EISSN: 2623-274X|PISSN: 2623-1603
Volume 8 Nomor 2 Agustus 2025 2025: 293-310
DOI: 10.30996/jhmo.v8i2.131863

Jurnal Hukum Magnum Opus

Open Legal Policy: Testing Practices and Limitations by the Constitutional Court

Baharuddin Riqiey[1*], Syofyan Hadi[2], Sukardi[3], Reza Maulana Hikam[4]
[1,3]Universitas Airlangga, Indonesia
[2]Universitas 17 Agustus 1945 Surabaya, Indonesia
[4]University of Hawai'i at Manoa, United States of America
*Corresponding Author: baharuddin.riqiey-2024@fh.unair.ac.id

Article History:
Submitted:
02-05-2025
Received:
10-05-2025
Accepted:
04-06-2025

Keywords:
open legal policy;
constitutional court;
judicial review

Abstract

The Constitutional Court in its various decisions has not granted a petition on the grounds of open legal policy. Open legal policy is always identical to numbers, for example, term of office, parliamentary threshold, etc. Therefore, the purpose of this study is to examine and analyze the practice of testing legal norms that are open legal policy by the Constitutional Court and to examine and analyze the limitations of testing legal norms that are open legal policy by the Constitutional Court. The research method used in this study is legal research with a statutory, conceptual, and case approach. The results of this study indicate that the practice of testing legal norms that are open legal policy has been going on since the Constitutional Court was established. The provisions of legal norms that are open legal policy are essentially the absolute domain of the legislators so that other state institutions cannot change these provisions. However, under certain conditions the Constitutional Court can change these provisions as long as the norms clearly violate morality, rationality, and intolerable injustice; exceed the authority of the legislators; are part of the abuse of authority; cause institutional problems and lead to legal deadlock; are contrary to political rights; and are contrary to the principle of people's sovereignty.

1. Introduction

Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the Constitutional Court has the authority to test laws/government regulations in lieu of laws against the Constitution.[1] The laws referred to above are laws enacted after the amendment[2] to the 1945 Constitution of the Republic of Indonesia (vide Article 50 of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court). In practice, testing laws against the Constitution is commonly known as judicial review.[3]

---

[1] Baharuddin Riqiey, "Urgensi Pembatasan Waktu Pengujian Perppu Oleh Mahkamah Konstitusi," *Jurist-Diction* 6, no. 4 (2023), https://doi.org/10.20473/jd.v6i4.45660; Mexsasai Indra, Geofani Milthree Saragih, dan Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia," *Jurnal Konstitusi* 20, no. 2 (2023), https://doi.org/10.31078/jk2026; Airlangga Gama Shakti, Maharani Wicahyaning Tyas, dan M. Lutfi Rizal Farid, "The Integration of Judicial Review in Indonesia," *Syiah Kuala Law Journal* 6, no. 3 (2023), https://doi.org/10.24815/sklj.v6i3.26940.

[2] Pan Mohamad Faiz, *Amendemen Konstitusi Komparasi Negara Kesatuan dan Negara Federal* (Depok: Rajawali Pers, 2019).

[3] Jimly Asshiddiqie, *Pengujian Formil Undang-Undang di Negara Hukum* (Jakarta: Konstitusi Press, 2020); Bertus de Villiers, Saldi Isra, dan Pan Mohamad Faiz, *Courts and Diversity* (Leiden: Brill | Nijhoff, 2024), https://doi.org/10.1163/9789004691698.

Judicial review as referred to above is not only limited to material testing, but also includes formal testing. Formal testing itself is briefly defined by Jimly Asshiddiqie as testing anything other than material testing.[4] Meanwhile, what is not related to material testing includes the legal form of regulations, the format of the regulation structure, the authority of the institutions involved, and the processes that occur in each stage of the formation of legislation.[5]

In practice, testing of laws in the Constitutional Court is not entirely the authority of the Constitutional Court. Instead, there are norms in the law that are open legal policy.[6] The norms of the law that are open legal policy are entirely the authority of the legislators.[7] Therefore, the Constitutional Court on several occasions did not accept the application on the pretext that the norms being tested were the domain of the legislators.[8] A new problem then arose, in certain cases the Constitutional Court granted the testing of legal norms that were clearly the domain of the legislators. However, in certain cases the Constitutional Court stated firmly that it was the domain of the legislators. This kind of inconsistency is what will endanger the practice of state administration in Indonesia.

Cases that are clearly within the realm of the legislators but are granted by the Constitutional Court are usually identical to the issue of themselves as Constitutional Justices, such as the issue of the term of office of Constitutional Justices.[9] Not only that, other cases that are clearly within the realm of the legislators but are granted by the Constitutional Court are usually identical to the issue of political figures that implicitly or not will benefit certain parties, such as the minimum age requirement for presidential and/or vice presidential candidates.[10]

---

[4] Asshiddiqie, *Pengujian Formil Undang-Undang di Negara Hukum*.

[5] Syofyan Hadi et al., "Implementation of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Study in Bedahlawak Village, Jombang Regency)," *DiH: Jurnal Ilmu Hukum* 20, no. 1 (2024), https://doi.org/https://doi.org/10.30996/dih.v20i1.9589.

[6] Rahayu Subekti, Zufar Maulana Ar-Razaq, dan Saiful Hamdi, "The Execution of Decision Constitutional Court Which Makes an Open Legal Policy Regarding Elections in Indonesia," 2023, https://doi.org/10.2991/978-2-38476-148-7_24.

[7] Sultoni Fikri et al., "Problematika Konstitusionalitas Presidential Threshold di Indonesia," *Jurnal Hukum Positum* 7, no. 1 (2022): 1–24, https://doi.org/https://doi.org/10.35706/positum.v7i1.6643.

[8] I Ketut Sukawati Lanang Putra Perbawa, "Legal Policy in the Decision of the Constitutional Court and the Formation of Law," *Journal of Law and Sustainable Development* 11, no. 12 (2023), https://doi.org/10.55908/sdgs.v11i12.2179; Al Mas'udah Al Mas'udah, "The Presidential Threshold As An Open Legal Policy In General Elections In Indonesia," *Prophetic Law Review* 2, no. 1 (2020), https://doi.org/10.20885/plr.vol2.iss1.art3; Idul Rishan, Sri Hastuti Puspitasari, dan Siti Ruhama Mardhatillah, "Amendment to Term of Office of Constitutional Court Judges in Indonesia: Reasons, Implications, and Improvement," *Varia Justicia* 18, no. 2 (2022), https://doi.org/10.31603/variajusticia.v18i2.7236.

[9] Idul Rishan, "Doubting the Impartiality: Constitutional Court Judges and Conflict of Interest," *Jurnal Jurisprudence* 12, no. 1 (2022), https://doi.org/10.23917/jurisprudence.v12i1.1058; Dewi Andriani, "Term of Office of Constitutional Judges and Its Implications for the Independence of Judicial Power," *JUSTICES: Journal of Law* 3, no. 1 (2024), https://doi.org/10.58355/justices.v3i1.40.

[10] Dewi Iriani, Muhammad Fauzan, dan Esti Ningrum, "Constitutional Court Judges' Interpretation Regarding the Limitation on the Presidential and Vice-Presidential Term of Office," *Jurnal Jurisprudence* 13, no. 1 (2023), https://doi.org/10.23917/jurisprudence.v13i1.1835.

Seeing that in practice the Constitutional Court often acts inconsistently with its stance as explained above, it is necessary to conduct a comprehensive study and analysis regarding the practice of testing open legal policy statutory norms by the Constitutional Court in the future and the limitations regarding testing open legal policy statutory norms by the Constitutional Court. It is hoped that in the future we can find clear limitations regarding what kind of open legal policy norms can be tested at the Constitutional Court.

This research has a fairly high value of novelty and originality. However, similar research has also been studied by previous researchers, for example research conducted by Iwan Satriawan and Tanto Lailam entitled "Open Legal Policy in Constitutional Court Decisions and the Formation of Laws".[11] The study examines the ratio decidendi of Constitutional Court decisions that are open legal policy and how they have implications for the formation of laws and regulations in Indonesia. Meanwhile, this study specifically and comprehensively examines the limitations of the Constitutional Court in adjudicating and deciding on requests for judicial review of legal norms that are open legal policy. Then, research with the object of open legal policy has also been studied by Radita Ajie with the title "Limitations of Policy Choices of Lawmakers (Open Legal Policy) in the Formation of Laws and Regulations Based on the Interpretation of Constitutional Court Decisions".[12] This study has a study object that specifically examines the limitations of open legal policy in the formation of laws and regulations by looking at the Constitutional Court Decision. This study specifically and comprehensively examines the authority of the Constitutional Court in deciding cases of testing legal norms that are open legal policy and specifically examines the limitations of this authority along with the latest decisions of the Constitutional Court. The next study related to open legal policy was also studied by Syaifullahil Maslul with the title "Progressiveness of the Constitutional Court in Testing the Age Limit of Marriage".[13] This study examines the progressiveness of the Constitutional Court in Testing the age limit of marriage. Although age is included in the framework of open legal policy handled by the Constitutional Court, the difference is very visible in this study. This study specifically examines the authority and limitations of the Constitutional Court in deciding applications for testing legal norms that are open legal policy. Seeing the description as above, it appears that this study has fundamental differences with previous studies. These fundamental differences are related to the object of study and the purpose of the study itself. Thus, this study has a fairly high value of novelty and originality.

---

[11] Iwan Satriawan dan Tanto Lailam, "Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang," *Jurnal Konstitusi* 16, no. 3 (2019): 559, https://doi.org/10.31078/jk1636.

[12] Radita Ajie, "Batasan Pilihan Kebijakan Pembentuk Undang-Undang (Open Legal Policy) Dalam Pembentukan Peraturan Perundang-Undangan Berdasarkan Tafsir Putusan Mahkamah Konstitusi," *Legislasi Indonesia* 13, no. 02 (2016): 111–20, https://doi.org/https://doi.org/10.54629/jli.v13i2.105.

[13] Syaifullahil Maslul, "Progresifitas Mahkamah Konstitusi Dalam Pengujian Batasan Usia Perkawinan," *AL-HUKAMA'* 12, no. 1 (18 Juni 2022): 127–40, https://doi.org/10.15642/alhukama.2022.12.1.127-140.

2. Methods

This research is a research with the type of legal research or legal research.[14] The approach method used is the legislative approach, conceptual, and case. While the legal materials used are primary legal materials and legal materials. Primary legal materials are collected using the inventory and categorization method, while secondary legal materials are collected using the library research method. Primary legal materials and secondary legal materials that have been collected are then identified, classified, and systematized according to their sources and hierarchies. After that, all legal materials are reviewed and analyzed using legal reasoning or legal reasoning with the deductive method.[15]

3. Results and Discussion

3.1. Practice of Testing Legal Norms of an Open Legal Policy Nature by the Constitutional Court

The Constitutional Court as the only judicial institution in Indonesia that has the authority to test laws against the Constitution is currently faced with the issue of testing legal norms that are open legal policy. This issue has given rise to the perspective in society that the Constitutional Court is often inconsistent with its stance on testing legal norms that are open legal policy. The reason is, in certain cases, the Constitutional Court seems to violate the boundaries that have been built so far. Likewise, in certain cases the Constitutional Court truly upholds these boundaries.

The open legal policy itself can be interpreted as an open legal policy by lawmakers. [16] This is practiced when the constitution as the highest legal norm (the supreme of the land) does not regulate or does not clearly provide the boundaries of a certain provision so that it must be regulated in law.[17] When in the conditions as above, the lawmakers have the authority to create a legal product in the form of a law or government regulation in lieu of law for the President with the approval of the House of Representatives.[18] Examples of open legal policy norms that are often tested in the Constitutional Court are those related to the presidential threshold and parliamentary threshold.[19]

---

[14] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

[15] Irwansyah dan Ahmad Yunus, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

[16] Erida Putri Yulianita, Radian Salman, dan Rizky Ramadhan, "Konstitusionalitas Persetujuan Dewan Perwakilan Rakyat pada Pengisian Jabatan Publik yang Tidak Diatur dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Amnesti: Jurnal Hukum* 6, no. 1 (2024), https://doi.org/10.37729/amnesti.v6i1.4080.

[17] Baharuddin Riqiey dan Syofyan Hadi, "Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives," *Mimbar Keadilan* 17, no. 1 (16 November 2023): 1–16, https://doi.org/10.30996/mk.v17i2.9635; Baharuddin Riqiey dan Miftaqul Janah, "Election Omnibus: Efforts to Realize Legal Certainty in General Elections in Indonesia," *Mimbar Keadilan* 18, no. 1 (2025), https://doi.org/https://doi.org/10.30996/mk.v18i1.11989.

[18] Baharuddin Riqiey dan Muhammad Ahsanul Huda, "Interpreting Article 22(2) of the 1945 Constitution of the Republic of Indonesia Post Constitutional Court Decision 54/PUU-XXI/2023," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 4, no. 1 (31 Januari 2024): 24–37, https://doi.org/10.15294/ipmhi.v4i1.76687.

[19] Muhammad Rinaldy Bima dan John Tumba Jacob, "The Age Threshold for Presidential Nominations in the Perspective of Dignified Justice Theory: Why is there a Court of Family (Mahkamah Keluarga) Issue?," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 3 (2023), https://doi.org/10.29303/ius.v11i3.1301; Syarifudin, Wiwit Pratiwi, dan Sherly Nelsa Fitri, "The Implication of Presidential Threshold as an Open

The birth of the term open legal policy cannot be separated from the thoughts of Hans Kelsen and Ronald Dworkin on the discretionary power of lawmakers. Hans Kelsen explained that discretionary power is the authority held by public officials to make decisions or take action in situations where the law does not provide clear or complete rules. In addition, Hans Kelsen, through the theory of norm hierarchy, views law as a hierarchical system, and discretionary power appears at a lower level in the hierarchy, where higher norms do not provide specific guidance.[20]

Referring to Hans Kelsen's thoughts above, it can be said that the term open legal policy is actually already known, but this understanding is not termed open legal policy, but is known as the discretionary power of lawmakers. In terms of meaning, both have the same meaning, namely both regulate unclear provisions, which were previously regulated at the level of the hierarchy of laws and regulations above it. Such matters remain absolutely the authority of the lawmakers to regulate it.

The legislators are basically given free authority to formulate a legal norm. This free authority cannot be interpreted as unlimited free authority. But still pay attention to the applicable legal theory. When the legislators exercise discretionary power, it cannot be interpreted as a norm that cannot be tried. But must still pay attention to the limitations that we explained in the second sub-discussion in this article. If the legislators do not violate these limitations, then the norm that is formed cannot be tested in the Constitutional Court. Likewise, if the norm that is formed actually violates these limitations, then the norm can be tested for constitutionality in the Constitutional Court.

In addition, the Constitutional Court as an institution authorized to test laws against the Constitution essentially acts as a negative legislator and not as a positive legislator. If the Constitutional Court is often found as a positive legislator, then in the future it is possible that there will be disputes between state institutions. The problem if this happens is, who will handle the dispute between the Constitutional Court and the legislators. Normatively, of course this is the authority of the Constitutional Court, but whether it can be ensured that there will be objectivity in handling cases, of course this needs to be discussed.[21]

Open legal policy judicial review is an interesting phenomenon in the context of constitutional law in various countries.[22] This approach provides space for constitutional courts to interpret laws based on broader social, political, and justice contexts. In this case, the

---

Legal Policy in Indonesia's General Election," *International Journal Of Multidisciplinary Research And Analysis* 06, no. 11 (7 November 2023), https://doi.org/10.47191/ijmra/v6-i11-09; Nur Kholis, "Parliamentary Threshold and Political Rights Limitation," *Journal of Law and Legal Reform* 1, no. 3 (2020), https://doi.org/10.15294/jllr.v1i3.37963.

[20] Hans Kelsen, *Pure Theory of Law* (New Jersey: The Lawbook Exchange, 2008); Syofyan Hadi, "The Influence of Theorie Von Stufenbau Der Rechtsordnung in the Indonesian Legal System," *DiH: Jurnal Ilmu Hukum*, 14 Juli 2024, 202–10, https://doi.org/10.30996/dih.v20i2.10989.

[21] Sholahuddin Al-Fatih, "Interpretation Of Open Legal Policy By The Constitutional Judges In Judicial Review Of Parliamentary Thresholds," *Diponegoro Law Review* 6, no. 2 (2021), https://doi.org/10.14710/dilrev.6.2.2021.231-246; Rizki Bagus Prasetio dan Febri Sianipar, "The Relevance of the Application of the Presidential Threshold and the Implementation of Simultaneous Elections in Indonesia," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021), https://doi.org/10.30641/dejure.2021.v21.267-284.

[22] Perbawa, "Legal Policy in the Decision of the Constitutional Court and the Formation of Law."

absolute authority of the legislators becomes the main focus, because the courts are often faced with the question of how far they can intervene in legislative decisions that have been taken. Various constitutional courts around the world have issued important decisions that reflect this approach.[23]

One important example comes from the Brazilian Constitutional Court in its ADPF 186/2006 decision. In this case, the court tested the constitutionality of a law regulating abortion in cases of rape. The court held that the law was contrary to the principles of human rights guaranteed by the constitution. This decision shows that while the legislature has absolute power, the court has the right to consider and strike down laws that are considered unfair or detrimental to the rights of individuals.

In Germany, the Federal Constitutional Court (*Bundesverfassungsgericht*) demonstrated absolute authority in its decision BVerfG 1 BvR 3295/07 (2010), which dealt with individual privacy. In this case, the court ruled that a law granting the government broad powers to tap telephones without judicial approval violated the constitutional right to privacy. The court emphasized that while legislators have the power to legislate, the courts have a responsibility to ensure that the laws are in accordance with constitutional values.

In India, the decision K.S. Puttaswamy v. Union of India (2017) is a significant example of where the Supreme Court tested the right to privacy. In this judgment, the Court held that a law requiring citizens to provide biometric data for an identification program was contrary to human rights. This decision reflects how the Supreme Court has used its absolute authority to protect individual rights, even if it meant challenging the policies adopted by legislators.

The Constitutional Court of South Africa also provides a strong example in this regard with its decision in S v. Makwanyane (1995), where the court struck down the death penalty as a violation of the right to life. In this decision, the Court emphasized that the power of the legislature cannot be at the expense of human values and social justice. This decision demonstrates the importance of the courts' role in overseeing legislative actions that may threaten the human rights of individuals.

In Canada, the Supreme Court in its decision R v. Morgentaler (1988) tested a law on abortion. The Court ruled that the law violated the right to liberty and security of the person and should be struck down. This decision shows that while legislation has the power, the courts are responsible for assessing the fairness and conformity of the law with constitutional principles, creating a balance between legislative power and the protection of fundamental rights.

Another example can be seen in the Turkish Constitutional Court's ruling, Erdogan v. Turkey (2019), where the court tested a law restricting freedom of expression. The court ruled that the law violated the constitutional right to freedom of opinion. This decision illustrates how despite the powers granted to legislators, the courts have the responsibility to protect the fundamental rights of individuals and uphold democratic principles.

In Spain, the Constitutional Court in its ruling STC 235/2013 also demonstrated the application of absolute authority in reviewing laws. The court struck down a law restricting social rights, emphasizing that legislative acts must reflect justice and equality. This ruling

[23] Max Steuer, "Democracy, Procedural and Social Rights, and Constitutional Courts in Hungary and Slovakia," *Constitutional Review* 9, no. 1 (2023), https://doi.org/10.31078/consrev912.

shows that while legislators have the power, the courts have the authority to assess and challenge laws that are inconsistent with constitutional values.

The testing of laws using the open legal policy approach in various constitutional courts around the world emphasizes the importance of the role of the judiciary in balancing the absolute authority of lawmakers and the protection of individual rights. These decisions reflect a commitment to creating a legal system that is fair and responsive to social change, with the courts serving as guardians of the constitution and protectors of human rights.

Looking at the problem as above, we know two theories that are famous among legal scholars, namely the theory of judicial restraint and the theory of judicial activism. The theory of judicial restraint essentially places the court in order to limit or restrain itself in making policies that are the authority of legislators, executives, and other legislators.[24] Meanwhile, the theory of judicial activism essentially emphasizes that judges use their views more than other factors regarding a policy in realizing substantive justice.[25]

Judicial restraint and judicial activism are two different approaches in the interpretation and application of law, especially in the context of judicial review at the Constitutional Court.[26] Both have significant implications for how the judiciary functions in the legal system, especially when dealing with laws that are considered to be unconstitutional. In the context of judicial review, a good understanding of these two concepts is essential to assess how the Constitutional Court carries out its functions and its impact on public policy. Judicial restraint refers to an approach in which courts seek to minimize intervention in legislative and executive affairs. Judges who adhere to this principle tend to respect the decisions taken by the legislature, arguing that the courts should wait and let the democratic process run its course without interference. In the context of judicial review at the Constitutional Court, judicial restraint means that the courts will be more careful in overturning laws that have been passed, unless there is clear evidence that the law violates the principles set out in the constitution.

In contrast, judicial activism is an approach in which the courts take a more active role in interpreting and applying the law. In this context, judges feel a responsibility to protect individual rights and achieve social justice, even if it means going against the policies taken by the legislature. In judicial review, judicial activism can mean that the Constitutional Court is more willing to overturn laws that are considered unfair or contrary to constitutional values, even though the laws have been passed through a legitimate legislative process. In the context of an open legal policy, where there is room for interpretation and adjustment of the law, both of these approaches can have an impact on public policy and the implementation of law in Indonesia. Judicial restraint may prioritize stability and legal certainty, but it can also ignore the need to make necessary changes in society. Conversely, judicial activism can encourage

---

[24] Susan D. Carle, "The Failed Idea of Judicial Restraint: A Brief Intellectual History," *Law and Social Inquiry* 49, no. 1 (2024), https://doi.org/10.1017/lsi.2023.66.

[25] Mamta Devi, "The Role of Judicial Activism in Shaping Constitutional Law of India," *EPRA International Journal of Multidisciplinary Research (IJMR)*, 2024, https://doi.org/10.36713/epra15921.

[26] Mirza Satria Buana, "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court," *Constitutional Review* 6, no. 1 (2020), https://doi.org/10.31078/consrev612; Larry D. Kramer dan Richard E. Lang, "Judicial supremacy and the end of judicial restraint," *California Law Review*, 2012.

reforms that are more rapid and responsive to social change, but it also risks creating legal uncertainty if not balanced with careful consideration.

The Indonesian Constitutional Court operates within a framework that allows for an open legal policy approach, where judges can consider various social, political, and economic aspects when conducting judicial review.[27] In this case, judges not only function as interpreters of the law, but also as decision makers who can influence the direction of public policy. This approach provides an opportunity for the Constitutional Court to play an active role in maintaining justice and protecting constitutional rights, but also requires responsibility to ensure that decisions taken do not ignore the principles of democracy and the rule of law.[28] It is important to note that both judicial restraint and judicial activism have their own advantages and disadvantages. The restraint approach can maintain mutual respect between the branches of government, but can hinder progress when there is an urgent need for reform. Meanwhile, judicial activism can bring about necessary changes, but can create dissatisfaction from parties who feel that the decision exceeds the limits of the court's authority. Therefore, the balance between these two approaches is very important in the context of judicial review at the Constitutional Court.

In practice, the courts often face a dilemma in choosing between restraint and activism.[29] The decisions taken by the Constitutional Court can reflect the tendency of one of these approaches, depending on the context of the case at hand. Therefore, it is important for judges to consider the long-term impact of their decisions, both on applicable law and on society as a whole. A balanced approach can help create a fair and responsive legal system without sacrificing the basic principles of democracy. In the context of judicial review, the Constitutional Court has an important role in determining the direction of public policy and the protection of constitutional rights. Understanding the difference between judicial restraint and judicial activism, and how these two approaches can be applied within the framework of an open legal policy, will help create a more effective and fair justice system. Thus, the Constitutional Court not only functions as a guardian of the constitution, but also as an institution that is able to adapt the law to the needs of the ever-evolving society.

The practice of testing legal norms that are open legal policy against the 1945 Constitution of the Republic of Indonesia by the Constitutional Court has been going on since the Constitutional Court was established. We can see this in various decisions that have been issued. Among others, *First*, Constitutional Court Decision Number 90/PUU-XXI/2023. This decision essentially confirms that Article 169 letter q of Law No. 7 of 2017 is a provision that is

---

[27] Tri Sulistyowati, Ali Rido, dan M. Imam Nasef, "Constitutional Compliance Solution to Law Testing Rulings in the Constitutional Court," *Jambura Law Review* 3, no. Special issue (2021), https://doi.org/10.33756/jlr.v3i0.10735; Zainal Arifin Mochtar, *Kekuasaan Kehakiman Mahkamah Konstitusi dan Diskursus Judicial Activism Vs Judicial Restraint*, *Depok: Rajawali Pers*, vol. 1, 2021.

[28] Hufron et al., "Regional Head Election Post-MK Decision Number 60/PUU-XXII/2024 in the Constitutional Law Landscape," *Legality : Jurnal Ilmiah Hukum* 33, no. 1 (2025), https://doi.org/https://doi.org/10.22219/ljih.v33i1.39064.

[29] Emre Turkut, "Emergency Powers, Constitutional (Self-)Restraint and Judicial Politics: the Turkish Constitutional Court During the COVID-19 Pandemic," *Jus Cogens* 4, no. 3 (2022), https://doi.org/10.1007/s42439-022-00064-7; Françoise Tulkens, "Judicial Activism v Judicial Restraint: Practical Experience of This (False) Dilemma at the European Court of Human Rights," *European Convention on Human Rights Law Review*, 2022, https://doi.org/10.1163/26663236-bja10048.

open legal policy, but the Constitutional Court considers this norm to have caused intolerable injustice so that the Constitutional Court declares this provision contradicts the 1945 Constitution of the Republic of Indonesia and does not have binding legal force.

Second, Constitutional Court Decision Number 121/PUU-XX/2022. This decision essentially confirms that Article 7A paragraph (1) of Law No. 7 of 2020 contradicts the 1945 Constitution of the Republic of Indonesia. Interestingly, in this case the Constitutional Court did not consider that this provision was part of the provisions of the norm that was open legal policy so that what the Applicant requested in this case was the realm of the legislators. Instead, in this case the Constitutional Court immediately granted the entire petition.

Third, Constitutional Court Decision Number 70/PUU-XX/2022. This decision essentially confirms that the provisions of Article 40A of Law No. 11 of 2021 are provisions that are open legal policy, but by the Constitutional Court these provisions are considered to have caused injustice and discrimination and therefore are declared to be contrary to the 1945 Constitution of the Republic of Indonesia. The implication of this decision is that the provisions of Article 40 of Law No. 11 of 2021 do not have binding legal force and these provisions have been in effect since five years after this decision.

Fourth, Constitutional Court Decision Number 112/PUU-XX/2022. This decision essentially confirms that the provisions of Article 34 of Law No. 30 of 2002 are provisions that are open legal policy, but by the Constitutional Court these provisions are considered to have caused injustice and discrimination which can lead to legal uncertainty, injustice, and discrimination and therefore are declared to be contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force.

Fifth, Constitutional Court Decision Number 52/PUU-XX/2022. This decision essentially confirms that the provisions of Article 222 of Law No. 7 of 2017 are provisions that are open legal policy in nature, therefore the Constitutional Court cannot examine, try, and decide whether the provisions are constitutional or not because the authority to do so is the absolute authority of the legislators. This case is different from the previous cases as above because in this case the Constitutional Judge tends to apply judicial restraint.

Another case that can reflect the difference in the attitude of Constitutional Justices in viewing the testing of norms that are open legal policy can be found in the Constitutional Court Decision Number 116/PUU-XXI/2023. This decision essentially confirms that the provisions of Article 414 paragraph (1) of Law Number 7 of 2017 are constitutional until the 2024 DPR Election but become conditionally constitutional in the 2029 DPR Election as long as the provisions have been changed in terms of numbers based on the specified requirements. This decision is not much different from the previous decision as above because both of them test provisions that are open legal policy but in the end the ratio decindie of the Constitutional Justices is different.

The examples as above are the practices of testing statutory norms that are open legal policy by the Constitutional Court recently. Looking at the explanation of the examples as above, we can find that in certain cases the Constitutional Court can grant and in certain cases the Constitutional Court does not grant. So, it can be said that the Constitutional Court has its own parameters or limitations in responding to the testing of statutory norms that are of an open legal policy nature.

It is an interesting question, how and why can open legal policy norms still be tested in the Constitutional Court. Of course, to answer this question, it cannot be separated from the theory of constitutional supremacy and also the theory of legal supremacy. Both theories essentially emphasize that the Constitution, in this case the 1945 NRI Constitution, is the highest law in Indonesia. In relation to the position of the 1945 NRI Constitution as the highest regulation, the 1945 NRI Constitution explicitly states that the Constitutional Court has the authority to test laws against the 1945 NRI Constitution. In this case, the law in its original intent is not limited to the nature of open legal policy norms or not. This means that all material contained in the law may be tested by the Constitutional Court through an application.

The testing of laws by the Constitutional Court is limited to norms of laws that are not open legal policy based on the principle of separation of powers. This principle essentially emphasizes that a state institution already has its own constitutional authority. Thus, the authority to regulate something that has not previously been regulated by the regulations above it, then it absolutely becomes the authority of the legislator. Thus, the Constitutional Court is not authorized to test the norm. With the aim of preventing disputes between the two institutions. Although in practice the Constitutional Court emphasizes that it is not authorized to examine, try, and decide on cases of testing legal norms that are open legal policy. However, in several cases, the Constitutional Court can examine, try, and decide on cases of testing legal norms. This is what is then known as a progressive step or judicial activism in the world of justice. Progressiveness must also be interpreted solely with the constitutional order that guarantees the constitutional rights of citizens as mandated by Article 28A to Article 28J of the 1945 Constitution of the Republic of Indonesia.

Looking at the developments so far, the Constitutional Court tends to be active in granting requests for judicial review of laws related to social and political rights. However, in relation to the economy and culture or other aspects other than those mentioned above, the Constitutional Court tries as much as possible to restrain itself in examining, trying, and deciding the case. Not only that, the Constitutional Court is also often active in granting requests for judicial review of legal norms that benefit it, both institutionally and individually, whether by judges, clerks, or employees within it.

This then brings quite serious implications in the practice of judicial review by the Constitutional Court. In the context of current social and political developments, the Constitutional Court is often given the term "Garbage Basket".[30] This term was born because of public dissatisfaction with the process of forming laws which tends to be non-transparent and does not reflect the general principles of good governance and also the principles of forming laws and regulations. If the Constitutional Court takes an active stance, this can strengthen the supremacy of law and protect constitutional rights, creating a precedent that legislators are not immune to judicial oversight. However, this approach can also create tension between the judiciary and the legislature, potentially triggering political conflict. On the other hand, the passive attitude of the Constitutional Court, where they are reluctant to intervene in discretionary legislative policies, can provide space for legislators to implement

[30] Hendro Dahlan Situmorang, "Kritik DPR, Pakar Hukum Sebut MK Jadi Keranjang Sampah," Berita Satu, 2022, https://www.beritasatu.com/nasional/1007481/kritik-dpr-pakar-hukum-sebut-mk-jadi-keranjang-sampah/all.

policies that may not be fully in line with constitutional principles. Thus, this choice of attitude has important consequences both in the legal context and in the political dynamics of the country.

3.2. Limitations of Testing of Legal Norms of an Open Legal Policy Nature by the Constitutional Court

Open legal policy, which refers to the margin of discretion of legislators in making laws (margin of appreciation), provides room for legislators to make flexible and responsive decisions to social dynamics. Within the framework of Hans Kelsen's legal hierarchy theory, legislators have the power to set norms within the limits determined by a higher norm, namely the constitution. Therefore, as long as the decision does not violate constitutional principles, judicial intervention should be minimized. Kelsen emphasized that judicial oversight should be limited, only to ensure that legislative actions remain within the corridor of higher law, thus maintaining the integrity of the legal system.

On the other hand, the concept of legal morality proposed by Lon L. Fuller and Ronald Dworkin's idea of the limits of judicial interpretation strengthen the argument that policies taken by legislators must consider ethical values and justice.[31] Fuller emphasized that law does not only consist of rules, but must also be based on moral principles that underlie these norms. Dworkin added that although courts must respect the discretion of legislators, they also have a responsibility to assess whether the policy is in line with the principles of justice. Thus, judicial intervention should be carried out if legislative policies violate the moral norms underlying the constitution, ensuring that the policies taken are not only legally valid but also just and ethical.

The practice of testing open legal policy norms by the Constitutional Court has been going on since the Constitutional Court was established.[32] These practices have created jurisprudence that in essence the Constitutional Court can examine, try, and decide on applications for testing open legal policy norms. In essence, the Constitutional Court is not an institution that has the authority to examine, try, and decide on applications for testing open legal policy norms, because that is the absolute domain of the legislators.

In practice, the Constitutional Court does not tend or is dominant in rejecting applications for testing open legal policy norms, but rather the Constitutional Court can grant part or even grant all of the applications for testing open legal policy norms submitted to it. These conditions (limitations) can be found in the Decisions of the Constitutional Court since the Constitutional Court was established. This stance by Constitutional Judges is currently often used as a reference in deciding on applications for testing open legal policy norms.

These limitations are: First, the Constitutional Court can assess the constitutionality of open legal policy statutory norms as long as the norms clearly violate morality, rationality, and intolerable injustice. *This first* limitation can be found in the Constitutional Court Decision Number 51-52-59/PUU-VI/2008 in conjunction with the Constitutional Court Decision

---

[31] Lon L. Fuller dan Kenneth I. Winston, "The Forms and Limits of Adjudication," *Harvard Law Review* 92, no. 2 (Desember 1978): 353, https://doi.org/10.2307/1340368.

[32] M. Yasin al Arif, Wahlulia Amri, dan Inda Dzil Arsyi Makiin, "Constitutionality of Open Legal Policy Making Law Number 3 of 2022 Concerning the State Capital in the Perspective of Siyasa Dusturiyyah," *KnE Social Sciences*, 2024, https://doi.org/10.18502/kss.v9i2.14995.

Number 26/PUU-VII/2009 in conjunction with the Constitutional Court Decision Number 22/PUU-XV/2017 in conjunction with the Constitutional Court Decision Number 93/PUU-XVI/2018. If in a request for review of open legal policy statutory norms, the elements as in the first limitation above are not found, then the Constitutional Court tends not to grant *a quo* request.

Second, the Constitutional Court can assess the constitutionality of open legal policy statutory norms as long as the provisions are legal products that exceed the authority of the legislators. This second limitation can be found in the Constitutional Court Decision Number 010/PUU-III/2005 in conjunction with the Constitutional Court Decision Number 26/PUU-VII/2009 in conjunction with the Constitutional Court Decision Number 51/PUU-XIII/2015. If in a request for a judicial review of a statutory norm that is of an open legal policy nature, no elements as in the second limitation above are found, then the Constitutional Court will tend not to grant *a quo* application.

Third, the Constitutional Court can assess the constitutionality of a statutory norm that is of an open legal policy nature as long as the norm is part of an abuse of authority. This third limitation can be found in the Constitutional Court Decision Number 010/PUU-III/2005 in conjunction with the Constitutional Court Decision Number 26/PUU-VII/2009 in conjunction with the Constitutional Court Decision Number 51/PUU-XIII/2015. If in a request for a judicial review of a statutory norm that is of an open legal policy nature, no elements as in the third limitation above are found, then the Constitutional Court will tend not to grant *a quo* application.

Fourth, the Constitutional Court can assess the constitutionality of open legal policy statutory norms as long as the provisions clearly cause institutional problems and lead to legal deadlock. This fourth limitation can be found in the Constitutional Court Decision Number 7/PUU-XI/2013. If in a request to review open legal policy statutory norms, no elements are found as in the third limitation above, the Constitutional Court tends not to grant *a quo* application.

Fifth, the Constitutional Court can assess the constitutionality of open legal policy statutory norms as long as the provisions of the norm clearly conflict with political rights. This fifth limitation can be found in the Constitutional Court Decision Number 90/PUU-XXI/2023. If in a request to review open legal policy statutory norms, no elements are found as in the third limitation above, the Constitutional Court tends not to grant *a quo* application.

Sixth, the Constitutional Court can assess the constitutionality of open legal policy statutory norms as long as the provisions of the norm clearly conflict with the principle of people's sovereignty.[33] This sixth limitation can be found in the Constitutional Court Decision Number 90/PUU-XXI/2023. If in a request to review a statutory norm that is open legal policy, no elements are found as in the third limitation above, then the Constitutional Court will tend not to grant a quo request.

[33] Baharuddin Riqiey, "Penujukkan Kepala Daerah oleh Presiden dalam Perspektif Demokrasi," *Seminar Nasional-Kota Ramah Hak Asasi Manusia* 3, no. 1 (2023); Baharuddin Riqiey, "Pemilihan Kepala Daerah oleh Dewan Perwakilan Rakyat Daerah Pasca Putusan MK No. 85/PUU-XX/2022," *Constitution Journal* 2, no. 1 (2023), https://doi.org/10.35719/constitution.v2i1.42.

These six limitations have been made by the Constitutional Court since its establishment. These limitations have all been outlined in various decisions to date. Therefore, testing of open legal policy statutory norms is not entirely the domain of the legislators, but the Constitutional Court can assess its constitutionality as long as it meets one of the 6 (six) elements as above. The six elements above do not all have to be met, but only one of them can the Constitutional Judge be sure that the norm being tested is contrary to the 1945 Constitution of the Republic of Indonesia.

Even though the Constitutional Court has provided the limitations as above, it does not rule out the possibility that the Constitutional Court can assess the constitutionality of open legal policy statutory norms even though they do not contain one of the elements as above. These possibilities could occur, depending on the political situation, personal interests, and other factors that could influence the collapse of the above limitations.

Seeing the limitations as above, the author needs to emphasize. If referring to the wording of the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution, in reality the Constitutional Court can examine, try, and decide on requests for judicial review of laws that are of an open legal policy nature. Because, in terms of original intent and also grammatically, the wording of the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution does not limit what norms are contained in laws that can be tested by the Constitutional Court. This is then also strengthened if referring to the perspective of the theory of constitutional supremacy and also the supremacy of law.[34]

Given the limitations as above, the author needs to emphasize. If referring to the wording of the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution, in reality the Constitutional Court can examine, try, and decide on requests for judicial review of laws that are of an open legal policy nature. Because, in terms of original intent and also grammatically, the wording of the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution does not limit what norms are contained in the law that can be tested by the Constitutional Court. This is then also strengthened if referring to the perspective of the theory of constitutional supremacy and also the supremacy of law.

However, it must be understood that it does not mean that if there are no restrictions in the wording of the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution, then the Constitutional Court has the authority to test the provisions of statutory norms that are of an open legal policy nature. This is a mistaken, even misleading, idea. Because, in legal science, not only one theory is known, but many theories can be used as a basis for running the wheels of government and justice. One of the theories referred to is the theory of separation of power, which clearly states the constitutional authorities of each state institution. If the Constitutional Court is active in cases of testing legal norms that are open legal policy, then the possibility of a dispute between the legislators and the Constitutional Court is very likely to occur.

In addition, if it is argued that the Constitutional Court has absolute authority to test legal norms that are open legal policy without considering the limitations as described above and based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, then logically the Constitutional Court has absolute authority to examine, try, and decide cases

[34] Luthfi Widagdo Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia," *Jurnal Konstitusi* 15, no. 1 (2018), https://doi.org/10.31078/jk1511.

that are directly related to it, in this case as long as it is part of the legal norms (i.e. the law on the Constitutional Court in conjunction with the law on Judicial Power). Of course, this kind of logical thinking is wrong. The author needs to emphasize that the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution must be read and interpreted comprehensively by paying attention to further regulations in the law and also other relevant legal theories. Thus, there is no need to think of one view regarding the provisions of Article 24C paragraph (1) of the 1945 NRI Constitution.

Apart from the description as above, it should be noted that, if the Constitutional Court often intervenes in open legal policy issues, it can cause various problems, including:

1. Shifting legislative power to the judiciary.

   When the court routinely intervenes in policies that should be the domain of legislators, this can cause legislation to lose its autonomy and legitimacy as a law-making body. As a result, legislators may feel pressured to change or adjust their policies according to the court's preferences, which in turn can reduce the efficiency and effectiveness of the legislative process.
2. Potentially violates the principle of checks and balances.

   A healthy government system relies on a balance between executive, legislative, and judicial powers. When the Constitutional Court is too active in testing open legal policy statutory norms, this can disrupt this balance, causing the judiciary to take over functions that should be carried out by the legislature. This can cause instability in the government system, where one branch of power dominates the others, and creates legal uncertainty among policy makers and the public.
3. Testing of legal norms that are open legal policy can be used as a legal political tool by certain interest groups is also a concern.

   When the courts become too involved in policy issues, there is a possibility that their decisions will be influenced by pressure from certain groups that have political agendas or economic interests. This can create the perception that the Constitutional Court is no longer functioning as an independent institution, but rather as a tool to facilitate the interests of certain groups, which can ultimately damage public trust in the judicial system.

Open legal policy review of statutory norms plays an important role in protecting citizens' constitutional rights by creating a balance between judicial self-control and judicial involvement. In this context, the Constitutional Court has a responsibility to ensure that legislative policies do not violate basic rights guaranteed by the constitution, while respecting the discretionary space owned by lawmakers. By conducting careful review, the court can prevent detrimental or discriminatory interpretations, while maintaining legislative authority. This dialectic is important for maintaining justice and the protection of human rights, so that the legal system remains responsive to the needs of society without sacrificing higher legal principles.

4. Conclusions

The practice of testing open legal policy statutory norms in the Constitutional Court has been going on since the Constitutional Court was established. The provisions of open legal policy statutory norms are essentially the absolute domain of the legislators, but under certain

conditions the Constitutional Court can assess their constitutionality as long as they fulfill one of the elements as stated in previous decisions. The Constitutional Court can assess the constitutionality of open legal policy statutory norms as long as: the norm clearly violates morality, rationality, and intolerable injustice; exceeds the authority of the legislators; is part of an abuse of authority; creates institutional problems and causes legal deadlock; conflicts with political rights; and conflicts with the principle of people's sovereignty.

5. Reference

Ajie, Radita. "Batasan Pilihan Kebijakan Pembentuk Undang-Undang (Open Legal Policy) Dalam Pembentukan Peraturan Perundang-Undangan Berdasarkan Tafsir Putusan Mahkamah Konstitusi." *Legislasi Indonesia* 13, no. 02 (2016): 111–20. https://doi.org/https://doi.org/10.54629/jli.v13i2.105.

Al-Fatih, Sholahuddin. "Interpretation Of Open Legal Policy By The Constitutional Judges In Judicial Review Of Parliamentary Thresholds." *Diponegoro Law Review* 6, no. 2 (2021). https://doi.org/10.14710/dilrev.6.2.2021.231-246.

Asshiddiqie, Jimly. *Pengujian Formil Undang-Undang di Negara Hukum*. Jakarta: Konstitusi Press, 2020.

Bima, Muhammad Rinaldy, dan John Tumba Jacob. "The Age Threshold for Presidential Nominations in the Perspective of Dignified Justice Theory: Why is there a Court of Family (Mahkamah Keluarga) Issue?" *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 3 (2023). https://doi.org/10.29303/ius.v11i3.1301.

Buana, Mirza Satria. "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court." *Constitutional Review* 6, no. 1 (2020). https://doi.org/10.31078/consrev612.

Carle, Susan D. "The Failed Idea of Judicial Restraint: A Brief Intellectual History." *Law and Social Inquiry* 49, no. 1 (2024). https://doi.org/10.1017/lsi.2023.66.

Dewi Andriani. "Term of Office of Constitutional Judges and Its Implications for the Independence of Judicial Power." *JUSTICES: Journal of Law* 3, no. 1 (2024). https://doi.org/10.58355/justices.v3i1.40.

Eddyono, Luthfi Widagdo. "The Constitutional Court and Consolidation of Democracy in Indonesia." *Jurnal Konstitusi* 15, no. 1 (2018). https://doi.org/10.31078/jk1511.

Faiz, Pan Mohamad. *Amendemen Konstitusi Komparasi Negara Kesatuan dan Negara Federal*. Depok: Rajawali Pers, 2019.

Fikri, Sultoni, Baharuddin Riqiey, Muhammad Iffatul, dan Miftaqul Janah. "Problematika Konstitusionalitas Presidential Threshold di Indonesia." *Jurnal Hukum Positum* 7, no. 1 (2022): 1–24. https://doi.org/https://doi.org/10.35706/positum.v7i1.6643.

Fuller, Lon L., dan Kenneth I. Winston. "The Forms and Limits of Adjudication." *Harvard Law Review* 92, no. 2 (Desember 1978): 353. https://doi.org/10.2307/1340368.

Hadi, Syofyan. "The Influence of Theorie Von Stufenbau Der Rechtsordnung in the Indonesian Legal System." *DiH: Jurnal Ilmu Hukum*, 14 Juli 2024, 202–10. https://doi.org/10.30996/dih.v20i2.10989.

Hadi, Syofyan, Wiwik Afifah, Istriani, dan Baharuddin Riqiey. "Implementation of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Study in Bedahlawak Village, Jombang Regency)." *DiH: Jurnal Ilmu Hukum* 20, no. 1 (2024). https://doi.org/https://doi.org/10.30996/dih.v20i1.9589.

Hufron, Sultoni Fikri, Syofyan Hadi, dan Baharuddin Riqiey. "Regional Head Election Post-MK Decision Number 60/PUU-XXII/2024 in the Constitutional Law Landscape." *Legality : Jurnal Ilmiah Hukum* 33, no. 1 (2025). https://doi.org/https://doi.org/10.22219/ljih.v33i1.39064.

Indra, Mexsasai, Geofani Milthree Saragih, dan Mohamad Hidayat Muhtar. "Strength of

Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia." *Jurnal Konstitusi* 20, no. 2 (2023). https://doi.org/10.31078/jk2026.

Iriani, Dewi, Muhammad Fauzan, dan Esti Ningrum. "Constitutional Court Judges' Interpretation Regarding the Limitation on the Presidential and Vice-Presidential Term of Office." *Jurnal Jurisprudence* 13, no. 1 (2023). https://doi.org/10.23917/jurisprudence.v13i1.1835.

Irwansyah, dan Ahmad Yunus. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2020.

Kelsen, Hans. *Pure Theory of Law*. New Jersey: The Lawbook Exchange, 2008.

Kholis, Nur. "Parliamentary Threshold and Political Rights Limitation." *Journal of Law and Legal Reform* 1, no. 3 (2020). https://doi.org/10.15294/jllr.v1i3.37963.

Kramer, Larry D., dan Richard E. Lang. "Judicial supremacy and the end of judicial restraint." *California Law Review*, 2012.

Mamta Devi. "The Role of Judicial Activism in Shaping Constitutional Law of India." *EPRA International Journal of Multidisciplinary Research (IJMR)*, 2024. https://doi.org/10.36713/epra15921.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2021.

Mas'udah, Al Mas'udah Al. "The Presidential Threshold As An Open Legal Policy In General Elections In Indonesia." *Prophetic Law Review* 2, no. 1 (2020). https://doi.org/10.20885/plr.vol2.iss1.art3.

Maslul, Syaifullahil. "Progresifitas Mahkamah Konstitusi Dalam Pengujian Batasan Usia Perkawinan." *AL-HUKAMA'* 12, no. 1 (18 Juni 2022): 127–40. https://doi.org/10.15642/alhukama.2022.12.1.127-140.

Mochtar, Zainal Arifin. *Kekuasaan Kehakiman Mahkamah Konstitusi dan Diskursus Judicial Activism Vs Judicial Restraint*. *Depok: Rajawali Pers*. Vol. 1, 2021.

Perbawa, I Ketut Sukawati Lanang Putra. "Legal Policy in the Decision of the Constitutional Court and the Formation of Law." *Journal of Law and Sustainable Development* 11, no. 12 (2023). https://doi.org/10.55908/sdgs.v11i12.2179.

Prasetio, Rizki Bagus, dan Febri Sianipar. "The Relevance of the Application of the Presidential Threshold and the Implementation of Simultaneous Elections in Indonesia." *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021). https://doi.org/10.30641/dejure.2021.v21.267-284.

Riqiey, Baharuddin. "Pemilihan Kepala Daerah oleh Dewan Perwakilan Rakyat Daerah Pasca Putusan MK No. 85/PUU-XX/2022." *Constitution Journal* 2, no. 1 (2023). https://doi.org/10.35719/constitution.v2i1.42.

Riqiey, Baharuddin. "Penujukkan Kepala Daerah oleh Presiden dalam Perspektif Demokrasi." *Seminar Nasional-Kota Ramah Hak Asasi Manusia* 3, no. 1 (2023).

Riqiey, Baharuddin. "Urgensi Pembatasan Waktu Pengujian Perppu Oleh Mahkamah Konstitusi." *Jurist-Diction* 6, no. 4 (2023). https://doi.org/10.20473/jd.v6i4.45660.

Riqiey, Baharuddin, dan Syofyan Hadi. "Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives." *Mimbar Keadilan* 17, no. 1 (16 November 2023): 1–16. https://doi.org/10.30996/mk.v17i2.9635.

Riqiey, Baharuddin, dan Muhammad Ahsanul Huda. "Interpreting Article 22(2) of the 1945 Constitution of the Republic of Indonesia Post Constitutional Court Decision 54/PUU-XXI/2023." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 4, no. 1 (31 Januari 2024): 24–37. https://doi.org/10.15294/ipmhi.v4i1.76687.

Riqiey, Baharuddin, dan Miftaqul Janah. "Election Omnibus: Efforts to Realize Legal Certainty in General Elections in Indonesia." *Mimbar Keadilan* 18, no. 1 (2025). https://doi.org/https://doi.org/10.30996/mk.v18i1.11989.

Rishan, Idul. "Doubting the Impartiality: Constitutional Court Judges and Conflict of

Interest." *Jurnal Jurisprudence* 12, no. 1 (2022). https://doi.org/10.23917/jurisprudence.v12i1.1058.

Rishan, Idul, Sri Hastuti Puspitasari, dan Siti Ruhama Mardhatillah. "Amendment to Term of Office of Constitutional Court Judges in Indonesia: Reasons, Implications, and Improvement." *Varia Justicia* 18, no. 2 (2022). https://doi.org/10.31603/variajusticia.v18i2.7236.

Satriawan, Iwan, dan Tanto Lailam. "Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang." *Jurnal Konstitusi* 16, no. 3 (2019): 559. https://doi.org/10.31078/jk1636.

Shakti, Airlangga Gama, Maharani Wicahyaning Tyas, dan M. Lutfi Rizal Farid. "The Integration of Judicial Review in Indonesia." *Syiah Kuala Law Journal* 6, no. 3 (2023). https://doi.org/10.24815/sklj.v6i3.26940.

Situmorang, Hendro Dahlan. "Kritik DPR, Pakar Hukum Sebut MK Jadi Keranjang Sampah." Berita Satu, 2022. https://www.beritasatu.com/nasional/1007481/kritik-dpr-pakar-hukum-sebut-mk-jadi-keranjang-sampah/all.

Steuer, Max. "Democracy, Procedural and Social Rights, and Constitutional Courts in Hungary and Slovakia." *Constitutional Review* 9, no. 1 (2023). https://doi.org/10.31078/consrev912.

Subekti, Rahayu, Zufar Maulana Ar-Razaq, dan Saiful Hamdi. "The Execution of Decision Constitutional Court Which Makes an Open Legal Policy Regarding Elections in Indonesia," 2023. https://doi.org/10.2991/978-2-38476-148-7_24.

Sulistyowati, Tri, Ali Rido, dan M. Imam Nasef. "Constitutional Compliance Solution to Law Testing Rulings in the Constitutional Court." *Jambura Law Review* 3, no. Special issue (2021). https://doi.org/10.33756/jlr.v3i0.10735.

Syarifudin, Wiwit Pratiwi, dan Sherly Nelsa Fitri. "The Implication of Presidential Threshold as an Open Legal Policy in Indonesia's General Election." *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS* 06, no. 11 (7 November 2023). https://doi.org/10.47191/ijmra/v6-i11-09.

Tulkens, Françoise. "Judicial Activism v Judicial Restraint: Practical Experience of This (False) Dilemma at the European Court of Human Rights." *European Convention on Human Rights Law Review*, 2022. https://doi.org/10.1163/26663236-bja10048.

Turkut, Emre. "Emergency Powers, Constitutional (Self-)Restraint and Judicial Politics: the Turkish Constitutional Court During the COVID-19 Pandemic." *Jus Cogens* 4, no. 3 (2022). https://doi.org/10.1007/s42439-022-00064-7.

Villiers, Bertus de, Saldi Isra, dan Pan Mohamad Faiz. *Courts and Diversity*. Leiden: Brill | Nijhoff, 2024. https://doi.org/10.1163/9789004691698.

Yasin al Arif, M., Wahlulia Amri, dan Inda Dzil Arsyi Makiin. "Constitutionality of Open Legal Policy Making Law Number 3 of 2022 Concerning the State Capital in the Perspective of Siyasa Dusturiyyah." *KnE Social Sciences*, 2024. https://doi.org/10.18502/kss.v9i2.14995.

Yulianita, Erida Putri, Radian Salman, dan Rizky Ramadhan. "Konstitusionalitas Persetujuan Dewan Perwakilan Rakyat pada Pengisian Jabatan Publik yang Tidak Diatur dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Amnesti: Jurnal Hukum* 6, no. 1 (2024). https://doi.org/10.37729/amnesti.v6i1.4080.