

From Guardian of the Constitution to Interpreter of Social Justice: An Analysis of the Post-Reform Role of the Constitutional Court and the Threat of Its Politicization

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ABSTRACT

The birth of the post-reform Constitutional Court (MK) is often narrowly interpreted by the public as that of "Election Calculators" or guardians of constitutional procedures. This view overlooks the historical mandate of its establishment, namely as an antithesis to the failure to fulfill social justice during the New Order era. This research aims to show that the Constitutional Court's most critical role is not that of a passive constitutional guardian but rather that of an active interpreter and enforcer of social justice. The study uses normative legal research methods with a qualitative-philosophical approach. The argument is constructed using the structure of a "three-act drama": (1) exposing the status quo of the New Order legacy and the narrow view of the role of the Constitutional Court; (2) conducting a confrontation by analyzing four landmark decisions of the Constitutional Court (case studies of the Water Resources Law, the Job Creation Law, Streams of Trust, and PHPU 2019) as evidence of its role in interpreting substantive and procedural justice; (3) offering a resolution in the form of an analysis of the threat of politicization to this crucial role. The results show that the Constitutional Court has consistently expanded its role from judicial-procedural to judicial-substantive. Ironically, however, this role as an interpreter of social justice is now threatened by political intervention, an echo of the past that reform seeks to eradicate.

Keywords: Constitutional Court, Social Justice, State of Law, Post-Reform, Politicization

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INTRODUCTION

For most Indonesians, the name of the Constitutional Court (*Mahkamah Konstitusi*, MK) is synonymous with one thing: election disputes. Especially in political years, this institution is often seen as limited to "*Election Calculators*" or "*Dispute Referees*" whose main role is administrative-judicial, namely counting and deciding disputes over votes (Prasetyo, 2024). This view, while not entirely wrong, dangerously narrows its meaning. It ignores the philosophical roots and the much deeper historical mandate behind the establishment of the Constitutional Court (Bustamante et al., 2021).

The birth of the Constitutional Court after the 1945 Constitution Amendment was not just an addition to the country's highest institutions. It is an antithesis; a fundamental correction to the historical trauma of Indonesian constitutionality (Smith & Tan, 2021; Kurniawan & Setiawan, 2020). For 32 years under the New Order regime, the law was designed as an instrument of political stability and economic development, not as a tool of justice (Suharto, 2022; Lee & Hidayat, 2021). The principle of *rechtsstaat* (state of law) written in the constitution was, in practice, hijacked into a *machtsstaat* (state of power) (Prabowo & Mahfud, 2020; Goh & Tan, 2021). The interpretation of the 1945 Constitution was monopolized by the executive through the exploited concept of the "integralistic state," which essentially placed the interests of the state (as interpreted by the ruler) above the basic rights of citizens (Sari & Putra, 2022; Handayani & Lubis, 2020). As a result, social justice—the fifth precept of Pancasila and the purpose of the state—was the mandate most often sacrificed (Tjahjadi et al., 2020; Wibowo & Rahman, 2021).

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Existing scholarly discourse on the post-reform Constitutional Court can be broadly categorized into several streams. First, studies focusing on its institutional design and early role as a guardian of democratic procedures, such as in resolving electoral disputes (e.g., Prasetyo, 2024). Second, analyses examining specific landmark decisions, like the cancellation of the Water Resources Law (Salim, 2015) or the conditional unconstitutionality of the Job Creation Law. Third, works exploring the theoretical tension between judicial activism and restraint within the Indonesian context (Isra, 2023). While these studies provide valuable insights, a significant gap remains. There is a lack of comprehensive research that systematically connects the Court's transformative jurisprudential role—from a procedural guardian to an active interpreter of social justice—with the contemporary and escalating threat of its politicization. Most studies treat these as separate discourses: either celebrating the Court's progressive decisions or warning against political interference, without analytically linking its success in substantive interpretation to the subsequent political backlash it engenders.

This is where the "gap" of understanding lies. This paper proposes a thesis (claim) that the role of the Constitutional Court cannot and should not be reduced only to a procedural guardian or "Election Calculator" (Sari & Tan, 2020; Aditya & Wijaya, 2021). This paper argues that the most important role of the Constitutional Court—and one that is often overlooked—is as an active interpreter of social justice (Wibowo et al., 2022; Nugroho & Setiawan, 2021). The Constitutional Court inherited the historical task of "reinterpreting" the long-lost ideals of justice in New Order legal practice, especially in issues that touch on the economic, social, and cultural rights of the people (Rahardjo, 2020; Tan & Wibowo, 2021). The Constitutional Court is not a passive guardian of the constitution but an active interpreter who gives "life" to the mandate of social justice in the 1945 Constitution (Prabowo & Santoso, 2020; Marzuki & Setiawan, 2022).

To prove these claims, this paper will be composed using the structure of a "*three-act drama*." This structure is chosen to build a coherent and analytical argument, which moves from the status quo, continues to the confrontation of arguments, and closes with resolution (Motro, 2015; Scott, 2019). This structure is important to avoid writing that is merely descriptive, a common weakness in many legal articles in Indonesia (Wibisana, 2019).

Based on this background, this study aims: (1) to critically analyze the transformation of the Constitutional Court's role from a procedural "*election calculator*" to an active interpreter of social justice principles; (2) to examine through case studies how this interpretive role manifests in substantive, procedural, and civil justice domains; and (3) to investigate the causal link between the Court's assertive jurisprudence and the emerging threats of institutional politicization, drawing comparative lessons from global trends of democratic backsliding. The benefits of this research are twofold. Theoretically, it contributes to the literature on constitutional courts in transitional democracies by offering a framework that connects jurisprudential activism with political resilience. Practically, it provides a critical analysis for policymakers, civil society, and the public to recognize and defend the Constitutional Court's essential role against efforts to undermine its independence, thereby supporting the ongoing project of Indonesia's democratic and constitutional strengthening.

RESEARCH METHOD

This research is normative legal research, which is research that examines law as norms or rules that apply in society. This research does not examine law at the level of practical implementation or community behavior (empirical), but focuses on the coherence between legal norms and constitutional principles.

To answer the problem formulation, this study uses three approaches at once:

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1. Statute Approach: Examining the regulations that are the object of study, especially the 1945 Constitution, Law No. 7 of 2004 concerning Water Resources, Law No. 11 of 2020 concerning Job Creation, and the 1985 Political Law package.
2. Case Approach: Analyzing the *ratio decidendi* or legal reasons of judges in Constitutional Court decisions that have permanent legal force, namely Decision No. 85/PUU-XI/2013, Decision No. 91/PUU-XVIII/2020, Decision No. 97/PUU-XIV/2016, and Decision No. 01/PHPU-PRES/XVII/2019.
3. *Conceptual Approach*: Refers to the evolving views and doctrines of law, such as the concept of *Rechtsstaat*, Judicial Activism vs. Judicial Restraint, and Judicial Populism. This research uses secondary data consisting of:
 1. Primary Legal Materials: Consists of laws and regulations and court decisions as mentioned above.
 2. Secondary Legal Materials: Consists of legal textbooks, scientific journals, and articles that provide explanations of primary legal materials.
 3. Tertiary Legal Materials: A legal dictionary and encyclopedia that provides instructions and explanations of primary and secondary legal materials.

Techniques Data collection is carried out through library *research* by inventorying and classifying relevant legal materials. The collected legal materials are then analyzed qualitatively-prescriptively. This analysis aims to provide arguments for the results of the legal search and provide a prescription (suggestion) on what should be done (*das sollen*) regarding the role of the Constitutional Court in the future.

RESULTS AND DISCUSSION

Historical and Theoretical Dynamics: From *Machtsstaat* to the State of Law

As explained in the Introduction, this thesis is based on the argument that the Constitutional Court (MK) has a role as an active interpreter of social justice. To understand the urgency and depth of the role, we cannot immediately "jump" to the analysis of the verdict. We must first understand the "stage" on which the Constitutional Court was established. This stage is the *status quo* both the historical *status quo* that gave birth to it, and the *status quo* of public understanding that it now faces. This section will present the "Part I" of our argument: the "enemy" picture or conventional idea to be corrected.

Historical Legacy: The Distortion of the State of Law and the Neglect of Social Justice in the New Order Era

The birth of the Constitutional Court did not occur in a vacuum. It was the product of a monumental reform movement, fueled by the accumulation of deep disillusionment with the practice of the constitution during 32 years under the New Order regime. To understand why the Constitutional Court—and its authority to test laws—became so crucial, we must look back at how the legal instruments of the time were distorted from their purpose.

During the New Order era (1966-1998), the regime's main obsession was *political stability* devoted to *economic development*. In this framework, law is not positioned as an instrument of *justice*, but as an instrument of power and social *engineering*. Political formats and structures are designed to serve this stability, often by using legal procedures that are rooted in bureaucratic authoritarianism.

The foundation of this distortion is the misuse of the interpretation of the 1945 Constitution itself. The concept of *"integralistic state"* initiated by Soepomo in the BPUPKI session which actually aims for the state to guarantee the interests of the entire community, not individual or group—is misinterpreted. Under President Suharto, this concept was exploited as a justification for the concentration of absolute power in the hands of the President. The president acts on behalf of the "state" and the "public interest", which in practice often erodes

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the basic rights of the people and legitimizes an extremely powerful (*executive heavy*) and uncontrollable government.

The impact is very systemic. Democracy, which should be a mechanism of public control, is merely a "disguise". Political institutions, including parliament (DPR) and the judiciary, in practice fail to carry out the function of *checks and balances*. Public participation is silenced, and elections, instead of being a vehicle for democratic leadership succession, instead become an instrument to perpetuate power and the source of democratic decline. In such a system, a fundamental gap is born between "the misery in the hearts of the people and the greed of the rulers". It was this failure—the failure of the law to protect citizens, the failure of state institutions to carry out *checks and balances*, and the failure of the system to realize social justice—that triggered the 1998 reform movement. One of its main demands is a constitutional amendment to restructure power and guarantee the basic rights of citizens (Asshiddiqie, 2005).

It was from the womb of this reform that the Constitutional Court was established with one main mandate: to ensure that the distortions and abuses of the law that ignore the constitution and social justice will never be repeated.

Theoretical Foundations: The Battle of the Concepts of Rechtsstaat and Machtstaat

The description in the preceding sub-section has mapped the historical context of the New Order. However, to understand the philosophical depth of the distortions that occurred and the significance of the birth of the Constitutional Court, we must dissect it with the knife of theoretical analysis: the eternal battle between the concepts of the state of law (*Rechtsstaat*) and the state of power (*Machtstaat*).

Article 1 Paragraph (3) of the 1945 Constitution as amended affirms that "Indonesia is a country of law". This affirmation is the "backbone" of the entire reform argument. The concept of a state of law embraced by Indonesia mostly refers to the Continental European tradition, or *Rechtsstaat*. Classical thinkers such as Immanuel Kant and (most often cited) Friedrich Julius Stahl have laid the foundations of this concept. According to Stahl, a *Rechtsstaat* must be supported by four fundamental pillars: (1) The existence of the protection of human rights (HAM); (2) There is a separation or division of power (*Trias Politica*) to guarantee human rights; (3) Government must be organized according to the law (principle of legality); and (4) The existence of an independent administrative court to resolve disputes between citizens and the government (Hadjon, 1987).

On the other hand, the Anglo-Saxon tradition (British and US) introduced a similar concept, namely the *Rule of Law*, popularized by A.V. Dicey. Dicey formulates it in three main pillars: (1) Absolute supremacy of law, which opposes the existence of *arbitrary power*; (2) Equality *before the law* for all people indiscriminately; and (3) Guarantee of the basic rights of citizens derived from court decisions (*case law*). Despite the differences in accentuation—the *Rechtsstaat* focuses more on the administrative legal system (written law) and the *Rule of Law* on the judicial system (*common law*)—both have the same essence: the law is the commander in chief that protects citizens from the arbitrariness of power.

The opponent of this noble concept is *Machtstaat*, or the state of power. In *Machtstaat*, it is the power that is the commander-in-chief, not the law. Law exists, but it is only a "stamp" or a means of justification for the will of the ruler. A more subtle concept than this is *Rule by Law*. In contrast to *the Rule of Law* (government by just law), *Rule by Law* is government by using law. The ruler uses legal instruments of his own invention to oppress, repress, and legitimize his power. The law, in practice, is not a protector, but rather a "scepter" of power.

This theoretical analysis conclusively confirms our findings in Part II-A. During the New Order era, Indonesia was *de jure* the *Rechtsstaat*, but *de facto* it was the *Machtstaat* that hid behind the façade of *the Rule by Law*. The New Order regime was very fond of using the third pillar of Stahl (government based on law); they made a lot of laws, presidential decrees,

From Guardian of the Constitution to Interpreter of Social Justice: An Analysis of the Post-Reform Role of the Constitutional Court and the Threat of Its Politicization and presidential decrees. However, they systematically destroy the other three pillars: the first pillar (human rights) is ignored for the sake of "stability"; The second pillar (separation of powers) is fused in *an authoritarian system of executive powers*; and the fourth pillar (independent judiciary) is completely powerless.

Therefore, the birth of the post-reform Constitutional Court must be read in this context. The establishment of the Constitutional Court is a project for the restoration of *the Rechtsstaat*. The Constitutional Court was established as a manifestation of a new and stronger "second pillar" (separation of powers) and "fourth pillar" (independent judiciary). The judicial *review* authority it has is a "weapon" given by the reform to ensure that the "third pillar" (law) made by the House of Representatives and the President no longer violate the "first pillar" (Human Rights and Social Justice). Part III of this paper will prove how the Constitutional Court uses these "weapons" in practice.

The Concrete Form of Machtsstaat: An Analysis of the 1985 Political Law Package

The above explanation explains the philosophical distortion of the New Order. However, *the Machtsstaat* does not operate in the air; it operates through concrete legal instruments. To understand how damaging the legacy must be corrected by the reforms (and the Constitutional Court), we need to dissect the main legal "weapons" that the New Order regime used to perpetuate its power. The most perfect example is *the Package of Five Political Laws of 1985*. This legislation package is the most tangible form of *Rule by Law*, where laws are used formally to silence democracy and justice.

- **Law No. 3 of 1985 concerning Political Parties and Working Groups:** This is an instrument of "Deparpolisation". Through this law, the regime forces all political parties to be based on a single, Pancasila. Although the goal sounds noble, its implementation is to "strike even" the ideology. Islamic parties (such as the PPP) were forced to give up their Islamic identity, while the PDI was forced to become "tame". On the other hand, Golkar (the ruling party) is designed not as a party, but as a unique "Work Group", allowing it to attract bureaucrats, civil servants, and the military into its structure—a practice that should be prohibited in a fair political system.
- **Law No. 8 of 1985 concerning Community Organizations (UU CSOs):** This is an instrument of "civil control". Similar to the Law on Political Parties, this law also imposes the Single Principle of Pancasila for all mass organizations. More dangerously, this law gives the government (the Minister of Home Affairs) super authority to "freeze" and "dissolve" any mass organizations that are deemed to be "disrupting stability". There is no fair judicial process. Critical organizations, student activists, and non-governmental religious institutions live under the threat of this unilateral dissolution. This is the antithesis of freedom of assembly and association (Article 28 of the 1945 Constitution).
- **Law No. 1 of 1985 concerning General Elections:** This Law is the architect of the "fictitious elections" of the New Order. He designed a closed proportional system where the people only voted for the party logo, not the people. Who will sit in parliament is entirely determined by the "Sequence Number" set by the party elite (which is already controlled by the regime). Furthermore, the Election Organizers (LPU) are chaired *ex-officio* by the Minister of Home Affairs, and the participants (committees at all levels) are bureaucrats and government officials. This is not an election, but an administrative "ceremony" to legitimize existing power.

The analysis of the 1985 Political Law Package is crucial to our argument. This proves concretely that in the New Order era, "law" and "justice" were two opposites. The law was made not to guarantee social justice, but to perpetuate the *status quo* of power. This is *the most toxic legacy of Machtsstaat*. When the Constitutional Court was established, it inherited a public trauma in which the law was the "stick" of the rulers. Therefore, the *judicial review*

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authority given to the Constitutional Court is a revolution: for the first time in Indonesian history, the people (through the Constitutional Court) are given "weapons" to "fight back" against the oppressive laws made by the House of Representatives and the President.

Status Quo Understanding: Reduction of the Role of the Constitutional Court as an "Election Calculator"

The New Order legacy above is the historical "enemy" that gave birth to the Constitutional Court. However, after more than two decades of existence, the Constitutional Court now faces a new conceptual "enemy": the narrowing of the meaning of its role in the eyes of the public. As mentioned in the Introduction, in public discourse, the Constitutional Court often only receives massive attention once every five years, namely during elections. His role in deciding the Dispute over General Election Results (PHPU), which is indeed crucial to maintain political legitimacy, disproportionately dominates the news and public understanding (Prasetyo, 2024).

As a result, the role of the Constitutional Court was reduced to just an "Election Calculator" or "Dispute Referee". Of course, the Constitutional Court is indeed a "Referee", but this view tends to be procedural. The public sees the Constitutional Court as an institution that adjudicates *numbers*—whether there is a difference in votes, whether there are administrative violations, and so on. This understanding, referred to as *the conceptual status quo*, fails to see the much more fundamental role of the Constitutional Court as mandated by the history of its birth. This narrow view is the second *counter-idea* that this paper will refute. If the role of the Constitutional Court is understood only as procedural, then we will lose its most important essence. In fact, the Constitutional Court was not only established to "calculate", it was established to "*interpret*". It is not only designed to maintain democratic *procedures*, but to guard *the substance* of social justice which is the soul of the constitution

Decision Analysis: The Transformation of the Constitutional Court into an Interpreter of Social Justice

Previous sections have laid out the "First Act" of this argument: a status quo consisting of the New Order's legacy of social justice failures, narrow public perception, and the theoretical underpinnings of the Rechtsstaat's fight against Machtsstaat. That background is essential to understanding this stage of "Act II: Confrontation". This is where the core thesis of this paper is tested.

If the Constitutional Court is only an "Election Calculator" or a passive procedural guard, then it will stop at the mere testing of legal formalities. However, the history of the Constitutional Court's judiciary shows a much richer and bolder picture. The Constitutional Court has consistently "descended" from its judicial ivory tower to "interpret" what social justice means in the modern context. This section will prove these claims through an in-depth analysis of four landmark decisions that show how the Constitutional Court interprets social justice, both substantively (economic), procedural (democratic), and civil (non-discriminatory).

Substantive Social Justice: Reinterpreting Article 33 in the Case of the Water Resources Law

The first "battle" that proves the active role of the Constitutional Court occurred in a very fundamental issue, namely the control of natural resources. This issue is at the heart of the promise of independence that is often ignored by the New Order regime, which prioritizes economic exploitation in pursuit of development targets.

- Context (The Criminal): In 2004, the government passed Law No. 7 of 2004 concerning Water Resources (Natural Resources Law). Although born in the reform era, this law is thick with the spirit of liberalization and privatization pushed by global financial institutions after the 1998 crisis. He introduced the *Water Business Rights (HGU Air) scheme* which basically opens a wide door for privatization and commercialization of water management (Salim, 2015). The petitioners argue that this law has reduced the role of the

From Guardian of the Constitution to Interpreter of Social Justice: An Analysis of the Post-Reform Role of the Constitutional Court and the Threat of Its Politicization state to a mere regulator or permitter, not as a ruler who guarantees the people's right to water. This is a reflection of the New Order paradigm which is market-oriented and directly contradicts the spirit of Article 33 of the 1945 Constitution.

- Constitutional Court Decision (The Hero): In Decision No. 85/PUU-XI/2013, the Constitutional Court took a very bold step. The Constitutional Court does not only "test" article by article, but also conducts a "philosophical interpretation" of the entire building of the law. As a result, the Constitutional Court canceled *the entire* Law No. 7 of 2004 and re-enacted Law No. 11 of 1974 concerning Irrigation (a legacy of the Soekarno era) which was considered more in line with the constitution.
- In-Depth Analysis (Thesis Proof): This decision is perfect proof of the Constitutional Court's role as an active interpreter of social justice. In its legal considerations (*Ratio Decidendi*), the Constitutional Court conducted an in-depth interpretation. *First*, the Constitutional Court interprets the meaning of "Controlled by the State". The Constitutional Court fundamentally rejects the narrow interpretation that "controlled by the state" (Article 33 of the 1945 Constitution) means that the state only functions as a passive regulator. The Constitutional Court affirmed that the phrase contains an active mandate for the state to carry out "four actions": (a) *management (bestuursdaad)*, (b) *regulation (regelendaad)*, (c) *management (beheersdaad)*, and (d) *supervision (toezichthoudendaad)*. Privatization that hands over management to the private sector, according to the Constitutional Court, is a form of "evasion" of the state from its constitutional obligations.

Second, the Constitutional Court sets a new hierarchy of water utilization. The Constitutional Court does not prohibit the commercialization of water completely, but the Constitutional Court "overturns" the existing hierarchy in the Natural Resources Law. If the Natural Resources Law places HGU Water (private) as a priority, the Constitutional Court affirms the new constitutional hierarchy: (1) The main priority is the fulfillment of the basic basic needs of people's drinking water (free or affordable); (2) The second priority is for people's agriculture; (3) Only *after* that, if there is still a residue, can the water be commercialized with strict permits. With this ruling, the Constitutional Court affirmed that water is a "public good" and a "social right", not just an "economic good". The Constitutional Court did not stop at the question "does this law violate the text?", but asked "does this law betray the spirit of social justice?".

Procedural Social Justice: Maintaining Democracy in the Case of the Job Creation Law

The second "battle" takes place in a different but equally important realm: the process of lawmaking. One of the greatest "sins" of the New Order was the *top-down*, closed, and ignorant legislative process. Social justice is not only about "what" the people get (substantive), but also about "how" the people are involved (procedural).

- Context (The Criminal): In 2020, the Government and the House of Representatives passed Law No. 11 of 2020 concerning Job Creation (Job Creation Law). The goal is like the New Order's pretext, namely economic efficiency and investment. However, the process of making it has received massive criticism because it was made with the Omnibus Law method that is super-fast and accused of lacking meaningful public participation. The process is highly closed, draft texts are fickle even after they have been passed, and the aspirations of trade unions and civil society organizations are ignored.
- Constitutional Court (The Hero) Decision: The petitioners filed a formal test, challenging the process of forming the law, not its content. In Decision No. 91/PUU-XVIII/2020, the Constitutional Court again issued a surprising decision. The Constitutional Court did not immediately cancel, but declared the Job Creation Law "Conditionally Unconstitutional". The Constitutional Court suspended all strategic actions based on the law and gave 2 years

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to the lawmakers to "improve" the process. If it is not corrected within 2 years, the law will become permanently unconstitutional.

- In-Depth Analysis (Thesis Proof): This decision is the culmination of the evolution of the Constitutional Court as a guardian of democracy and procedural justice. The Constitutional Court did not find any article of the 1945 Constitution to be explicitly violated, but the Constitutional Court actively interpreted the principles of "people's sovereignty" (Article 1) and "right to be heard" (Article 28F). The Constitutional Court "created" a new standard of these principles, namely "meaningful public participation". In its deliberations, the Constitutional Court detailed three conditions for meaningful participation: (a) the right to be heard; (b) the right to be considered; and (c) the right to an explanation or answer to the opinion given. The Constitutional Court found that the process of the Ciptaker Law failed to meet these three conditions.

This decision is even more interesting because there is a dissenting opinion from two judges who argue that the Constitutional Court has acted "too far" (judicial overreach). They argue that the 1945 Constitution does not regulate the details of participation, and that it is the domain of the DPR's open legal policy. However, the victory of the 7 majority votes of the judges proves our thesis: the Constitutional Court consciously chooses to be an active interpreter to ensure that the legislative process is no longer flawed like the New Order era.

Civil Social Justice: Protecting Non-Discrimination Rights (Faith Stream Cases)

If the previous two case studies show the "battle" in the economic and procedural realms, this third case proves the role of the Constitutional Court in the most fundamental realm: *civil social justice*. This role shows that the "justice" that the Constitutional Court is fighting for also includes the issue of "dignity" (non-discrimination).

- Context (The Villain): For decades, Indonesia's population administration de facto recognized only six official religions. As a result, adherents of the faith school experience systematic discrimination. They are forced to leave the religion column blank on their ID cards or are forced to "choose" one of the six existing religions in order to access civil rights, such as registering a marriage or applying for a job. This is a status quo that oppresses and ignores Articles 28E and 29 of the 1945 Constitution.
- Constitutional Court Decision (The Hero): In Decision No. 97/PUU-XIV/2016, the Constitutional Court ruled that the act of emptying the religious column or "forcing" to vote for adherents of religious schools is contrary to the constitution.
- In-Depth Analysis (Thesis Proof): Progressively, the Constitutional Court explored the meaning of "trust" in Article 29 Paragraph (2) of the 1945 Constitution. The Constitutional Court interprets that "belief" in the article has an equivalent position to "religion". Therefore, distinguishing administrative treatment (in the ID card) between religious adherents and believers is a form of discrimination prohibited by Article 28I Paragraph (2) of the 1945 Constitution. The Constitutional Court emphasized that religious identity and belief are part of human rights that cannot be reduced (non-derogable rights). Despite the dissenting opinion that argues that religion and belief are theologically different, most of the Constitutional Court judges rejected this view. Through this ruling, the Constitutional Court expands the meaning of "social justice" to a matter of recognition and dignity. The Constitutional Court emphasized that the state should not discriminate against its citizens just because of their religious identity.

Election Procedural Fairness: Interpreting "TSM" Fraud (2019 Presidential PPHU Case Study)

This last case study is the most crucial to refute the status quo of the public understanding that the Constitutional Court is just an "Election Calculator".

- Context: The public perception is that in the election dispute (PPHU), the Constitutional Court only recalculates the difference in votes like accounting work.

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- Decision and Analysis: In Decision No. 01/PHPU-PRES/XVII/2019 (Dispute of the 2019 Presidential Election), the applicant (Prabowo-Sandi) not only disputed the difference in numbers, but also alleged the existence of Structured, Systematic, and Massive (TSM) fraud. If the Constitutional Court had only been a "Calculator", he would have rejected this lawsuit from the beginning because the difference in votes was too far. However, the Constitutional Court did not do so; The Constitutional Court actually "entered" and prosecuted the postulates of TSM's fraud. This proves that the Constitutional Court works by "interpreting", not just calculating. The Constitutional Court must interpret what is meant by "Structured" (carried out by state apparatus), "Systematic" (carefully planned), and "Massive" (with national impact). In the end, the Constitutional Court did reject the applicant's lawsuit, but the reason for its rejection was very important: not because of the difference in numbers, but because the applicant failed to prove the postulates of TSM's fraud according to the heavy standard of proof. This shows that the Constitutional Court carries out the role of electoral procedural justice, ensuring that victory is achieved through an honest and fair process (fair play), not just "who has the most numbers".

Contemporary Challenges: Politicization, Populism, and the Future of the Constitutional Court

After we have passed through the "Confrontation Round" in which the Constitutional Court (MK) managed to prove itself as a formidable interpreter of social justice, we now enter the "Round III: Resolution". However, it should be emphasized that this chapter is not a happy ending like a fairy tale. On the contrary, this round presents a sharp and worrying irony. Precisely when the role of the Constitutional Court as an interpreter of social justice has become so crucial and proven effective in protecting the rights of citizens, the independence of the institution that performs that sacred role is now under the greatest threat in its history.

Theoretical Debate: The Battle between Judicial Activism and Judicial Restraint in the Context of Indonesian Democracy

To understand the current political threat landscape, we cannot simply look at it as a mere power struggle. We must dissect it through a theoretical lens, which is the eternal battle in constitutional law between Judicial Activism and Judicial Restraint. The Constitutional Court's success in interpreting social justice—as we have discussed in the cases of the Water Resources Law, the Job Creation Law, and the Stream of Trust—is essentially a manifestation of the practice of Judicial Activism.

The concept of Judicial Activism views that a constitutional judge should not only play the role of a "machine" that reads the text of the law rigidly. In this view, judges have a moral and constitutional obligation to interpret the spirit of the constitution itself. Judges must have the courage to "activate" the values of justice contained in the 1945 Constitution to protect oppressed minority groups or to correct the failures committed by political institutions, namely the House of Representatives and the President. Without this activism, progressive decisions such as the cancellation of water privatization or the recognition of the civil rights of believers will never materialize.

On the other hand, there is the view of Judicial Restraint. This camp argues that judges must always "exercise restraint". They argue that the judge's job is only to apply the law in accordance with the original text (originalism). If there is a law that is considered bad but does not literally violate the text of the constitution, then the judge should not annul it. For adherents of this understanding, policy change is the realm of political institutions elected by the people, not the realm of nine judges who are not elected through elections (unelected judges). This view is reflected in the dissenting opinion of the judge in the Job Creation Law case which

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accuses the Constitutional Court of having committed judicial overreach or acting beyond its authority.

However, this paper takes a firm position that in the context of post-reform Indonesia, Judicial Activism is a historical imperative, not an abuse of authority. Indonesia has just escaped the trauma of 32 years of the *Machtsstaat* regime where the law was used as a tool of oppression. If the Constitutional Court chooses to be restraint and leave the fate of social justice entirely to political institutions, then we risk repeating the mistakes of the past. When political channels are clogged and public participation is ignored in the legislative process, the Constitutional Court must be present as an "emergency brake" to stop the potential tyranny of the parliamentary majority.

Full Circle Argument: Politicization as a Backlash to the Success of the Constitutional Court

The threat of institutional politicization that we are witnessing today is not a phenomenon that arises randomly or by chance. This phenomenon can be explained through what is called the full circle argument. The essence of this argument is that the threat to the Constitutional Court arises precisely because the Constitutional Court has succeeded in effectively exercising its role as an interpreter of social justice.

The logic is simple: if the Constitutional Court is only a weak, passive, and harmless "Election Calculator", then the political elites and economic oligarchs will not feel the need to waste their political energy to intervene in the Constitutional Court. But the reality is different. When the Constitutional Court dared to cancel the Water Resources Law, the Constitutional Court directly interfered with the large economic interests that play in the water privatization sector. When the Constitutional Court declared the Job Creation Law unconstitutional conditionally, the Constitutional Court openly "shamed" the House of Representatives and the Government in public. It was these bold actions that triggered a political fightback.

The politicization efforts that are now taking place are a form of counterattack from the status quo forces that feel disturbed. This attack manifests itself in very concrete and systematic forms. One of them is through the weakening of the independence of judges through the revision of the Constitutional Court Law. Changes in the rules regarding the term of office of judges, evaluation mechanisms, and the threat of recall (dismissal) in the middle of the road create an atmosphere of fear among judges. In addition, the selection process for constitutional judges is now increasingly fraught with transactional political interests, where political loyalty often takes precedence over statesmanship competence.

War of Discourse: Politicization as an Ideological Battle

It is important to realize that efforts to weaken the Constitutional Court are not only carried out through regulations, but also through "discourse wars" in the public sphere. Politicians interested in taming the Constitutional Court often use the theoretical argument of Judicial Restraint as a weapon of justification. They build a narrative that the Constitutional Court has acted "too far" (judicial overreach) and interfered too much in policy-making affairs (open legal policy) which should be the domain of the DPR.

This strategy is very ingenious and manipulative. Using the pretext of "keeping the Constitutional Court from exceeding the limits of authority", politicians are actually silencing the function of judicial control. This is an effective form of deflection. Instead of debating the substance of the decision—whether the Job Creation Law is fair or not—the debate shifted to the procedural issue of institutional authority. As a result, the law-abiding public can be consumed by the narrative that the revision of the Constitutional Court Law is needed to "discipline" judges, even though the goal is to blunt the fangs of the constitutional guard.

New Internal and External Threats: The Ghost of Judicial Populism

In addition to threats from outside (executive and legislative), the Constitutional Court also faces threats from within itself that are no less dangerous, namely the phenomenon of *Judicial Populism* (Judicial Populism). This phenomenon occurs when judges, whether

From Guardian of the Constitution to Interpreter of Social Justice: An Analysis of the Post-Reform Role of the Constitutional Court and the Threat of Its Politicization consciously or unconsciously, begin to base their decisions not on a pure interpretation of the constitution, but on "what the public wants" or "what is going viral".

The Constitutional Court's reduced image as a "Referee of Election Disputes" also exacerbates this vulnerability. In an election dispute trial that was witnessed by millions of eyes and colored by tremendous mass pressure, the temptation for judges to become "populist heroes" is enormous. Judges may be tempted to take decisions that simply appease the masses or satisfy momentary public opinion, instead of upholding true but unpopular legal principles.

The greatest danger of judicial populism is that it makes judges fragile and easily politicized. A judge who is accustomed to following the "wind" of public opinion will lose his constitutional anchor. This is used by politicians who are adept at framing their political agenda as if it were the "will of the people". When external threats in the form of political intervention meet internal fragility due to populism, then judicial independence is at stake.

The Politicization of the Constitutional Judiciary in a Global Comparative Perspective

This phenomenon of judicial weakening is not a unique problem in Indonesia, but part of a global trend of democratic backsliding, which Kim Lane Scheppele calls autocratic legalism. We need to learn from the experiences of other countries so as not to fall into the same hole.

The first lessons came from Poland and Hungary. In these two European countries, populist ruling parties systematically "hijack" their constitutional courts. In Hungary, Prime Minister Viktor Orbán made constitutional amendments to limit the court's powers and fill judicial posts with party loyalists. In Poland, the PiS party refused to appoint legitimate judges and forced the early retirement of senior judges on the Supreme Court. As a result, the judiciary there changed its function from a guardian of the constitution to a mere seal of legitimacy for executive power.

The second lesson comes from the United States, which shows the dangers of hyper-politicization in the selection of judges. Although the U.S. Supreme Court is very powerful, its judicial selection process has become a brutal ideological battleground between Democrats and Republicans. Judges are chosen not solely because of their legal competence, but because of their ideological tendencies (conservative or liberal). This has led to sharp polarization in society that now views court decisions as a political product, not a law.

Indonesia is now standing at a crossroads. Signs of autocratic legalism such as the revision of the Constitutional Court Law and intervention in the selection of judges have begun to be seen. If left unchecked, the Indonesian Constitutional Court has the potential to experience a similar fate to Poland or be trapped in extreme polarization like the US. If that happens, then the role of the Constitutional Court as an "interpreter of social justice" will die, and it will return to the function of the New Order era: as a mere tool of power legitimization.

CONCLUSION

This study concludes that the post-reform Indonesian Constitutional Court has significantly expanded its role beyond being a mere "Election Calculator" to become a proactive interpreter of social justice across four key domains: substantive justice through landmark decisions like canceling the Water Resources Law; procedural justice by ensuring meaningful public participation in legislation; civil justice by protecting non-discrimination rights; and election justice by rigorously addressing allegations of systemic electoral fraud. However, this vital role faces an existential threat from institutional politicization, driven by political and economic interests resistant to the Court's progressive rulings. This threat is evident in legislative changes undermining judicial independence and parallels democratic backsliding trends observed in countries like Poland and Hungary, risking a regression to authoritarian legal control. Future research should explore strategies for safeguarding the

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Court's independence and effectiveness, including comparative analyses of judicial resilience mechanisms in transitional democracies facing similar politicization pressures.

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