



# Judicial Activism by the Constitutional Court in the Frame of Check and Balances as Development Towards Juristocracy

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**Abstract:** The Constitutional Court as the guardian of the constitution and the guardian of the democracy is a form of rapid progress of the modern legal state. The authority of constitutional judges is growing not only as a negative legislature, but also as a mini-positive legislature by using judicial activism so that several times it has issued ultra petitem or ultra vires decisions. This phenomenon is called jurisprudence where judicial institutions are increasingly involved in state administration and political affairs. This study uses a type of normative juridical research with a legislative approach and a case approach. The results of this study found that the Constitutional Court in creating the phenomenon of jurisprudence had a great impact on improving democracy in Indonesia and did not harm checks and balances. However, the threat still exists because constitutional judges are also ordinary human beings who can make mistakes, so internal control that refers to the code of ethics and clearer selection guidelines are the key in ensuring that the quality of constitutional judges remains fair and independent from all conflicts of interest.

**Keywords:** Judicial Activism; Checks and Balances; Juristocracy; Constitutional Court

## 1. Introduction

As an effort to realize the goals of the state, society will plunge into politics, and these aspirations will later be crystallized into law (Wahyudhi, 2011). This raises the understanding that laws or regulations are political products. Every law that is formed is the result of socio-political dynamics with the ideas discussed being further processed into the formulation of laws in a political forum so that laws are created (Fight, 2021),(Oce Madrid, 2020). The process of forming laws through political institutions such as the legislature is one way to control the most influential power, namely the executive. In a country with a republican form such as Indonesia, a presidential system of government is implemented where the president is the holder of original power (inherent power of head of state)(Purnomo, Amiruddin, & Minollah, 2023),(SANTI, 2024). According to Ismail Suny, the president's power as an executive includes many things including administrative power (executing laws and administrative politics) and legislative power (submitting and ratifying draft laws). The government, both legislative and executive, have their respective roles in making laws so that it can be said that the House of Representatives (DPR) as a legislator and the government as a co-legislator(Setiawan, Mau, & Sagala, 2025),(MA'RUF, 2022). The authority held by the legislative and executive in forming laws is actually one manifestation of the voice of the people because they are all directly elected by the people in elections(Sabrina & Saad, 2021),(Barlian & Karsa, 2023).

The process of forming laws carried out by the executive and legislative branches, although it is a normative manifestation of the people's voice, in reality does not always represent the needs of the people and the goals of the state as stated in the constitution (Ulaan, Pinasang, & Pinori, 2024),(Ulaan et al., 2024). This is proven by various problems of legislative products that are created both materially and formally, thus encouraging the creation of a judicial review mechanism implemented by judicial institutions, especially for laws handled by the Constitutional Court (MK) to test the constitutionality of

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Received: May 03, 2025;

Revised: May 14 2025;

Accepted: May 22, 2025;

Published: Jun 30, 2025;



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related laws (Setiabudi, Taufik, & Haryadi, 2022), (Irsyad Dahri, 2020). According to Jimly Asshiddiqie, judicial review is an effort to test the legal products of the legislative and executive branches of power in order to ensure that the principle of checks and balances continues to be implemented properly in accordance with the state power system (separation of power). The authority held by the Constitutional Court is not only limited to the judicialization of legal products resulting from political institutions, but also to adjudicating political cases themselves (Wicaksono & Tonralipu, 2021), (Arsil, 2024).

Based on Article 24C Paragraph (1) and (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it states 4 (four) authorities and 1 (one) obligation (Princess & Charisma, 2022), (Sari & Raharjo, 2022). The authority of the Constitutional Court consists of testing laws against the 1945 Constitution of the Republic of Indonesia, deciding on disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia, deciding on the dissolution of political parties, and deciding on disputes over the results of general elections. As for the obligations of the Constitutional Court, it is to provide a decision on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the 1945 Constitution of the Republic of Indonesia (Princess & Charisma, 2022), (Widya, 2022). The correlation of the Constitutional Court's authority to resolve political and constitutional cases is very vital. This statement was affirmed by Katherine Glenn Bass and Sujit Choudry who said that the Constitutional Court has the authority consisting of "disputes over the constitutions provisions often involve the most sensitive political issues facing a country, including review of the country's electoral laws and elections, the powers of the various branches of government and other questions". The role of the Constitutional Court is very important and brings rapid progress in improving the quality of democracy and the rule of law (Bakry, Apriyanto, & Mangaluk, 2025), (Fauziah, Bimantara, Bahrenina, & Pertiwi, 2023).

The authority of the Constitutional Court as a judicial institution in ensuring that politics and state administration in Indonesia continue to run in accordance with the goals of the state and the constitution makes it the most dominant judicial institution (Zamroni, 2021). The Constitutional Court is often known as the protector of human rights, the protector of citizen's constitutional rights, the guardian of democracy, and the guardian of the constitution. The Constitutional Court is also the only state institution authorized to interpret the constitution, so it is also called the sole interpreter of the constitution. The interpretations made by the Constitutional Court in considering its decisions are very diverse and have a comprehensive logical ratio (Anggraini, 2022), (Fauzi, 2021). Not infrequently, the Constitutional Court dares to issue *ultra petitem* or *ultra vires* decisions to resolve difficult cases where this makes it play a role not only as a negative legislature, but also as a mini positive-legislature. There are examples of cases where the Constitutional Court acted *ultra vires* by becoming a mini positive-legislature such as the Constitutional Court Decision No. 85/PUU-XI/2013 which stated that Law No. 7 of 2004 concerning Water Resources (UU SDA) was contrary to the 1945 Constitution of the Republic of Indonesia so that it was revoked and provided provisions for water restrictions that must be included in the law. This kind of thing was done by the Constitutional Court to protect the constitution and respond to the inability to realize substantive justice representing the values and goals of society, not just written law.

The courage of judges to realize substantive justice in their decisions even though they have to exceed their authority (*ultra vires*) or exceed what is requested (*ultra petitem*) is the manifestation of judicial activism. Judicial activism can fight for progressive values, but at the same time it is also risky because it exceeds the authority of other state institutions, namely the executive and legislative (Harahap, nd). In addition, the implementation of judicial activism can develop further into juristocracy. Juristocracy is a phenomenon where all activities in a country including those related to politics are intervened by the court. This explanation is in line with C. Neal Tate who said that political polemics that also become the authority of the judicial institution make it like a political institution. This phenomenon is common in a state of law as Hirschl said that constitu-

tional law is another form of politics. Furthermore, C. Neal Tate also added "judicialization of politics as infusion of judicial decision-making and of court-like procedures into political arenas where they did not previously reside".

The phenomenon of juristocracy has 2 (two) sides, namely it is useful in becoming a legislative and executive body that does not issue legal products that are contrary to the needs of society and the constitution considering that constitutional judges have high integrity and progressiveness. However, at the same time this phenomenon is also risky considering the power of constitutional judges to be able to cancel legal products formed by political institutions that are directly elected by the people (Dawn, 2021), (Daniel, 2023). Moreover, constitutional judges themselves are also human beings who are not free from mistakes as can be seen in cases of violations of the code of ethics by constitutional judges in the case of constitutional judge Patrialis Akbar, the case of constitutional judge Guntur Hamzah, and the case of constitutional judge Anwar Usman. Not only that, there are problematic decisions both because they are related to ethical violations such as Constitutional Court Decision No. 90/PUU-XX/2023 concerning the age limit for presidential and vice presidential candidates or those that are not related to ethical violations such as Constitutional Court Decision No. 65/PUU-XXI/2023 concerning campaigns in educational environments and government facilities and Constitutional Court Decision No. 112/PUU-XX/2022 concerning the extension of the term of office of the leadership of the Corruption Eradication Commission (KPK).

Based on the explanation of the problem, the Constitutional Court has contributed greatly to improving the state system and politics to be more democratic considering that juristocracy is a phenomenon that is the next phase of democracy and the rule of law. However, at the same time it also makes constitutional judges in a very vital and strong position so that there must be a supervisory system that guarantees no abuse of power without eliminating or reducing the independence and freedom of the judiciary in the Constitutional Court (Mahmuda, 2024), (Luturmas & AP, 2022). Therefore, the researcher considers it necessary to conduct research with 2 (two) problem formulations, including: First, How does the Constitutional Court use judicial activism in its authority to maintain checks and balances? Second, How to ensure that the juristocracy created by the Constitutional Court does not negate checks and balances and the objectives of constitutional justice?

## 2. Materials and Methods

This study uses a type of normative legal research, namely research that examines legal problems based on secondary data from literature studies. These materials are obtained to obtain an explanation of the theory, concept, principles, and legal regulations that correlate with the legal problems being studied. One of the scopes of this type of research is research on the principles and systematics of law. Furthermore, the research approaches used are the statute approach, case approach, and conceptual approach.

## 3. Results and Discussion

### 3.1 *The role of the Constitutional Court is to utilize judicial activism within its authority to maintain checks and balances.*

The Constitutional Court was established as one of the mandates of the reformation that required clarity in the trias politica and checks and balances. It was first included in Article 7B, 24 Paragraph (2), Article 24C of the third amendment to the 1945 Constitution of the Republic of Indonesia which became the constitutional basis for the establishment of the Constitutional Court. While waiting for the establishment of the Constitutional Court, the MPR determined the Supreme Court (MA) which had the authority to temporarily carry out the functions of the Constitutional Court as stipulated in Article III of the transitional provisions of the fourth amendment to the 1945 Constitution of the Republic of Indonesia. After the Constitutional Court was established in 2003, all cases that were the authority of the Constitutional Court that were being handled by the MA were handed over to the Constitutional Court. Referring to the general explanation in Law No.

8 of 2011 concerning the Constitutional Court (MK Law), the duties and functions of the Constitutional Court are to handle constitutional and state affairs in order to ensure that the constitution is implemented responsibly and in line with the will of the people and democracy and to avoid double interpretation of the constitution by making the Constitutional Court the sole interpreter of the constitution. The amendment to the 1945 Constitution of the Republic of Indonesia makes the state administration more assertive in the separation of powers between the judiciary, executive, and legislative with a correlation of checks and balances. The authority held by the Constitutional Court creates a balance when running the state.

One of the most important powers of the Constitutional Court is judicial review because it was the forerunner to the establishment of the Constitutional Court. The judicial review mechanism was first discovered in the *Marbury v. Madison* Decision in the United States in 1803. This case questioned the issuance of a Writ of Mandamus by the Supreme Court based on Section 13 of the Judiciary Act 1789 by the applicant Marbury because his letter of appointment had not been issued by Thomas Jefferson as US President and James Madison as Secretary of State. However, the US Supreme Court refused to issue a writ of mandamus and instead revoked the *a quo* provision because it was contrary to Article III Section 2 of the US Constitution. This was the first time a judicial review was carried out where James Wilson also argued that "... the courts should have the even broader power to strike down any unjust federal or state legislation". Judicial review is a very important authority to ensure that all legislative products are not only based on populism, so that in Indonesia, the Constitutional Court as a judicial institution that has the authority to conduct judicial review to test constitutionality also has various other authorities. High trust in judicial institutions leads to judicial activism and juristocracy.

Trust in judicial institutions, especially the Constitutional Court, has exceeded trust in political institutions such as the executive and legislative branches. The judicial practice carried out by the Constitutional Court has exceeded its role as a negative legislature, but also interprets the constitution, policies, and becomes a mini positive legislature. This phenomenon occurs not only in Indonesia, but also throughout the world after World War II during the democratization period where Hirschl's findings show that there are more than 80 countries that have constitutions regulating judicial intervention in legislative politics from judicial review. The tendency of the Constitutional Court as a positive legislature has characteristics such as intervention in the power held by constituents, intervention in applicable laws and regulations, intervention in legal or legislative vacuums that are not careful in legislation, and carrying out legislation through judicial review. The role of becoming a mini positive legislature is justified based on judicial activism.

Judicial activism can be recognized through the basis of legal reasoning carried out by judges to protect basic rights guaranteed by the constitution. The term judicial activism is often used in countries with a common law legal system implemented in England, India, and the US to protect the rights of vulnerable or minority groups from arbitrary legal formation supported by the will of the majority group. The habit of common law countries that focus more on judges as law makers (judge made law) places them as very influential figures in a state of law that equals or even exceeds the legislature in the context of legislation. Judicial activism manifested in *ultra petitem* and *ultra vires* decisions can be assessed for its legitimacy from legal considerations that are based on (just law). Factors in the decision must contain elements of justice (*gerechtigheit*), benefit (*zweckmassigkeit*), and legal certainty (*rechtssicherheit*). This is also in accordance with the freedom and independence of judges in the trial which are absolute requirements in carrying out the judge made law process according to judicial activism.

When judges carry out judge made law as part of judicial activism, it is actually justified both philosophically and normatively in the law. The judicial power, which also includes the Constitutional Court, is guaranteed its independence to uphold law and justice as regulated in Article 24 Paragraph (1) of the 1945 Constitution of the Republic of

Indonesia. In line with the constitution, based on Article 1 number 1 of Law No. 48 of 2009 concerning Judicial Power (Judicial Power Law), where judicial power is an independent power. Furthermore, Article 5 Paragraphs (1) and (2) of the Judicial Power Law require constitutional judges to explore, follow, and understand the legal values and sense of justice in society where constitutional judges are required to have integrity and good personality. The a quo provision explains that judge made law is indeed permitted and even needed to cover the shortcomings of the applicable positive law.

Several examples of constitutional judges creating decisions that represent judicial activism, thus providing legal progress, include Constitutional Court Decision No. 85/PUU-XI/2013 concerning changes in water resource governance. The a quo decision revoked Law No. 7 of 2004 concerning Water Resources (UU SDA) because it provided excessive space for management and control of water resources to the private sector, thus contradicting Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so that constitutional judges drafted norms concerning restrictions on water management by the private sector which must be included by legislators. Furthermore, there is Constitutional Court Decision No. 35/PUU-X/2012 concerning customary forests, where Article 1 number 6 of Law No. 41 of 1999 concerning Forestry (UU Kehutanan) previously determined that customary forests are state-owned forests in the territory of customary law communities (MHA), thus making it seem as if MHA do not have the right to live in the forest. The constitutional judges finally removed the word "state" in the a quo provision so that it means "forest in the MHA community area". There is also the Constitutional Court Decision No. 46/PUU-VII/2010 concerning the status of children born out of wedlock where previously in Article 43 Paragraph (1) of Law No. 1 of 1974 concerning Marriage stated that children born out of wedlock do not have a civil relationship with their parents because it is unfair for children who cannot choose who they are born to not receive civil legal protection. The Constitutional Judges changed the a quo provision so that children born out of wedlock have a civil relationship with their father and mother. These decisions show that the Constitutional Court uses judicial activism to change the legal system so that it is more ideal in accordance with the objectives of the law.

Despite the many contributions made by the Constitutional Court through judicial activism, of course such vital and broad authority still has the risk of abuse. As stated by Lord Acton that "power tends to corrupt, absolute power corrupts absolutely". Although constitutional judges are required to have noble personalities with high integrity, in the end they are just ordinary people who are not free from mistakes or abuses. This encourages the need for supervision without derogating the independence and freedom of the judiciary in the Constitutional Court. The running juristocracy must be ensured not to deviate from the essence of a clean and fair trial in order to ensure that the modern rule of law is not destroyed in the hands of several constitutional judges.

### ***3.2 Ensuring that the Juristocracy Created by the Constitutional Court Does Not Negate Checks and Balances and the Objectives of Constitutional Courts***

The practice of judicial activism by the Constitutional Court, although it has made a major contribution to improving law in Indonesia, has caused several decisions that have actually caused polemics. Some of these decisions include Constitutional Court Decision No. 112/PUU-XX.2022 concerning the age requirements for the leadership of the Corruption Eradication Commission (KPK), which previously had a minimum age of 50 (fifty) years and a maximum of 65 (sixty-five) years during the election process, changed to a minimum of 50 (fifty) years or experienced as a KPK leader, and a maximum of 65 (sixty-five) years during the election process. In addition to the age requirements for KPK leaders, this decision also changed the term of office from previously 4 (four) years to 5 (five) years. This decision is considered polemic because based on the dissenting opinion in it, it states that the matter of the term of office has nothing to do with constitutional rights and justice, it is only a matter of institutional design which is a purely political realm to be managed by legislators.

Another case example can also be seen from the Constitutional Court Decision No. 65/PUU-XXI/2023 concerning government facilities, places of worship, and educational institutions used as places to carry out election campaigns. The a quo decision questions the conflict between Article 280 Paragraph (1) letter h of Law No. 7 of 2017 concerning General Elections (Election Law) which explicitly prohibits government facilities, places of worship, and educational institutions from being used by election participants for campaigning. However, in the explanatory appendix to Article 280 Paragraph (1) of the Election Law, the exception requirements are stated, namely obtaining permission from the person in charge of the place and without election campaign attributes. In fact, violations of the a quo provisions can be subject to criminal penalties. Therefore, this results in legal uncertainty considering that the explanatory section in a law should only clarify a phrase, not add new norms. The constitutional judge finally revised the a quo decision, but by making the norms in the explanatory section included in the material content section. As a result, now election participants can campaign in government facilities and educational institutions as long as they have permission from the person in charge of the relevant location and are present without campaign attributes. In this decision, there is judicial activism that makes the Constitutional Court a mini positive legislature, but there is a polemic because in its legal considerations, the prohibition of campaigning has been clearly discussed historically, but the Constitutional Court actually includes the norms in the explanation section into the content material. In addition, determining whether or not government facilities and educational institutions can be used as campaign venues is actually the domain of the DPR because it is included in the open legal policy, the Constitutional Court is sufficient to declare it unconstitutional because it is not in accordance with Law No. 12 of 2011 concerning the Formation of Legislation (UU P3).

Finally, there is also Decision No. 90/PUU-XXI/2023 concerning the age requirements for Presidential and Vice Presidential Candidates which is questionable for several reasons. In the a quo decision, a judicial review was conducted on Article 169 letter q of the Election Law concerning the age requirements for presidential and vice presidential candidates which is an open legal policy, but it was granted and was ultra petitem by adding the requirement to be "at least 40 (forty) years old or have/are currently holding a position elected through general elections including regional head elections". In fact, the open legal policy in Article 6A Paragraph (5) of the 1945 NRI Constitution explicitly gives authority to the DPR because further regulations on the requirements for presidential and vice presidential candidates in the election are regulated by law. Not to mention the inconsistency of decisions in a very short time because at the same time there were Constitutional Court Decisions No. 29/PUU-XXI/2023, Constitutional Court Decisions No. 51/PUU-XXI/2023, and Constitutional Court Decisions No. 55/PUU-XXI/2023 which broadly conducted a judicial review with the same argument, but was rejected by the Constitutional Court on the grounds that the age limit for presidential and vice presidential candidates was an open legal policy. The Constitutional Court has violated its authority as a negative legislature and judicial activism to carry out mini positive legislature which is unable to become a legal standing for the decision. In addition, the a quo decision is also problematic because of the presence of constitutional judge Anwar Usman who actually has a conflict of interest because he has a family relationship with one of the vice presidential candidates, thus violating the principle of *nemo iudex in causa sua* and Article 17 Paragraph (3) of the Judicial Power Law concerning the obligation of judges to recuse themselves when the trial involves parties to the case who are still related.

Decision No. 90/PUU-XXI/2023 is problematic in terms of form and ethics, thus prompting a Constitutional Court Honorary Council (MKMK) Hearing. Based on Decision No. 1/MKMK/T/02/2023, there are 9 (nine) main problems in the serious violation of the constitutional judge's code of ethics committed by Anwar Usman, including: First, conflict of interest; Second, violation of the procedure for canceling the withdrawal of the case on Anwar Usman's orders; Third, the lie of the reason for Anwar Usman's absence in 2 (two) other cases that have the same argument as Decision No. 90/PUU-XXI/2023;

Fourth, efforts to postpone the formation of the ad hoc MKMK; Fifth, the failure of good judicial leadership; Sixth, the space for intervention that was deliberately opened so that outside parties could enter into the determination of Decision No. 90/PUU-XXI/2023; Seventh, Anwar Usman's comments in public regarding the case contents that are still under examination; Eighth, his leaking of confidential RPH information; Ninth, Anwar Usman's request not to be included in the examination of Case No. 141/PUU-XXI/2023.

The violation of the code of ethics committed by constitutional judges has not only happened once, it has also happened before, such as the Patrialis Akbar case and the Guntur Hamzah case. In the Patrialis Akbar case, who was proven to have committed a serious violation of the code of ethics because he was involved in a criminal act of collusion, so he was caught in a KPK sting operation (OTT) which information was obtained directly from the KPK press conference regarding the determination of constitutional judge Patrialis Akbar as a suspect. In this case, constitutional judge Patrialis Akbar has a close relationship with Basuki Hariman as the applicant for a judicial review of Law No. 18 of 2008 concerning Animal Husbandry and Animal Health which is registered as Case 129/PUU-XIII/2015. They met at Intiland Tower Sudirman, Kantin Golf Rawamangun, and Grand Indonesia. At these meetings, Basuki Hariman as the applicant conveyed his complaint that meat imports from India had drastically decreased his meat sales, making him directly involved in the case handled by Constitutional Judge Patrialis Akbar.

The result of the communication between the two, both directly and indirectly, resulted in Constitutional Justice Patrialis Akbar leaking the results of Decision Number PUU 129/PUU-XIII/2015 before the verdict pronouncement hearing in a plenary session open to the public. In addition to leaking the verdict results, Constitutional Justice Patrialis Akbar was proven to have received benefits from Basuki Hariman amounting to 20,000 USD. The last violation committed by Constitutional Justice Patrialis Akbar was changing the legal considerations and verdict from previously "granting" to "granting in part" outside the RPH and without the approval of other constitutional justices. This violation was also accompanied by photographing the draft of the unilaterally changed verdict and then sending it to Basuki Hariman. For his actions, Constitutional Justice Patrialis Akbar was brought before the Constitutional Court's Honorary Council hearing referring to the Code of Ethics and Guidelines for the Conduct of Constitutional Justices (Sapta Karsa Utama - PMK No. 9/PMK/2006) for violating the principles of independence, impartiality, integrity and propriety and politeness, so that based on Article 23 Paragraph (2) letter h of the Constitutional Court Law, constitutional justices who violate the code of ethics and guidelines for the conduct of constitutional justices will be dishonorably dismissed.

Finally, there is the case of Constitutional Justice Guntur Hamzah which is related to the case of the dismissal of Constitutional Justice Aswanto by the DPR because he had too often annulled their legal products. The dismissal of a constitutional justice by the DPR is contrary to checks and balances and Article 23 of the Constitutional Court Law which has regulated various reasons for honorable and dishonorable dismissals which do not exist because of dismissal by the DPR. After the dismissal of Constitutional Justice Aswanto, Decision No. 103/PUU-XX/2022 which tested Article 23 of the Constitutional Court Law was just finished being decided changing the phrase "Thus" to "In the future" so that it becomes a contradiction in terminis. This is because the phrase "Thus" means that the dismissal of Constitutional Justice Aswanto by the DPR is incorrect because the dismissal of a constitutional justice may only be for reasons stipulated in Article 23 of the Constitutional Court Law. This is different from the meaning of the phrase "In the future" which means that the dismissal of a constitutional justice by the DPR is justified, but in the future it becomes something that is prohibited because the justified reasons are only those stipulated in Article 23 of the Constitutional Court Law. Changes to the format can still be made by asking the clerk to correct it while it is displayed on the screen, but substantive changes must be made with the approval of the majority of constitutional judges and at least the drafting judge.

Constitutional Justice Guntur Hamzah, who was not involved in this decision, changed the substance without following the correct procedure because he did not inform the drafting judge, Saldi Isra, and only informed Constitutional Justice Arief Hidayat, who was also not involved in deciding this case. The changes he made were only in the minutes and copy of the decision published in the Constitutional Court Decision directory, not the decision pronounced by the constitutional justice during the reading session. However, this publication is aimed at public transparency and the minutes as a tool to help trace the trial process. These things are important, especially since this case is a sensitive issue for the public because it violates checks and balances. Therefore, Constitutional Justice Guntur Hamzah has violated the principle of integrity even though he was not dismissed.

Various cases caused by constitutional judges who violate the code of ethics are proof that they are only human beings who are not free from intentional or unintentional mistakes so that their vital role is very dangerous if misused. The characteristics of a state of law conveyed by Julius Sthal state that there is an independent and independent judiciary. This leads to the thinking of Jimly Asshidiqie who states that the main principle of a state of law is the existence of an independent and impartial judiciary. Conflicts of interest or ethical violations always threaten quality constitutional justice. Moreover, external supervision from the Constitutional Court is also impossible including from the Judicial Commission (KY) as regulated in the Constitutional Court Decision No. 005/PUU-IV/2006. External supervision from the KY is indeed not possible because the original intent of placing the KY's authority in Article 24B of the 1945 NRI Constitution after Article 24A of the 1945 NRI Constitution which regulates the Supreme Court and before Article 24C of the 1945 NRI Constitution which regulates the authority of the Constitutional Court so that the KY is directed to supervise the Supreme Court. In addition, if the KY can supervise the Constitutional Court, then this will cause conflict and can disrupt the independence of the Constitutional Court when handling disputes between state institutions whose authority is delegated by the 1945 Constitution of the Republic of Indonesia if the KY is in dispute. In the end, the best supervision of constitutional judges without harming checks and balances or the independence and freedom of the judiciary is supervision and enforcement of the code of ethics from within and a very strict selection system.

The election of constitutional judges has been regulated in Article 24C Paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 4 in conjunction with Article 18 of the Constitutional Court Law which stipulates that 9 constitutional judges are proposed by 3 (three) different state institutions according to their trias politica branches. The submission of constitutional judges consists of 3 (three) from the Supreme Court, 3 (three) from the DPR, and 3 (three) from the President. The requirements for the appointment of constitutional judges refer to Article 15 of the Constitutional Court Law, namely having integrity and an impeccable personality, being fair, and being a statesman who masters the constitution and state administration. Unfortunately, Article 20 of the Constitutional Court Law does not regulate in detail the procedures for selecting constitutional judges from each state institution because this matter is left to the relevant state institution. The additional requirements stipulated in Article 20 of the Constitutional Court Law in selecting constitutional judges are only objective and accountable. The delegation in the Constitutional Court Law is of course not in accordance with the mandate of the constitution which explicitly requires other provisions regarding the Constitutional Court to be regulated in law.

The selection of constitutional judges is important to ensure that the quality of the Constitutional Court is maintained considering that the professionalism and wisdom of judges are crucial to the quality of the laws it forms. Some of the principles needed for selection are to assess ethics. Currently, the code of ethics is the most relevant norm and allows to guarantee the quality of constitutional judges so as not to make juristocracy the destruction of a modern constitutional state. As conveyed by the adage "law floats in the sea of ethics". The existence of the Constitutional Judges Ethics Council and the MKMK

as internal controllers that uphold the honor, dignity, and code of ethics of constitutional judges regarding reports of alleged serious violations committed by reported judges or suspected judges submitted by the Constitutional Judges Ethics Council. Although the determination of the MKMK is carried out by the Chief Justice of the Constitutional Court, the submission/proposal still comes from the ethics council. There is something interesting about the composition of the MKMK membership regulated in Article 5 of PMK No. 2 of 2014 concerning the MKMK because although this instrument is included in internal control, the elements that fill it include 1 constitutional judge, 1 member of the KY, 1 professor of law, and 1 community leader. This shows the existence of control space from various external parties that are still within the corridor of internal control so that it does not seem like there is an institution that oversees the Constitutional Court. Finally, the reference to the code of ethics applied is not only based on Sapta Karsa Hutama-PMK No. 9/PMK/2006 which has internalized The Bangalore Principles of Judicial Conduct 2002 with its main principles such as independence, impartiality, integrity, politeness, equality, competence, and perseverance. But also the ethics of the nation in TAP MPR No. VI/MPR 2001.

#### 4. Conclusions

Constitutional judges in utilizing judicial activism in their authority have contributed greatly to improving the legal order to be better and in accordance with substantive justice and improving democracy in Indonesia to be better. Various ultra vires or ultra petitum decisions are proof that the Constitutional Court dares to take the courage to interpret the law not only positivistically, but to interpret it flexibly and responsibly so that it is able to make legal discoveries and create laws. Judicial activism activities in exercising its authority prove that the phenomenon of juristocracy is a further development of democracy, not a form of regression or negating the voice of the people. However, at the same time juristocracy does not mean viewing constitutional judges as figures who are always right and cannot be separated from accountability. In fact, their figures are very influential because they are able to cancel or even issue judicial orders to the legislature, making them closer to persuasion that violates ethical and legal norms so that control and enforcement of the code of ethics and state values are the key to ensuring that juristocracy does not deviate. In addition, there needs to be more detailed regulations regarding the selection of constitutional judges at the level of laws in accordance with the mandate of the constitution.

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