

THE PRACTICE OF DELGITIMIZATION DECISIONS COURT DUE TO THE INTERSECTION OF JUDICIAL REVIEW IN INDONESIA

Supriyadi A. Arief^{1*}, Sofyan Piyo^{**}, Ramadhan Usman^{***}, Janwar Hippy^{****},
Irlan Puluhulawa^{*****}

Fakultas Hukum Universitas Negeri Gorontalo

Abstract

The Post-Decision Intersection Between the Supreme Court and the Constitutional Court in Indonesia. The Constitutional Court Decision No. 70/PUU-XXII/2024 and the Supreme Court Decision No. 23/P/HUM/2024, both addressing the age eligibility requirements for candidacy in the 2024 simultaneous regional elections, have reignited tensions between two branches of judicial power. This tension is further exacerbated by the decision of the House of Representatives (DPR), through a Working Committee meeting, to favor the Supreme Court's ruling. This study aims to analyze the extent of the intersection between the Supreme Court (MA) and the Constitutional Court (MK) by examining their respective decisions. The analysis adopts a normative approach, relying on secondary data as the primary source, supported by statutory, case law, and conceptual approaches to address the core issues. The findings reveal that the overlap between the Supreme Court and the Constitutional Court in conducting judicial reviews of regulations has led to delegitimization between Supreme Court Decision No. 23/P/HUM/2024 and Constitutional Court Decision No. 70/PUU-XXII/2024. To address this issue, both courts must exercise judicial restraint, particularly regarding substantive matters with potential overlap between their jurisdictions. Such restraint is essential to prevent external parties or institutions from exploiting court decisions to advance their institutional agendas, thereby avoiding unnecessary institutional conflicts.

Keywords: decisions, supreme court, constitutional court, judicial restraint

A. Background

The establishment of the Constitutional Court (MK) in Indonesia's constitutional system is a mandate of the Third Amendment to the 1945 Constitution of the Republic of Indonesia (UUD 1945). The creation of the MK introduced a dual structure of judicial power in Indonesia, alongside the pre-existing Supreme Court (MA). Referring to Indonesia's written Constitution, namely the 1945 Constitution of the Republic of Indonesia, the presence of these two judicial branches is regulated in Chapter IX, particularly in Articles 24, 24A, and 24C.

Examining the substance of the 1945 Constitution, it states that judicial power is exercised by a Supreme Court and the courts under its jurisdiction within the general judiciary, religious judiciary, military judiciary, and state administrative judiciary, as well as by a Constitutional Court.² The construction of Article 24, paragraph (2) of the 1945 Constitution serves as

* arfa@ung.ac.id¹, **sofyanpiyo@ung.ac.id, ***ramadhanu_dosen@ung.ac.id,
****janwarhippy93@ung.ac.id, *****irlanpuluhulawa@ung.ac.id

² See article 24 paragraph(2) UUD 1945

the foundation for the existence of two judicial bodies within the judicial branch, positioned as equals, where the Supreme Court (MA) is not superior to the Constitutional Court (MK), and vice versa.

Specifically regarding the MK, established in Indonesia in 2003, it functions as a judicial body handling constitutional matters, with decisions that are final and binding in reviewing laws against the 1945 Constitution. This institutional role aims to uphold constitutional supremacy, ensuring it is implemented responsibly in line with the will of the people and democratic ideals. Fundamentally, the establishment of the MK is intended to safeguard and strengthen the constitutional basis of legislation, signifying that the MK is the sole institution authorized to interpret the Constitution and resolve disputes arising between state institutions.³

In alignment with the role of the Constitutional Court (MK), the Supreme Court (MA), as the highest court in the state judiciary, holds authority as stipulated in Article 24A, paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UD NRI 1945), which states: “The Supreme Court has the authority to adjudicate at the cassation level, to review regulations under laws against the law, and to exercise other authorities granted by law.” In addition to these powers, the MA serves as the highest court for all judicial branches. Moreover, all organizational, administrative, and financial matters of the MA and the courts under its jurisdiction fall under the authority of the MA.

The existence of these two judicial power institutions is inseparable from the institutional relationship between them. The relationship referred to by the author primarily concerns the authority explicitly established in the Constitution itself. Broadly speaking, the Constitution regulates the interactions between state institutions based on the principle of checks and balances, while also defining the legal relationship between the state and society, encompassing mutual rights and obligations (reciprocity).⁴ In this context, the Constitutional Court (MK), as one of the judicial power institutions in Indonesia, specifically assumes the role of the guardian of the Constitution and the sole interpreter of the Constitution of the Republic of Indonesia (the soul and the highest interpreter of the Constitution).

Although the MK's decisions, which are final and binding, reflect the Constitution and serve as the official and sole interpretation of it, these decisions are often not adhered to and are even challenged by parties dissatisfied with the MK's rulings. These parties seek justice through other judicial institutions, in this case, the Supreme Court (MA). This indicates that the MK's decisions frequently face various complexities and challenges at the implementation stage, even after being declared final.⁵

³ Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD* (Raih Asa Sukses, 2015).

⁴ King Faisal Sulaiman, *Politik Hukum Kekuasaan Kehakiman Indonesia | Perpustakaan Fakultas Hukum* (Yogyakarta: UII Press, 2017), [//hukumlib.untagsmg.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D5253](https://hukumlib.untagsmg.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D5253).

⁵ Ahmad Syahrizal, “Problem Implementasi Putusan MK,” *Jurnal Konstitusi* 4, no. 1 (2007).

Although, normatively, the Constitutional Court (MK) and the Supreme Court (MA) (and the subordinate judicial bodies under it) have distinct authorities, in practice, there are often overlaps and interactions related to the boundaries of their respective powers, and conflicts frequently arise between them.⁶ One example of the overlap, specifically related to the recent decisions from each of these judicial institutions, pertains to the age eligibility requirements for candidacy in the 2024 simultaneous regional elections.

This issue began when the Constitutional Court (MK), through Decision No. 70/PUU-XXII/2024, ruled on the Petition for Judicial Review of Law No. 10 of 2016 concerning the Regional Head Elections Law (UU Pilkada). The article being reviewed was Article 7, paragraph (2), letter e, which states: “The Candidate for Governor and Deputy Governor, Candidate for Regent and Deputy Regent, as well as Candidate for Mayor and Deputy Mayor, as referred to in paragraph (1), must meet the following requirements: e. be at least 30 (thirty) years old for Governor and Deputy Governor candidates, and 25 (twenty-five) years old for Regent and Deputy Regent candidates, as well as Mayor and Deputy Mayor candidates”.

In its ruling, the MK elaborated in its considerations that “after thoroughly and comprehensively considering the historical, systematic, and practical approach, as well as comparisons, Article 7, paragraph (2), letter e of Law 10/2016 is a norm that is clear and unambiguous.” Consequently, it ruled that the petitioner’s request was not legally justified. This decision also impacted the requirement that the age of the regional head candidate must be calculated at the time of the candidate pair’s designation.

However, the MK’s clarification of the age requirement for regional head candidates as regulated in Article 7, paragraph (2), letter e of the UU Pilkada does not align with the Supreme Court’s decision. This discrepancy occurred when the Supreme Court, through Decision No. 23/P/HUM/2024, ruled that the provision in Article 4, paragraph (1), letter d of the General Elections Commission Regulation (PKPU) No. 9 of 2020 conflicted with higher regulations, such as the UU Pilkada, and had no binding legal force unless it was interpreted as “at least 30 (thirty) years old for Governor and Deputy Governor candidates, and 25 (twenty-five) years old for Regent and Deputy Regent candidates or Mayor and Deputy Mayor candidates, calculated from the inauguration of the elected candidate pair”.⁷

The root of this issue is the lack of alignment between the decisions of each judicial body. This not only disrupts the principle of legal certainty embedded in judicial rulings, but it also undoubtedly affects public perception of every decision issued by these two judicial institutions. The situation becomes even more complex when the meeting of the People’s Representative Council (DPR), through the working committee (Panja) of the Draft Law

⁶ Budi Suhariyanto, “Masalah Eksekutabilitas Putusan Mahkamah Konstitusi Oleh Mahkamah Agung,” *Jurnal Konstitusi* 13, no. 1 (2016): 171–90.

⁷ “Putusan MAHKAMAH AGUNG 23 P/HUM/2024,” accessed February 5, 2025, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef21887b3c4de28717313630353533.html>.

(RUU) on the Fourth Amendment to Law No. 1 of 2015 regarding the Ratification of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors into Law, saw the majority of the factions in the Panja RUU Pilkada agree to adopt the age eligibility requirements for regional head candidates as stated in Supreme Court Decision No. 23/P/HUM/2024.⁸

This situation inevitably creates a negative contact between the Constitutional Court (MK) and the Supreme Court (MA). This not only harms one of the institutions, but also impacts both the MA and MK as judicial bodies and the general public, who place their 'hope for justice' in the decisions of these two courts.

B. Identified Problems

Based on the issues outlined above, the problem presented in this study is to what extent the intersection between the Supreme Court (MA) and the Constitutional Court (MK) can be positioned through their respective decisions?

C. Research Methods

The author will analyze the formulation of the problem normatively. Therefore, this study is categorized as normative research. Normative research, also known as doctrinal legal research, often conceptualizes law as what is written in legislation.⁹ Normative legal research is research conducted by examining library materials or secondary data. In analyzing the issues raised by the author, a legislative approach, case approach, and conceptual approach are used to address the problems outlined in the previous section.

D. Research Findings dan Discussions

1. The Relationship Between the Supreme Court and Constitutional Court

After the amendment of the 1945 Constitution, judicial power is no longer solely exercised by the Supreme Court as the highest judicial body in Indonesia, but has been supplemented by the Constitutional Court as one of the judicial institutions safeguarding the Constitution. Therefore, the regulation of the implementation of judicial power in the 1945 Constitution goes beyond the framework of legal norms; in practice, it also emphasizes the independence and autonomy of the

⁸ Ady Thea DA, "Baleg DPR Lebih Memilih Putusan MA Ketimbang MK Soal Batas Usia Calon Kepala Daerah," [hukumonline.com](https://www.hukumonline.com), accessed February 5, 2025, <https://www.hukumonline.com/berita/a/baleg-dpr-lebih-memilih-putusan-ma-ketimbang-mk-soal-batas-usia-calon-kepala-daerah-lt66c5d09a26ad4/>.

⁹ Joanedi Effendi, Johnny Ibrahim S. H. I. Jonaedi Efendi, S. H. Johnny Ibrahim, and M. M. Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018)., *Metode Penelitian Hukum Normatif Dan Empiris*, Depok: Prenadamedia Group, 2018. Hlm. 124.

judicial power as part of the state governance system. This is intended to ensure the administration of justice to uphold law and justice.¹⁰

The implementation of judicial power in Indonesia is carried out by two judicial bodies, both of which enforce the law and provide justice for every party that seeks to have their case or petition adjudicated. However, both the Supreme Court (MA) and the Constitutional Court (MK) have distinct roles, functions, and powers, as regulated in the 1945 Constitution.

Normatively, the provisions regarding judicial power in Indonesia are regulated in Articles 24, 24A, and 24C of the 1945 Constitution, with further details provided in Law No. 48 of 2009 concerning Judicial Power, Law No. 3 of 2009 amending Law No. 14 of 1985 on the Supreme Court, and Law No. 7 of 2020 amending Law No. 24 of 2003 on the Constitutional Court. Each of these laws serves as a further elaboration of the roles of the Supreme Court and the Constitutional Court, as well as their relationship.

The Constitutional Court and the Supreme Court are two important pillars and the final authorities in the law enforcement process within Indonesia's judicial system. The law enforcement processes are distinct because the Supreme Court enforces the law through a tiered judicial system, while the Constitutional Court enforces the law by safeguarding and ensuring that every legal policy does not contradict the constitution. Therefore, the constitutional amendment that divides judicial power between the Supreme Court and the Constitutional Court has made these two institutions complementary to each other, simultaneously upholding both the law and the constitution.

The presence of these two judicial bodies in Indonesia today is a key pillar in realizing the supremacy of law in the nation's governance. Therefore, in carrying out their duties and responsibilities, there is a guarantee of impartiality in judicial power, except in relation to the law and justice alone.¹¹ In relation to this, the Supreme Court (MA) fundamentally has the following powers:¹²

- 1) To examine and decide on cassation petitions and petitions for judicial reviews.
- 2) To provide legal advice to state institutions.
- 3) To provide legal advice to the President regarding the granting of clemency and rehabilitation.
- 4) To conduct a review of regulations under the law.

¹⁰ Mardona Siregar, "Kekuasaan Kehakiman: Hubungan Antara Mahkamah Agung, Mahkamah Konstitusi Dan Komisi Yudisial," *Jurnal Fakta Hukum (JFH)* 2, no. 2 (2023): 107–28.

¹¹ King Faisal Sulaiman, *Politik Hukum Kekuasaan Kehakiman Indonesia | Perpustakaan Fakultas Hukum*.

¹² "See Article 14 Paragraph(1), Article 24A Paragraph(1) UUD 1945, UU Kekuasaan Kehakiman, Dan UU Tentang Mahkamah Agung." (n.d.).

In its other functional roles, the Constitutional Court (MK), as a judicial body established after the amendment of the 1945 Constitution, has five institutional duties. These five duties are then classified into four powers and one obligation. The four powers are: to review the constitutionality of laws against the Constitution, to adjudicate disputes over the authority of state institutions as granted by the Constitution, to dissolve political parties, and to decide disputes regarding election results.¹³ Meanwhile, the sole obligation of the Constitutional Court (MK) is to issue a decision on the opinion of the House of Representatives (DPR) regarding alleged violations committed by the President and/or Vice President as stipulated in the 1945 Constitution.¹⁴

Tabel 1. Comparison of Functions and Powers of the Supreme Court (MA) and the Constitutional Court (MK)

Comparative Aspect	Supreme Court	Constitutional Court
Institutional Functions	Serving as a court of cassation while simultaneously overseeing the implementation of judicial processes in subordinate courts.	Upholding the supremacy of the constitution.
Institutional Authorities	Examining and deciding cases at the cassation level, reviewing regulations below the law against the law, and issuing rulings in disputes concerning the authority of state institutions.	Reviewing the constitutionality of laws, adjudicating disputes over the results of general elections, dissolving political parties, resolving disputes between state institutions, and issuing decisions on the dissolution of political parties as well as on the House of Representatives' opinions regarding alleged legal violations committed by the President or Vice President.

Based on the aforementioned explanation, the Constitutional Court (MK) is considered to hold an equal or equivalent position to the Supreme Court (MA), as stipulated in Article 24 Paragraph (2) of the 1945 Constitution. Both MK and MA function as independent judicial branches of power, separate from other branches of government, namely the executive (government) and the legislative (representative-deliberative institutions).¹⁵

The practice of judicial power exercised by the Supreme Court (MA) and the Constitutional Court (MK) has at least two implications,

¹³ “Article 24C Paragraph(1)” (n.d.).

¹⁴ “Article 24C Paragraph(2)” (n.d.).

¹⁵ Muhammad Abdul Aziz Nurambiya and Demson Tiopan, “Harmonisasi Antara Lembaga Yudikatif Mahkamah Konstitusi Dan Mahkamah Agung Dalam Dinamika Hukum Tata Negara: Analisis Terkait Keseimbangan Kekuasaan Di Indonesia,” *UNES Law Review* 6, no. 2 (2023): 5202–14.

namely:¹⁶ On one hand, this judicial power can be effectively exercised, wherein both institutions, as executors of judicial authority, can carry out their respective duties and functions properly without encountering jurisdictional overlaps that may create issues. On the other hand, the execution of a single judicial power by two or more institutions has the potential to result in overlapping jurisdictions or, at the very least, jurisdictional conflicts, which could ultimately lead to the ineffective implementation of the intended judicial authority.

The authority granted by the constitution to both the Supreme Court (MA) and the Constitutional Court (MK), according to Jimly Asshiddiqie, stems from their fundamentally different natures: the MA functions more as a court of justice, while the MK operates as a court of law.¹⁷ This theoretical perspective arises from the strong public interest involved in every dispute brought before the MK for constitutional review,¹⁸ in contrast, the MA often gives the impression that the cases brought before it are *ex parte* or voluntary in nature.¹⁹

However, upon a deeper examination of the substance of judicial authority as outlined in the 1945 Constitution, it becomes apparent that the boundaries between their roles as a court of justice and a court of law are not entirely absolute. This can be observed in the MK, which not only functions as a court of law but also acts as a court of justice, and in the MA, which conducts judicial review of regulations (albeit with certain limitations), a domain typically associated with a court of law, yet it cannot be fully constructed as purely a court of justice. Regarding this, Mahfud MD states that:

“MK adjudicates conflicts involving abstract regulations while also resolving disputes (conflicts) between individuals or institutions that are concrete in nature. Similarly, MA resolves disputes between individuals or institutions that are concrete, while also adjudicating conflicts between abstract regulations.”²⁰

In this context, the relationship or even the overlap between MA and MK becomes evident. Both institutions exercise judicial authority, and there exists an intersection in their powers to conduct judicial review, as both are endowed with this authority. However, the judicial review conducted by each institution differs in its scope: the MK reviews the constitutionality of laws against the 1945 Constitution,

¹⁶ Moh Mahfud, “Titik Singgung Wewenang Antara MA Dan MK,” *Jurnal Hukum Dan Peradilan* 4, no. 1 (2015): 1–16.

¹⁷ “Kedudukan Mahkamah Konstitusi Dalam Struktur Ketatanegaraan Indonesia | Mahkamah Konstitusi Republik Indonesia,” accessed February 5, 2025, <https://www.mkri.id/index.php?page=web.Berita&id=11779>.

¹⁸ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia (Edisi Kedua)* (Sinar Grafika, 2022).

¹⁹ *Ibid.*

²⁰ Mahfud, “Titik Singgung Wewenang Antara MA Dan MK.”

while the MA examines regulations beneath the level of laws against the respective laws.

This arrangement is a logical consequence of the third amendment to the 1945 Constitution, particularly Article 24C(1), which limits the MK's judicial review authority to the examination of laws against the Constitution. Meanwhile, Article 24A(1) stipulates that the MA has the authority to review regulations below the level of laws against laws.²¹

The relationship between MA and MK in the context of judicial review can intersect when the MA conducts a judicial review of regulations beneath the level of laws, while the MK simultaneously reviews the constitutionality of the related law. To address such instances, there are provisions requiring the MA to temporarily suspend the judicial review process brought before it.²² Moreover, any judicial review application submitted to the MK must be notified to the MA no later than seven days after the application is registered.²³

Although judicial decisions inherently involve differing arguments and interpretations by judges, these provisions foster harmony and legal certainty in the exercise of judicial power in Indonesia. It is worth noting that if there are differences in interpretation within MA decisions, the MA is restricted from interpreting the Constitution, as such authority lies exclusively with the MK.

Furthermore, the provision requiring the suspension of the judicial review process by the MA is also a consequence of the hierarchical system of regulations. According to Maruarar Siahaan, as quoted by Saldi Isra, the authority to review regulations, both by the MA and the MK, aims to uphold and enforce the principle of hierarchical norms.²⁴ The hierarchy of laws in Indonesia places the 1945 Constitution at the top, followed by other regulations, including laws. This automatically positions judicial decisions that interpret the 1945 Constitution as a reference for decisions interpreting regulations beneath it. Similarly, the 1945 Constitution must serve as the reference for the regulations beneath it. Therefore, the judicial review process conducted by the MA is closely linked, or even inseparable, from the decisions made by the MK, which have previously reviewed the law in question.

2. Intersection Through Court Decisions

²¹ Jimly Asshiddiqie, "Konstitusi Dan Konstitusionalisme Indonesia, Jakarta" (Konstitusi Press, 2005).

²² Initially, this provision obliged the Supreme Court to stop the judicial review, as stipulated in Law Number 24 of 2003 as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. However, based on Constitutional Court Decision Number 93/PUU-XV/2017, the phrase 'shall be terminated' does not have binding legal force as long as it is not interpreted as 'postponed the examination'.

²³ See Article 53 UU MK

²⁴ Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia (Edisi Kedua)*.

A country's judicial system cannot be separated from the legal system prevailing in that country. In other words, the judicial system is a subsystem of the country's legal system. Since Indonesia's legal system is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the judicial system must also be founded on the values of Pancasila and the articles contained in the 1945 Constitution.²⁵

The implementation of the judicial system in Indonesia places judges not merely as instruments of the law, but also as active participants in shaping the law. As law-makers, judges, within the framework of judicial power, have a close relationship with the constitution. This relationship does not always relate to reviewing (testing) the constitution but also includes interpreting it as a means of actualizing or updating the Constitution. Interpreting the Constitution may involve narrowing or broadening its provisions, particularly those of the 1945 Constitution.²⁶ Thus, judicial decisions and courts are an inseparable entity.

Judicial decisions, as the outcome of the judicial process, occur in the courts, and the courts serve as the place to seek justice. Therefore, judicial decisions must meet the demands of those seeking justice.²⁷ To determine the verdict, judges are obligated to delve into legal values, both those embedded in legislation and those emerging and developing in society. This position and role guide and reflect the judge as a representative of the state institution, carrying out its institutional functions through their rulings.

Court decisions that have acquired the force of law, also known as the principle of *Res Judicata Pro Veritate Habetur*, are universally accepted in almost all judicial bodies worldwide. According to Sudikno Mertokusumo, this principle means that a judge's decision must be considered correct. If false testimony is presented and the judge makes a ruling based on that false testimony, the decision is clearly not based on truthful testimony. However, it must still be deemed correct until it attains final legal force or is overturned by a higher court (in the case of an appeal or cassation).²⁸

The principle of *Res Judicata Pro Veritate Habetur* places the judge in a critical position in the law enforcement process within this country. Therefore, the quality of justice in every decision made by a judge heavily depends on the quality of their relationship or piety with

²⁵ Ihat Subihat, "SISTEM PERADILAN DI INDONESIA BERDASARKAN UUD NEGARA REPUBLIK INDONESIA TAHUN 1945," *Yustitia* 5, no. 1 (April 20, 2019): 27–62, <https://doi.org/10.31943/yustitia.v5i1.58>.

²⁶ Bagir Manan, *Memahami Konstitusi: Makna Dan Aktualisasi* (RajaGrafindo Persada, 2014).

²⁷ Fence M. Wantu, "Idée Des Recht Kepastian Hukum, Keadilan, Dan Kemanfaatan (Implementasi Dalam Proses Peradilan Perdata)," *Yogyakarta: Pustaka Pelajar*, 2011.

²⁸ Sudikno Mertokusumo, "Penemuan Hukum: Sebuah Pengantar," 2007.

God Almighty.²⁹ *Res Judicata Pro Veritate Habetur* is related to the actions of judges in examining and deciding a case, where the decision they render must be considered correct, regardless of its contents. As such, judicial decisions cannot be re-examined in light of what the court has ruled, unless a higher court renders a decision that annulled the previous ruling.

In practice, however, this principle becomes problematic when considering the decisions of the Constitutional Court (MK) and the Supreme Court (MA). Regarding the testing of legislation, the MK's rulings have a higher degree of constitutionality because the basis of its examination is the 1945 Constitution. Meanwhile, the MA is positioned beneath the MK, as its review is based only on laws. However, this distinction often becomes a root issue between the two judicial bodies. While the differences between the MA and MK are conceptually clear, in practice, there is much overlap in their duties, which complicates the execution of their functions.³⁰ This can be seen in the examples of decisions outlined in the background section.

By design, the MA is a judicial body that implements the *in dubio pro reo* principle, meaning that in case of doubt, the defendant must be proven guilty beyond a reasonable doubt, as it is better to release a guilty person than to convict an innocent one. The design of the MA is to correct errors in the lower judicial bodies in order to uphold the justice expected in an ideal perspective, one that cannot be refuted and truly satisfies the sense of justice.³¹

On the other hand, the MK is designed to ensure that its legal interpretations do not favor one interest but reflect the aspirations and needs of society as a whole. In this context, democracy becomes a crucial foundation, as it allows active participation from various stakeholders in the decision-making process. Decisions made by the MK are expected to be widely accepted by all parties, as they undergo an inclusive and transparent process that reflects democratic principles.³²

Considering the characteristics of court decisions, the MK has distinct characteristics as stated in Article 47 of the MK Law, which states, "The decision of the Constitutional Court has the force of law immediately upon being pronounced in an open plenary session." Based on this Article, according to Fajar Laksono, the final nature of the

²⁹ "Arti Asas Res Judicata Pro Veritate Habetur | Klinik Hukumonline," accessed February 5, 2025, <https://www.hukumonline.com/klinik/a/arti-asas-ires-judicata-pro-veritate-habetur-i-lt5301326f2ef06/>.

³⁰ Alasman Mpesau, "Kewenangan Badan Pengawas Pemilu Dalam Penanganan Pelanggaran Administrasi Ditinjau Dari Perspektif Sistem Peradilan Indonesia," *Audito Comparative Law Journal (ACLJ)* 2, no. 2 (2021): 74–85.

³¹ Adya Paramita Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi: Perspektif Konflik Dan Kolaborasi," *Jurnal Usm Law Review* 7, no. 2 (2024): 729–39.

³² *Ibid.*

decision shows at least three things:³³ First, the decision of the MK directly obtains legal force; Second, because it has legal force, the decision of the MK has legal consequences for all parties involved. All parties must comply with and implement the MK's decision. Third, as it is the first and final court, no further legal resource available.

A Constitutional Court decision, once pronounced in an open session, can have three powers: binding force, probative force, and executive force. These types of powers are known in civil procedural law theory and can also be applied in the procedural law of the Constitutional Court.³⁴

Thus, the MK's decisions have specific characteristics, with each decision having a progressive effect going forward and not retroactive. Therefore, all legal subjects are considered valid until the MK ruling, which will establish new legal subjects. In addition to creating new law, the MK's decision also contributes to the creation of the envisioned law (*Ius Constituendum*) in Indonesia's constitutional system.

The practices conducted by the MK and the MA, when examined through their respective decisions, have led to intersections that result in delegitimization of one of the court's rulings, as outlined in the background section. Misunderstanding their roles can lead to overlapping authority and institutional conflicts that undermine the stability of the legal system.³⁵

To address the intersection of decisions between the MA and MK, which leads to delegitimization of one of the judicial bodies' decisions, it is important to adopt a policy of judicial restraint. This entails mutual agreement to refrain from ruling on an issue that has already been decided by one of the courts. A similar practice of judicial restraint has been observed between the MA and MK in Italy to reduce confusion and ambiguity in legal cases.³⁶

Judicial restraint, according to Aharon Barak, is the principle that judges should refrain from creating new legal norms when adjudicating a case, in order to maintain a balance between conflicting social values. In other words, judicial restraint requires judges to interpret a law while first considering the legal policy of its creators. Meanwhile, Robert Posner describes judicial restraint as an effort by the judiciary to limit itself within the framework of the separation of powers principle. This means that judicial restraint is the effort by the judicial branch to avoid

³³ Fajar Laksono Soeroso, "Aspek Keadilan Dalam Sifat Final Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no. 1 (2014): 64–84.

³⁴ Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia (Edisi Kedua)*.

³⁵ Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi."

³⁶ Zaka Firma Aditya and Abdul Ghofar, "Relasi Mahkamah Konstitusi Dengan Mahkamah Agung: Masalah-Masalah Dan Cara Penanggulangannya," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 14, no. 1 (2023): 20–37.

adjudicating cases that might interfere with other branches of government.³⁷

In relation to judicial restraint, in Decision Number 22/PUU-XV/2017, the Constitutional Court stated that the principle of judicial restraint can be disregarded when there is a clear violation of morality, rationality, or when it causes intolerable injustice, contradicts political rights, the sovereignty of the people, and as long as such a policy does not exceed the authority of the lawmaker or constitute an abuse of power, and is not clearly in violation of the 1945 Constitution of the Republic of Indonesia.³⁸

The exception to judicial restraint should not necessarily limit its implementation in the Constitutional Court (MK) and the Supreme Court (MA), particularly regarding the intersection of decisions between the MA and MK. The issues surrounding decisions, as discussed in the background of this writing, actually open up space for judicial restraint from each judicial body. The act of restraint by judicial bodies is not intended to curb or prevent their progressiveness.

Such a step of judicial restraint is crucial to maintaining a conducive judicial atmosphere where the decisions of one body do not conflict with those of another, thus avoiding judgments of significant magnitude. Furthermore, with judicial restraint in place, there will be no disruption from other parties or institutions seeking to use court decisions to support their institutional policies. For example, the practice following the decisions of the MK and MA regarding the age requirements for regional head candidates, which led to turmoil in the legislature (DPR) choosing one ruling as precedent, further solidifies the importance of judicial restraint for each judicial body.

E. Conclusions

The implementation of judicial power in Indonesia, carried out by the Supreme Court (MA) and the Constitutional Court (MK) as mandated by Article 24, paragraph (2) of the 1945 Constitution, creates a relationship and even conflicts between MA and MK, particularly regarding their authority in judicial review. The existence of this authority becomes problematic when juxtaposing decisions from MK and MA, as seen in the Supreme Court Decision No. 23/P/HUM/2024 and Constitutional Court Decision No. 70/PUU-XXII/2024.

This issue leads to delegitimization of one of the court's decisions. Therefore, both the MA and MK need to exercise judicial restraint, particularly in matters where overlap between their respective domains arises. This act of restraint helps avoid disruption by other parties or institutions seeking to leverage court decisions to support their institutional policies.

³⁷ Wicaksana Dramanda, "Menggagas Penerapan Judicial Restraint Di Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no. 4 (2014): 617–31.

³⁸ Syaifullahil Maslul, "Judicial Restraint Dalam Pengujian Kewenangan Judicial Review Di Mahkamah Agung," *Jurnal Yudisial* 15, no. 3 (2022): 385–403.

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