

## From Guardians to Threats? Abusive Judicial Review and Public Distrust

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**Abstract.** This article investigates the crisis of public trust in Indonesia's Constitutional Court, triggered by a series of controversial decisions that suggest the practice of abusive judicial review. It focuses on three pivotal rulings, Decision No. 90/PUU-XXI/2023, that collectively reveal a pattern of judicial behavior aligned with executive interests, undermining judicial independence and constitutional integrity. Utilizing a normative legal research method with statute, conceptual, and analytical approaches, the study critically examines how judicial overreach, ethical breaches, and procedural irregularities have contributed to institutional decay. The findings indicated that the Constitutional Court has shifted from its role as a counter-majoritarian institution to a political instrument, eroding legal certainty and democratic accountability. The involvement of justices in conflicts of interest, particularly in election-related cases, has intensified public skepticism and revealed systemic weaknesses in judicial appointment and oversight mechanisms. This paper argued that such decisions constitute a form of "abusive judicial review" that threatens Indonesia's constitutional democracy. To restore judicial legitimacy, structural reforms are imperative, emphasizing transparent judicial recruitment, permanent ethical oversight bodies, and stronger civil society engagement. The article concluded that without substantial reform, the erosion of public trust may further delegitimize the Court as a guardian of the Constitution.

**Keywords:** Abusive Judicial Review, Constitutional Court, Judicial Integrity, Legal Reform, Public Trust.

**Abstrak.** Artikel ini mengkaji krisis kepercayaan publik terhadap Mahkamah Konstitusi Indonesia, yang dipicu oleh serangkaian putusan kontroversial yang menunjukkan praktik peninjauan kembali yang sewenang-wenang. Artikel ini berfokus pada tiga putusan penting: Putusan No. 90/PUU-XXI/2023, yang secara kolektif mengungkap pola perilaku peradilan yang selaras dengan kepentingan eksekutif, yang merusak independensi peradilan dan integritas konstitusional. Dengan menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan analitis, studi ini secara kritis mengkaji bagaimana penyalahgunaan wewenang peradilan, pelanggaran etika, dan penyimpangan prosedural telah berkontribusi pada pembusukan kelembagaan. Temuan penelitian menunjukkan bahwa Mahkamah Konstitusi telah bergeser dari perannya sebagai lembaga kontra-mayoritas menjadi instrumen politik, yang mengikis kepastian hukum dan akuntabilitas demokratis. Keterlibatan hakim dalam konflik kepentingan, khususnya dalam perkara terkait pemilu, telah meningkatkan skeptisisme publik dan mengungkap kelemahan sistemik dalam pengangkatan hakim dan mekanisme pengawasan. Tulisan ini berargumen bahwa putusan-putusan tersebut merupakan bentuk "peninjauan kembali yang sewenang-wenang" yang mengancam demokrasi konstitusional Indonesia. Untuk memulihkan legitimasi peradilan, reformasi struktural sangat penting dengan menekankan rekrutmen peradilan yang transparan, badan pengawas etik yang permanen, dan keterlibatan masyarakat sipil yang lebih kuat. Artikel ini menyimpulkan bahwa tanpa reformasi substansial, erosi kepercayaan publik dapat semakin mendelegitimasi Mahkamah Konstitusi sebagai penjaga Konstitusi.

**Kata Kunci:** Peninjauan Kembali yang Abusif, Mahkamah Konstitusi, Integritas Peradilan, Reformasi Hukum, Kepercayaan Publik.

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## INTRODUCTION

The Constitutional Court of the Republic of Indonesia occupies a vital role within Indonesia's post-reform constitutional framework. Established under the Third Amendment to the 1945 Indonesian Constitution, the Court serves as an independent guardian of constitutional supremacy. Its primary functions include conducting judicial review, resolving institutional disputes, overseeing the dissolution of political parties, and adjudicating electoral conflicts. Given the profound political implications of these responsibilities, the Court's legitimacy fundamentally depends on its independence, impartiality, and utmost adherence to the rule of law to maintain public trust and institutional integrity.<sup>1</sup>

However, in recent years, the Court's legitimacy has eroded significantly, reflected in public opinion surveys, scholarly critiques, and media scrutiny, particularly in light of several controversial decisions, including Decisions No. 90/PUU-XXI/2023. For instance, the most prominent controversy arose from Decision No. 90/PUU-XXI/2023, issued on 16 October 2023, which modified the minimum age requirement for presidential and vice-presidential candidates. The Court permitted individuals under 40 with prior elected office experience to compete, granting this exception despite thirteen petitions. This decision facilitated the nomination of Gibran Rakabuming Raka, the 36-year-old Mayor of Surakarta and son of President Joko Widodo, as vice-presidential candidate alongside Prabowo Subianto. The controversy was intensified by Chief Justice Anwar Usman's refusal to recuse himself from the case despite being Gibran's uncle, triggering allegations of conflict of interest, judicial bias, and institutional capture. Critics contend that this decision enabled political dynasties and weakened fair electoral competition.<sup>2</sup>

Collectively, these decisions are perceived as undermining constitutional and democratic principles. The Court has been accused of effectively acting as a "rubber

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<sup>1</sup> Luh Putu Vera Astri Pujayanti et al., "Indonesia's Constitutional Court: Bastion of Law Enforcement and Protector of Human Rights in The Reform Era," *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 17, no. 1 (2024): 35–49, <https://doi.org/10.21107/pamator.v17i1.24128>.

<sup>2</sup> Munif Rochmawanto, Suisno, and Zainal Hamdan Sakuroikan, "Age Limit For Presidential and Vice Presidential Candidates in the Constitutional Court Decision Number 90/PUU-XXI/2023; A Legal Approach," *Jurnal Independent* 12, no. 2 (2024): 188–99, <https://doi.org/10.30736/ji.v13i2.328>.

stamp” for executive interests by eroding public trust in the judiciary’s role as a guardian of democracy. This pattern of judicial manipulation has contributed to a significant decline in public trust toward the Court.<sup>3</sup> The backlash against the Court’s decisions is not isolated but rather reflects broader concerns regarding its vulnerability to political interference and its failure to uphold judicial independence and impartiality. Such doubts are further intensified by a series of ethical violations involving Constitutional Court justices, ranging from Akil Mochtar’s bribery conviction in 2013 to misconduct allegations against Justices Arief Hidayat, Patrialis Akbar, M. Guntur Hamzah, and, most recently, Anwar Usman.<sup>4</sup> These incidents reveal systemic weaknesses in the Court’s recruitment and oversight mechanisms, including opaque appointment procedures and inadequate enforcement of ethical standards, which have allowed individuals of questionable integrity to exercise significant constitutional authority.<sup>5</sup>

The ongoing legitimacy crisis of the Constitutional Court has attracted considerable scholarly attention. For instance, Adelia Yuliana and colleagues have conducted empirical research demonstrating statistically significant correlations between controversial judicial decisions and a decline in public trust toward the judiciary.<sup>6</sup> Meanwhile, Dewi Sulastri and colleagues have offered critical analyses of the judicial selection process and ethical oversight mechanisms, highlighting structural vulnerabilities that permit political interference.<sup>7</sup> Furthermore, Enika Maya Oktavia and colleagues have advanced the theoretical framework of abusive judicial review, conceptualizing it as a systemic phenomenon in which courts cease to function as impartial arbiters and instead become instruments for regime consolidation through

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<sup>3</sup> Herlambang P Wiratraman, “Constitutional Struggles and the Court in Indonesia’s Turn to Authoritarian Politics,” *Federal Law Review* 50, no. 3 (2022): 314–30, <https://doi.org/10.1177/0067205X221107404>.

<sup>4</sup> Fikri Muhammad and Daruaji Kusuma, “Legal Review of Corruption Crimes Committed by Chief Justice of the Constitutional Court,” *Law Journal Borobudur International* 1, no. 1 (2024): 1–15, <http://lawjournalborobudurinternational.com/index.php/LJBI/article/view/17>.

<sup>5</sup> Rozana Sukma Dewi, Avien Zakaria, and Aghnia Safana Ilmi, “Ethical Supervision of Judges to Improve the Integrity of the Constitutional Court,” *Journal of Indonesian Constitutional Law* 1, no. 3 (2024): 221–45, <https://doi.org/10.71239/jicl.v1i3.29>.

<sup>6</sup> Adelia Yuliana et al., “Analisis Tingkat Kepercayaan Publik terhadap Mahkamah Konstitusi Pasca Putusan Nomor 90/PUU-XXI/2023,” *Jurnal Hukum Statuta* 3, no. 2 (2024): 74–91, <https://doi.org/10.35586/jhs.v3i2.9095>.

<sup>7</sup> Dewi Sulastri et al., “Institutional Integrity and Challenges in the Indonesian Constitutional Court Institution,” *Jurnal Media Hukum* 32, no. 1 (2025): 40–58, <https://doi.org/https://doi.org/10.18196/jmh.v32i1.24100>.

selective constitutional interpretation.<sup>8</sup> Despite these valuable contributions, much of the existing literature tends to address public perception, normative critique, or ethical concerns in isolation, lacking a comprehensive institutional analysis.

To address this gap, the present article undertakes a critical examination of abusive judicial review as a broader legal-political strategy that jeopardizes both judicial integrity and democratic governance. This research focuses specifically on the implications of Decisions No. 90/PUU-XXI/2023, while also scrutinizing structural weaknesses within the Court, such as politicized recruitment processes and insufficient oversight mechanisms that facilitate such decisions. The article aims to assess whether these recent decisions signify a departure from the Court's constitutional mandate and to explore how they contribute to the ongoing erosion of public trust in the judiciary.

## METHODOLOGY

This research employs a normative legal method, focusing on doctrinal analysis of constitutional principles and judicial behavior in Indonesia. Employing a statute approach, the research systematically examines the 1945 Indonesian Constitution and relevant statutory frameworks governing the Constitutional Court, while a conceptual approach engages with foundational doctrines such as judicial independence, impartiality, and abusive judicial review to contextualize institutional conduct. Furthermore, an analytical approach is utilized to critically assess the Court's recent decisions in light of established theoretical frameworks. Legal materials including statutory texts (e.g., the 1945 Indonesian Constitution, Law No. 24 of 2003 concerning the Constitutional Court as amended, MK Regulation No. 02/PMK/2003, MK Regulation No. 9/PMK/2006, and DKPP Regulation No. 2 of 2017), Constitutional Court decisions (especially No. 90/PUU-XXI/2023 and related cases), and scholarly literature are collected through comprehensive document analysis and examined qualitatively to identify patterns of judicial abuse and political alignment.

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<sup>8</sup> Enika Maya Oktavia, Mely Noviyanti, and Dalpin Safari, "Potret Abusive Judicial Review Di Masa Pemerintahan Presiden Joko Widodo," *Jurnal Legislatif* 7, no. 2 (2024): 131–51, <https://doi.org/10.20956/jlv7i2.35506>.

## RESULT AND DISCUSSION

### Abusive Judicial Review in Practice? A Critical Reading of Key Constitutional Court Decisions

As articulated by scholars such as Dixon and Landau, abusive judicial review is described as a phenomenon where courts, rather than acting as neutral arbiters protecting democracy, intentionally use their interpretive powers to undermine the foundational elements of democratic governance. This process does not typically involve overt violations of the law. Instead, it relies on the manipulation of judicial authority and the strategic deployment of legal reasoning to legitimize outcomes that serve the interests of dominant political actors, thereby eroding the democratic minimum core.<sup>9</sup>

In the context of the Constitutional Court of the Republic of Indonesia, this theoretical framework is increasingly relevant. The Court now faces mounting criticism for engaging in practices consistent with abusive judicial review. Rather than restraining authoritarian impulses, the Court has, in several high-profile cases, facilitated democratic backsliding by issuing decisions that, while formally legal, effectively consolidate executive power and weaken democratic safeguards. This trend is most notably reflected in Decision No. 90/PUU-XXI/2023, which altered the minimum age requirement for presidential and vice-presidential candidates. In this case, the legal reforms served to benefit incumbents or their affiliates, raising significant concerns about the Court's neutrality, institutional capture, and judicial independence. Susi Dwi Harijanti has characterized the decision as a clear manifestation of abusive judicial review, whereby the Court exceeded both its constitutional jurisdiction and procedural safeguards to advance a politically expedient outcome. This judicial behavior reflects not merely a passive legitimization of an anti-democratic political decision, but a more troubling phenomenon: the active judicial engineering of

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<sup>9</sup> David Landau, "Courts Are Not Enough: Independent Accountability Institutions and the Protection of Democracy in the United States," *SSRN Scholarly Paper*, 2025, 1–83, <https://doi.org/10.2139/ssrn.5165178>.

constitutional norms to facilitate anti-democratic objectives. In such instances, courts do not merely act as passive arbiters but as direct agents of constitutional regression.<sup>10</sup>

The case thus exemplifies what contemporary constitutional theory refers to as a form of “strong” or “aggressive” judicial review. In this mode of adjudication, the judiciary imposes its will with minimal, if any, deference to the constitutional judgment of democratically elected legislative or executive actors.<sup>11</sup>

This approach is particularly susceptible to abusive capture when wielded in authoritarian or hybrid democratic contexts. Aspiring authoritarian actors often find themselves constrained by the formal rigidity of democratic constitutions, especially where key provisions, such as electoral qualifications or term limits, are entrenched and insulated through “tiered” amendment procedures. As formal constitutional amendments become increasingly difficult due to heightened thresholds and supermajoritarian requirements, the judiciary becomes an alternative institutional vehicle through which authoritarian agendas can be pursued indirectly but effectively.<sup>12</sup>

While this represents a “strong” form of abusive judicial review characterized by active judicial overreach, it is important to recognize that abusive judicial review also manifests in “weak” forms. In such cases, the Court may not overtly impose its will but instead act as a passive instrument, rubber-stamping executive or legislative actions that erode democratic norms and rights. These “weak” forms involve judicial acquiescence or selective enforcement, whereby courts lend legitimacy to anti-democratic measures without robust scrutiny or resistance. Both strong and weak abusive judicial reviews undermine the judiciary’s role as an impartial guardian of

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<sup>10</sup> Ngudi Astuti and Dewi Setyarini, “The Advancement of Gibran in Political Contestation as Vice President of the 2024 Election in the Perspective of Political Ethics of the Indonesian Nation,” *Journal of Social Science (JoSS)* 3, no. 1 (2024): 1174–95, <https://doi.org/10.57185/joss.v3i1.273>.

<sup>11</sup> Jeremy Waldron, “The Crisis of Judicial Review,” *SSRN Scholarly Paper*, 2024, <https://doi.org/10.2139/ssrn.4763558>.

<sup>12</sup> Oran Doyle and Rachael Walsh, “Constitutional Amendment and Public Will Formation: Deliberative Mini-Publics as a Tool for Consensus Democracy,” *International Journal of Constitutional Law* 20, no. 1 (2022): 398–427, <https://doi.org/10.1093/icon/moac013>.

constitutional democracy. Still, they differ in the degree and manner of judicial engagement in facilitating authoritarian or illiberal agendas.<sup>13</sup>

These patterns of abusive judicial review, whether strong or weak, are not unprecedented. Across various jurisdictions, the Court has been instrumentalized in supporting executive overreach or ignoring democratic violations. In the realm of constitutional adjudication, the Court oscillates between two interpretive philosophies: judicial activism and judicial restraint. Judicial activism manifests when the Court adopts a proactive stance in invalidating statutory provisions deemed inconsistent with the 1945 Indonesian Constitution. While such interventions may serve as a corrective mechanism to uphold constitutional supremacy, they risk morphing into an abuse of judicial authority when exercised without sufficient doctrinal grounding or institutional restraint. This situation is particularly problematic in fragile democracies, where courts may become entangled in political agendas under the guise of constitutional guardianship. Conversely, judicial restraint reflects a more conservative orientation in which the judiciary defers to the legislature and intervenes only in cases where constitutional violations are unambiguous. This approach underscores respect for the separation of powers and seeks to preserve democratic legitimacy by limiting judicial discretion in policy-laden domains. The tension between these paradigms is central to assessing whether judicial review mechanisms reinforce or erode constitutional order, particularly in jurisdictions where institutional checks are already compromised.<sup>14</sup>

Procedurally, the Court failed to adhere to fundamental norms of judicial conduct, particularly in the context of election-related adjudication. The Court disregarded the Purcell Principle, a well-established doctrine that counsels against judicial interventions in the midst of electoral processes, in order to preserve electoral stability and avoid confusion among voters and electoral administrators. Additionally, the

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<sup>13</sup> Tommaso Pavone and Øyvind Stiansen, “The Shadow Effect of Courts: Judicial Review and the Politics of Preemptive Reform,” *American Political Science Review* 116, no. 1 (2022): 322–36, <https://doi.org/10.1017/S0003055421000873>.

<sup>14</sup> Geofani Milthree Saragih, Mirza Nasution, and Dan Eka N A M Sihombing, “Judicial Review by the Constitutional Court: Judicial Activism vs. Judicial Restraint in the Perspective of Judicial Freedom; [Judicial Review oleh Mahkamah Konstitusi: Judicial Activism vs. Judicial Restraint dalam Perspektif Kebebasan Kehakiman],” *Jurnal Konstitusi* 22, no. 1 (2025): 39 – 65, <https://doi.org/10.31078/jk2213>.

Court displayed inconsistency in its application of the “ne bis in idem” principle. It failed to undertake a thorough evaluation of the petitioners' legal standing, contrary to the stipulations of Article 51 of Law No. 24 of 2003 on the Constitutional Court. The handling of the petition's withdrawal also deviated from procedural requirements as articulated in Article 35 of the same law, further highlighting deficiencies in procedural compliance. This article posits that such procedural violations, when analyzed systematically alongside ethical breaches, reveal not merely isolated judicial missteps but a deliberate institutional shift demonstrating how procedure itself is being strategically manipulated to enable political outcomes.<sup>15</sup>

Compounding these procedural irregularities was the presence of a serious ethical concern. Chief Justice Anwar Usman, who presided over and participated in the adjudication of the case, is the brother-in-law of President Joko Widodo. Given that the Court's decision directly benefited President Widodo's son, Gibran Rakabuming Raka, who, at the time, held the position of Mayor of Surakarta and was subsequently nominated as a vice-presidential candidate, the Chief Justice's failure to recuse himself gave rise to a substantial appearance of a conflict of interest. It has been widely interpreted as a breach of judicial ethics and impartiality, as defined under the Bangalore Principles of Judicial Conduct and reinforced in MK Regulation No. 02/PMK/2003 on the Code of Ethics and Judicial Conduct of Constitutional Court Justices.<sup>16</sup>

Substantively, the decision raises critical concerns regarding legal consistency and democratic principles. The Court failed to offer adequate legal justification for its departure from earlier decisions such as Decisions No. 29/PUU-XXI/2023, 51/PUU-XXI/2023, and 55/PUU-XXI/2023, which had upheld the legislature's authority to determine the eligibility criteria for presidential and vice-presidential candidates under the doctrine of open legal policy. The new decision departed from this stance

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<sup>15</sup> Simon Butt and Prayekti Murharjanti, “What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia,” *International Journal of Constitutional Law* 20, no. 1 (2022): 428–53, <https://doi.org/10.1093/icon/moac014>.

<sup>16</sup> A Resopijani and Yohanes Baptista Neonbeni, “Ethical Violation by the Chairman of the Constitutional Court against Indonesian Law and Democracy,” *Journal of Multidisciplinary Academic Business Studies* 1, no. 3 (2024): 335–432, <https://doi.org/10.35912/jomabs.v1i3.2147>.



by introducing an exception to the minimum age requirement of 40 years, allowing individuals with regional executive experience to run despite being below the prescribed age. However, this exception lacked evidentiary grounding and was not supported by a comprehensive record in the proceedings, thereby introducing legal ambiguities and undermining the consistency of the Court's jurisprudence.<sup>17</sup>

The implications of those decisions go beyond technical legal concerns; they strike at the heart of democratic accountability and institutional integrity. The perception that the Court manipulated its interpretive function to benefit particular political figures has triggered widespread public skepticism and undermined trust in the judiciary. The invocation of the maxim *salus populi suprema lex esto*, the welfare of the people shall be the supreme law, was arguably employed as a rhetorical justification for what in substance amounted to a politicized judgment. Instead of serving as a safeguard for the public interest, the principle was arguably instrumentalized to legitimize a decision that reinforces executive interests at the expense of judicial neutrality.<sup>18</sup>

These developments also intersect with the ethical responsibilities of election organizers and their adherence to the Code of Ethics as stipulated under Article 1, point 4, and Article 22 of DKPP Regulation No. 2 of 2017. This regulation emphasizes that moral principles and ethical considerations must guide election organizers in their conduct. Sanctions for ethical breaches include warnings, temporary suspension, or permanent dismissal. By analogy, Court justices are similarly bound by principles of propriety and impartiality. Reports have been filed with the Honorary Council of the Constitutional Court alleging that Chief Justice Anwar Usman violated these ethical standards by participating in a decision from which he should have been disqualified due to his familial relationship with a direct beneficiary of the ruling.<sup>19</sup>

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<sup>17</sup> Juanda and Nina Zainab, "Delinquency of Constitutional Court Decision Number 90/PUU-XXI/2023 on Age Limit Requirements for Presidential and Vice Presidential Candidature," *Siber International Journal of Advanced Law (SIJAL)* 2, no. 2 (2024): 75–87, <https://doi.org/10.38035/sijal.v2i2.124>.

<sup>18</sup> Gilda R Daniels, "Democracy's Distrust: The Supreme Court's Anti-Voter Decisions as a Threat to Democracy," *The Yale Law Journal* 134 (2025): 1062–98, <https://www.yalelawjournal.org/forum/democracys-distrust-the-supreme-courts-anti-voter-decisions-as-a-threat-to-democracy>.

<sup>19</sup> Totok Yanuarto et al., "Legal Certainty in the Decisions of the Honorary Council of the Constitutional Court: A Case Study of Chairman Anwar Usman's Ruling," *Mimbar Keadilan* 17, no. 2 (July 10, 2024): 154–63, <https://doi.org/10.30996/mk.v17i2.11012>.

Other justices, including Deputy Chief Justice Saldi Isra and former Chief Justice Arief Hidayat, also expressed strong dissents that referenced the ethical and political implications of the decision, indirectly criticizing Anwar Usman's conduct.<sup>20</sup> These dissents, while doctrinal in form, conveyed broader concerns about the erosion of ethical boundaries within the Court. The fallout from this case has not only diminished the credibility of the Court as an independent constitutional guardian but has also intensified calls for institutional reform to restore public confidence and reinforce the rule of law. To evaluate these decisions as instances of abusive judicial review, it is instructive to apply the criteria proposed by Landau and Dixon. The following table distills these criteria and illustrates how they manifest in the Indonesian context:

**Table 1. Indicators of Abusive Judicial Review in Constitutional Court of the Republic of Indonesia Decisions**

<b>Indicator of Abuse</b>	<b>Manifestation in Practice</b>
<b>Undermining Democratic Minimum Core</b>	Alters rules of electoral fairness; facilitates the candidacy of specific elite actors with familial ties to the President.
<b>Strategic Alignment with Executive Interests</b>	Rulings timed to benefit incumbent regime actors, particularly in pre-election contexts.
<b>Court Capture &amp; Conflict of Interest</b>	Chief Justice's familial relationship with beneficiary candidate; refusal to recuse; subsequent ethical sanction.
<b>Instrumental Use of Legal Mechanisms</b>	Justification relies on a vague interpretation of the "experience" clause; no clear legislative intent or necessity.
<b>Suppression of Judicial Dissent</b>	Public and media framing downplays dissenting opinions of justices; decisions are presented as unanimous or neutral.
<b>Doctrinal Overreach (Positive Legislator Role)</b>	The court acts beyond its mandate by creating exceptions not grounded in legal text, violating its "negative legislator" function.
<b>Erosion of Procedural Transparency</b>	Lack of clear disclosure of deliberative process; absence of public reasoning mechanisms.

<sup>20</sup> Nurus Zaman et al., "Questioning the Constitutional Court Decision Regarding the Age Limit of Presidential and Vice-Presidential Candidates," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHdS)* 9, no. 2 (2024): 540–60, <https://doi.org/10.22373/petita.v9i1.299>.

<b>Public Distrust and Perceived Illegitimacy</b>	Sharp decline in trust survey data shows drop from 70% (2014) to 48% (2023); the majority perceives bias in rulings.
<b>Legal Outcomes Benefitting Regime Affiliates</b>	Decisions directly favor individuals and institutions politically aligned with the executive.
<b>Weak Ethical Infrastructure</b>	The ethics council operates only reactively and lacks structural power for ongoing oversight.

*Source: Author’s Analysis*

These indicators illustrate a systematic pattern of judicial behavior that prioritizes regime stability over constitutional fidelity. Rather than acting as an impartial check on majoritarian overreach, the Court becomes, to borrow Landau and Dixon’s phrase, a "strategic tool" cloaked in legality but weaponized for political gain. The most troubling consequence of this judicial drift is the erosion of public trust, a foundational element in sustaining the rule of law. Judicial legitimacy is not solely derived from legal authority but from perceived impartiality and integrity. When courts are seen as serving political agendas, the public’s willingness to comply with rulings diminishes.<sup>21</sup>

**The Crisis of Judicial Distrust: Unraveling Erosion of Judicial Independence in Indonesia**

The Constitutional Court of the Republic of Indonesia was established to guarantee the checks and balances among the branches of power and to uphold constitutional supremacy, as mandated by Articles 24 and 24C of the 1945 Indonesian Constitution. Judiciary independence is a fundamental principle of the *Rechtsstaat*, or rule of law, and is at the core of this institutional framework.<sup>22</sup>

However, in recent years, this ideal has increasingly come under siege. Systemic political encroachments, opaque judicial appointments, and a series of controversial rulings have cast serious doubt on the impartiality and integrity of the Court. This institutional regression is not merely anecdotal. For instance, the Court’s approval

<sup>21</sup> Tom Ginsburg and Aziz Z. Huq, “How to Save a Constitutional Democracy,” *International Journal of Constitutional Law* 16, no. 4 (December 31, 2018): 1352–57, <https://doi.org/10.1093/icon/moy107>.  
<sup>22</sup> Idul Rishan, “The Politicizing of Judicial Independence: Cases and Controversy in Indonesian Constitutional Court’s,” *South East Asian Journal of Advanced Law and Governance (SEAJ ALGOV)* 1, no. 2 (November 26, 2024): 31–48, <https://doi.org/10.22146/seajalgov.v1i2.15535>.

rating tracked by Kompas Research and Development over 20 surveys since 2015 has shown a steady decline, culminating in a historic low of 50% in December 2023.<sup>23</sup> This trend illustrates a measurable erosion of public trust over time. Such a decline is emblematic of a broader legitimacy crisis that threatens not only the authority of the Court but the very foundation of constitutional governance in Indonesia.

This legitimacy crisis is exemplified by Constitutional Court Decisions No. 90/PUU-XXI/2023, both of which reflect patterns of abusive judicial review that strategically aligned with executive interests. The latter controversially lowered the presidential and vice-presidential age threshold to accommodate the candidacy of the President's son, triggering allegations of constitutional engineering and conflict of interest, especially as Chief Justice Anwar Usman, a close relative, refused to recuse himself. These rulings not only undermined legal certainty and equal political opportunity but also intensified public distrust, evidenced by survey data showing 61% of respondents viewed the decisions as politically biased, revealing the Court's drift from constitutional guardianship toward instrumentalization by dominant political forces.

From a constitutional theory standpoint, this development represents a violation of the principle of constitutionalism, which demands that legal and ethical norms constrain all state actions. According to Alexander Bickel's theory of the "counter-majoritarian difficulty," courts are entrusted precisely to resist momentary political pressures and to uphold enduring constitutional values. When the judiciary capitulates to political influence, it ceases to function as a counter-majoritarian institution and instead legitimizes transient majoritarian will. The Court, once a bulwark against authoritarianism, is now perceived by many as complicit in perpetuating it.<sup>24</sup>

The dismissal of Chief Justice Anwar Usman by the Constitutional Court's Ethics Council in 2023 due to his failure to recuse himself in Decision No. 90/PUU-XXI/2023, which directly benefited his nephew, exposed a profound ethical and institutional

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<sup>23</sup> Agnes Rita Sulistyawaty, "Citra MK Berada Di Titik Terendah Sejak 2015," <https://www.kompas.id/baca/video/2023/12/19/citra-mk-berada-di-titik-terendah-sejak-2015>, 2023.

<sup>24</sup> Ip. Eric C, "The Democratic Foundations of Judicial Review under Authoritarianism: Theory and Evidence from Hong Kong," *International Journal of Constitutional Law* 12, no. 2 (April 1, 2014): 330–53, <https://doi.org/10.1093/icon/mou026>.

crisis within Indonesia's constitutional judiciary. Despite the existence of ethical instruments such as MK Regulation No. 9/PMK/2006 and the adoption of the Bangalore Principles, their implementation remains superficial and reactive. The ruling in question controversially revised the age requirement for presidential and vice-presidential candidates, creating an ad hoc exception that facilitated the candidacy of Gibran Rakabuming Raka, son of President Joko Widodo. This procedural and ethical breach illustrates a clear instance of abusive judicial review, where judicial power is repurposed to serve political objectives rather than constitutional fidelity. The refusal of Chief Justice Usman to disqualify himself despite a manifest conflict of interest undermined legal certainty (*rechtszekerheid*) and gravely impaired the Court's legitimacy as a guardian of democratic principles.

Ethical transgressions within the judiciary have a corrosive effect on public trust. First, they diminish public trust in the integrity of judicial institutions. Second, they contribute to the erosion of democratic legitimacy by undermining faith in the judicial process, which in turn may negatively affect institutional performance indices. Third, repeated or high-profile ethical breaches can significantly damage the judiciary's reputation, both domestically and internationally. For instance, Levendusky et al. found that public perception of the U.S. Supreme Court has become increasingly polarized following controversial rulings, signaling a deep crisis of legitimacy and a decline in institutional trust.<sup>25</sup>

Public trust in the judiciary is fundamentally contingent upon the ethical integrity and institutional conduct of constitutional judges, as exemplified in Indonesia's recent Constitutional Court decisions. In Decision No. 90/PUU-XXI/2023, the Court's modification of the presidential and vice-presidential age requirement amidst an undisclosed familial conflict of interest revealed serious breaches of judicial ethics and procedural norms, undermining both legal certainty and electoral fairness. These cases illustrate a pattern of abusive judicial review wherein the Court operates not as a bulwark against authoritarian encroachment, but as a facilitator of regime

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<sup>25</sup> Matthew Levendusky et al., "Has the Supreme Court Become Just Another Political Branch? Public Perceptions of Court Approval and Legitimacy in a Post- *Dobbs* World," *Science Advances* 10, no. 10 (March 8, 2024), <https://doi.org/10.1126/sciadv.adk9590>.

consolidation under the veneer of legality. Ethical violations, doctrinal overreach, and institutional partiality in such decisions directly corrode public confidence, revealing a judiciary increasingly detached from its normative function and vulnerable to politicization, thus deepening the legitimacy crisis at the heart of Indonesia's constitutional democracy.<sup>26</sup>

Moreover, the legitimacy of electoral outcomes constitutes a cornerstone of democratic governance. A credible election process requires that its rules, procedures, and results be universally accepted not only by political elites and contesting candidates but also by the general populace. When judicial decisions that shape electoral eligibility are tainted by ethical violations or conflicts of interest, the broader legitimacy of the electoral process itself is called into question. This dynamic poses a direct threat to democratic stability and public confidence in constitutional governance.<sup>27</sup>

Restoring public trust requires more than cosmetic reforms or rhetorical commitments. It necessitates a re-constitutionalizing of the judiciary anchored in transparent selection processes, strengthened ethics enforcement, and robust civil oversight. Institutions such as the Honorary Council of the Constitutional Court and the Board of Ethics for Constitutional Justices must not operate on an ad hoc basis, but be restructured into independent, permanent bodies with investigatory autonomy and enforcement power.<sup>28</sup> Furthermore, judicial education must emphasize not only doctrinal mastery but also civic responsibility and ethical fortitude.

In closing, the Court stands at a critical juncture. It can either reclaim its role as the guardian of the Constitution or continue down a path that renders it a legal facade for political experience. The crisis of legitimacy it faces today is not merely a reputational issue; it is a constitutional emergency. As the late Justice William J. Brennan once stated, "The Constitution will endure as a viable system of government only so long

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<sup>26</sup> Yogi Prasetyo, Alfalachu Indiantoro, and Aries Isnandar, "Ethical Criticism of Constitutional Court Decision Number.90/PUU-XXI/2023 Concerning Minimum Age Limits for Presidential and Vice Presidential Candidates," *Constitutionale* 5, no. 1 (September 6, 2024): 53–66, <https://doi.org/10.25041/constitutionale.v5i1.3431>.

<sup>27</sup> Ginsburg and Huq, "How to Save a Constitutional Democracy."

<sup>28</sup> Yoyon Mulyana Darusman, Elmer Micu Soriano, and Bhanu Prakash Nunna, "Strengthening Judicial Commission Authority in Indonesia Judicial Power Institutions, Link to Trias Politica Theory," *Jurnal Dinamika Hukum* 24, no. 1 (April 22, 2024): 73, <https://doi.org/10.20884/1.jdh.2024.24.1.3987>.

as the people and their institutions genuinely believe in its values.” In the Indonesian context, that belief is waning, and it is the Court’s paramount responsibility to restore it. In legal theoretical terms, this development aligns with the rise of judicial populism, where courts increasingly depart from their adjudicatory neutrality and begin to reflect the preferences of dominant political forces under the guise of constitutional interpretation. The degeneration of the judiciary from an arbiter of rights to an enabler of power reflects the transition from a rule of law paradigm to a rule by law structure, where legal formalism is invoked to justify political hegemony.<sup>29</sup> Herlambang P. Wiratraman has aptly categorized this as a manifestation of authoritarian legalism, whereby constitutional mechanisms are formally adhered to while their substantive guarantees are hollowed out.

Indonesia has been familiar with this situation before. Comparative jurisprudence reveals a parallel trajectory in the Philippines under President Rodrigo Duterte, as examined in Dressel and Bonoan. During Duterte’s administration, the Philippine Supreme Court issued a series of politically sensitive rulings overwhelmingly favorable to the executive, including the burial of former dictator Ferdinand Marcos Sr. in the national heroes’ cemetery, the affirmation of martial law in Mindanao, the removal of Chief Justice Maria Lourdes Sereno, and the dismissal of petitions concerning Duterte’s health disclosure. Although instances of dissenting opinions and judicial activism persisted, the overarching trend indicated increasing judicial deference in politically salient cases, reinforced by patterns of factional voting that aligned closely with presidential appointments.

This comparison underscores a crucial point: judicial independence is not solely a function of constitutional text, but of political culture, appointment mechanisms, and the internal resilience of the judiciary to external pressures.<sup>30</sup> In both Indonesia and the Philippines, courts have become increasingly susceptible to informal political loyalties and elite patronage networks, reducing their capacity to function as

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<sup>29</sup> Dian A H Shah, “Dismantling Democratic Change in Asia: Modalities and Weapons of Choice,” *International Journal of Constitutional Law* 22, no. 4 (December 29, 2024): 997–1030, <https://doi.org/10.1093/icon/moae088>.

<sup>30</sup> Adriaan Bedner and Ward Berenschot, “Legal Mobilisation and Civil Society,” in *Routledge Handbook of Civil and Uncivil Society in Southeast Asia* (London: Routledge, 2023), 81–98, <https://doi.org/10.4324/9780367422080-6>.

autonomous institutions. In such environments, voting alignment among justices often mirrors the political affiliation of their appointing authorities, thereby eroding the structural independence that is vital to any constitutional democracy.

The implications for constitutional law and judicial governance are profound. When judicial appointments are politicized and decision-making processes are perceived as influenced by executive interests, the judiciary risks transforming from a neutral adjudicator to a strategic political ally.<sup>31</sup>

This degeneration of judicial integrity suggests that legal independence must be protected not only through statutory guarantees but also through the establishment of institutional cultures of accountability, transparent appointment processes, and robust ethical oversight. Absent these protections, public trust in judicial institutions will continue to decline, and legal legitimacy will become performative rather than substantive.

### **Restoring Constitutional Legitimacy: Challenges and Prospects**

The legitimacy of a constitutional court lies not in the text it interprets, but in the trust it sustains through its conduct. In transitional and fragile democracies like Indonesia, the Constitutional Court was envisioned as a stabilizing force, a forum of principled deliberation and legal integrity. Yet, the current erosion of its perceived neutrality, combined with allegations of political partiality, underscores a fundamental crisis: the gap between formal constitutional authority and public constitutional legitimacy.<sup>32</sup>

In fragile democracies, courts must adopt "constitutional humility," a normative stance that actively resists the temptation to become vehicles of political validation and acknowledges the limits of judicial power, as Rosalind Dixon admirably argues.<sup>33</sup> This principle is particularly important in post-authoritarian regimes, where judicial legitimacy must be established through procedural transparency, ethical consistency, and doctrinal coherence. Nevertheless, the Indonesian experience illustrates an

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<sup>31</sup> M Beni Kurniawan, "Filling the Position of Constitutional Court Judge and Its Corraletion With the Independence of Judges (Comparative Study of Some Countries)," *JURNAL CITA HUKUM* 6, no. 2 (December 5, 2018): 253–76, <https://doi.org/10.15408/jch.v6i2.4739>.

<sup>32</sup> Ginsburg and Huq, "How to Save a Constitutional Democracy."

<sup>33</sup> Rosalind Dixon, *Responsive Judicial Review* (Oxford University PressOxford, 2023), <https://doi.org/10.1093/oso/9780192865779.001.0001>.



inverted trajectory: judges have progressively practiced judicial maximalism under the guise of progressive constitutionalism, rather than reducing their institutional reach, resulting in decisions that frequently favor the regime's interests at the expense of constitutional democracy.<sup>34</sup> This trend indicates a concerning shift from the judiciary's traditional function as a counter-majoritarian institution to the instrumental application of constitutional interpretation for political consolidation.

This distortion calls for institutional reform along three critical vectors: selection, ethics, and societal oversight. Reforming the judicial selection process is central to restoring independence. At present, the tripartite mechanism, where appointments are made by the President, Parliament, and the Supreme Court, has proven susceptible to political capture. Comparative practice suggests the adoption of a Judicial Appointments Commission model, composed of representatives from the legal academy, bar associations, and civil society, to ensure merit-based and ideologically neutral nominations.

Ethical integrity must also be systemically reinforced. Indonesia's current framework, which relies on the Honorary Council of the Constitutional Court, is reactive, ad hoc, and lacks structural autonomy. Additionally, decision transparency must be elevated: all dissenting opinions should be formally acknowledged, internal deliberations summarized publicly, and hearings made consistently accessible.<sup>35</sup>

To meaningfully reverse the crisis of legitimacy afflicting Indonesia's Constitutional Court, reform must address the institutional root causes of public distrust. First, the judicial appointment mechanism must be redesigned to ensure merit-based selection is insulated from partisan politics. Drawing from comparative models such as judicial appointment commissions, Indonesia should adopt a multi-stakeholder selection body comprising legal academics, bar associations, and representatives of civil society

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<sup>34</sup> Rosalind Dixon and David Landau, *Abusive Constitutional Borrowing* (Oxford University Press Oxford, 2021), <https://doi.org/10.1093/oso/9780192893765.001.0001>.

<sup>35</sup> Melea Lewis and Philip Stenning, "Considering the Glenister Judgment: Independence Requirements for Anti-Corruption Institutions," *South African Crime Quarterly*, no. 39 (March 8, 2016), <https://doi.org/10.17159/2413-3108/2012/v0i39a847>.

to assess candidates based on competence, integrity, and independence rather than political affiliation.

Second, ethical oversight must be transformed from a reactive, ad hoc system into a permanent, independent institutional framework. A restructured Honorary Council should be granted autonomous investigatory and sanctioning powers, operate transparently, and be composed of both legal professionals and public representatives. It would allow ethical violations such as conflicts of interest or breaches of impartiality to be addressed proactively and impartially. Third, civil society must be elevated from a peripheral commentator to an institutionalized watchdog. Legal NGOs, academia, and media must have structured access to judicial review proceedings, including transparency in case deliberations, publication of dissenting opinions, and open hearings. Such engagement reinforces accountability and ensures that the judiciary remains responsive to democratic expectations. These reforms are not only technical necessities but constitutional imperatives to reestablish the Court's legitimacy as a guardian of the rule of law.

Additionally, civil society must be redefined as a constitutional monitor, as opposed to a peripheral observer. Transitional courts' legitimacy is a co-production; society must hold them accountable through sustained engagement, and the courts must execute their functions with integrity. Finally, Indonesia must reconceptualize the role of the Constitutional Court within its fragile democratic architecture. Rather than serving as an auxiliary to executive design, the Court must reassert its role as the principal guardian of the democratic process. It requires a retreat from overreach, a return to negative legislator principles, and a commitment to restraint. By narrowing its role to the core function of constitutional safeguarding, the Court can reestablish itself as a legitimate site of legal authority, not a performative instrument of power.

## CONCLUSION

This research concluded that the decline of public trust in the Constitutional Court of the Republic of Indonesia is fundamentally driven by the rise of abusive judicial review, a phenomenon wherein judicial power is strategically repurposed to

legitimize regime interests under the veneer of constitutional legality. The Court's controversial rulings, notably Decision No. 90/PUU-XXI/2023, exemplify how politicized judicial appointments, procedural opacity, and a reactive ethical framework have collectively undermined the Court's legitimacy as an impartial guardian of constitutional democracy. To reverse this institutional decay, three key reforms are imperative. First, judicial selection must be restructured through the establishment of a merit-based appointment mechanism, such as a Judicial Appointments Commission composed of representatives from academia, civil society, and the legal profession, ensuring transparency and ideological neutrality. Second, ethical oversight must be institutionalized via a permanent, independent ethical body with investigatory and sanctioning powers to prevent conflicts of interest and uphold judicial integrity. Third, civil society must be integrated as an active constitutional monitor, with guaranteed access to judicial processes, public deliberations, and structured channels for accountability. Only through these transformative reforms can the Constitutional Court reclaim its role as a counter-majoritarian institution committed to the rule of law and restore the waning public trust that is vital to Indonesia's democratic consolidation.

## COMPETING INTEREST

There is no conflict of interest in the publication of this article.

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