

# Analyzing the concept of incompleteness and ambiguity of norms in formal testing of laws at the constitutional court

<sup>1</sup>Topan Yulia Pratama, <sup>2</sup>Sudarsono, <sup>3</sup>Herman Suryokumoro & <sup>4</sup>Aan Eko Widiarto

## Abstract

The effectiveness, fairness, and legal certainty of Indonesia's constitutional system are significantly undermined by the inadequacy and ambiguity of legislative standards. Deficiencies in legislative drafting, such as insufficient regulatory provisions and vague legal language, often contribute to this issue. This research examines the role of the Constitutional Court in addressing the incompleteness and ambiguity of legal norms through formal judicial review. By employing a normative legal research methodology with a descriptive-analytical approach, this study analyzes constitutional provisions and selected Constitutional Court decisions, including the judicial review of the Job Creation Law and the Revision of the Corruption Eradication Commission Law. The findings underscore the Constitutional Court's pivotal role in safeguarding constitutional supremacy by providing interpretative guidance for unclear or incomplete legal standards. The Court has successfully identified procedural deficiencies in the legislative process that compromise transparency and public participation, as exemplified in Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law. However, this interpretative function frequently raises concerns about the limits of the Court's jurisdiction. This study argues that legislative reform is imperative to minimize the occurrence of incomplete and ambiguous norms. It advocates for the enhancement of legislative drafting quality, the professionalization of legislators, and the reinforcement of public participation mechanisms. This research contributes to the broader discourse on the Constitutional Court's function in mitigating systemic legislative deficiencies and fostering a more inclusive, responsive, and constitutionally grounded legal framework.

**Keywords:** *legislative clarity, constitutional court, judicial review, legal norms, legislative reform*

## Article History:

*Received:* December 18, 2024

*Accepted:* January 28, 2025

*Revised:* January 25, 2025

*Published online:* February 5, 2025

## Suggested Citation:

Pratama, T.Y., Sudarsono, Suryokumoro, H. & Widiarto, A.E. (2025). Analyzing the concept of incompleteness and ambiguity of norms in formal testing of laws at the constitutional court. *International Review of Social Sciences Research*, 5(1), 106-127. <https://doi.org/10.53378/irssr.353148>

## About the authors:

<sup>1</sup>Corresponding author. Faculty of Law, Brawijaya University, Malang, Indonesia. Email: [topan\\_yp@student.ub.ac.id](mailto:topan_yp@student.ub.ac.id)

<sup>2</sup>Faculty of Law, Brawijaya University, Malang, Indonesia. Email: [sudarsono@ub.ac.id](mailto:sudarsono@ub.ac.id)

<sup>3</sup>Faculty of Law, Brawijaya University, Malang, Indonesia. Email: [herman.suryo@ub.ac.id](mailto:herman.suryo@ub.ac.id)

<sup>4</sup>Faculty of Law, Brawijaya University, Malang, Indonesia. Email: [widiarto@ub.ac.id](mailto:widiarto@ub.ac.id)



## 1. Introduction

The establishment of a framework to ensure the constitution's preeminence as the nation's highest law is the foundational impetus for the creation of Constitutional Courts worldwide (Muhtar et al., 2023). The fundamental principle is that the legislative, executive, and judicial departments must comply with the constitution as the principal framework guiding the relationship between the state, its citizens, and its institutions (Razak et al., 2023). This notion originates from the current legal legacy grounded in democracy and the rule of law.

In 1803, John Marshall, the chief judge of the US Supreme Court, was the first to popularize the notion of constitutional review via the *Marbury v. Madison* ruling. Marshall established the principle of judicial review in this case, giving the courts the power to ascertain whether a legislation or executive order contravenes the Constitution (Nelson, 2018). Although the United States lacks a permanent Constitutional Court, the Constitutional Courts of other countries have emerged from the principle of judicial review.

Hans Kelsen, the Austrian jurist sometimes considered the founder of modern positive law, established the foundation for the present Constitutional Court. Austria created a Constitutional Court in 1920, based on Kelsen's design. The principal duty of the Constitutional Court, as posited by Kelsen, is to guarantee that legislation does not contravene the Constitution. The Court need to operate autonomously from the conventional courts (Wijaya, 2023). Numerous European countries established constitutional courts post-World War II, exemplified by the Austrian Constitutional Court. Following World War II, Western European countries accelerated the reconstruction of their legal frameworks by establishing Constitutional Courts to protect democratic values and personal freedoms. For instance, the German Constitutional Court has been instrumental in upholding democracy and justice since its formation in 1949, in line with the German Basic Law (*Grundgesetz*) (Zekoll & Wagner, 2018). In Germany and other European countries, the Constitutional Court is tasked with responsibilities beyond judicial review; it also supervises elections, arbitrates conflicts among governmental entities, and protects human rights.

The concept of the Constitutional Court has proliferated outside Europe, with other countries' legal systems incorporating it in distinct ways. In fact, Indonesia established the Constitutional Court in 2003 as a reform after the New Order, intended to strengthen democracy and the rule of law (Muhtar et al., 2023). The Constitutional Court of Indonesia possesses broad jurisdiction, encompassing the authority to assess whether legislation

contravenes the 1945 Constitution of the Republic of Indonesia, adjudicate the dissolution of political parties, resolve electoral disputes, and evaluate laws for constitutional compliance.

Issues with inadequate and ambiguous criteria arise during the Constitutional Court's formal evaluation of legislation. The absence of clear and precise criteria undermines legal clarity, justice, and the effective implementation of the constitution (Pujayanti et al., 2024). An instance of norm incompleteness arises when a legal rule is deficient in essential elements required to effectively regulate a specific situation. Conversely, normative vagueness arises when the language of a legal rule is ambiguous, permitting many and often contradictory interpretations. The Constitutional Court often faces issues throughout the formal review process due to the inconsistent adherence to constitutional procedures in legislation drafting, affecting both technical aspects and legal substance.

The Constitutional Court has distinct challenges stemming from the ambiguity and vagueness surrounding official testing requirements. Consequently, justices on the court are required to use their constitutional authority to interpret and address the deficiencies. On one side, the Constitutional Court is not tasked with defining new norms; that responsibility is with the legislature. The Court has the supplementary obligation to ensure that the evaluated law does not violate basic principles due to ambiguous or absent requirement (Diharjo et al., 2024). The Constitutional Court is sometimes requested to interpret ambiguous norms constructively, in accordance with the principles of justice, benefit, and the protection of human rights. This method often utilizes many interpretative techniques, including systematic, teleological, and historical interpretation, to ascertain the legislator's initial intent while adapting it to the changing needs of society.

Ambiguous or incomplete criteria may undermine the Constitutional Court's legitimacy, especially when its decisions are seen as exceeding its authority or resulting in contested new interpretations. The Constitutional Court often conducts formal examinations to ascertain if the legislative adoption process adheres to the stipulations outlined in the constitution. However, where such rules lack explicit standards, it may be difficult for the Court to determine which factors to use. The Court must determine whether the noncompliance is sufficiently serious to invalidate the law when the constitution does not explicitly provide penalties for violations of specified legislative procedures. Consequently, criteria that are too vague or insufficient in legislative processes may undermine trust in the system's capacity to uphold checks and balances.

Cases concerning the official review of legislation by the Constitutional Court, such as Law Number 11 of 2020 on Job Creation, illuminate the issues of incompleteness and ambiguity in criteria. The Constitutional Court has had considerable challenges regarding this matter due to the unprecedented nature of the omnibus legislation technique in Indonesian lawmaking (Wijaya, 2023). The petitioners claimed in their petition that the procedures specified in Law No. 12 of 2011 for the Formation of Legislation had been breached. The purported infractions included, among other issues, ambiguity in academic paper writing norms, insufficient public engagement, and a deficiency of openness in House of Representatives deliberations.

Law Number 11 of 2020 regarding Job Creation is conditionally invalid owing to formal faults identified in its formulation, as per Decision Number 91/PUU-XVIII/2020 of the Constitutional Court. The Court determined that the legislative procedures used in the formulation of Law No. 11 of 2020 on Job Creation inadequately satisfied the constitutional standards for openness, public participation, and legal certainty (Putri et al., 2023). The Court emphasizes that the omnibus legislation approach lacked clear endorsement by Indonesian law at the time of its enactment, signifying an inadequacy in the legislative framework concerning normative standards (Fitria et al., 2023). Furthermore, the Constitutional Court found the legal norms governing public participation in the legislative process to be vague. While public participation is a fundamental principle in lawmaking, the existing legal framework lacks explicit provisions defining the methods and extent of public involvement. As a result, the Court faced difficulties in assessing whether the legislative process for Law Number 11 of 2020 on Job Creation adhered to the principles of transparency and public engagement. To address this issue, the Court exercised its interpretative authority, relying on the principles of deliberative democracy as enshrined in Indonesian constitutional law.

This case highlights the broader challenges posed by ambiguous and incomplete legislative standards in Indonesia. The Constitutional Court's ruling, which declared the enactment of the Job Creation Law procedurally flawed, underscores the need for a clearer legislative framework. However, this decision also raises concerns about the limits of judicial intervention in legislative processes. The Court's decision to grant the government and the House of Representatives a two-year period to revise the law, rather than annulling it outright, reflects a careful balance between legal rectification and economic stability.

The critical role of the Constitutional Court in addressing legislative deficiencies necessitates further scholarly inquiry into the mechanisms by which the Court interprets and rectifies incomplete legal norms. Hence, this research aims to examine the Constitutional Court's role in resolving legislative ambiguities through formal judicial review and to analyze the impact of procedural deficiencies on constitutional principles. Specifically, this study seeks to answer two key questions: (1) How does the Constitutional Court address ambiguity and incompleteness in legal norms during formal judicial review?; and (2) How does the legislative process, in accordance with constitutional principles, respond to and rectify insufficient and ambiguous norms? By exploring these questions, this research contributes to the ongoing discourse on constitutional adjudication and legislative reform, emphasizing the need for a more precise and participatory lawmaking process in Indonesia.

## **2. Theoretical Framework**

Legal theories are crucial for comprehending the Indonesian Constitutional Court's deficiencies and ambiguities in the formal examination of norms. This theoretical and practical study indicates that incomplete or ambiguous legal standards may affect the legislative system, law enforcement, and the formal assessments of the Constitutional Court. Several significant perspectives on essential legal concepts and the constitutional framework are relevant to this topic.

Hans Kelsen's notion of legal standards is crucial for comprehending their hierarchical organization. Kelsen emphasized in the Pure Theory of Law that any legal norm must be hierarchically connected to the Grundnorm. Kelsen argues that legal norms are deficient due to their absence of precise regulations to address specific situations. Ambiguity in legal writings permits several, sometimes contradictory interpretations. This concept pertains to Indonesia, where partial and imprecise norms often emerge throughout the legislative process, exemplified by the Job Creation Law, which was deemed conditionally unconstitutional. Kelsen's study demonstrates that deficient or confusing normative systems undermine legal certainty and constitutional supremacy.

This study is also framed by the concept of constitutionalism. Constitutionalism asserts that all governmental entities must adhere to the supreme law, the constitution. Ambiguous or incomplete criteria in legislative legislation may contravene constitutionalism, especially if they compromise justice and accountability (Alfauzi & Effendi, 2020). This principle directs

the Constitutional Court's formal evaluation of legislation for legality, including transparency, public participation, and legislative accountability. The doctrine of constitutionalism emphasizes the Constitutional Court's role in maintaining the constitution when legal norms are inadequate.

This study also employs the notion of judicial review established in *Marbury v. Madison* (1803). Judicial review enables courts to assess the constitutionality of legislation. The Indonesian Constitutional Court evaluates legislation for constitutional compliance, including transparency and public engagement. This concept offers the Constitutional Court a legal basis to address the deficiencies and ambiguities in legislative standards. Consequently, judicial review elucidates the Constitutional Court's validity as a guardian of the Constitution. Furthermore, Hans-Georg Gadamer's theory of legal hermeneutics aids in the interpretation of ambiguous legal writings. Legal hermeneutics emphasizes the importance of contextual and historical comprehension of legal texts (Gadamer & Schmidt, 1992). The Constitutional Court employs systematic, teleological, or historical interpretation to address norm uncertainty. The Constitutional Court, in its formal review of the Job Creation legislation, must define the concept of public involvement, which is absent from the statute. This hermeneutic approach assists the lawful Court in addressing legal ambiguity, ensuring that its determinations are lawful.

John Rawls' theory of justice is pertinent to this topic. Rawls advocated for procedural equity within the judicial system. Incomplete and ambiguous norms lead to legal uncertainty and potential discrimination, so infringing against procedural fairness (Edmundson, 2017). In Indonesia, insufficient standards impact disadvantaged communities, such as illegitimate children, whose rights remain ambiguous. The Constitutional Court consistently rectifies such deficiencies to ensure procedural fairness for all parties. Rawls' theory provides an ethical framework for analyzing the impact of inadequate or ambiguous legal norms on community rights.

Judicial activism elucidates the manner in which the Constitutional Court addresses legal ambiguities. Judicial activism entails the court actively interpreting or clarifying ambiguous regulations (Witte et al., 2013). The Indonesian Constitutional Court has faced allegations of exceeding its authority via broad interpretations. This idea posits that judicial activism may maintain the law's responsiveness to societal dynamics and processes. This study

analyzes the Constitutional Court's limitations and responsibilities in addressing normative deficiencies while maintaining the separation of powers.

Judicial interpretation addressing legal deficiencies is equally significant. This concept necessitates that judges address legal voids by analogies, interpretations, and overarching concepts (Hakim, 2016). The Constitutional Court often employs this method with flawed legal criteria. The Constitutional Court must interpret the amendment to the Eradication Commission Law to address the legal void regarding institutional independence. The rechtsvinding thesis elucidates how the Constitutional Court may implement legal principles without creating new norms.

The notion of public accountability in law also aids this examination. This philosophy advocates for openness and public participation in the legislative process. Incomplete norms often indicate that the legislature did not meet accountability standards. The Constitutional Court's formal assessment of the Job Creation Law identified the lack of public participation in the legislative process as a significant issue. Consequently, public accountability underscores the need for formal examination to ensure that the legislative process is democratic and transparent.

This research also examines Satjipto Rahardjo's innovative legal theory. Rahardjo emphasizes that the law must evolve in accordance with social needs and advancements. Deficient standards often demonstrate the law's discordance with societal expectations. The Constitutional Court may uphold human rights by ensuring that legal standards align with the expectations of legislators and society via a progressive methodology. This study uses progressive legal theory to evaluate the Constitutional Court's responsiveness to contemporary legislation.

This work is fundamentally based on rechtsstaat theory. The rule of law mandates that the state maintains law, justice, and legal clarity. This idea is compromised by inadequate and confusing legislation, resulting in legal ambiguity that may be used for certain interests. The Constitutional Court must guarantee that legal standards established via formal testing adhere to the foundations of the rule of law. This argument elucidates the importance of establishing legal standards for fostering public trust in the legal system.

These theories are significant in research since they provide a comprehensive conceptual framework for analyzing norm incompleteness and ambiguity. This research may elucidate the Constitutional Court's function in improving Indonesia's legislative framework

via the integration of normative legal theory, interpretation, and justice. These theories also connect ideal legal concepts with politically and socially influenced legislative acts. This research enhances theoretical understanding and provides practical recommendations to reinforce the constitutional primacy duties of legislation and legal institutions.

### **3. Research Methods**

This study utilizes a comprehensive normative legal research methodology to solve the identified difficulties. This study focuses on situations with insufficient or ambiguous criteria, analyzing constitutional provisions, legal theory, and the Constitutional Court's formal evaluation of legislation. The objective of the technique is a comprehensive understanding of relevant legal ideas and their application to the formal testing process (Mahmud Marzuki, 2011).

This study employs a descriptive-analytical methodology to address the first research question: How does the Constitutional Court navigate inadequate and ambiguous criteria in formal law assessment? This approach involves a thorough theoretical and practical examination of norm incompleteness and ambiguity within Indonesia's constitutional framework. The research analyzes formal judicial review cases where the Constitutional Court has ruled on the clarity and completeness of legislative provisions. Data collection is conducted through an in-depth analysis of Constitutional Court decisions, particularly those that reveal procedural or substantive deficiencies in legislative drafting. This process includes examining judicial reasoning, dissenting opinions, and the legal principles applied in landmark rulings. The study further employs a juridical-evaluative strategy to answer the second research question: How do incomplete and ambiguous legal standards influence the legislative process in accordance with constitutional principles? This method assesses both the theoretical implications and the practical consequences of ambiguous legislation on legal certainty, legislative quality, and constitutional rights. The study evaluates the role of the Constitutional Court in shaping Indonesia's legislative framework and examines how its rulings influence legislative amendments and judicial practices.

This research relies on primary legal sources, including the 1945 Constitution of the Republic of Indonesia as the fundamental legal basis for legislative and judicial authority, statutory laws and regulations governing lawmaking procedures and public participation, and Constitutional Court rulings, particularly those involving formal judicial review, such as



Decision No. 91/PUU-XVIII/2020 on the Job Creation Law and Decision No. 85/PUU-XVII/2019 on the Revision of the Corruption Eradication Commission Law. Additionally, secondary legal sources are analyzed to contextualize judicial interpretations and legislative practices. These sources include academic legal literature and journal articles on constitutional adjudication, legislative drafting, and judicial review, as well as comparative legal studies drawing from constitutional court practices in Germany, the United States, and South Africa to assess international approaches to handling incomplete and ambiguous norms.

To ensure data saturation, this study follows a systematic process of legal text analysis. Judicial decisions and scholarly sources are continually reviewed until no new patterns or insights emerge. The process involves cross-referencing multiple court decisions to identify consistent judicial trends in addressing legal ambiguities. This study also employs doctrinal legal analysis, which focuses on interpreting judicial reasoning and legislative provisions to establish a coherent understanding of how constitutional principles are upheld in cases of normative deficiencies. By integrating these methodologies, this research provides a comprehensive evaluation of the Constitutional Court's role in mitigating legislative ambiguities and ensuring constitutional compliance. The findings contribute to the broader discourse on legal reform and judicial interpretation in Indonesia's constitutional system.

## **4. Findings and Discussion**

### ***4.1. Constitutional Court Addresses Incompleteness and Ambiguity of Norms in Formal Review of Laws***

The constitutional revisions that started towards the conclusion of the New Order period in Indonesia led to the establishment of the Constitutional Court. Immediate action was required to fortify democracy, human rights, and the rule of law after the 1998 fall of the Soeharto administration, according to the reform agenda (Agustina et al., 2024). An integral part of this plan is the establishment of the Constitutional Court as a separate constitutional court institution by an amendment to the Constitution of 1945 (Muhtar et al., 2024). Article 24C of the Republic of Indonesia Constitution establishes the Constitutional Court and its primary functions, including the following: determining whether laws violate the constitution, resolving conflicts of power between state institutions, determining whether political parties can be dissolved, resolving disputes over election results, and providing decisions based on the

DPR's opinion regarding alleged violations by the President or Vice President (Amer et al., 2024).

The fundamental idea behind Indonesia's Constitutional Court is the need of checking that all laws are in line with constitutional principles (Widodo et al., 2023). The primary objective of the Constitutional Court is to ensure that the executive and legislative branches do not overstep their authority in ways that compromise the supremacy of the Constitution. This function is critical in maintaining the balance of power and preventing arbitrary governance that could undermine democratic principles. As the ultimate guardian of constitutional rights, the Court is tasked with interpreting, enforcing, and upholding constitutional provisions, ensuring that all legal and governmental actions align with fundamental legal norms. The Court's authority is grounded in the principles of independence, impartiality, and legal prudence, which guide its decision-making processes and reinforce public trust in judicial review. The Court exercises its jurisdiction through both formal and material testing of laws, scrutinizing not only the procedural compliance of legislative enactments but also their substantive content to ensure consistency with constitutional mandates. Through these functions, the Constitutional Court serves as an essential institution in preserving legal certainty, promoting democratic accountability, and safeguarding fundamental rights.

Law No. 24 of 2003, which was subsequently revised by Law No. 8 of 2011, lays forth the formal provisions of the Constitutional Court. The Constitutional Court's power, case submission, and trial processes are all outlined in this rule (Abqa et al., 2023). One of the key powers is formal review, which ensures that legislation is formed in accordance with constitutional ideals including openness, public involvement, and accountability. Concerning the formal review, it is the responsibility of the Court to ascertain if the process of legislation is in conformity with relevant statutes and constitutional requirements.

Since its establishment not long ago, Indonesia's Constitutional Court has been essential in molding the country's approach to the law. When dealing with complicated legal matters, such as those with incomplete or ambiguous rules, the Court's rulings often serve as significant references (Mangesti et al., 2024). The formal examination of Law Number 11 of 2020 concerning Job Creation is one example of a case that illustrates how the Constitutional Court must address procedural and normative concerns that are not completely addressed by Indonesian legislation. The Court found that there was insufficient clarity in the legislative

process since the omnibus legislation method of law formation lacked a sufficient legal foundation (Bakung et al., 2024).

Despite its youth, Indonesia's Constitutional Court has quickly established itself as a rock solid institution responsible for defending individual liberties and maintaining the supremacy of the constitution. The Court has grown into a major player in constitutional interpretation since its inception in 2003, tackling a wide range of political and legal issues that the nation has encountered (Amin et al., 2023). Its primary responsibility is to check that the legislation does not run afoul of constitutional principles, either in its content or the way it was drafted. The Court often encounters incomplete norms and imprecise norms in this regard; the former occurs when there are insufficiently explicit regulations in the law to govern an issue, and the latter occurs when the legal terminology or processes used lack a precise meaning.

The Court's decision on Law Number 11 of 2020, which deals with Job Creation, is a clear illustration of its involvement in resolving these matters. A lot of people thought this bill violated constitutional norms as it was being created utilizing the omnibus law technique (Manullang et al., 2023). Formal judicial review petitions were submitted challenging the legislative process of Law Number 11 of 2020 on Job Creation, citing fundamental procedural violations, including a lack of transparency, insufficient public participation, and non-compliance with the procedural requirements mandated by Law Number 12 of 2011 on the Formation of Legislation. The Constitutional Court, upon reviewing these claims, ruled that the enactment of the Job Creation Law was procedurally flawed and declared it conditionally unconstitutional. This designation allowed the law to remain temporarily in force but mandated its revision within a two-year period to rectify the identified deficiencies. The ruling underscored the Court's assessment that the omnibus legislation method, which was employed in drafting the statute, lacked a clear legal foundation in Indonesia's legislative framework at the time of its enactment. The Court's decision not only exposed significant weaknesses in the legislative process but also set a precedent for stricter scrutiny of large-scale legislative reforms, emphasizing the necessity for procedural integrity, meaningful public consultation, and adherence to constitutional principles in future lawmaking endeavors (Anggono & Firdaus, 2020). This exemplifies how rules for controlling the creation of laws are lacking, particularly when it comes to the use of innovative, complicated legislative techniques like omnibus legislation.

The Constitutional Court identified significant ambiguities in the legal framework governing public participation in the legislative process, emphasizing the absence of clear and enforceable standards for its implementation. While public involvement is widely recognized as a fundamental principle in democratic lawmaking, existing regulations fail to specify the mechanisms, timing, and depth of public engagement required during the legislative process. This legal uncertainty creates room for inconsistent interpretations and discretionary applications by both lawmakers and stakeholders, ultimately undermining meaningful civic engagement. The lack of procedural clarity allows the government and legislature to justify varying degrees of public involvement, often limiting substantive contributions from civil society and affected communities. Recognizing these deficiencies, the Court undertook a constitutional interpretation to determine whether the legislative process for Law Number 11 of 2020 on Job Creation conformed to the principles of openness, transparency, and accountability enshrined in the 1945 Constitution. The Court's examination underscored that public participation must not be treated as a mere formality but as a substantive component of lawmaking that ensures democratic legitimacy, legal certainty, and the protection of constitutional rights.

The Constitutional Court of Indonesia has many powers and responsibilities with other constitutional courts across the world, but it also has its own distinct personality that is a product of Indonesia's distinctive legal system. When it comes to interpreting Germany's Grundgesetz, the Federal Constitutional Court (Bundesverfassungsgericht) has considerable influence. The German legal system relies on this Court to uphold fundamental rights and ensure harmony among governmental entities (Nowag, 2016). Judgmental review of a law in Germany can only be conducted after it has entered into force, but in Indonesia, it can be filed at any point after a law has been passed, regardless of when it has come into force or not. This is one key distinction between the two Constitutional Courts. On the other hand, the United States Supreme Court first established the notion of judicial review in the case of *Marbury v. Madison* in 1803, which is considered the first instance of constitutional review in the land. Instead of a separate body like the Constitutional Court, the Supreme Court is responsible for determining whether or not legislation comply with the constitution under this system (Zurn, 2007). The system's adaptability in determining whether a policy is constitutional is one of its strengths, but its tendency to reduce the scope of the test is one of its weaknesses when contrasted with the Constitutional Court in nations like Germany and Indonesia.

Similarities may also be seen between the Constitutional Court of South Africa, which was formed after the 1994 end of apartheid, and the Constitutional Court of Indonesia. South Africa's Constitutional Court, similar to Indonesia's, was established to safeguard human rights and constitutional principles throughout the country's peaceful transition to democracy. The South African Supreme Court stands out for its proactive involvement in defending economic and social rights, including the right to housing and education, even when doing so requires imaginative constitutional interpretations (Dixon & Ginsburg, 2011).

The Indonesian Constitutional Court faces a fundamental challenge in ensuring that its decisions are not only legally enforceable but also instrumental in driving comprehensive reforms within the nation's legislative framework. One of the core issues hindering the effectiveness of the Court is the substantial influence that politicians exert over the legislative process. This influence often leads to the enactment of laws that are either insufficiently detailed or ambiguous, complicating the Court's ability to uphold constitutional principles consistently. To address this, the Court must take a more proactive role in guiding legislators, ensuring that the laws they pass are crafted in full alignment with constitutional mandates, particularly with regard to public participation, transparency, and accountability. Looking to international precedents, Indonesia's Constitutional Court could strengthen its approach by learning from the experiences of other countries. Germany, for example, offers valuable lessons in resolving normative ambiguity, especially in the realm of public participation regulations. By adopting Germany's rigorous standards for transparency and civic involvement, Indonesia could improve its own legislative processes, ensuring that public input is not only sought but meaningfully incorporated into the formulation of laws.

Furthermore, South Africa's experience in balancing robust legal interpretations with the protection of socio-economic rights provides another important model. South Africa's approach, which emphasizes the safeguarding of basic rights while maintaining a strong interpretative framework, could help Indonesia navigate its own challenges in regulating fundamental rights and social justice issues. For the Indonesian Constitutional Court to more effectively fulfill its duty to uphold the constitution and protect the rights of its citizens, it must integrate these international best practices into its judicial framework. This means enhancing the Court's capacity to interpret and apply the law in a manner that aligns with both national constitutional principles and global human rights standards. Achieving a more equitable, transparent, and responsive judicial system will require the collaboration of all key

stakeholders, legislators, the executive branch, and the public. Such collective efforts will be essential in ensuring that Indonesia's legal framework evolves to meet the pressing needs of its citizens, while also reinforcing the integrity and legitimacy of the constitutional system.

#### ***4.2. Implications of Incompleteness and Ambiguity of Norms for Legislative Processes in Accordance with Constitutional Principles***

The legislative process in Indonesia is deeply impacted by inadequate and ambiguous standards, which reflect significant deficiencies in the way laws are formulated, particularly when they fail to align with constitutional principles. In cases where legislative provisions are incomplete, the law lacks the necessary detail to effectively govern specific situations. Conversely, when laws are poorly defined, they can lead to interpretations that are vague or contradictory, creating legal uncertainty and undermining the stability of the legal system. Both of these shortcomings undermine the fundamental purpose of the legal system to provide clear, predictable rules for governance and the protection of rights. Such legislative weaknesses directly affect the alignment of laws with constitutional principles. When legislative standards are incomplete or ambiguous, they undermine the core constitutional values of fairness, justice, and accountability. The lack of clear guidelines not only impedes the legislative process itself but also raises serious concerns about the integrity of governance, as laws may be enacted that contradict constitutional mandates or fail to meet the needs of society. This vagueness poses a threat to legal certainty and the protection of human rights, leading to confusion about the applicability of laws and the enforcement of rights.

The Constitutional Court plays a crucial role in addressing these deficiencies through formal and material testing of laws. By identifying and correcting errors in legislation, the Court helps ensure that laws conform to the constitution and provide a solid foundation for governance. However, the Court's task is made more difficult when legislative procedures themselves are unclear or flawed. For example, the absence of explicit regulations governing the use of omnibus legislation or public participation can lead to inconsistencies in the lawmaking process, further complicating the Court's ability to adjudicate legal issues effectively.

These ambiguities also create opportunities for conflict between different branches of government and other stakeholders, particularly when conflicting interpretations of constitutional principles arise due to unclear legislative language. In such cases, the Court may

be compelled to engage in judicial activism, using its interpretative authority to fill in the gaps left by ambiguous or incomplete legislation. While this may be necessary to preserve constitutional integrity, it also raises questions about the limits of the Court's jurisdiction and its role in shaping policy. This increasing reliance on judicial interpretation highlights the need for more robust legislative procedures and clearer guidelines to ensure that the law is both transparent and in full alignment with the constitution.

**Table 1**

*Cases of incompleteness and ambiguity of norms in legislation in Indonesia*

No.	Decision Number	Case	Focus on the Problem	Implications of the Decision
1	91/PUU-XVIII/2020	Job Creation legislation 11 of 2020 (omnibus legislation) formal testing	Incomplete legislative and public participation standards	Omnibus laws must be better controlled in the legislative system after the legislation was deemed provisionally unlawful.
2	85/PUU-XVII/2019	Testing Law 19 of 2019 on Revision of the Corruption Eradication Commission Law	Ambiguity in institutional independence principles	The Court sought an amendment to bolster the Corruption Eradication Commission's independence and internal monitoring.
3	46/PUU-VIII/2010	Testing Article 43 Paragraph 1 of the Marriage Law on illegitimate children	Incomplete child rights norms	For child safety, the article was changed to recognize illegitimate children's civil rights.
4	137/PUU-VII/2009	Testing the Law on Legislation Formation	Legal hierarchy norm ambiguity	The Court stressed the necessity to harmonize the P3 Law with acceptable laws.
5	3/PUU-VII/2019	Presidential threshold testing under Election Law Article 222	Norm ambiguity in threshold mechanisms	The Court called for further rules to clarify democratic threshold applicability.
6	5/PUU-IX/2015	Testing Regional Election Law standards for regional head nominations	Incomplete nomination and procedure standards	The Court sought a change to nomination standards that respect democracy and political representation.
7	56/PUU-XVII/2019	Testing of the Water Resources Act	The ambiguity of norms regarding the right to water as a basic human right	The court mandated more explicit regulations on water rights for public usage as opposed to commercial use

The legislative process in Indonesia is hindered by insufficient and ambiguous criteria, as shown by rulings from the Constitutional Court. These cases illustrate fundamental deficiencies in legislation, both in formulation and implementation. Decision 91/PUU-

XVIII/2020 deemed the Job Creation law (omnibus legislation) temporarily unconstitutional. The absence of parliamentary procedural standards is particularly significant, given the omnibus legislation method used in Indonesia lacks explicit legal foundation (Fitria et al., 2023). This suggests that legislators have not fully comprehended the intricacies of the new legislative approach, leading to ambiguity and a violation of transparent public engagement. Cases such as Decision 85/PUU-XVII/2019 about the Revision of the Corruption Eradication Commission Law illustrate the impact of ambiguous regulations on the autonomy of state institutions. The ambiguity surrounding the internal oversight procedures of the Corruption Eradication Commission and the authority of the Supervisory Board may undermine the autonomy of anti-corruption authorities. The Court suggested a change of the regulation to elucidate the balance between state institution accountability and independence (Simanjuntak & Lita Tyesta, 2022). This case emphasizes the need for consistency in legal norms to prevent divergent interpretations that might undermine constitutional ideals.

Decision 46/PUU-VIII/2010 on Article 43 Paragraph 1 of the Marriage Law illustrates the detrimental impact of insufficient standards on fundamental rights, particularly the rights of illegitimate offspring. Incomplete civil rights regulations for illegitimate children result in discrimination that contravenes the constitution, specifically on justice and human rights (Saputra et al., 2018). The Constitutional Court mandated modifications to protect illegitimate offspring, representing a significant advancement. Insufficient standards generate legal uncertainty and may adversely affect vulnerable communities, as seen in this case.

In cases such as Decision 3/PUU-VII/2019 regarding the presidential threshold, the ambiguous criterion has precipitated a protracted dispute on equitable democracy. The ambiguity of this criterion impacts the political system and raises issues over the legitimacy of the nomination process. The Court emphasized the need for more explicit, democratic principles to prevent the abuse of existing norms (Karjoko et al., 2020). Under different conditions, as indicated by Decision 56/PUU-XVII/2019 on the right to water, ambiguity in natural resource management might jeopardize community rights to access essential resources. The Court emphasized that the management of water resources must prioritize the public interest as guardians of people's economic and social rights.

An examination of Constitutional Court rulings reveals that insufficient and confusing regulations impact both the legal framework and society at large, extending beyond only the legislative process. Incomplete norms, devoid of essential regulations to govern a legal context,



sometimes reflect legislators' incapacity or reluctance to formulate comprehensive laws. This signifies that the law has not fulfilled the requirements of a dynamic and intricate society. Deficient standards may generate legal voids that facilitate the use of authority or the manipulation of regulations for particular purposes. This weakens constitutional principles and creates legal uncertainty that adversely affects society.

Conversely, normative ambiguity pertains to legal rules that are indistinct or unclear, allowing interested parties to interpret them variably. Imprecise legal language diminishes the efficacy of laws in regulating behavior and resolving legal disputes. Ambiguous norms for public engagement in lawmaking may perplex the public on participation methods, while the government and legislature might use this uncertainty to limit public involvement. Consequently, normative ambiguity is not just a technical concern but also impacts legislative transparency, accountability, and legitimacy.

The incomplete and confusing regulations highlight the deficiencies of Indonesia's legislative system, which are often influenced by political dynamics and group interests. Legislation sometimes favors immediate interests above constitutional principles such as justice, equality, and human rights. The laws lack legal clarity and generate social conflicts that may exacerbate public distrust in legal institutions. Inadequate legislative oversight, characterized by little public engagement and ineffective judicial scrutiny, exacerbates this issue. Moreover, inadequate and ambiguous legislation impact the safeguarding of human rights. Children, women, and the underprivileged are often vulnerable due to ambiguous or insufficient regulations. The inadequate regulation of illegitimate children in Article 43 Paragraph 1 of the Marriage Law contravenes the constitutional principle of human rights by discriminating against them. This case illustrates how regulations that disregard the demands of disadvantaged groups may result in systemic inequity.

The Constitutional Court's role as a constitutional protector is compromised by the incompleteness and vagueness of the regulations. The Court sometimes must actively interpret or address normative gaps, leading to disputes over its authority. The judicial activism of the Constitutional Court may rectify legislation; however, it may have beyond its legal authority. This example underscores the need of enhancing legislation to prevent future complications. Numerous systemic interventions are necessary to rectify this issue. Initially, legal practitioners, scholars, and community leaders must participate in the formulation and drafting of legislation to ensure a robust foundation and the fulfillment of genuine demands. Secondly,

the Law on Legislative Formation necessitates more explicit constraints on legislative procedures, including omnibus legislation and public engagement strategies to address normative deficiencies. Third, instructing and educating legislators on contemporary legislative techniques and constitutional concepts may mitigate norm uncertainty.

The Constitutional Court must persist in addressing normative incompleteness and ambiguity incrementally. The Court's conditionally unconstitutional rulings, such as the Job Creation legislation, reconcile legal reform with the socio-economic implications of invalidating the statute. For the proper execution of decisions, collaboration among the Court, legislature, and administration is essential. Implementing these concepts should make legal regulations more thorough and explicit. This will enhance the quality of legislation and public trust in Indonesia's legislative framework and legal institutions. Implementing constitutional principles via exemplary legislation is fundamental to a democratic and equitable legal system.

## **5. Conclusion**

The Constitutional Court in Indonesia plays a crucial role in interpreting legal provisions, particularly in cases where legislative deficiencies undermine constitutional principles. However, the Court's limitations in correcting deficiencies without overstepping its jurisdiction are evident. The study suggests legislative reforms should focus on clearer, more comprehensive processes, strengthening legislators' capacity through legal training and expert consultations, and promoting public participation in the process. The balance between judicial interpretation and legislative authority should be balanced, with future reforms focusing on procedural safeguards and comparative legal frameworks. This research underscores the need for a structured approach to legislative drafting, minimizing ambiguities and enhancing constitutional review effectiveness.

### **Disclosure statement**

No potential conflict of interest was reported by the author(s).

### **Funding**

This work was not supported by any funding.

### **Declaration**

The author declares the use of Artificial Intelligence (AI) as an assistive tool in writing this paper. Specifically, the author used ChatGPT to assist in structuring the paper, identifying relevant literature, summarizing key points, and developing analyses based on the collected sources. Additionally, Quillbot was utilized for paraphrasing, enhancing language clarity, and restructuring sentences to align with the desired academic writing style. The author takes full responsibility in ensuring proper review and editing of contents generated using AI.

### **ORCID**

Topan Yulia Pratama – <https://orcid.org/0000-0003-2872-8944>

Sudarsono – <https://orcid.org/0000-0003-3709-9035>

Herman Suryokumoro – <https://orcid.org/0000-0003-1565-4982>

Aan Eko Widiarto – <https://orcid.org/0000-0002-2034-1668>

### **References**

- Abqa, M. A. R., Junaidi, Hutabarat, S. A., Suhariyanto, D., Fauziah, N. M., Khilmi, E. F., Meliana, Y., & Muhtar, M. H. (2023). *HUKUM TATA NEGARA: Sebuah Konsep Dasar dalam Menata Bangsa*. PT. Sonpedia Publishing Indonesia.
- Agustina, E., Irvita, M., Saharuddin, S., Rahim, E. I., & Muhtar, M. H. (2024). Finding a new direction for Indonesian democracy: Analysis of limitations of the president's powers in the amendments to the constitution. *Legal Brief*, 13(1), Article 1. <https://doi.org/10.35335/legal.v13i1.929>
- Alfauzi, R., & Effendi, O. (2020). Pembatasan Kekuasaan Berdasarkan Paham Konstitusionalisme di Negara Demokrasi. *Politica: Jurnal Hukum Tata Negara Dan Politik Islam*, 7(2), 111–133. <https://doi.org/10.32505/politica.v7i2.1990>

- Amer, N., Lubis, A. F., Muhtar, M. H., Saija, V. J. E., Putri, V. S., & Setiawan, B. (2024). Implications of the constitution for political neutrality in the dynamics of law and democracy. *Journal de Facto*, 10(2), Article 2. <https://doi.org/10.36277/jurnaldefacto.v10i2.189>
- Amin, F., Susmayanti, R., Fuqoha, Faried, F. S., Suwandoko, Zaelani, M. A., Agustiwi, A., Herlina, Permana, D. Y., Yudanto, D., Muhtar, M. H., Hadi, A. M., Widodo, I. S., & Rizaldi, M. (2023). *Ilmu Perundang-Undangan*. Sada Kurnia Pustaka.
- Anggono, B. D., & Firdaus, F. R. (2020). Omnibus Law in Indonesia: A Comparison to the United States and Ireland. *Lentera Hukum*, 7, 319.
- Bakung, D. A., Putri, V. S., Muhtar, M. H., Dungga, W. A., & Junus, N. (2024). Criticizing potential deviations in the role of environmental impact analysis after the enactment of the job creation law. *E3S Web of Conferences*, 506, 06005. <https://doi.org/10.1051/e3sconf/202450606005>
- Diharjo, N. N., Muhtar, M. H., Rahim, E. I., Rachman, S. N., Saija, V. J. E., & Lubis, A. F. (2024). Human rights and constitutional sovereignty in the context of the struggle for legal justice. *Bacarita Law Journal*, 4(2), Article 2. <https://doi.org/10.30598/bacarita.v4i2.12985>
- Dixon, R., & Ginsburg, T. (2011). The South African Constitutional Court and socio-economic rights as ‘insurance swaps’. *Constitutional Court Review*, 4(1), 1–29. <https://doi.org/10.10520/EJC129896>
- Edmundson, W. A. (2017). *John Rawls: Reticent socialist*. Cambridge University Press.
- Fitria, D. F., Mukhlis, M., & Harun, H. (2023). Implikasi putusan mahkamah konstitusi nomor 91/PUU-XVIII/2020 atas pengujian formil undang-undang nomor 11 tahun 2020 tentang cipta kerja. *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 6(2), 108–121.
- Gadamer, H.-G., & Schmidt. (1992). *Hans-Georg Gadamer on Education, Poetry, and History: Applied Hermeneutics*. SUNY Press.
- Hakim, M. R. (2016). Implementasi rechtsvinding yang berkarakteristik hukum progresif. *Jurnal Hukum Dan Peradilan*, 5(2), Article 2. <https://doi.org/10.25216/jhp.5.2.2016.227-248>
- Karjoko, L., Wardhani, L. T. A. L., Marwiyah, S., Handayani, I. G. A. K. R., Jaelani, A. K., Tahir, A., & Al-Fatih, S. (2020). Problems of democratic and dignified election in

- indonesian simultaneously electoral era. *International Journal of Criminology and Sociology*, 9, 1701–1708.
- Mahmud Marzuki, Peter. (2011). *Penelitian Hukum*. Kencana Prenada Media Group.
- Mangesti, Y. A., Ahmad, A., Muhtar, M. H., Ginting, G., & Sacipto, R. (2024). Term limitation of Indonesian parliamentarians seen from constitutionalism. *Revista de Investigações Constitucionais*, 11, e263. <https://doi.org/10.5380/rinc.v11i2.91104>
- Manullang, S. O., Putri, V. S., Kusumadewi, Y., & Ningrum, E. (2023). Legal construction for settlement of spatial planning disputes after the Law No.11 of 2020 about job creation applied. *Legal Standing : Jurnal Ilmu Hukum*, 7(1), Article 1. <https://doi.org/10.24269/lis.v7i1.6689>
- Muhtar, M. H., Kasim, N. M., & Suryani, I. (2023). Islamic Law in the constitution of Indonesia (a study of characteristics Sharia local regulations). *TSAQAFAH*, 19(1), 236–263.
- Muhtar, M. H., Khasanah, D. D., Anita, A. A., Abas, M., Bagus, M., Cahyandari, D., Setiawan, E. B., Jenar, S., Putri, F. A. W., Taufik, A., Widodo, M. F. S., & Susmayanti, R. (2024). *Menimbang Keadilan: Dinamika Hukum dan Demokrasi Di Persimpangan Zaman*. Sada Kurnia Pustaka.
- Muhtar, M. H., Maranjaya, A. K., Arfiani, N., & Rahim, E. (2023). *Teori & Hukum Konstitusi: Dasar pengetahuan dan pemahaman serta wawasan pemberlakuan hukum konstitusi di Indonesia*. PT. Sonpedia Publishing Indonesia.
- Nelson, W. E. (2018). *Marbury v. Madison: The origins and legacy of judicial review*, 2<sup>nd</sup> Ed., Revised and Expanded. University Press of Kansas.
- Nowag, J. (2016). EU law, constitutional identity, and human dignity: A toxic mix. *Common Market Law Review*, 53, 1441.
- Pujayanti, L. P. V. A., Nugrahayu, Z. Z., Rahim, E. I., Muhtar, M. H., & Yassine, C. (2024). Indonesia's Constitutional Court: Bastion of law enforcement and protector of human rights in the reform era. *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo*, 17(1), Article 1. <https://doi.org/10.21107/pamator.v17i1.24128>
- Putri, V. S., Muhtar, M. H., Winarsasi, P. A., & Manullang, S. O. (2023). *Kewenangan izin pemanfaatan ruang pasca undang-undang cipta kerja*. Eureka Media Aksara. <https://repository.penerbiteurka.com/publications/563020/>

- Razak, A., Muhtar, M. H., Rivera, K. M., & Saragih, G. M. (2023). Balancing civil and political rights: Constitutional court powers in Indonesia and Austria. *Journal of Indonesian Legal Studies*, 8(2), Article 2. <https://doi.org/10.15294/jils.v8i2.70717>
- Saputra, H. E., Zaki, I., & Al Mustofa, M. U. (2018). *Constitutional court decision number 46/Puu-Viii/2010 reviewed from the perspective of Adat Law, Burgerlijk Wetboek (Bw) and Islamic Law*. <https://www.academia.edu/download/90934968/294f44b529a34002a7d3b948c5835dacad20.pdf>
- Simanjuntak, S. H., & Lita Tyesta, A. L. W. (2022). Procedural justice or substantive justice: Review of constitutional court decision number: 91/PUU/XVIII/2020. *Jurnal Ilmiah Kebijakan Hukum*, 16(2), 341–362.
- Widodo, I. S., Muhtar, M. H., Suhariyanto, D., Permana, D. Y., Bariah, C., Widodo, M. F. S., Monteiro, J. M., Rachmatulloh, M. A., EM, E. N. F., Abqa, M. A. R., Fuqoha, Agustiwi, A., Amin, F., Kamil, H., Gustaliza, R. B., Sukma, D. P., Bidari, A. S., & Susmayanti, R. (2023). *Hukum Tata Negara*. Sada Kurnia Pustaka.
- Wijaya, G. P. (2023). Kewenangan mahkamah konstitusi dalam pengujian formil terhadap undang-undang nomor: 11 tahun 2020 tentang cipta kerja. *Mandalika Law Journal*, 1(1), Article 1. <https://doi.org/10.59613/mlj.v1i1.1543>
- Wijaya, R. (2023). Fungsi mahkamah konstitusi dalam pengujian undang-undang terhadap undang-undang dasar 1945. *IJOLARES: Indonesian Journal of Law Research*, 1(1), Article 1. <https://doi.org/10.60153/ijolares.v1i1.5>
- Witte, B. de, Muir, E., & Dawson, M. (2013). *Judicial activism at the European Court of justice*. Edward Elgar Publishing.
- Zekoll, J., & Wagner, G. (2018). *Introduction to German Law*. Kluwer Law International B.V.
- Zurn, C. F. (2007). *Deliberative democracy and the institutions of judicial review*. Cambridge University Press.