.

In conclusion, the four-cluster parameters, along with the matrix for follow-up from decisions to legislative responses, clarify the Court's interpretational boundaries, maintain the rule of law and checks and balances, and improve the quality of post-decision legislation. This model offers a practical tool for the Court, lawmakers, and stakeholders to ensure effective, proportional, and accountable judicial corrections.

Keywords: Negative Legislator, Positive Legislator, Judicial Review, Legislative Response

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Introduction

The Constitutional Court was established as an agent of judicial power specifically to maintain the supremacy of the Constitution through judicial review of laws against the 1945 Constitution, deciding disputes over the authority of state institutions, deciding on the dissolution of political parties, deciding on disputes over election results, as well as other authorities determined by the 1945 Constitution and its organic laws [1][2]. Within this framework, the classical doctrine that is often used as a reference is the distinction between the role of lawmakers as positive legislators and the role of constitutional courts as negative legislators. This distinction, which was first popularized by the Kelsenian tradition, emphasizes that parliament “creates” laws freely within the limits of the Constitution, while the constitutional court only “abolishes” norms that conflict with the constitution without replacing them with new norms [6][7].

The development of Indonesian constitutional practice over the past two decades has shown a more complex dynamic. On the one hand, the Court upholds its role as a negative legislator by invalidating unconstitutional norms. On the other hand, a pattern of conditional decisions and additive or substitutive rulings has emerged, which, in their normative consequences, serve to fill gaps or modify norms, which many researchers interpret as positive expressions of the legislator within certain limits.[4][5] This shift in the interpretative field has given rise to academic and practical debates regarding the “constitutional limits” of the Court's interpretation, particularly when considerations of expediency, justice, and legal certainty are intertwined.

Three main legal instruments serve as the starting point. First, Law No. 24 of 2003 concerning the Constitutional Court as the founding law, which has been amended through Law No. 8 of 2011 and a third amendment through Law No. 7 of 2020 [1][2]. Second, the general principle of judicial power in Law No. 48 of 2009, which positions the judiciary as the guardian of the rule of law and justice. Third, the practice of judicial review, which establishes operational rules through the *ratio decidendi* and the decision-making model. In practice, the restructuring of the Court through the amendments to the organic law above demonstrates institutional consolidation while opening up space for criticism of the design of judicial authority and ethics, but does not change its basic mandate as the guardian of the 1945 Constitution [2][3].

Theoretically, the shift from negative to positive legislators commonly occurs when constitutional courts interpret constitutional rights or when faced with a legal vacuum that is feared to cause legal chaos if norms are revoked without transitional guidelines. Comparative literature shows that from the beginning Kelsen was already aware of the political nature of judicial review and warned that the enforcement of rights could encourage the courts to play a more positive role in “shaping” the content of norms through interpretation and corrective rulings [6][14]. In the Indonesian context, academic debate affirms the existence of decisions that functionally fill the vacuum, thus sparking discourse on the limits of the Court's positive legislative legitimacy [8][9].

Meanwhile, the practice of conditional decisions is the most obvious area where this tug-of-war is evident. Decisions declaring a norm conditionally unconstitutional or conditionally constitutional mark situations where the Court does not immediately invalidate the norm, but instead links its constitutionality to certain conditions or provides a deadline and an order for corrections to be made to the legislator. Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law is a frequently cited example: the Court declared it formally flawed and conditionally unconstitutional while ordering corrections within a specific deadline, and detailing the consequences if the corrections are not made [4][11]. This model of ruling presents a boundary problem: to what extent does the Court remain within the realm of negative

legislators, and when has it stepped into the role of positive legislator by establishing a new configuration of legal consequences.

In other areas, there are decisions that operationally "open" new legal mechanisms previously unavailable in law. Decision Number 23/PUU-XIX/2021 concerning legal remedies against decisions on Suspension of Debt Payment Obligations, for example, is interpreted by a number of researchers as a step by the Court to correct the design of the law to align with justice and legal certainty, even though the consequence is a change in the architecture of legal remedies in the bankruptcy and PKPU regimes [12][13]. From a theoretical perspective, such a configuration again raises questions about the constitutional limits of the Court's interpretation: when corrections are necessary to avoid vacuum and uncertainty, and when corrections actually touch on the function of norm-drafting, which should be within the realm of lawmakers.

In national academic discourse, several authors emphasize the necessity of positioning the Court as a negative legislator in order to maintain checks and balances and maintain the supremacy of representative institutions in lawmaking. However, there are also views that recognize limited positive legislative space under certain conditions, for example when there is an urgent situation, a real public need, or a legal vacuum that has the potential to cause legal chaos if the norm is immediately revoked without transitional arrangements [8][10]. This difference of opinion is natural, but for state administration practice, operational parameters are needed to ensure that the boundaries are not blurred.

The urgency of this research lies in the need to present a "test tool" that can be used consistently to distinguish when the Court's interpretation is in the negative domain of legislators and when it takes on the positive role of legislators who are still legitimate. The test tool is expected to be not just a normative formulation, but based on indicators that can be traced in the construction of decisions, including: the nature and level of constitutional defects found, the existence of *rechtvacuum* or the risk of chaos if the norm is annulled, the availability of less intrusive remedies, the impact on institutional design and the process of forming laws, and consistency with the basic principles of the rule of law such as certainty, justice, and benefit [5][10].

Thus, this research is directed at two main results. First, the affirmation of the theoretical construction of the Court's role as a negative legislator in the Indonesian system, as stated in the 1945 Constitution and the Constitutional Court Law and its amendments. Second, the formulation of parameters for the limits of positive legitimacy of legislators that are constitutionally accountable and serve as practical guidelines for the Court, lawmakers, and other stakeholders when facing conditional, additive, or substitutive decisions. Ultimately, these parameters are expected to maintain checks and balances, reduce uncertainty in the follow-up of decisions, and strengthen the quality of legislation without sacrificing the Court's role as guardian of the constitution [6][12].

The constitutional boundaries of interpretation are not static, thick lines, but rather principled barriers that must be calibrated through practice and accumulated knowledge. That is why this study presents two main topics: mapping the legal framework and decision-making practices that demonstrate the spectrum of legislators' negative and positive responses, and formulating operational parameters along with tests on several key decisions. With this design, the contribution offered is twofold: strengthening a clear theoretical foundation and providing practical instruments that can be used in state institutions' decision-making following a Court decision [8][12].

Literature Review

The study of the Constitutional Court's role in the negative-positive legislator spectrum departs from Kelsenian construction. Parliament is positioned as a positive legislator that forms norms, while the constitutional court is a negative legislator that eliminates norms that are contrary to the constitution. However, Kelsen also acknowledged that the enforcement of rights

will encourage the court to play a creative role through interpretation, so that the dividing line becomes the axis of debate in many countries [6][14]. Indonesian literature emphasizes both sides: there is a stream that maintains the Court as a negative legislator to maintain checks and balances, and another stream that recognizes the positive legislator's space that is limited to certain circumstances such as legal vacuum, urgent needs, or protection of rights [8][9].

A more specific study of Indonesian practice reveals two ruling instruments at the heart of the debate: conditional rulings and additive or substitutive rulings. Research on conditionally constitutional and conditionally unconstitutional rulings outlines how the Court uses conditional formulas to prevent legal chaos and provide deadlines for legislators, as seen in the analysis of Decision 91/PUU-XVIII/2020 [4][5]. On the other hand, a study of Decision 23/PUU-XIX/2021 shows how the Court opened up a new remedy within the PKPU regime, which some have read as a positive expression of legislators that needs to be justified within strict parameters [12][13].

The Constitutional Journal literature also enriches the discourse with the analogy of negative budgeters and positive budgeters when the review touches on the State Budget Law, indicating that the negative-positive debate between legislators does not only occur in the review of general material norms, but also in the highly sensitive context of the state budget [10]. Finally, there is a common methodological thread: treating judicial review not merely as a mechanical cancellation, but rather as an act of maintaining the constitutional order that demands a balance between certainty, justice, and benefit. The gap that this research aims to fill is the lack of concise, auditable, and transferable operational parameters across cases to assess the legitimacy of the Court's steps when entering areas that have an additive or substitutive impact on norms [5][8].

Research Methodology

This research employs a normative juridical approach with three analytical tools. First, a statute approach to the 1945 Constitution and the Constitutional Court's organic law and its amendments to map the mandate, limits of authority, and general principles of constitutional justice [1][2]. Second, a case approach to representative decisions that represent the legislative negative-positive spectrum, especially conditional decisions and additive or substitutive rulings, with a focus on Decisions 91/PUU-XVIII/2020 and 23/PUU-XIX/2021 as parameter testing studies [4][12]. Third, a conceptual-comparative approach that links Kelsenian doctrine and comparative literature to the Indonesian context to formulate constitutionally and functionally legitimate operational parameters for state practice [6][14]. Data were obtained from valid primary and secondary legal materials, indexed scientific articles, and official publications of state institutions. The analysis was conducted qualitatively, extracting indicators from the ratio decidendi, ruling structure, and normative impact, then synthesizing them into a parameter matrix that can be applied in case testing.

Results

4.1 Legal Framework and Decision Practice: The Negative–Positive Spectrum of Legislators in the Constitutional Court's Interpretation

The authority of the Constitutional Court stems from the mandate of the 1945 Constitution which was then operationalized through Law 24 of 2003 and its amendments, with the main essence of maintaining the supremacy of the constitution through judicial review of laws against the 1945 Constitution [1][2]. Above this framework, the negative legislator doctrine places the Court as a tester who eliminates unconstitutional norms without replacing them, while the positive legislator is attached to the lawmakers who create new norms within the limits of the

constitution [6][7]. However, constitutional practice shows a more graded spectrum: the Court does not only annul, but also issues conditional, additive, or substitutive rulings which in normative consequences fill gaps or adjust the contents of norms to align with the 1945 Constitution [4][5].

Methodologically, the purest negative expression of legislators is seen in rulings that declare norms contrary to the 1945 Constitution and have no binding legal force, so that lawmakers must react through ordinary legislative changes [1][2]. Meanwhile, in decisions with conditional clauses, the Court postpones the legal vacuum and provides transitional parameters to maintain public order and legal certainty, a pattern clearly seen in the formal review of the Job Creation Law through Decision 91/PUU-XVIII/2020 which declared it conditionally unconstitutional with the consequence of improving the procedures for forming laws within a certain deadline [4][11]. This kind of construction marks the strengthening of judicial statesmanship to avoid legal chaos while maintaining constitutional supremacy, but at the same time raises questions about limits because the consequences of the ruling regulate the behavior of state institutions before legislative changes are complete [5][11].

At this point, the theoretical distinction needs to be enriched with operational indicators. First, the degree of constitutional defect found. If the defect is formal-procedural in nature that disrupts the legitimacy of the formation of the law, a conditional ruling with a deadline for improvement can be justified for the sake of legal certainty and public service, as long as the Court does not enter the realm of substantial policy design [4][11]. If the defect is material-substantial in nature that concerns constitutional rights, especially human rights, a direct negative annulment of the legislator is more consistent with the design of authority, unless there is a risk of a vacuum that threatens the right itself so that a minimal conditional formula is needed to prevent the denial of the right [6][8]. Second, the existence of a *rechtvacuum* and systemic risk. When an immediate annulment creates a vacuum that has the potential to cause widespread uncertainty, a conditional ruling can be chosen as a less intrusive remedy, provided that the Court does not formulate new norms that should be the realm of lawmakers [5][10].

Third, the relationship between the consequences of a ruling and institutional architecture. A ruling that merely postpones the consequences of cancellation and orders a legislative fix remains in the legislator's negative orbit, while a ruling that dictates the content and detailed policy choices approaches the legislator's positive orbit, thus requiring stricter justification in terms of necessity, proportionality, and systemic coherence [6][10]. Fourth, coherence with the principles of the rule of law. Certainty, justice, and benefit must appear as a triad that is weighed equally. A ruling that prioritizes only corrective justice but ignores certainty and benefit can trigger friction between branches of power, while a ruling that pursues procedural certainty without sensitivity to material justice can negate the protection of rights [8][9].

A study of conditional decisions demonstrates how the Court combines certainty with justice through injunction techniques that link constitutionality to the fulfillment of certain conditions or provide a transitional period for procedural improvements [4][5]. In the case of the Job Creation Law, the Court identified drafting flaws and ordered legislators to improve their legislative drafting techniques, while restricting government action from issuing strategic regulations with broad impacts before the revisions, a remedial design that aims to maintain governance without closing down public services [4][11]. This model straddles a fine line: it does not establish new norms, but rather regulates administrative behavior temporarily, thus requiring parameters to ensure there is no judicial commandeering of comprehensive and detailed policies.

In contrast, additive or substitutive rulings that add or replace normative elements deserve closer scrutiny. The Constitutional Journal literature notes the problem of following up on conditional constitutional decisions containing new norms, because there the Court not only assesses constitutional conformity but also formulates elements that are actually legislative policy material [5][10]. Decision 23/PUU-XIX/2021 concerning legal remedies in the PKPU

regime is a frequently discussed example: the Court's correction was read as opening up a remedy that was previously unregulated, thus giving rise to debate as to whether the step was still within the scope of testing or had entered the realm of positive legislation [12][13]. Here, the measure of need, the availability of less intrusive alternatives, and the impact on checks and balances must be used as testers of the legitimacy of the interpretation.

From an institutional design perspective, negative–positive legislative tensions also emerge in the judicial review of laws in the field of state budgets. The analogy of negative budgeting is used to emphasize that the Court should be careful when its ruling touches on the details of budget allocations, because budgetary arrangement is the core political function of parliament and government [10]. This is not an absolute prohibition, but rather a call for judicial restraint so that the Court maximizes constitutional corrections without micro-managing fiscal policy choices that contain polycentric trade-offs [6][10].

The need for boundary parameters is urgent because without them, follow-up decisions often stall at the executive and legislative levels. When conditional rulings are not accompanied by operational measures, lawmakers struggle to assess whether revisions have met the Court's required corrections. Conversely, when rulings are too detailed, lawmakers lose policy space and potentially shift political accountability from parliament to the judiciary [5][12]. This research therefore offers a set of auditable indicators to map the position of rulings on the legislator's negative-positive spectrum, while also helping to formulate an appropriate legislative response.

The first indicator is the nature of the defect being corrected. If the defect is procedural and has a systemic impact, a ruling that postpones the consequences of the cancellation while ordering procedural improvements is more appropriate and in line with the negative legislator [4][11]. The second indicator is the existence of a legal vacuum risk. If the immediate cancellation results in a vacuum that threatens public services or public rights, a conditional ruling can be justified, but must be structured to a minimum and be temporary [5][11]. The third indicator is the intrusiveness of the ruling. The more detailed the ruling regulates the policy material, the stronger the burden of justification that there is no adequate less intrusive remedy, and the higher the risk of shifting to the positive role of the legislator [6][10]. The fourth indicator is the coherence of the normative hierarchy. The ruling must not exceed its authority by substantively restructuring institutional structures or other constitutional authorities, except within the limits of correcting obvious constitutional violations that cannot be corrected other than by minimal restructuring [1][2].

The application of the above indicators will clarify the lines of responsibility. The Court remains the guardian of the constitution, upholding the highest reference, while lawmakers are tasked with formulating derivative norms in line with corrections. This clarity of line maintains checks and balances and reduces friction between branches of power, while simultaneously improving the quality of legislation because the Court's corrections are translated into policy designs through an accountable political process [8][12]. Thus, Discussion 1 concludes that the negative-positive spectrum of legislators is a practical consequence of the meeting between the supremacy of the constitution and the need to maintain legal order. What is needed is not a rigid dichotomy, but operational parameters to ensure that every expression of judicial correction remains constitutionally legitimate and proportional in regulating legal consequences [6][10].

4.2 Operational Parameters of Interpretation Boundaries and Governance Recommendations: From Decisions to Legislative Responses

This discussion formulates operational parameters that can be used to assess the legitimacy of the Court's interpretation and guide legislative and administrative follow-up. The parameters are arranged in four clusters: necessity, proportionality, systemic coherence, and accountability. The necessity cluster asks whether there is a clear constitutional defect and whether without correction there will be a violation of rights or legal chaos. The proportionality

cluster examines whether the chosen ruling is a less intrusive remedy than available alternatives. The systemic coherence cluster examines the injunction's integration with the institutional architecture, normative hierarchy, and lawmaking process. The accountability cluster assesses whether the ruling is equipped with time markers and monitoring mechanisms that allow the public to assess the compliance of state institutions [5][10].

For operationalization, each cluster is reduced to test questions. In the needs cluster: is the constitutional violation procedural or material, and what is the concrete evidence of its systemic impact [4][11]. In the proportionality cluster: is direct cancellation possible without creating a legal vacuum, and if not, is the conditional ruling formulated minimally and temporarily [5][11]. In the coherence cluster: does the ruling regulate the policy content in detail or simply postpone the consequences of the cancellation and order a legislative fix, and does the intervention shift the constitutional functions of other branches of power [1][6]. In the accountability cluster: are there reasonable deadlines, limits on authority between institutions, and clear compliance measures so that the follow-up process can be monitored by the public [5][12].

These parameters are then tested on two typologies of decisions. The first typology, conditional decisions on procedural defects. Here, the need score is high because immediate cancellation can create uncertainty in public services, so a conditional ruling with a deadline for correction is appropriate, provided that the formulation does not dictate the content of substantive policy [4][11]. The second typology, additive or substitutive rulings on substantial defects. Here, the proportionality score must be rigorously tested. If there is an alternative of partial cancellation or constitutional interpretation that does not add new elements, then the choice of an additive ruling must be elaborated on why there is no adequate less intrusive remedy [5][12]. The typology-based approach helps the Court avoid the temptation to overreach and helps lawmakers interpret the correction signal more precisely.

To enable parameters to become a working tool, this study offers a concise matrix for the internal benefit of state institutions. The first column contains test indicators, the second column contains relevant factual or normative evidence, the third column contains the implications of the ruling choice, and the fourth column contains the legislative follow-up plan and its deadline. This matrix is used by the Court during the ruling formulation stage to check coherence and intrusiveness, and is used by the House of Representatives and the Government to develop a risk-based legislative response plan. Thus, the follow-up to the ruling is no longer dependent on free interpretation, but on a publicly auditable work map [5][12].

In addition to parameters, follow-up governance needs to be improved. First, the establishment of a joint post-decision working unit consisting of law drafters, constitutional law experts, and legal bureaus of relevant ministries to map the legislative consequences of the ruling and prepare policy options within the limits of constitutional correction [5][12]. Second, establishing a timeline and regular public reporting on the progress of follow-up, so that legal certainty increases and the risk of non-compliance decreases [11][12]. Third, strengthening regulatory drafting guidelines that accommodate the Court's ruling patterns so that law drafters have a correction template that complies with the rules and does not over-react beyond the Court's established guidelines [1][10].

At the methodological level of the decision, the Court can clarify the ratio decidendi that links the finding of defect, the assessment of the risk of *rechtvacuum*, and the reasons for selecting the remedy. This transparency makes it easier for lawmakers to follow up without guessing about the remaining policy space [4][11]. On the lawmaker's side, the obligation to conduct post-legislative scrutiny on laws that have been tested and corrected is worth considering as a good practice to ensure that the reforms mandated by the Court are actually implemented and do not give rise to unintended consequences [5][12].

This discussion also emphasizes the importance of judicial restraint in policy areas with multiple decision centers, such as fiscal, spatial planning, or strategic industrial policy. In such

areas, the ruling should maintain the constitutional corridor without detailing the technical policy design, unless neglect would result in a serious violation of constitutional rights and there are no other adequate corrective options [6][10]. This principle of prudence ensures that the Court remains within the realm of constitutional guardianship, while political accountability for policy choices remains with lawmakers and the government.

Ultimately, the proposed parameters and governance aim to reduce friction between branches of government, restore clarity of roles, and improve the quality of post-ruling legislation. The Court gains an internal reflection tool to weigh the intrusiveness of rulings and ensure coherence with the legislator's negative mandate. Lawmakers gain a measurable follow-up plan, allowing constitutional corrections to be internalized without eliminating policy space. The public gains assurance that judicial corrections truly lead to normative improvements, not merely symbolic declarations [5][12]. Thus, the transition from ruling to legislative response becomes more orderly, measurable, and accountable, while maintaining the Court's dignity as guardian of the constitution within the constitutional limits of legitimate interpretation [6][10].

Conclusion

This research confirms that the Constitutional Court must remain positioned as the guardian of the constitution, with a primary focus on judicial review that safeguards the integrity of the 1945 Constitution. The negative legislative doctrine is its starting point: the Court abolishes norms that conflict with the constitution without creating new ones. However, practice demonstrates the need for more nuanced corrections through conditional, additive, or substitutive decisions. Therefore, clear principles are needed to prevent interpretations from shifting into policy design.

The four cluster parameters serve as control tools. First, necessity, to ensure there is a real constitutional flaw and the potential for a legal vacuum if the annulment is immediately imposed. Second, proportionality, to select a less intrusive, adequate, and temporary remedy. Third, systemic coherence, to ensure the ruling does not shift the authority architecture and normative hierarchy. Fourth, accountability, to provide deadlines, division of tasks, and a mechanism for monitoring follow-up.

In procedural defects with systemic impact, a conditional decision suspending the effects of the annulment while ordering corrections is justified as long as it does not dictate the policy content. In substantial defects affecting constitutional rights, outright annulment is more appropriate unless there is a serious risk to rights protection that requires minimal transitional arrangements. In polycentric policy areas such as fiscal policy, judicial restraint must be prioritized to prevent the Court from micromanaging policy.

Ultimately, a follow-up matrix is needed that connects findings of violations, remedy options, legal implications, and a measurable legislative response plan. With disciplined parameters and governance, the Court's corrective role remains strong yet controlled, the rule of law and checks and balances are maintained, and the quality of post-decision legislation improves.

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