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The Principle of Prudence and Scope Limitation in the Discussion of the Indonesian Constitutional Court: Implications for Legal Reform and Judicial Decision Making

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Abstract

The principle of precaution is understood as a preventive action in facing uncertainty or potential risks, especially when the potential impact of an action could be harmful. The Constitutional Court, whose decisions are final and binding, also applies this principle in its decision-making process. This research analyzes the relationship between the precautionary principle and the Justice Deliberation Meeting (RPH). The research method used was normative legal research with a statutory, conceptual, and philosophical approach. The study results affirm that the characteristics of Constitutional Court justices, viewed from the theory of authority, are unique. The theory of authority in law refers to the power or authority an institution or legal body possesses to make legitimate and binding decisions. In the context of the Constitutional Court, its decisions have a distinctiveness that reflects this institution's special nature and responsibility. Furthermore, the Constitutional Court's final decisions are binding, prioritize public interest, and use comprehensive evaluations in testing laws, reflecting the application of the precautionary principle in maintaining the integrity of the Constitution and justice for the entire society. In the case of RPH, justices should also apply the precautionary principle by considering all

aspects and potential impacts of the law on the Constitution and the sense of justice in society.

Keywords
Constitutional Court, Prudence Principle, Justices' Deliberation Meeting.

Introduction

Prudence refers to the careful and preventive technique used by judges during the judicial review and decision-making process of the Indonesian Constitutional Court. This principle states that to ensure that judicial actions are guided by constitutional principles and the public interest, all potential risks must be thoroughly evaluated before making a final decision. By using prudence in the decision-making process, the Constitutional Court seeks to maintain the integrity of the Constitution and the justice of society. On the contrary, the scope defines the limits to which the Court can exercise its powers during the judicial deliberation process. This principle ensures that the Court will not overstep its bounds or make decisions beyond its obligations under the Constitution. Instead, the Court will remain focused on a specific legal issue. To prevent activism against safeguards and ensure that decisions maintain safeguards, it is essential to have a clear definition of their scope. Prudence and scope limitation are interdependent in their application. If prudence emphasizes the importance of careful consideration to avoid undesirable outcomes, then scope limitation ensures that this consideration can only be exercised within legally defined limits. The caution and limitation of scope in the Indonesian constitutional framework can be traced back to the establishment of the Constitutional Court (MK) in 2003, through Law No. 24 of 2003. The MK is expected to be the guardian of constitutional integrity, balancing its authority with the need to avoid overreach. This balance is institutionalized through procedural law, including deliberative mechanisms such as the Judges' Deliberation Meeting (RPH), which emphasizes careful and focused judicial decision-making. In Germany, for example, it is firmly based on environmental law, guiding judicial decisions to prevent harm even when scientific evidence is inconclusive. Similarly, in the United States public health and safety regulations, the

precautionary principle is frequently invoked, representing a proactive approach to managing potential risks[1].

A comparative comparison of the legal systems in the United States, Germany, and the European Union Court can help shape the worldwide debate over judicial wisdom and court decision-making. Each jurisdiction has a distinct approach to prudence in decision-making, which might lighten on international legal controversies. Understanding how courts in different countries utilize the principle of prudence will help us understand how to keep judicial decisions fair, effective, and in conformity with the law.

In the United States, prudence is frequently applied to public health and environmental legislation[2]. U.S. courts, particularly the Supreme Court, are regularly embroiled in conflicts over how to apply the precautionary principle when scientific data remains vague or uncertain. For example, courts must balance public safety and individual or corporate liberties in matters concerning climate change or hazardous product regulation. This US approach indicates that prudence may be an effective preventive measure in the face of uncertainty, while it frequently provokes arguments over the extent to which state intervention is permissible in the sphere of individual liberties.

In contrast, the precautionary concept in Germany is deeply ingrained in environmental law. German courts strictly implement this principle, especially in cases involving ambiguous environmental dangers. This approach enables the government and courts to intervene even when scientific data is limited, as long as there is a sufficient potential risk. This method is more proactive than the American approach, emphasizing the necessity of preventive measures to balance economic development and environmental preservation. It also reflects

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[1] Timothy O'Riordan, "The Precautionary Principle in Germany - Enabling Government," in *Interpreting the Precautionary Principle*, 2021, https://doi.org/10.4324/9781315070490-8.

[2] Joel A. Tickner and Sara Wright, "The Precautionary Principle and Democratizing Expertise: A US Perspective," *Science and Public Policy* 30, no. 3 (2003), https://doi.org/10.3152/147154303781780470.

Germany's tighter adherence to the "precautionary" principle (Vorsorgeprinzip) in legislation[3].

The European Union Court also plays a vital role in the evolution of the precautionary principle, particularly in international and regional law[4]. This court is frequently involved in disputes between member states concerning health, safety, and environmental regulations. The EU is well-known for its cautious legal structure in managing these concerns, with the precautionary principle recognized as one of its decision-making pillars. For example, when regulating the use of chemicals or agricultural products, the EU Court frequently prioritizes public health and environmental preservation over short-term economic interests, even when these restrictions are challenged by some member states.

By comparing the United States, Germany, and the European Union, we can see how the precautionary principle is utilized in different legal environments. The worldwide debate on this subject focuses not only on how governments legislate the precautionary principle, but also on how judges in each jurisdiction interpret this principle in their findings. The U.S. Supreme Court, the German Federal Court, and the European Union Court face unique issues in balancing individual rights, economic demands, and public interest. Further discussion could center on how this precautionary approach affects global judicial law developments. Comparative perspectives show that prudence and scope limits are important for judicial decision-making and can be adapted to different legal and constitutional contexts. The Indonesian Constitutional Court can improve its practices to ensure that judicial decisions are effective, fair, and in line with constitutional values. They can learn from the experiences of the US Supreme Court, the German Federal Constitutional Court, and the Indian Supreme Court. These lessons can serve as references for legal reforms that enhance the Court's function as a pillar of Indonesia's legal system and democracy.

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[3] Jeffrey K. Aronson, "When i Use a Word.... The Precautionary Principle: A Brief History," *The BMJ* 375 (2021), https://doi.org/10.1136/bmj.n3059.

[4] Alessandra Guida, "The Precautionary Principle and Genetically Modified Organisms: A Bone of Contention between European Institutions and Member States," *Journal of Law and the Biosciences* 8, no. 1 (2021), https://doi.org/10.1093/jlb/lsab012.

The principle is gradually being integrated into the judicial process in Indonesia, especially in the Constitutional Court, where it ensures that judicial decisions maintain constitutional integrity and justice for the public. The Constitutional Court of Indonesia aims to apply the precautionary principle that aligns with national legal traditions and the broader international legal traditions by limiting the scope of discussions in deliberation meetings. The Constitution of the Republic of Indonesia established a system for determining the judiciary's power[5]. The Constitution mandates that judicial power should have the characteristic of being independent and free from the influence of other powers[6]. Furthermore, judicial power, according to the 1945 Constitution of the Republic of Indonesia, is an independent power exercised by a Supreme Court and subordinate judicial bodies within the general courts, religious courts, military courts, and state administrative courts, as well as by a Constitutional Court, to administer justice. The Constitutional Court (MK) has the authority to review laws against the 1945 Constitution, resolve disputes concerning the authority of state institutions granted by the 1945 Constitution, dissolve political parties, adjudicate election result disputes, and decide on the House of Representatives opinion that the President and/or Vice President are suspected of having committed legal violations such as treason, corruption, bribery, or other serious crimes[7]. Prudence (prudence) and authority (scope limitation) have developed in constitutional jurisprudence in the history of Indonesian constitutional law. This principle stems from the need to balance the power of the Constitutional Court (MK) with the principle of democracy, which places the people and their representatives as lawmakers.

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[5] Fitria Esfandiari and Aan Eko Widianto, "Pancasila Legal System: Balancing The Fulfillment Of National Moral Values And Law Enforcement In Indonesia," *Indonesian Journal of Law and Economics Review* 19, no. 1 (January 2024), https://doi.org/10.21070/ijler.v19i1.999.

[6] Fitria Esfandiari and Moh. Fadli, "Repositioning the Role of the Constitutional Court as Positive Legislature in Indonesia," 2020, https://doi.org/10.5220/0009923411041111.

[7] Sulardi and Fitria Esfandiari, "The Authority of the People's Consultative Assembly and the Discourse of the Limited Amendment of the Constitution," 2020, https://doi.org/10.2991/aebmr.k.200513.050.

Historically, since its establishment through the 1945 Constitution, especially Article 24C, which regulates the functions and authorities of the Constitutional Court, has been limited. This is done to avoid accusations as an institution that exceeds its limits (ultra vires), especially when conducting material tests on laws. The principle of prudence and limitation of the Constitutional Court's authority can be linked to the theory of judicial restraint, which emphasizes that judges or judicial institutions must limit themselves only to matters regulated by law. The purpose of this theory is to prevent judicial activism, where the judiciary is considered to intervene in the process of forming policies that should be under the jurisdiction of the legislature or executive. These principles are also used in global jurisprudence to maintain the legitimacy of judicial institutions in constitutional democracies. For example, the US Supreme Court usually cannot make decisions on controversial political or public policy issues unless there is a clear violation of the constitution.

Therefore, the precautionary principle and the limitation of the authority of the Indonesian Constitutional Court not only have theoretical and historical relevance but are also in line with the practice of constitutional justice in various countries. These principles support the establishment of a balance between the supremacy of law and respect for the sovereignty of the people. The Constitutional Court's (MK) constitutional authority is practically translated through the principles of judicial power administration: simplicity, speed, and low cost. In line with this, the procedural law used by the MK is based on Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. The Constitutional Court's regulations/procedural law, as regulated in the MK Law, are divided into two parts: general procedural law rules for proceedings in the MK and special rules according to the characteristics of each case under the MK's jurisdiction.

To support the implementation of its duties and authority, the MK is granted the authority to supplement procedural law according to the MK Law. Additionally, the legal provisions regarding MK procedures are partly contained in the 1945 Constitution (Article 7B) and partly in the MK Law (Articles 28 to 85). The rest are regulated in the Constitutional Court Regulations (PMK) and, in practice, through

MK decisions. It is possible under Article 86 of the MK Law, which grants the MK the authority to regulate further matters necessary for the smooth execution of its duties and powers.

The division of procedural law provisions in the MK Law includes Articles 28 to 49, which contain general procedural rules applicable to all MK authorities. The remaining provisions pertain to specific procedures for each MK authority: Articles 50 to 60 for judicial review of laws against the 1945 Constitution, Articles 61 to 67 for resolving disputes over the authority of state institutions granted by the 1945 Constitution, Articles 68 to 73 for the dissolution of political parties, Articles 74 to 79 for resolving disputes over election results, and Articles 80 to 85 for procedural law concerning the MK's obligation to decide on the House of Representatives (DPR) opinion regarding violations by the President and/or Vice President. The provisions in Article 7B of the 1945 Constitution also apply.

Broadly speaking, as mentioned above, the general aspects of MK procedural law include provisions on hearings, application requirements, and decisions. For example, in MK hearings, examining, adjudicating, and deciding in a plenary session with all nine justices present is only done in extraordinary circumstances; otherwise, the plenary session requires at least seven Constitutional Court justices. Extraordinary circumstances include cases of death or physical/mental incapacitation of justices.

As the session's leader, the Chairman of the Constitutional Court (MK) presides or the Deputy Chairman if the Chairman is absent. If both are absent, the session can be led by one of the members. The examination stage is conducted by a panel of justices formed by the MK, consisting of at least three justices. The results from this panel examination are presented in a plenary session for further decision-making or examination.

The plenary session, referred to as the Justices Deliberation Meeting (hereinafter referred to as RPH), is a closed session for the public. It is intended to report the panel's case discussions and make decisions or further examinations. The subsequent step is that the decision made in the closed session is announced in a plenary session open to the public. At least seven justices must attend. The decision in this open session is a valid and binding requirement.

With independence and integrity, the constitutional justices decide constitutional cases in the RPH of the Constitutional Court. This process is crucial to ensure that the interpretation and application of the Constitution, as well as the judicial review of laws against the Constitution, are conducted fairly. All justices provide opinions and considerations based on the law, and the decisions made by all justices reflect a commitment to constitutional justice in Indonesia. The principle of prudence requires judges to exercise caution by thoroughly evaluating all potential risks and consequences before making decisions, especially in high-stakes cases with broad social implications. This principle aims to maintain constitutional integrity while minimizing harm. while in the context of the Limitation of scope, it refers to the boundaries set within which the Constitutional Court operates, ensuring that its decisions are in line with its constitutional mandate and do not go beyond the legislative or executive realm. These two principles can function in a complementary manner, with prudence ensuring careful consideration and limitation of scope defining the limits of judicial authority.

This paper examines how the Indonesian approach, particularly through the practices of the Constitutional Court, compares and differs from international applications of the precautionary principle. It highlights the changing nature of judicial prudence in Indonesia and the potential for legal reform inspired by global debates. By examining these differences, the paper contributes to a broader understanding of how the precautionary principle can shape judicial jurisprudence.

Method

The normative legal research method was utilized in this qualitative study, specifically employing legislative approaches and literature research to explore the research subject. The study examined Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court of Indonesia and its alignment with the principle of caution and the characteristics of Constitutional Court justices' decisions. Legal sources for this research were primary and secondary legal sources. Primary legal sources originated from relevant legislation, while secondary legal sources

included books, articles, research findings, and judgments related to the principle of caution in Indonesian Constitutional Court decisions.

Result and Discussion

A. Characteristics of Constitutional Court Justices Based on the Theory of Authority

The theory of authority in legal contexts refers to the power granted to individuals or institutions to make binding decisions[8]. Justices of the Constitutional Court (MK) possess specific characteristics that distinguish them from justices in other judicial institutions[9]. These characteristics encompass aspects of professionalism, integrity, and independence that are strictly regulated by legislation in Indonesia. The characteristics of Constitutional Court (MK) justices, which include professionalism, integrity, and independence, are tightly regulated under several legislative provisions in Indonesia.

Normatively, these provisions are examined within Law Number 24 of 2003 concerning the Constitutional Court, which lays the foundation for the establishment, authority, and duties of the Constitutional Court, including the requirements and characteristics of Constitutional justices. Furthermore, Law Number 8 of 2011, amending Law Number 24 of 2003 concerning the Constitutional Court, strengthens provisions regarding the requirements, appointment, and dismissal of Constitutional justices, emphasizing the importance of integrity and independence of Constitutional justices. In Law Number 48 of 2009 concerning Judicial Power, fundamental principles of judicial power in Indonesia are regulated, including the independence and integrity of justices in general, which also apply to Constitutional justices.

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[8] Jimly Asshiddiqie, "Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi," *Sekretaris Jenderal & Kepaniteraan Mahkamah Konstitusi RI*, 2006.

[9] Endriyani Lestari Lestari, "Negarawan, Independensi Kualifikasi Negarawan Sebagai Independensi Hakim Mahkamah Konstitusi Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 5, no. 2 (2023), https://doi.org/10.52005/rechten.v5i2.113.

In addition to the provisions above, internal regulations are drafted by the Constitutional Court (MK). These include the MK Regulations, which contain the code of ethics and guidelines for the conduct of Constitutional justices. For example, Constitutional Court Regulation Number 02/PMK/2003 provisions on the Code of Ethics and Guidelines for the Conduct of Constitutional Justices govern the standards of ethics, professionalism, and integrity that Constitutional justices must uphold. Furthermore, Constitutional Court Regulation Number 10 of 2012 on Guidelines for Court Governance and Administration outlines good court governance and administration practices, including professionalism and integrity for Constitutional justices.

These regulations provide a strict legal framework to ensure that Constitutional Court justices carry out their duties with high professionalism, integrity, and independence. It is crucial for maintaining public trust and upholding constitutional law in Indonesia. Constitutional court justices are expected to demonstrate a high level of professionalism[10]. They must have a strong legal education background, extensive experience in legal practice or academia, and the ability to understand and interpret the Constitution[11]. This professionalism is maintained through a rigorous selection process involving executive, legislative, and judicial institutions to ensure that prospective justices have adequate competence[12]. In addition, integrity is a key aspect of the characteristics of Constitutional court justices. Constitutional court justices must show high integrity in carrying out their duties to ensure that the decisions are fair and based on the law[13]. This integrity is maintained through a strict code of ethics and supervision by the

[10] Anthonio Bimo et al., "Challenges in the Implementation of Judges' Professional Ethics and Conflicts of Interest That Affect Integrity," *QISTINA: Jurnal Multidisiplin Indonesia* 2, no. 2 (2023), https://doi.org/10.57235/qistina.v2i2.821.

[11] Bagir Manan, "Peranan Hukum Dalam Mewujudkan Cita-Cita Keadilan Sosial Menurut UUD 1945," *Varia Peradilan*, no. 340 (2014).

[12] Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia – Edisi Kedua*, 2018.

[13] Hafizatul Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan," *Unizar Law Review* 6, no. 2 (2023), https://doi.org/10.36679/ulr.v6i2.60.

Constitutional Court Ethics Council[14]. Justices who violate the code of ethics may be subject to sanctions, including dismissal[15]. Independence is a fundamental characteristic of Constitutional court justices[16]. They must be free from executive, legislative, and personal influence. This independence is guaranteed by the Constitution and laws, which prohibit outside interference in the decision-making process. It can be underlined that the characteristics of Constitutional justices based on the theory of authority include professionalism, integrity, and independence. These three characteristics are essential for maintaining public confidence in the Constitutional Court's rulings and ensuring that the Constitutional Court can function as an effective constitutional bodyguard. A strict selection process, a strict code of ethics, and protection of the independence of justices are some of the mechanisms implemented to maintain these characteristics.

Authority comes from the word authority, which can be interpreted as something given by law that will subsequently cause legitimate legal consequences[17]. There is also a characteristic of the authority itself, which is carried out unilaterally and has consequences whose impact is felt in general. [18] The authority itself is contained with rights and obligations[19]. Meanwhile, authority can be obtained using attribution, delegation, and mandate.

In the provisions of Article 1 number 5 of Law Number 48 of 2009 concerning Judicial Power, which reads:

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[14] Ramadan, Nusantara, and Mitasari, "Reformulation of Supervision of the Constitutional Court to Increase the Effectiveness of Enforcement of the Code of Ethics for Constitutional Judges."

[15] Cantika Dhea Marshanda Zulqarnain, Nararya Salsabila Zamri, and Raesa Mahardika, "Analisis Pelanggaran Kode Etik Dalam Kasus Pemberhentian Ketua MK Anwar Usman Terkait Putusan Batas Usia Capres Dan Cawapres Pada Pemilu 2024," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 2 (2023).

[16] Jimly Asshiddiqie, "Implikasi Perubahan UUD 1945 Terhadap Pembangunan Hukum Nasional," in *Universitas Stuttgart*, 2005.

[17] HR Ridwan, "Pertanggungjawaban Publik Pemerintah Dalam Perspektif Hukum Administrasi Negara," *Jurnal Hukum IUS QUIA IUSTUM* 10, no. 22 (2003), https://doi.org/10.20885/iustum.vol10.iss22.art3.

[18] Frits Stroink Rene Seerden, *Administrative Law in the Netherlands*, 2002.

[19] Bagir Manan and Susi Dwi Harijanti, "Konstusi Dan Hak Asasi Manusia," *Padjadjaran Jurnal Ilmu Hukum*, 2016.

"Justices are justices in the Supreme Court and justices in the judicial bodies under them in the general judicial environment, the religious court environment, the military judicial environment, the state administrative judicial environment, and justices in special courts within the judicial environment."

Furthermore, Article 1 number 6 states, "The Supreme Court Justice is a judge of the Supreme Court". Then Article 1 number 7 states, "Constitutional Judge is a judge of the Constitutional Court."[20]

If it is associated with the function of a justice, it is found in Law Number 48 of 2009 concerning Judicial Power, Article 5, paragraphs (1) to (3), which read:

1. Justices and constitutional justices are obliged to explore, follow, and understand the legal values and sense of justice that live in society;
2. Justices and constitutional justices must have integrity and personality that is irreproachable, honest, fair, professional, and experienced in the field of law;
3. Justices and constitutional justices are obliged to obey the Code of Ethics and the Code of Conduct for Justices.

Indonesian justices must decide cases and maintain justice, and the public interest. It is crucial to consider the values of society, not merely as a mouthpiece for the law .

Returning to the discussion of the principle of prudence, the researcher observes the technical provisions regulated in the Constitutional Court Regulation Number 1 of 2018 concerning the Trial of the Constitutional Court. Article 1 number 6 reads, "The Justices Deliberation Meeting, hereinafter referred to as RPH, is a meeting conducted by the Court closed to the public, to make decisions ." The article can be interpreted that there is a technical way to conduct the trial in a closed and confidential manner. The RPH can contain a decision-making agenda regarding the mechanism for examining and continuing cases, provisional decisions, and final decisions.

The absence of clear restrictions on the restrictions on objects spoken in the Justices' Consultative Meeting may cause bias. The essence

[20] "Undang – Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman Pasal 1 Angka 5 -7" (n.d.).

of a trial is problem-solving, whose purpose is the usefulness of every activity in the trial and objectivity. The RPH is carried out behind closed doors to prevent information leakage, ultimately aiming at the court decision's objectivity . The relationship between the Constitutional Court and other branches of government in Indonesia often involves navigating complex political dynamics. Caution and limited scope are important tools in maintaining this balance. For example, in politically sensitive cases such as election law disputes or impeachment proceedings, the Constitutional Court must ensure that its decisions are based on constitutional principles while avoiding the perception of bias or overreach.

At least seven (7) justices attend the Justices Deliberation Meeting (RPH) through consensus for decision-making. If this is not achieved, the decision is made by a majority vote, and if this is not achieved, then the final vote of the Chairman of the Consultative Assembly of Justices will be decisive. Based on the regulations, it is more regulated on the technicalities of attendance and the implementation, so if viewed objectively, it will impact the outcome of the decision.

B. The Precautionary Principle in Judicial Deliberation Meetings

Principles are fundamental things that must always exist and be brought into an action or behavior[21]. If reviewed from the Constitutional Court Regulation Number 1 of 2018 concerning the Trial of the Constitutional Court article 15 paragraph (1), it is stated that the stages of the examination carried out in the RPH include:

1. Examination of case papers
   Letters or writings are used as evidence that must be accountable in the form of quotes, copies, state administrative decisions, and/or court decisions. In the Constitutional Court's procedural law, all categories of written evidence in civil, criminal, and state administrative laws also apply, even

[21] Moh Fadli, "Constitutional Recognition and Legal Protection for Local Religion in Indonesia: A Discourse on Local Religion of the Tengger and Baduy People," *Pertanika Journal of Social Sciences and Humanities* 25, no. 2 (June 2017): 601–14.

more broadly, according to the type of case being [22]handled. In the case of disputes over the results of the general election (PHPU), for example, an authentic deed in the form of a vote count minutes or a recapitulation of the vote count results is essential for the trial examination process[23]. On the other hand, in the case of testing the law, the important thing is not whether a legal document submitted as evidence is authentic. However, it must be proven that the document is a copy of an authentic law, namely the law contained in the State Gazette and the Supplement to the State Gazette, so its regulated norms apply as binding legal norms[24].

2. Witness Statement
   The testimony of witnesses under oath regarding the facts that they saw, heard, and experienced themselves.[25] In the trial of constitutional cases, witness statements are required in different proportions according to the type of case being handled. In the case of testing the law, for example, witness testimony is generally needed in terms of proving the legal standing of the applicant, which is related to the existence of an event as a form of loss of rights or authority requested due to the provisions of the law being requested. Meanwhile, the proof of whether the provisions of the law in question are contrary to the 1945 Constitution is more based on legal

[22] Soeharno, "Hukum Acara Mahkamah Konstitusi Penegak Hukum Dan Pengadilan," *Jurnal LPPM Bidang EkoSosBudKum* 1, no. 2 (2014).

[23] Khotob Tobi Almalibari, Abdul Aziz, and Adrian Febriansyah, "Kewenangan Mahkamah Konstitusi Dalam Sistem Pemilihan Umum," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 1 (2021), https://doi.org/10.52005/rechten.v3i1.21.

[24] Patrick Frend Wongkar, "Analisis Yuridis Kewenangan Mahkamah Konstitusi Dalam Melakukan Pengujian Undang-Undang Terhadap Undang-Undang Dasar Di Indonesia," *Lex Et Societatis* 9, no. 1 (2021), https://doi.org/10.35796/les.v9i1.32060.

[25] "Pasal 19 – 21 Peraturan Mahkamah Konstitusi Nomor 6 Tahun 2005 Tentang Pedoman Beracara" (2005).

arguments[26]. On the other hand, for the impeachment case of the President and/or Vice President, witness testimony is required in the subject matter of the case to prove that the President and/or Vice President has committed a violation of the law that can be the basis for impeachment as stipulated in the 1945 Constitution. In the judicial process of the Constitutional Court, witness testimony must also be supported by other evidence.

3. Expert Testimony
   Expert testimony under oath is a consideration for the verdict, as it should be expert testimony. Expert testimony is an opinion submitted by a person under oath in the examination of the trial regarding a matter related to the case being examined following expertise based on knowledge and experience. Thus, the information submitted by the expert is different in principle from the information submitted by witnesses. Expert testimony is open in the form of information about what is seen, felt, or experienced about an event, but opinions and analysis are by their expertise. Expert testimony can be submitted orally and/or in writing, which will be input for constitutional justices to consider in deciding cases[27]. In submitting an expert for a case, the applicant must include information about the expertise possessed by the expert to be submitted, as well as the subject of information to be provided. Expert testimony is crucial, especially in legal testing, which focuses more on arguments when deciding a case[28]. In addition, due to the breadth of the scope of the substance of the law being tested, constitutional justices must have sufficient expert knowledge to decide a case of testing a

[26] Ilhamdi Putra and Khairul Fahmi, "Karakteristik Ne Bis In Idem Dan Unsurnya Dalam Hukum Acara Mahkamah Konstitusi," *Jurnal Konstitusi* 18, no. 2 (2021), https://doi.org/10.31078/jk1824.

[27] Arief Rachman Hakim et al., "Kekuatan Hukum Pertimbangan Hakim Mahkamah Konstitusi Mengenai Penjabat Kepala Daerah," *JURNAL USM LAW REVIEW* 6, no. 1 (2023), https://doi.org/10.26623/julr.v6i1.5853.

[28] Trio, Zarkasi, and Amin, "Analysis of Constitutional Court Judges' Considerations on the Re-Vote for Regional Head Election Based on Laws and Regulations."

law. In addition to experts submitted by relevant parties to the law-making and related parties, constitutional justices can also submit witnesses and other experts to ensure that the information provided in the trial is fair. If his testimony is required, the judge can summon other experts.

4. Applicant's Statement

   The applicant's statement includes the President, the Government, the House of Representatives, and/or the DPD, as well as the information of related parties. The information provided by the parties in a case, both as the respondent and related parties, is known as the parties' statement. The information can respond to the application's content. It can include the rejection of the postulates or their support with data and facts. To obtain comprehensive information, the parties' information is required (audi et alteram partem). For example, in a dispute over the authority of a state institution, the statement of the party is the statement of the applicant, and the party related to the applicant's evidence and the facts and events related to the case. For example, as shown in SKLN Case No. 068/SKLNII/2004 concerning the Dispute over the Authority to Elect BPK Members, the statements of the parties heard include the statements of Respondent I (President) and Respondent II (DPR), which contain evidence opposing or rejecting the Applicant's application, as well as the statements of BPK-related parties explaining the chronological facts of the election of BPK members. In addition, it can be done to ask for information from other parties about the substance of the law being tested. These parties include state institutions and community groups related to the problem. For example, in the trial of Case No. 140/PUU-VII/2009 regarding the testing of Law No. 1/PNPS/Year 1965 concerning the Prevention of Abuse and/or Blasphemy, the Nahdlatul Ulama organization and the Indonesian Ulema Council made a statement that rejected the petitioner's demands and supported the demands of the relevant parties of the House of Representatives and the Government.

5. Clues
   The clues in question are things obtained from data, information, deeds, circumstances, and/or events following evidence. The explanation of Article 36 paragraph (1) letter e of Law Number 24 of 2003 states that clues are only obtained from witness statements, letters, and evidence. Therefore, the clue in this case is something that the judge gets from the content of witness statements, letters, and other evidence that supports or matches each other.[29] To clarify the meaning of instructions, Article 188 of the Criminal Code defines instructions as acts, events, or circumstances that, due to their conformity, both between one and another or with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is. Thus, the justice assesses the strength of the clues after the trial examination and based on the judge's conviction.
6. Other Evidence
   Other evidence is in the form of information that is spoken, transmitted, received, or stored electronically and similar optical devices.[30] The provisions of Article 36 paragraph (1) letter f of Law No. 24 of 2003 state that one of the pieces of evidence is "other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar to it." The evidence in question can be briefly referred to as electronic information. Electronic information is obtained from, transmitted through, or stored in electronic devices. This information can be in letters or other forms of writing, communication data, numbers, sounds, images, videos, or other types of information and data. The electronic devices used can be in the form of websites or other recording media in various forms (solid disks, hard disks, flash disks, cards, and others).

[29] "Pasal 36 Ayat (1) Huruf e UU Nomor 24 Tahun 2003" (2003).

[30] Pasal 19 – 21 Peraturan Mahkamah Konstitusi Nomor 6 Tahun 2005 tentang Pedoman Beracara.

From the analysis of the examination stages in the Constitutional Court examination above, it can be understood that the RPH is a type of plenary session that is closed in nature[31]. The RPH that discusses cases is confidential and is only attended by constitutional justices, clerks, and substitute clerks. In this RPH, the development of a case, and decisions and rulings related to a case, are discussed. Especially for the RPH for case decision-making, it is regulated in Article 45, paragraph (4) to paragraph (10) of Law No. 24 of 2003. Regarding the evidence declared valid, the Constitutional Court then assesses by paying attention to the conformity between one piece of evidence and the other in the RPH. Given the importance of the evidentiary examination stage as a decisive stage, the presence of the parties, witnesses, and experts in fulfilling the summons of the Constitutional Court is an obligation. Therefore, if the parties are state institutions, they can be represented by appointed officials or their proxies based on laws and regulations. For this reason, for the summon to be able to prepare everything, the summons of the Constitutional Court must have been received within a period of no later than 3 (three) days before the day of the trial.

As for the process in the RPH, it is expressly stated that the decision-making is finalized in the series. Therefore, RPH is closed and confidential. In the decision-making process, each constitutional judge must submit a written consideration or opinion on the application. The verdict must be tried as much as possible by deliberation to reach a consensus. The deliberation is postponed until the next RPH if a consensus cannot be reached. If a consensus cannot be reached, the decision is based on the majority of votes. In the Explanation of Article 5 paragraph (5) of Law No. 24 of 2003, it is determined that there is no abstention in the deliberative session of decision-making.

The Justices Deliberation Meeting (RPH) is an integral part of the examination, court, and decision-making process in constitutional cases. Based on the provisions of Law Number 24 of 2003 concerning the Constitutional Court, the RPH must be attended by nine Constitutional justices. However, with the latest amendments in Law Number 7 of 2020 concerning the Constitutional Court, there is an

[31] Mulk Haeriah, "Keterkaitan Pengaturan Hukum Acara Mahkamah Konstitusi Dalam Peraturan Mahkamah Konstitusi," *Osf.Io*, 2011.

affirmation that in extraordinary circumstances, a decision can be taken by a minimum of seven constitutional justices. The term "exceptional circumstances" is not explained in detail in the law but can be interpreted as unforeseen or unavoidable circumstances that prevent a constitutional judge from attending the RPH, for example, due to health reasons or other emergencies. In such an extraordinary situation, if only eight justices are present, and there is an impasse in decision-making with four justices granting the application, and four justices rejecting or not accepting—Article 45 paragraph (8) of Law Number 24 of 2003, which remains relevant to the amendment in Law Number 7 of 2020, stipulates that the vote of the Chairman of the Plenary Session of the Constitutional Justices is decisive. If the votes are evenly divided, the final decision will be in the hands of the Session's Chairman.

Thus, this mechanism ensures that every decision of the Constitutional Court can still be taken, even if not all justices can be present, while maintaining balance and fairness in the decision-making process. The latest amendments in Law Number 7 of 2020 provide a clearer and firmer legal framework regarding extraordinary circumstances, strengthening the legitimacy and effectiveness of decision-making in the Constitutional Court.

The Constitutional Court (MK) decision is an important part of the legal system in Indonesia. In general, the Constitutional Court's decision can be declarative or constitutive. The first suggests that the rulings are declarative, meaning they establish something as valid or invalid without altering the existing law. For example, when the Constitutional Court issued a law contrary to the 1945 Constitution, this decision expressly stated that the law was invalid from the beginning. On the contrary, due to its constitutive nature, the Constitutional Court's rulings can change existing legal circumstances or create new ones. In other words, the Constitutional Court's decision can ratify, change, or revoke laws that violate the 1945 Constitution. This decision constitutionally removes the existence of law from the law [32]. The fundamental difference between the declarative and constitutive nature of this Constitutional Court decision greatly influences the application

[32] Ahmad Fadlil Sumadi, "Hukum Acara Mahkamah Konstitusi Dalam Teori Dan Praktik," *Jurnal Konstitusi* 8, no. 6 (2016), https://doi.org/10.31078/jk861.

and enforcement of law in Indonesia. Through the declaratoir decision, the Constitutional Court maintains legal certainty by affirming the existing legal status. Meanwhile, through constitutional decisions, the Constitutional Court plays an active role in legal reform by resolving legal problems faced by the community. The Constitutional Court's decision states what the law is and can simultaneously eliminate the legal situation and create a new one[33].

For example, in the case of testing the law, the granting decision is declarative because it states the law of a legal norm, contrary to the 1945 Constitution. At the same time, the decision created a new state of law[34].

Similarly, in the decision on disputes over the election results, the Constitutional Court's decision states the law of the KPU's determination of the election results, whether true or not[35]. If the application is granted, the Constitutional Court cancels the determination of the KPU, which means eliminating the legal situation and creating a new one. In the case of a dispute over the constitutional authority of a state institution, the Constitutional Court's decision can have a condemnatoir nature, namely giving punishment to the respondent for doing or not doing something. Article 64, paragraph (3) of the Constitutional Court Law states that if an application is accepted in a case of a dispute over the constitutional authority of a state institution, the Constitutional Court expressly states that the party applying cannot exercise the disputed authority[36].

In procedural law, especially in civil procedural law, there is a view that some experts have considered as one of the principles of procedural law, namely that the judge is prohibited from deciding beyond what is requested (*ultra petite*). This provision is based on Article 178, paragraph

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[33] Sulardi and Esfandiari, "The Authority of the People's Consultative Assembly and the Discourse of the Limited Amendment of the Constitution."

[34] Nur indra Socawibawa and Arif Wibowo, "INDEPENDENSI KEKUASAAN KEHAKIMAN HUKUM ACARA MAHKAMAH KONSTITUSI," *Jurnal Penelitian Multidisiplin* 2, no. 1 (2023), https://doi.org/10.58705/jpm.v2i1.103.

[35] Fitria Esfandiari dkk, "Implementation Of Consistent Pilkada In Malang District From Precautionary Principles," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 11–18, https://doi.org/https://doi.org/10.22219/aclj.v2i1.15157.

[36] Khotob Tobi Almalibari Khotob, "Kewenangan Mahkamah Konstitusi Dalam Sistem Pemilihan Umum," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 1, no. 2 (2022), https://doi.org/10.52005/rechten.v1i2.45.

(2) and paragraph (3) of the HIR and Article 189, paragraph (2) and paragraph (3) of the RBg. Because of this view, when the Constitutional Court decided to cancel all Law Number 20 of 2002 concerning Electricity[37] and cancel all Law Number 27 of 2004 concerning the Truth and Reconciliation Commission (KKR Law),[38] there were many responses that the Constitutional Court had violated the principle of prohibiting ultra petita. These cases demonstrate how caution and spatial constraints guide the Court's reasoning, ensuring that decisions taken are legally valid and have a social impact. However, it cannot be ascertained that the ultra petite prohibition applies to the Constitutional Court because of the characteristics of the cases under the authority of the Constitutional Court. The authority to test the Constitutional Court's laws is public, even if the submission can be made by specific individuals whose constitutional rights are harmed by the provisions of the law. It is in line with the object of the test, namely the provisions of the law as a norm that is generally abstract and binding.

For example, when testing the law, it is related to the public interest. Therefore, the law is binding on everyone (*erga omnes*). In civil law, the prohibition of ultra petite applies because the initiative to defend a person's private rights lies in his own will, and the consequences of the law are binding only on that individual, not on others. In fact, due to progress and the need to meet the demands of justice, the ban is no longer enforced absolutely. However, in its decision, the Constitutional Court also considered the Supreme Court's decision on the KKR Law, which affirmed that Article 178 paragraph (2) and paragraph (3) of the HIR and Article 189 paragraph (2) and paragraph (3) of the RBg regarding the prohibition of ultra petita do not apply absolutely. This is because justices must actively participate and try to give a verdict that resolves the case. In addition, in every lawsuit, indictment, or petition, there is usually a request for the judge to make a decision that is as fair as possible so that the judge can decide more than a petitum.

It is important to include specific case studies where the precautionary principle and scope limitation have influenced the decisions of the Indonesian Constitutional Court. This would increase

[37] "Putusan Nomor 001-021-022/PUU-I/2003" (2003).
[38] "Putusan Nomor 006/PUU-IV/2006" (2006).

the practical relevance of this article. These examples show how these principles are applied in judicial practice, especially in cases related to controversial issues such as governance, human rights, or the balance of power. The Constitutional Court (MK) has several times canceled the law, such as the Electricity Law and the KKR Law. In the case of the Electricity Law, the Constitutional Court considered that even though only a few articles are contrary to the 1945 Constitution, these articles are the core of the law and are not in line with the spirit of Article 33 paragraph (2) of the 1945 Constitution. As a result, the Constitutional Court canceled the entire Electricity Law. This decision reflects the principle of prudence, where the Constitutional Court considers the incompatibility of some articles with the 1945 Constitution and law's overall impact on the constitutional system and values. Thus, the Constitutional Court ensures that the enacted laws are not only in line with the Constitution's text but also with the spirit and purpose of the Constitution to maintain the integrity of the law and justice for the community.

In its ruling on the Truth and Reconciliation Commission (KKR) Law, the Constitutional Court (MK) stated that all operationalization of the KKR Law depends on and boils down to Article 27. When Article 27 is declared contrary to the 1945 Constitution, all provisions in the KKR Law become impossible to implement. Article 27 is closely related to several other articles in the KKR Law, including Article 1 number 9, Article 6 letter c, Article 7 paragraph (1) letter g, Article 25 paragraph (1) letter b, Article 25 paragraph (4), (5), and (6), Article 26, Article 28 paragraph (1), and Article 29. These articles greatly determine whether all the provisions in the KKR Law can function.

This Constitutional Court decision reflects the principle of prudence, where the Constitutional Court not only looks at violations in one article in isolation but also considers the systemic impact of the incompatibility of the article on the entire law. The principle of prudence requires the Constitutional Court to ensure that the laws implemented are not only in line with the text of the Constitution but also with the spirit and purpose of the Constitution. By repealing the entire KKR Law, the Constitutional Court is acting to prevent the implementation of fundamentally flawed laws, which may cause injustice or legal uncertainty. It shows the Constitutional Court's commitment to

maintaining the integrity of the law and ensuring that every law enacted is truly enforceable in accordance with constitutional values.

Constitutional justices have the authority to annul certain articles of a law. However, the annulment of a particular article alone can cause legal uncertainty if the article is at the heart of the entire law. In addition to the above parts in the provisions of Article 45 paragraph (10) of Law No. 24 of 2003, which has been amended into Law No. 7 of 2020 concerning the Constitutional Court, it mandates that the opinions of different members of the Panel of Justices must be contained in the decision. Differing opinions are indeed possible and, in practice, are common because a verdict can be taken with the most votes if deliberation cannot reach a consensus. Different opinions can be divided into two types, namely (1) *dissenting opinion* and (2) *concurring opinion* or consenting opinion. A *dissenting opinion* is a different opinion regarding substance that affects the difference in the verdict. Meanwhile, *a concurring opinion* is a different opinion that does not affect the verdict. The difference in *concurring opinion* is the difference in legal considerations that underlie the same verdict. In this context, the principle of prudence is very important for constitutional justices to apply. Any decision that strikes down a particular article of the law must consider its impact on the overall law and any potential legal uncertainties that may arise. The decision must be based on an in-depth analysis, and the implications for other articles must be considered to minimize the risk of contradicting the 1945 Constitution and maintain legal certainty.[39]

Concurring opinions, which include different considerations with the same outcome of a decision, do not always have to be placed separately from the majority opinion. On the contrary, the opinion can be incorporated into legal considerations that support the decision. However, *dissenting opinions*, as different opinions that affect the outcome of the decision, must be presented separately in the decision. One form of moral accountability of constitutional justices who express different opinions is openly expressing their opinions. It also allows the public to understand all the legal aspects of the Constitutional Court's

[39] Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Mahkamah Konstitusi, 2019).

decision. Regarding the principle of prudence, including different opinions, both *dissenting* and *concurring,* shows the justices' commitment to providing a comprehensive and in-depth analysis. By displaying various points of view, the Constitutional Court's decision is expected to be more transparent and accountable, thereby reducing the risk of errors and legal uncertainty. The principle of prudence requires justices to consider all relevant aspects before making a final decision, including different opinions to ensure that all legal considerations have been carefully analyzed. The existence of *a dissenting opinion* does not affect the legal force of the Constitutional Court's decision. The Constitutional Court's decision by consensus by nine Constitutional justices without dissenting opinions has the same force, no less and no more, with the Constitutional Court's decision taken with the most votes with a composition of 5 to 4. In the practice of the Constitutional Court's decision, the placement of dissenting opinions has undergone several changes. First, dissenting is placed in the legal consideration section of the Court after the majority legal consideration, followed by a verdict.[40] In its development, such placement is seen as confusing for people who read the verdict because after reading the dissenting, they only read the verdict, which is the opposite. Moreover, if the dissenting is quite a lot in proportion to the legal considerations of the majority of justices, the placement of the dissenting was changed again, namely after the verdict but before the closing part and the signature of the constituent judge and the substitute clerk.[41] Currently, the dissenting is placed after the Constitutional justice' cover and signature but before the substitute clerk's name and signature.[42]

The Constitutional Court's decision has permanent legal force since it was pronounced in a plenary session open to the public.[43] It is a consequence of the nature of the Constitutional Court's decision, which the 1945 Constitution determines as final. Thus, the Constitutional Court is the first and last court whose decision cannot be subject to legal action. After the verdict is read, the Constitutional Court is obliged to

[40] "Putusan Nomor 004/PUU-I/2003" (2003).
[41] "Putusan Nomor 011-017/PUU-I/2003" (2003).
[42] "Putusan Nomor 019-020/PUU-III/2005" (2005).
[43] Putusan Nomor 011-017/PUU-I/2003.

send a copy to the parties within no later than seven working days from the pronouncement of the verdict.[44]

C. Implication of Legal Reform in Indonesia

The precautionary principle and scope limitation have significant potential to influence and improve Indonesia's legal system. By integrating these principles more effectively into judicial practice, the Constitutional Court (MK) can address long-term challenges related to efficiency, fairness, and respect for the legislative process. This section explores the implications of these principles for legal reform and proposes actionable recommendations. The principle of prudence encourages thorough consideration and evaluation of evidence, legal arguments, and social effects before making a decision. This method not only improves the quality of judicial decisions but also increases public confidence in court decisions. However,, prudence can also lead to delays if not balanced with procedural efficiency. It is expected that the Indonesian legal system will benefit significantly from the proposed reforms. The main benefit is the enhancement of judicial legitimacy. The Constitutional Court can strengthen public trust through fair, impartial decisions that are always based on the constitution by applying the principle of prudence and clear limitations of authority. This trust is an important foundation in ensuring that the judiciary remains a credible guardian of the constitution.

This reform can also reduce legal uncertainty in the justice system. Having clear boundaries and procedures in the legal system can reduce ambiguity. This will increase the predictability and stability of the law, which is very important for maintaining legal certainty and fostering trust among legal actors.

These reforms can also reduce legal uncertainty in the judicial system. Having clear boundaries and procedures in the legal system can reduce ambiguity. This will increase predictability and stability of the law, which are essential for maintaining legal certainty and fostering trust among legal actors.

[44] Putusan Nomor 019-020/PUU-III/2005.

Indonesia's democratic institutions will also be strengthened by these reforms. A healthy balance of power can be achieved by respecting the legislative process while maintaining the judicial oversight function. This will encourage the strengthening of constitutional democracy in Indonesia and ensure that the legal system operates fairly and transparently in accordance with democratic principles.

Ultimately, these reforms based on prudence and limited powers will make the Constitutional Court an example of judicial excellence. Not only will they improve the efficiency and fairness of the Court, but they will also assist broader legal reforms, which will result in a judicial system that is in line with constitutional obligations and the needs of society. By implementing these principles carefully and systematically, the Constitutional Court can strengthen its position as a cornerstone of legal integrity and democracy in Indonesia. Law No. 24 of 2003 established the Constitutional Court, which was a major step forward in the judicial oversight system in Indonesia. Over the years, the principles of prudence and scope limitation have developed into essential elements in the Court's task of safeguarding constitutional democracy. Global constitutional theories, such as judicial restraint, are consistent with these principles and emphasize that judicial intervention should be limited to maintain the separation of powers. Over the years, these principles have been applied in Indonesia, demonstrating a commitment to balancing judicial authority with democratic governance. The Constitutional Court's effectiveness and legitimacy can be enhanced by adding caution and scope limitations to judicial practice. For example, incorporating these principles into procedural law would provide clear guidance for judges; judicial training programs centered on these principles could improve consistency in decision-making; and institutional reforms could establish ways to monitor how these principles are applied in practice. Such reforms would increase public confidence in the Court and ensure it fulfills its constitutional duties by making fair and efficient decisions.

Conclusion

The implementation of the precautionary principle in the Justices Deliberation Meeting (RPH) of the Constitutional Court (MK) and the characteristics of Constitutional justices are closely intertwined and

mutually supportive. Constitutional justices possess specific traits that enable them to effectively apply the precautionary principle in the decision-making process. The RPH emphasizes cooperation and deliberation in decision-making. This process allows for diverse perspectives and in-depth analyses from various angles, which are crucial for applying the precautionary principle. The precautionary principle in the RPH of the MK is strongly supported by the characteristics of Constitutional justices who are independent, competent, have integrity, and work collectively. It ensures that decisions are legally sound, fair, transparent, and oriented towards public interest and constitutional justice.

Recommendations

1. The principle of prudence and scope limitations should be explicitly codified in the Constitutional Court's procedural law to ensure consistency in judicial decision-making. This can be done by including detailed provisions defining caution and scope limitations as judicial guiding principles.
2. Designing a publicly accessible online platform regarding case progress, accessing decisions, and learning about Court activities.

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