



DOI: <https://doi.org/10.38035/sijal.v4i2>
<https://creativecommons.org/licenses/by/4.0/>

Received: 23-09-2026 | Revised: 12-10-2026 | Accepted: 19-10-2026

Constitutional Omission in the Testing of the Law: The Limits of the Constitutional Court's Authority as a Negative Legislator

Sukaca

Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia, sukoco_pn65@yahoo.com

Corresponding Author: sukoco_pn65@yahoo.com

Abstract: This research is motivated by the issue of constitutional omission in the testing of laws that have a different character from the testing of ordinary norms because the problem arises from the absence or incompleteness of regulation, thus giving rise to a gap in the form of uncertainty in the limits of the authority of the Constitutional Court (MK) between what is regulated and what should be regulated. This research aims to examine constitutional omission as well as formulate the limits of the authority of the Constitutional Court as a negative legislator. The research method used is normative juridical with a legislative, conceptual, and case approach to the Constitutional Court Decision Number 10/PUU-VI/2008, 100/PUU-XIII/2015, 183/PUU-XXII/2024, 158/PUU-XXIV/2026, as well as Main Decision Number 261/PUU-XXIII/2025. The results of the study show two tendencies of the Constitutional Court's practice, namely the recognition of the absence of material as a constitutional issue and judicial restraint on the issue of implementation or the choice of law-making policies. The novelty of this research lies in the formulation of explicit parameters to distinguish constitutional omissions that are worthy of examination from mere legal voids which are issues of implementation or legal policy.

Keywords: Constitutional Omission, Legal Testing, Constitutional Court, Negative Legislator, Judicial review.

INTRODUCTION

The Constitutional Court was established as part of the design of judicial power after the amendment of the 1945 Constitution of the Republic of Indonesia. Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia places the legal test of the Constitution as one of the main powers of the Court. This authority is classically understood through Hans Kelsen's idea of the constitutional court as a negative legislator because the constitutional court essentially nullifies norms that are contrary to the constitution. The problem becomes more complicated when the constitutional defect does not lie in the written norms, but in the material that is not contained in the law. In such circumstances, the constitutional test is faced with the fundamental question of whether the Court can only remove norms or also restore the constitutional meaning lost due to the failure of lawmakers. (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945).

Constitutional omission is born from a problem that is different from a legal vacuum in the general sense. A legal void can indicate the absence of a rule that governs a problem, while constitutional omission requires a normative failure that is related to a constitutional obligation. These differences determine who is responsible for improving the state of the law and which institution has the authority to provide remedies. If every legal vacuum is considered a constitutional problem, the Court's authority will expand without clear limits because almost any legislative incompleteness can be brought to judicial review. On the other hand, if the absence of the norms necessary to make constitutional rights effective is always seen as a matter of lawmaking, constitutional protection can lose its effectiveness when it is needed.

This issue has arisen in the Court's jurisprudence long before the term constitutional omission was widely used in Indonesian literature. The Constitutional Court Decision No. 10/PUU-VI/2008 shows that the Court has faced a situation when the domicile requirements and individual requirements for prospective DPD members are not explicitly formulated in Law No. 10 of 2008. In the ruling, the Court maintains the norm by providing the meaning that the provision remains constitutional as long as it is interpreted to contain the requirements of domicile in the province to be represented. The structure of the law is important because the Court does not formally create new laws but returns the normative content that is considered necessary for the law to be in harmony with the Constitution. This decision is one of the important points to assess the relationship between omission, constitutional interpretation, and the negative function of legislators (Mahkamah Konstitusi Republik Indonesia, 2008).

Subsequent developments show that the Court's response to the lack of regulation is not always in the form of cancellation. In Decision No. 100/PUU-XIII/2015 concerning single candidates in the election of regional heads, the Court faced the problem when the law has not provided an adequate mechanism to ensure that elections are held in the event that there is only one pair of candidates. The Court gave meaning to a number of provisions so that elections can still be held with a single pair of candidates and a choice of blank boxes. This pattern shows the Court's remedial ability to go further than simply removing norms. At the same time, these developments raise the issue of democratic legitimacy because the norms that apply after the verdict are partially formed through the interpretation of judges (Mahkamah Konstitusi Republik Indonesia, 2015).

The debate about the shift from negative legislators to positive legislators has been widely discussed in the Indonesian constitutional law literature. The Constitution Journal notes that decisions with a positive legislative character can arise when the Court does not stop at the cancellation of norms but provides new formulations or changes the meaning of the norms being tested. The 2023 study even identified 107 decisions that were categorized as positive legislative decisions out of 198 decisions granted in their research period. These findings show that the problem is no longer whether the Court has ever produced a decision that has a regulatory impact, but how to determine the juridical limits so that the impact remains within the framework of judicial review. Constitutional omission provides a more specific angle of entry because the question of positive legislators arises precisely when there is a lack of normative material to be restored.

The most relevant development is contained in the Constitutional Court Decision Number 261/PUU-XXIII/2025 which was pronounced on August 28, 2026. This case tested Article 7 paragraph (2), Article 7 paragraph (3), and Article 84 of Law Number 24 of 2007 concerning Disaster Management. The Petitioners questioned the unclear parameters of the determination of disaster status and the non-issuance of a Presidential Regulation as ordered by Article 7 paragraph (3), while the Law has been in force since April 26, 2007. In the trial, the Petitioner's expert explicitly used the term constitutional omission to describe the failure to establish implementing rules for almost two decades. But what is more methodologically important is the Court's own stance: The Court grants some of the requests against Article 7 paragraph (2)

but does not grant the arguments regarding Article 7 paragraph (3) and Article 84. (Mahkamah Konstitusi Republik Indonesia, 2025)

Regarding Article 7 paragraph (2) of the Disaster Management Law, the Court found a constitutional problem in the way the five indicators in the norm work cumulatively. The Court considered that the full cumulative application could make it difficult to determine disaster status under certain factual conditions and affect the speed of disaster handling. Therefore, the Court gave a new meaning: for a national disaster status, at least three out of five indicators must be met with the number of victims as the main indicator. The warning does not simply remove phrases or words that are contrary to the Constitution but determines a new normative structure regarding the relationship between indicators. This is where the problem of negative legislators becomes real because the Court must explain the basis that justifies the determination of the new normative configuration.

On the other hand, Decision No. 261/PUU-XXIII/2025 shows a limit that is precisely very important. Regarding Article 7 paragraph (3), the Court stated that the choice between Government Regulation and Presidential Regulation is a legal policy that makes the law and both have their own constitutional basis. Regarding Article 84, the Court found that Government Regulation Number 21 of 2008, Government Regulation Number 22 of 2008, and Government Regulation Number 23 of 2008 were indeed issued on February 28, 2008, thus passing the six-month deadline set by law. However, the Court emphasized that the delay in implementing norms does not automatically make the norms unconstitutional because the testing of laws against the Constitution is different from testing the implementation of norms. This distinction is very important to formulate the limits of constitutional omission.

Case Number 94/PUU-XXIV/2026 which was decided on the same day strengthens the importance of Decision Number 261/PUU-XXIII/2025. In this case, the Applicant again questioned the absence of parameters for determining disaster status. The Court stated that the application was inadmissible because the construction of Article 7 paragraph (2) had changed through Decision Number 261/PUU-XXIII/2025 so that the object applied for had lost its object. This situation shows that a decision that gives a new meaning can change the legal field for the next case. Thus, remedial interpretation has juridical consequences that are *erga omnes* to the next test. (Mahkamah Konstitusi Republik Indonesia, 2026)

On the other hand, recent practice also shows that the evidence regarding the absence of norms is not always accepted. Decision Number 158/PUU-XXIV/2026, for example, noted the absence of norms regarding the submission of copies of examination minutes to witnesses as one of the subject points of the application, but Amar finally declared some applications unacceptable and rejected others. Decision Number 58/PUU-XXIV/2026 also ended with the rejection of the application, which was related to, among other things, the absence of exemption rules in the Criminal Code. The two decisions are important because they show that the existence of omission postulates is not enough to give birth to a constitutional obligation for the Court to form or add norms.

Based on these developments, the research question is not appropriate if it is directed to the question of whether the Constitutional Court has ever acted as a positive legislator. The more basic question is when normative deficiencies turn into constitutional problems and when the Court must restrain itself because the case is in the area of implementation or legal policy that makes the law. The answer to this problem requires a reading that compares the decision that gives meaning to the decision that rejects the postulate of omission. This study uses Decision Number 261/PUU-XXIII/2025 as the main case because the decision most clearly shows the meeting between the incompleteness of the regulation, the protection of constitutional rights, the conditional meaning, and the limits of judicial authority. From this comparison, the research is directed to formulate parameters that can explain constitutional omission in the context of Indonesian constitutional law.

Based on the above background, the formulation of the problems that will be discussed includes, how is the construction of constitutional omission in the practice of law testing by the Constitutional Court of the Republic of Indonesia and how is the limit of the authority of the Constitutional Court as a negative legislator when giving meaning to laws that contain constitutional omission.

METHODS

This research is normative legal research that places law as norms, principles, and decisions that must be analyzed through juridical reasoning. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020, Law Number 12 of 2011 and its amendments, as well as relevant Constitutional Court decisions. Secondary legal materials are in the form of constitutional law books, journal articles, and scientific studies on constitutional review, legislative omission, judicial activism, judicial restraint, and negative and positive legislators. Tertiary legal materials are used on a limited basis to ensure the accuracy of terms and trace sources.

The statutory approach is used to examine the basis of the Constitutional Court's authority and the structure of the formation of laws and regulations. The conceptual approach is used to distinguish constitutional omission from legal vacuum, normative ambiguity, and implementation failure. The case approach is used to decisions that show variations in the Court's response to normative deficiencies. Decision No. 261/PUU-XXIII/2025 is placed as the main case because it provides a contemporary example of the meaning of norms while showing the limits applied by the Court to the issue of implementing regulations.

The analysis was carried out through grammatical, systematic, and constitutional interpretations of the ratio decidendi and the ruling. Each decision was based on four variables, namely the source of the constitutional obligation, the form of normative deficiencies, the relationship between the deficiency and constitutional losses, and the form of the remedy. The results of the comparison were then used to find patterns that could explain when the Court acted as a negative legislator with remedial interpretation and when the Court refrained. In this way, the research did not stop at the description of the content of the decision but tested the consistency of the legal reasons used by the Court.

RESULTS AND DISCUSSION

The Construction of Constitutional Omission in the Practice of Law Testing by the Constitutional Court of the Republic of Indonesia

Constitutional omission must begin with the question of constitutional obligations that should be realized through legislation. Decision No. 10/PUU-VI/2008 provides an important point because the Court accepts that the absence of certain formulations in the Election Law can cause inconsistency with the Constitution. In this case, Article 12 letter c of Law No. 10 of 2008 does not explicitly include the requirements for provincial domicile for prospective DPD members, even though the constitutional design of the DPD is related to regional representation. The Court then defended the norm on the condition that the norm is interpreted to contain the requirements of domicile in the province represented. The decision shows that the absence of text does not necessarily mean that there is no object of testing because omission can be assessed through normative consequences born from what is not contained.

The difference with ordinary legal emptiness lies in the relationship between omission and constitutional norms. If an issue is not governed by law but the constitution does not provide an identifiable mandate, space is essentially a legislative policy space. Conversely, when the absence of regulation causes the rights or institutional structures guaranteed by the Constitution to not work, the issue can enter the realm of constitutional review. Thus, the first measure of constitutional omission is the existence of a fairly concrete constitutional duty. This

measure is important so that the Court does not turn every policy demand into a constitutional obligation.

Therefore, the term constitutional omission in this study must be used carefully. Decision Number 261/PUU-XXIII/2025 shows that the Petitioner's expert used the term to describe the non-issuance of a Presidential Regulation for almost 19 years. However, in the ratio decidendi, the Court did not declare Article 7 paragraph (3) unconstitutional due to the failure to issue a Presidential Regulation. On the contrary, the Court stated that the choice of the Presidential Regulation as an implementing rule has a constitutional basis and is a legal policy that makes the law. This fact shows that constitutional omission cannot be inferred only from the time lag or the unavailability of implementing rules.

Decision No. 10/PUU-VI/2008 is one of the important precedents because the Court explicitly discussed the possibility of unconstitutionality stemming from the absence of norms. In the decision, the Court argued that the authority to test material is not limited only to the circumstances where there are norms that are contrary to the Constitution. Unconstitutionality can also arise when there are norms that should be contained based on the mandate of the Constitution but are not included in the law. Although the structure of the argument does not systematically establish the doctrine of constitutional omission like some other jurisdictions, this decision provides the basis that omission can be understood as a constitutional issue.

The Court did not delete the entire Article 12 letter c but stated that the norm remains constitutional as long as it is interpreted to contain the requirements of domicile in the province to be represented. This method shows that the Court restores the relationship between the norms of the law and the constitutional design in an interpretive way. Functionally, the result is indeed regulative because after the decision the norm has a more complete content than the original text. However, juridically, the legitimacy of the remedy comes from the obligation to interpret the norm so as not to contradict the Constitution, not from the general authority of the Court to make laws.

This precedent also shows the problem of limits. If every material omission from the law can be filled by the Court on the grounds of preserving the constitution, then the distinction between constitutional adjudication and legislation becomes blurred. On the other hand, if the Court is completely unable to give meaning when the omission has caused a constitutional inconsistency, the authority of judicial review becomes too formalistic. Thus, precedent 10/PUU-VI/2008 is more appropriately understood as a basis for conditional remedial interpretation, not as an acknowledgment that the Court has general legislative authority.

Decision No. 100/PUU-XIII/2015 shows further developments. When the law has not provided an operational mechanism for the situation of a single candidate in the Regional Elections, the Court has given meaning to several provisions so that elections can still be held. The decision shows that remedial interpretation can change the way a legal regime works when the literal application of norms has the potential to stop the constitutional process that must continue. From the point of view of constitutional omission, this case is relevant because it shows that normative issues can be in the form of incomplete legal design, not merely textual contradictions.

However, regulative ruling is not automatically synonymous with constitutional omission. There is a difference between filling out the material directly required by the constitution and choosing the policy mechanism that is considered the most rational to address practical issues. Such differences are important in assessing the legitimacy of judicial remedy. Courts can make the interpretations necessary to avoid unconstitutional outcomes, but the more specific the design specified in the *amar*, the stronger the need to demonstrate the constitutional basis that requires it.

The literature of the Constitutional Journal also shows that the practice of positive legislature has developed in the Constitutional Court's decisions and raises implementation issues. A 2023 study on positive legislature decisions found that of the 198 decisions granted

in the study period, 107 were categorized as having a positive legislative character, while only 26 were said to have been implemented by the adjudication address. The findings show that the issue of the limit of authority does not stop at the legitimacy when the decision is rendered. Overly detailed decisions also face the question of who should implement and how the norms of the results of the decisions will be placed in the next legislative process.

Decision Number 261/PUU-XXIII/2025 is the most important case for this study because it shows the difference between the two sources of problems that are raised at the same time. On the one hand, there is the issue of the substance of Article 7 paragraph (2), namely five indicators of disaster status determination that can work cumulatively. On the other hand, there is the problem of not issuing a Presidential Regulation ordered by Article 7 paragraph (3). The Court separated the two issues and produced two different legal responses. This separation provides the strongest basis for formulating the limits of constitutional omission.

Regarding Article 7 paragraph (2), the Court considers that the use of five indicators in a full cumulative manner can make it difficult to determine disaster status and hinder prompt handling. The Court then declared the norm conditional unconstitutional if it is not interpreted that the indicators used are five existing indicators, but for a national disaster status at least three indicators must be met with the number of victims as the main indicator. The Court thus did not add a new category of indicators to the law. The Court changed the normative relationship between the indicators that were already available by determining how the indicators should be met.

Theoretically, this action is more appropriately called remedial constitutional interpretation with a regulative effect than positive legislation in the sense of the formation of a new law. The basis is that all the main elements included in the amar come from Article 7 paragraph (2) itself. What is changed is its normative configuration so that the goal of legal protection and legal certainty can be achieved. This limit is important because it shows that the Court is still working against the object of the norm being tested and does not create a completely new legal regime. (Saldi Isra, 2010)

However, there is a more problematic part. The determination of three of the five indicators and the placement of the number of victims as the main indicators are not written in Law 24/2007. The determination is the result of the Court's reasoning based on the purpose of protecting constitutional rights and the need for disaster management. Thus, even though the basic material is sourced from the norms tested, the operational formula is the product of the judge's interpretation. At this point, the legislator's negative limit becomes thin because the law not only removes the contradictory meaning but also establishes the formula that must be used by the government.

The legitimacy of such an action can be maintained if the remedy is seen as the only proportionate way to prevent the unconstitutional consequences of full cumulative application. However, this study considers that such legitimacy should not be extended to the general principle that the Court is free to choose the figures, parameters, or mechanisms that are considered best. In other cases, such a choice may contain a greater policy choice and should be returned to the lawmakers. Therefore, Decision 261/PUU-XXIII/2025 is more appropriate as a basis for formulating remedial interpretation limits than as a precedent for expanding the authority of the Constitutional Court without criteria.

The most important part of Decision No. 261/PUU-XXIII/2025 is found in the Court's rejection of the postulates regarding Article 7 paragraph (3) and Article 84. The Petitioners attribute the non-issuance of the Presidential Regulation and the delay in the Regulation to a legal vacuum that is detrimental to constitutional rights. The Court acknowledged that PP 21/2008, PP 22/2008, and PP 23/2008 were issued on February 28, 2008, past the six-month deadline since Law 24/2007 was promulgated on April 26, 2007. However, the Court stated that the delay in implementing the norm does not automatically make the norm of the law contrary to the Constitution.

These considerations form a very important line of demarcation. The test of the law is directed at the constitutionality of the norm, not at every failure to implement the norm. Thus, the non-issuance of an implementing regulation can be a fact that explains the impact of a norm, but it is not enough to turn the issue of implementation into a constitutional omission that can be decided through judicial review. If the Court takes the opposite approach, any delay in the government's issuance of implementing regulations can turn into a constitutional dispute.

The decision also shows that the authority of lawmakers is still respected when the issue concerns the choice of the type of implementing regulation. The Court stated that Government Regulation and Presidential Regulation both have a constitutional basis, while the choice of type of regulation is the legal policy of the lawmaker. This rejection is important because it proves that the Court does not automatically turn regulatory failure into a reason to change the design of legislation. Judicial restraint thus becomes part of the construction of constitutional omission in Indonesia.

The Limits of the Constitutional Court's Authority as a Negative Legislator When Giving Meaning to Laws That Contain Constitutional Omissions

The first parameter is the existence of constitutional obligations that can be demonstrated normatively. These obligations can be in the form of protection of rights, guarantees of legal certainty, institutional structures, or mandates that are directly or systematically sourced from the Constitution. Without this basis, the claim that the law is incomplete is closer to policy preference than constitutional omission. In Decision 261/PUU-XXIII/2025, the relationship was found in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia because the Court considered that the configuration of the indicators in Article 7 paragraph (2) did not provide fair legal certainty in determining disaster status.

This parameter also prevents the Court from becoming a forum to debate all the shortcomings of legislation. The Constitution does not require that every policy choice be governed in a certain way. When there are several options that are equally constitutionally acceptable, the room for that choice remains with the legislator. The Court will only have a stronger reason to make corrections if one of those choices creates a disagreement that can be drawn directly from the constitutional standard. (José Rolando Cardenas Gonzales, 2025)

Constitutional omission must have normative consequences that can be explained. It is not enough to state that an arrangement would be better if it was added or clarified. There must be a relationship between the deficiency and the inability of the law to carry out its constitutional function. In Decision 261/PUU-XXIII/2025, the Court linked the configuration of indicators to the speed of determining disaster status and protection of victims.

The relationship becomes weaker when the issue concerns only administrative implementation. Delays in issuing implementing rules can indeed raise practical problems, but the Court in the same case refused to make it the basis for declaring Article 84 unconstitutional. Thus, constitutional injury must arise from the construction of the norm or from the inseparable relationship between the content of the norm and the failure of constitutional protection, not solely from administrative conduct after the law takes effect.

The third limit relates to the form of the decision. The further the Court moves from the text and structure of the norms tested, the greater the risk of shifting the adjudication function towards legislation. Decision 261/PUU-XXIII/2025 still has a direct relationship with the five indicators that have been formulated in Article 7 paragraph (2), so the Court reregulates the way these indicators work. This pattern is different from the formation of a new regime that has no basis in the norms being tested.

The remedy must also be proportionate to the constitutional problem. If the goal can be achieved by removing certain phrases or giving them a limited meaning, there is no constitutional reason to design a new regulatory system in detail. With this principle, the legislator should not be understood as an absolute prohibition against decisions that have a

normative effect, but as an obligation to keep those effects a necessary consequence of constitutional testing.

Decision 261/PUU-XXIII/2025 provides a clear example of the open legal policy space. The Court rejected the request to replace the Presidential Regulation with a Government Regulation because the two forms of regulation have a constitutional basis and the choice between the two is a law-making policy. This rejection shows that the Court still distinguishes constitutional issues from the choice of regulatory design.

This parameter becomes important when the postulated omission can actually be overcome through several policy models. The court should not choose one model just because it is considered more effective. The choice requires a process of political deliberation that is the function of the House of Representatives with the President. Judicial intervention can be justified when the constitution has defined the limits or when all but one of the options results in an unconstitutional circumstance, but not when the issue is purely about policy design preferences.

Constitutional omission decisions must have a relationship that can be traced between legal reasons and *amar*. An *amar* that adds norms without the support of *ratio decidendi* will magnify the problem of judicial legitimacy. In Decision 261/PUU-XXIII/2025, the Court outlined the reasons for the protection of legal certainty, the need for a quick response, and the difficulty of applying five indicators cumulatively before determining the configuration of three of the five indicators.

This relationship is important for legal certainty because the Constitutional Court's decision has binding legal force from the moment it is pronounced. Decision 94/PUU-XXIV/2026 shows the direct consequence of this nature: after Decision 261/PUU-XXIII/2025 changed the construction of Article 7 paragraph (2), the case that tested the previous construction was declared to have lost its object. Thus, when the Constitutional Court gives remedial interpretation, the Court at the same time creates a new reference point that must be considered in the next case.

Analysis of these decisions shows that the binary distinction between negative legislators and positive legislators is not always adequate. The court can continue to carry out the function of negative legislators formally through conditional rulings, but it produces positive normative effects because the meaning of norms changes. Therefore, a more appropriate issue is the intensity of remedial intervention and its constitutional basis.

Constitutional omission is right at the point of that meeting. If the Court encounters normative flaws that render constitutional rights ineffective, pure nullification can result in new, worse vacancies. The Court therefore needs space to provide remedial interpretation. However, that space must be controlled by parameters so that the remedy does not turn into a new legal policy that the constitution does not order.

On that basis, this study views the position of the Court as a negative legislator as functional, not mechanical. The function of negative legislators remains a basic principle, while conditional interpretation is a remedial technique that can be used in certain circumstances. The technique is valid as long as it is necessary to restore the constitutionality of the norm, has a close relationship with the norm being tested, does not override open policy choices, and can be explained through a transparent *ratio decidendi*.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. The construction of constitutional omission in the practice of the Constitutional Court has not been realized as a single doctrine but has been formed through jurisprudence such as Decisions Number 10/PUU-VI/2008, 100/PUU-XIII/2015, and 261/PUU-XXIII/2025. This practice shows that the Constitutional Court can provide remedial interpretation of the absence of norms in order to ensure legal certainty, but still restraint (judicial restraint) in

the realm of implementation and policy choices. In contrast to ordinary legal vacancies, constitutional omission only occurs when the incompleteness of the norm clearly violates the constitutional duty.

2. The limits of the Constitutional Court's authority as a *negative legislator* are determined by five main parameters, namely the existence of a clear constitutional obligation, the impact on the effectiveness of citizens' rights, remedies that remain relevant to the norms of origin, not taking over *open legal policy*, and the alignment of *ratio decidendi* with the verdict. Through this parameter, the conditional meaning by the Constitutional Court only functions as a limited instrument to restore constitutionality without seizing the role of law-making.

Recommendations

1. The Constitutional Court needs to clarify its doctrinal arguments by explicitly distinguishing between constitutional omission, legal vacuum, unclear norms, and failure to implement. The clarity of this limitation is important so that the conditional meaning that implies *erga omnes* has consistent guidelines and does not confuse the practice of judicial review in the future
2. Lawmakers (DPR and Government) must be more responsive in following up on incompleteness of norms and ensuring that implementing instruments/regulations are issued on time. This is important so that the issue of legal incompleteness does not continue to be brought to court, so that the Constitutional Court can remain at the limits of its authority as a negative legislator without being forced to take over function of the formation of new norms.

REFERENCES

- Asshiddiqie, J. (2012). *Hukum acara pengujian undang-undang*. Sinar Grafika.
- Efendi, M. A. F., Muhtadi, & Saleh, A. (2023). Putusan *positive legislature* oleh Mahkamah Konstitusi. *Jurnal Konstitusi*, 20(4), 622–639. <https://doi.org/10.31078/jk2044>
- Gonzales, J. R. C. (2025). The legislative function of the constitutional court in relation to the omission of the constituent. *Constitutional Review*, 11(1). <https://doi.org/10.31078/consrev1113>
- Hakiki, Y. R., & Taufiqurrahman. (2023). Gagasan penataan legislasi nasional berbasis *ratio decidendi* dan *obiter dictum* putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 20(1), 78–99. <https://doi.org/10.31078/jk2015>
- Isra, S. (2010). *Pergeseran fungsi legislasi: Menguatnya model legislasi parlementer dalam sistem presidensial Indonesia*. Rajawali Pers.
- Mahkamah Konstitusi Republik Indonesia. (2008, 1 Juli). Putusan Nomor 10/PUU-VI/2008.
- Mahkamah Konstitusi Republik Indonesia. (2015, 29 September). Putusan Nomor 100/PUU-XIII/2015.
- Mahkamah Konstitusi Republik Indonesia. (2022, 31 Oktober). Putusan Nomor 91/PUU-XX/2022.
- Mahkamah Konstitusi Republik Indonesia. (2025, 28 Agustus). Putusan Nomor 261/PUU-XXIII/2025.
- Mahkamah Konstitusi Republik Indonesia. (2025, 30 Juli). Putusan Nomor 183/PUU-XXII/2024.
- Mahkamah Konstitusi Republik Indonesia. (2026, 16 April). Putusan Nomor 58/PUU-XXIV/2026.
- Mahkamah Konstitusi Republik Indonesia. (2026, 17 Juni). Putusan Nomor 158/PUU-XXIV/2026.
- Mahkamah Konstitusi Republik Indonesia. (2026, 28 Agustus). Putusan Nomor 94/PUU-XXIV/2026.

- Mochtar, Z. A. (2021). *Kekuasaan kehakiman Mahkamah Konstitusi dan diskursus judicial activism vs. judicial restraint*. Rajawali Pers.
- Palguna, I. D. G. (2013). *Constitutional complaint: Upaya hukum terhadap pelanggaran hak-hak konstitusional warga negara*. Sinar Grafika.
- Rahman, F. (2020). Anomali penerapan klausul bersyarat dalam putusan pengujian undang-undang terhadap Undang-Undang Dasar. *Jurnal Konstitusi*, 17(1), 27–53. <https://doi.org/10.31078/jk1712>
- Sari, A. F. P., & Raharjo, P. S. (2022). Mahkamah Konstitusi sebagai *negative legislator* dan *positive legislator*. *Sovereignty*, 1(4), 681–691. <https://doi.org/10.13057/sovereignty.v1i4.112>
- Sulastri, D., & Sanmas, A. (2025). Mahkamah Konstitusi sebagai *positive legislator*: Implikasi putusan terhadap prinsip *checks and balances* di Indonesia. *Litigasi*, 26(2). <https://doi.org/10.31078/litigasi.v26i2.21999>
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. (1945).
- Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan sebagaimana telah diubah. (2011).
- Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah terakhir dengan Undang-Undang Nomor 7 Tahun 2020. (2003/2020).
- Undang-Undang Nomor 24 Tahun 2007 tentang Penanggulangan Bencana. (2007).
- Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman. (2009).