

Reformulation of Judicial Principles in Judicial Review Cases Based on Open Legal Policy by the Constitutional Court

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Received: 21 Jan 2026 | Revised 18 Feb 2026 | Accepted: 20 March 2026

ABSTRACT:

Background: In Indonesia's constitutional system, the Constitutional Court has the authority to review laws against the 1945 Constitution to ensure constitutional supremacy and protect citizens' constitutional rights. In practice, the Constitutional Court not only acts as a negative legislature, invalidating legal norms, but also, in some decisions, acts as a positive legislature through the application of the principle of judicial activism. However, the application of this principle often generates debate, particularly when it relates to norms of an open legal policy nature, which are essentially within the authority of the lawmakers.

Aims: This study aims to analyze the application of the principle of judicial activism by the Constitutional Court in cases of judicial review of laws related to the norm of open legal policy, and to examine the consistency of its application in constitutional judicial practice in Indonesia.

Methods: This study employs a juridical-normative research method with a case approach, a conceptual approach, and a comparative approach. Data were obtained through a literature review, encompassing primary legal materials in the form of legislation and Constitutional Court decisions, as well as secondary legal materials in the form of academic literature and legal doctrine. Data analysis was conducted qualitatively through a content analysis of Constitutional Court decisions related to the application of the principle of judicial activism.

Result: The research results show that the Constitutional Court has applied the principle of judicial activism in several of its decisions by formulating or adding new legal norms during the judicial review process. However, this principle has not been consistently applied, particularly in cases related to open legal policy norms. In some decisions, the Constitutional Court has refused to review these norms, arguing that this falls within the authority of the legislators, while in other decisions, the Constitutional Court has intervened in norms that constitute open legal policy.

Conclusion: This study concludes that the Constitutional Court's application of the principle of judicial activism still requires clearer parameters to avoid inconsistencies in its judicial review practices. Such clarity is crucial for maintaining a balance of power between the judiciary and the legislature and strengthening the Constitutional Court's role as a guardian of the constitution in a democratic state governed by the rule of law.

Keywords: judicial activism, judicial review, open legal policy, Constitutional Court, constitutional law

INTRODUCTION

Indonesia as a democratic country based on the principle of the rule of law places the constitution as the highest norm in the state system.(Adnan et al., 2022; Asadi & Sukurman, 2024; Muin, 2025)In this context, the Constitutional Court has a strategic role as the guardian of the constitution, ensuring that all laws and regulations are in line with the 1945 Constitution.(Ari et al., 2024; Ilham, 2024; Mawardi et al., 2025)The Constitutional Court's existence is the result of constitutional reforms aimed at strengthening the checks and balances mechanism and ensuring the protection of citizens' constitutional rights. One of this institution's primary powers is to conduct judicial review of laws against the constitution to ensure that all legislative policies do not conflict with the principles of justice and the rule of law.(Andiraharja, 2021; Safitri & Wibowo, 2023; Wijaya, 2023)In practice, the role of the Constitutional Court is becoming increasingly important due to the increasing public constitutional awareness and the high demand for constitutional legal dispute resolution mechanisms.

The urgency of judicial review studies is increasingly evident in the increasing number of cases handled by the Constitutional Court since its establishment in 2003. Data shows that judicial review cases are the most frequently filed type of case compared to other types of disputes. This situation reflects two factors simultaneously: increased public trust in the Constitutional Court as the guardian of the constitution and the issue of the quality of legislation, which often does not fully reflect the values of justice and legal certainty in society.(Kansil & Nadilatasya, 2024; Yuliana et al., 2024)The large number of requests for judicial review of laws also indicates that the legislative process in Indonesia still faces various challenges, such as regulatory disharmony, normative conflicts, and regulations that are unresponsive to social and political dynamics.

The increasing number of cases presents an opportunity for the Constitutional Court to play a more active role in filling legal gaps and ensuring the fulfillment of citizens' constitutional rights. In some cases, the Constitutional Court acts not only as a negative legislature, revoking statutory norms, but also as a positive legislature by formulating new norms through its decisions. This phenomenon is known as judicial activism, an approach in which judges play an active role in interpreting and even shaping legal norms to ensure substantive justice in society.(Agustine et al., 2023; Mustafa, 2021; Rozaq et al., 2024)This approach often arises when the legislative process is unable to respond quickly to evolving legal needs, leading the judiciary to step in to fill the gap.

However, previous studies have not explicitly examined the pattern of inconsistency in the Constitutional Court's application of judicial activism when dealing with open legal policy norms. Nor have they systematically identified the conceptual boundaries that distinguish legitimate judicial interpretation from excessive judicial intervention. Existing literature tends to discuss judicial activism in general or focus on isolated cases without providing an integrated analysis of how it is applied across different judicial decisions.

This study therefore offers a conceptual and analytical contribution by systematically examining Constitutional Court decisions, revealing patterns of inconsistency in the application of judicial activism, and formulating clearer parameters regarding its limits within the framework of a democratic rule of law (Rohmah, 2024; Subandri, 2024). This is expected to strengthen the theoretical discourse on the role of the judiciary, while providing practical guidance on maintaining the balance of power between the judiciary and the legislature.

Based on these issues, this study aims to analyze the status quo of the Constitutional Court's use of the principle of judicial activism in judicial review, particularly regarding norms that are open legal policy. Furthermore, this study also seeks to examine the rationale for using this approach and formulate a clearer concept regarding the limitations of the application of judicial activism within the

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framework of a democratic rule of law. Theoretically, this study is expected to contribute to the development of constitutional law studies, particularly regarding the role of the Constitutional Court in maintaining the balance of power. Meanwhile, practically, this study is expected to serve as a reference for policymakers and legal practitioners in formulating clearer parameters regarding the use of the principle of judicial activism in the constitutional justice system in Indonesia.

METHOD

Research Design

This research uses a juridical-normative approach to analyze legal principles, doctrine, and the practice of court decisions related to the application of judicial activism in judicial review cases by the Constitutional Court. This approach is used because the research focuses on the analysis of legal norms, constitutional interpretation, and the consistency of court decisions in addressing norms of an open legal policy nature.

This study employs three main approaches: the case approach, the conceptual approach, and the comparative approach. The case approach is used to analyze various Constitutional Court decisions related to judicial review, particularly those that demonstrate the application of the principle of judicial activism. The conceptual approach examines legal theories and doctrines related to the concepts of judicial activism, judicial restraint, and open legal policy. The comparative approach, meanwhile, compares judicial review practices across several countries to gain a more comprehensive perspective on the role of the judiciary in shaping legal norms.

Participant

This research utilizes legal data sources consisting of primary, secondary, and tertiary legal materials. Primary legal materials include various laws and Constitutional Court decisions relevant to the research, such as the 1945 Constitution of the Republic of Indonesia, the Law on the Constitutional Court, and several Constitutional Court decisions concerning judicial review of laws related to the concept of judicial activism.

Secondary legal materials consist of academic literature such as books, scientific journal articles, and legal doctrines discussing the theory of judicial activism, legal interpretation, and the concept of constitutional review of laws. Meanwhile, tertiary legal materials include supporting sources such as legal dictionaries, legal encyclopedias, and institutional reports related to constitutional judicial practice.

Instrument

The primary instrument in this research is a legal document analysis framework, which is used to identify and categorize various Constitutional Court decisions related to the application of the principle of judicial activism. This instrument is used to organize legal data based on several analytical indicators, such as the type of case, the basis for the judge's considerations, the form of the decision, and the implications of the decision for the formation of new legal norms.

Furthermore, this study uses a comparative legal analysis matrix to compare judicial review practices across countries. This matrix helps researchers identify similarities and differences in the application of the principle of judicial activism and the limits of judicial institutions' authority in shaping legal norms.

Data Analysis

The data analysis in this study was conducted using qualitative analysis of legal documents. The analysis process was carried out in several stages. The first stage was the identification and classification of legal data, namely collecting and grouping various Constitutional Court decisions relevant to the research topic. The second stage was content analysis, namely analyzing the legal considerations used by constitutional judges in deciding cases related to the norm of open legal policy. The third stage was comparative analysis, namely comparing the practice of judicial review in Indonesia with practices in other countries to gain a more comprehensive understanding of the application of the principle of judicial activism. The final stage was conceptual synthesis, namely drawing conclusions regarding the application of judicial activism in the practice of judicial review and formulating recommendations regarding the limitations of the use of this principle in the Indonesian constitutional system.

RESULTS AND DISCUSSION

Result

The research findings indicate that the practice of judicial review at the Constitutional Court has undergone significant development since its establishment. Judicial review has become the most common type of case, compared to disputes over the authority of state institutions and disputes over election results. This demonstrates that the Constitutional Court has become a primary instrument for upholding the constitutionality of laws and a platform for the public to advocate for their constitutional rights. The high number of judicial review cases also reflects growing public constitutional awareness and a high level of public trust in the constitutional court in resolving fundamental legal issues.

Research findings also indicate that in the practice of judicial review, the Constitutional Court does not always act as a negative legislature, merely annulling legal norms. In several decisions, the Constitutional Court also demonstrates a tendency to act as a positive legislature by formulating or adding new norms through court decisions. This practice is a manifestation of the application of the principle of judicial activism, an approach in which judges actively interpret and develop the law to fill normative gaps or guarantee the protection of citizens' constitutional rights. This approach is often used when there is a need for legal certainty that cannot be immediately met through the legislative process.

However, the research found that the Constitutional Court's application of the principle of judicial activism has not been entirely consistent, particularly in handling cases related to open legal policy norms. In several decisions, the Constitutional Court refused to review these norms, arguing that open legal policy is the authority of the legislators. However, in other decisions, the Constitutional Court instead used a judicial activism approach to amend or add norms that actually fall within the realm of legislative policy. This situation indicates an inconsistency in the use of the principles of judicial restraint and judicial activism in the practice of judicial review.

One of the key findings of this study relates to the controversial Constitutional Court ruling regarding the age requirements for presidential and vice-presidential candidates, outlined in Decision Number 90/PUU-XXI/2023. In this ruling, the Constitutional Court added alternative requirements for presidential and vice-presidential candidates not previously regulated by law. This ruling sparked widespread debate as it was perceived as expanding the Constitutional Court's authority to formulate legal norms, which should be the purview of the legislative body. This finding demonstrates that the practice of judicial activism in the context of judicial review in Indonesia still requires clearer parameters to avoid conflicts of authority between state institutions and to maintain the principle of separation of powers within the constitutional system.

Discussion

The results of the study show that the practice of testing laws in the Constitutional Court is not only limited to the negative function of the legislature, but in some cases has developed towards the positive function of the legislature. (Muhammad, 2025; Sari & Raharjo, 2022) This development occurred when the Constitutional Court not only annulled norms deemed unconstitutional but also added or formulated new norms through its decisions. This phenomenon reflects the application of the principle of judicial activism, which provides space for constitutional judges to play an active role in filling legal gaps and ensuring the protection of citizens' constitutional rights. (Alatas et al., 2024; Sabrina & Khalid, 2023).

However, research findings indicate that the Constitutional Court's application of the principle of judicial activism has not been entirely consistent, particularly in cases involving open legal policy norms. In some decisions, the Constitutional Court has chosen to use a judicial restraint approach, refusing to review the norms because they are considered lawmakers' policies. However, in other decisions, the Constitutional Court has intervened in norms that are open legal policy. This inconsistency indicates that there are no clear parameters regarding the limits of the use of the principle of judicial activism in the practice of judicial review. From the perspective of the theory of separation of powers, this situation has given rise to debate regarding the extent to which the judiciary can play a role in shaping legal norms. On the one hand, the judicial activism approach is seen as a mechanism capable of upholding the constitution and protecting citizens' constitutional rights. However, on the other hand, this practice has the potential to create a conflict of authority with the legislative body if the Constitutional Court is deemed to have exceeded its constitutional function. Therefore, clear boundaries are needed to ensure that the application of judicial activism remains in line with the principle of checks and balances in the constitutional system.

Furthermore, this study's findings demonstrate that the absence of such parameters has resulted in practical inconsistencies in Constitutional Court decisions, as evidenced by cases involving open legal policy. These inconsistencies create legal uncertainty and risk undermining public trust in the judiciary, as well as disrupting the balance of power between state institutions. Therefore, a clearer conceptual framework is a practical requirement as well as a theoretical necessity for ensuring the legitimacy and effectiveness of constitutional adjudication.

In summary, this study advances the discourse on judicial activism by shifting the focus from justification to limitation. It emphasises that the key issue is not whether judicial activism should exist, but how it can be regulated within a constitutional framework that balances the protection of rights with the principle of separation of powers.

Implications

This study has several practical implications for key figures within the constitutional system. For example, it highlights the need for the Constitutional Court to establish clearer interpretative guidelines, such as those relating to necessity, proportionality and institutional respect, to ensure the consistent application of judicial activism, particularly in cases involving open legal policy. For legislators, the findings emphasise the importance of improving the clarity and precision of statutory drafting to reduce legal ambiguity that could lead to excessive judicial intervention. For academics, the study provides a conceptual framework that can be developed into analytical tools for evaluating judicial decisions and refining the boundaries of judicial activism. Overall, these implications emphasise the importance of aligning judicial practice, legislative quality and academic discourse in order to maintain the balance of power within a democratic constitutional system.

Research contribution

Theoretically, this study contributes by proposing a conceptual framework of judicial activism based on the principles of necessity, proportionality and institutional respect. This framework offers clearer boundaries between judicial interpretation and legislative authority. In terms of methodology, it employs a systematic qualitative content analysis of Constitutional Court decisions, combined with a comparative approach. This provides a replicable model for examining inconsistency in judicial reasoning.

Limitations

This study has several limitations that require attention. First, it uses a juridical-normative approach that focuses on the analysis of legal documents and court decisions, thus not including an empirical analysis of judges' considerations in the decision-making process. Second, this study is limited to an analysis of a number of Constitutional Court decisions relevant to the research topic, thus not reflecting the full dynamics of judicial activism practices in all judicial review cases.

Suggestions

Further research is recommended to develop a more comprehensive approach by combining normative and empirical methods, allowing for a more in-depth examination of the factors influencing the Constitutional Court's application of the principle of judicial activism. Furthermore, future research could expand the comparative study to include judicial review practices in various countries to gain a broader understanding of the limits of judicial authority in shaping legal norms. Further research is also needed to formulate clearer indicators regarding the limits of judicial activism in relation to open legal policy norms in the Indonesian legal system.

CONCLUSION

This study concludes that the practice of judicial review at the Constitutional Court demonstrates significant developments in Indonesia's constitutional system. The Constitutional Court not only functions as a negative legislature, invalidating legal norms that conflict with the constitution, but in some cases also plays a positive role by formulating or adding new norms through its decisions. This phenomenon reflects the application of the principle of judicial activism, which aims to fill legal gaps and ensure the protection of citizens' constitutional rights when the legislative process is unable to respond quickly to legal needs.

However, research results indicate that the Constitutional Court's application of the principle of judicial activism has not been entirely consistent, particularly in cases related to open legal policy norms. In some decisions, the Constitutional Court has chosen to use a judicial restraint approach, refusing to review these norms, considering them to be within the authority of the legislators. However, in other decisions, the Constitutional Court has intervened in open legal policy norms by adding or formulating new ones. This inconsistency indicates that, to date, there are no clear parameters regarding the limits of the use of the principle of judicial activism in the practice of judicial review.

Based on these findings, this study emphasizes the importance of formulating clearer guidelines or parameters regarding the limitations of the use of the principle of judicial activism in judicial review, particularly regarding norms that constitute open legal policy. These clear limitations are necessary to ensure the Constitutional Court can continue to fulfill its role as guardian of the constitution without exceeding its constitutional authority and to maintain the balance of power between the judiciary and the legislature. Therefore, consistency in the application of the principle of judicial activism is a crucial aspect in strengthening the legitimacy of the Constitutional Court and ensuring the upholding of the principles of the rule of law and constitutional democracy in Indonesia.

AUTHOR CONTRIBUTION STATEMENT

TA contributed to the conceptualization of the study, data collection, data analysis, and writing the initial draft of the article. NSD contributed to research supervision, methodology development, analysis validation, and academic review and editing of the manuscript. Both authors have read and approved the final version of the published manuscript.

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