

THE ROLE OF THE INDONESIAN CONSTITUTIONAL COURT IN PREVENTING SOCIAL CONFLICT IN A DIVERSE SOCIETY

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Abstract

In the diverse society of Indonesia, the Constitutional Court plays a vital role in maintaining social harmony and preventing social conflict. Although this contribution is largely indirect, the Court exerts significant influence through its decisions. Since its establishment in 2003, the Court has rendered over 1,000 decisions, many of which carry profound implications for Indonesian society. This article addresses how the Constitutional Court, through its decisions, has contributed to mitigating social conflicts and fostering equilibrium within the nation's diversity. To analyze this main issue, a normative approach grounded in the nation's laws and the Constitutional Court's decisions will be employed. Several decisions, especially on judicial reviews and election disputes, will be examined to illustrate the Court's role in minimizing social conflict. From a social theory perspective, the study of social conflict has relevance in the context of law and society, given the potential for various types of conflicts in Indonesia's diverse society. The legal basis for addressing social conflicts in Indonesia is the 2007 Law on Social Conflict Management. According to this law, social conflicts may arise from various factors, including political issues, economic disparities, socio-cultural differences, inter-religious or inter-ethnic tensions, disputes over boundaries at the village, regency/municipal, or provincial

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levels, conflicts related to natural resources, and disparities in the distribution of these resources within society. The Constitutional Court indirectly plays a role in preventing social conflicts. Nevertheless, the Court faces challenges in fulfilling this role. Pressures from various parties and interests may hinder its ability to ensure constitutional justice, potentially compromising its principles of independence and impartiality in fulfilling its mandate.

Keywords: Constitutional Court; Court Decisions; Diversity; Judicial Independence; Social Conflicts.

I. INTRODUCTION

Indonesia, a diverse nation, exhibits pluralism in terms of ethnicity, language, race, culture and religion. Embracing the motto Unity in Diversity, and emblematic of the coexistence of its various cultures and ethnicities, the country's people predominantly live in harmony. As one of the world's most ethnically diverse societies, Indonesia is the dwelling place of over 1,300 distinct self-identified ethnic groups living on approximately 6,000 islands.¹

Minority migrant ethnic groups, including the Chinese, Arab and Indian communities, make up the remaining segment of Indonesia's diverse populace. The prevailing perception among some is that diversity poses a challenge to national unity, often correlating it with adverse social consequences.² Indonesia's diverse society, in reality, does have the potential for localized conflicts, driven by factors such as poverty, inequality, miscommunication, ethnic and religious diversity and disparities, as well as variations in community-level associations and security arrangements. A study reveals notable correlations between local conflict and unemployment, inequality, natural disasters, changes in sources of income, and the clustering of ethnic groups within villages. Simultaneously, institutional variables indicate that the presence of places of worship tends to be associated with a lower incidence of conflict, whereas the presence of religious groups and traditional (*adat*) cultural institutions is associated with an increased

¹ Badan Pusat Statistik [Statistics Indonesia], "Mengulik Data Suku di Indonesia [Digging into Ethnic Tribes Data in Indonesia]," Badan Pusat Statistik [Statistics Indonesia], accessed August 7, 2022.

² Samuel Bazzi, et al., "Unity in Diversity? How Intergroup Contact Can Foster Nation Building," *American Economic Review* 109, no. 11 (2019): 3978, <https://doi.org/10.1257/aer.20180174>.

likelihood of conflict.³ Since its establishment in 2003, Indonesia's Constitutional Court has introduced a new alternative to setting legal mechanisms aimed at reducing potential social conflicts in the nation's diverse society. Among the Court's competencies, as stipulated by the Indonesian Constitution, is the power of judicial review, which allows the evaluation of the constitutionality of the Laws, as well as adjudicating disputed election results. The Court has, over the past 20 years, delivered more than 1,000 decisions relevant to the ongoing effort to create equilibrium within this diverse society. This article explores the Constitutional Court's role as one of the institutions that reduces the risk of social conflict within a diverse society. It also considers how the Court's decisions have made a significant contribution to upholding the constitutional values that serve to foster community cohesion in Indonesia. In general, the potential for social conflict in Indonesia may have its roots in various sources, such as political rivalries, economic and social disparities, religious and cultural differences, and tribal or ethnic conflicts.

According to Article 18B (2) of the Indonesian Constitution, "The state recognizes and respects entities of the *adat* (indigenous) law communities along with their traditional rights as long as these remain in existence and are in accordance with the development of community and the principles of the Unitary State of the Republic of Indonesia, are regulated by law." This constitutional provision serves as the basis for protecting indigenous rights and imposes upon the government the responsibility to recognize and respect the rights of indigenous communities. The government also has the constitutional duty to ensure that indigenous communities can live in harmony within Indonesia's diverse society while securing their traditional rights. Furthermore, Article 28G (1) of the Constitution stipulates that, "Every person has the right to protection of self, family, honor, dignity, and their property, and has the right to security and protection from threats of fear to exercise or not to exercise his human rights." This article is the constitutional basis for the right to protection, peace and security from any threats.

³ Menno Pradhan, Patrick Barron, and Kai Kaiser, *Local Conflict in Indonesia: Measuring Incidence and Identifying Patterns*, Policy Research Working Papers (The World Bank, 2004), <https://doi.org/10.1596/1813-9450-3384>.

II. DISCUSSION

2.1. Social Conflicts: Inherent Risks for Diverse Society in Indonesia

Social theory posits that conflicts within and between societal groups, collectively known as social conflict, can act as a deterrent against the gradual erosion of creativity resulting from long-established compromises and entrenched norms. The clash of values and interests, the tension between the existing state of affairs and the envisioned ideals of certain groups, and the conflict between established interests and emerging strata and groups demanding their share of power, wealth and status, have historically generated vitality. We can note, for example, the contrast between the ‘frozen world’ of the Middle Ages and the burst of creativity that accompanied the thaw that set in with the Renaissance civilization.⁴ Furthermore, according to Lewis Coser, social conflicts can be categorized into internal and external social conflicts. According to Coser, social conflict plays an important role in shaping the broader social environment by establishing the positions of various subgroups within the system and helping to define the power relations between them.⁵ In terms of external conflicts, Indonesia’s geopolitical position may put the country at risk because it is an archipelagic state with significant influence in the Southeast Asia region. Conversely, Indonesia’s diversity in ethnicity, race, cultures and religions may expose it to a multitude of potential threats stemming from conflicts within this multi-cultural society.

In Indonesia, the normative concept for understanding social conflict is established by Law No. 7/2007 on Social Conflict Management. Article 1 of this Law defines social conflict as a conflict characterized by enmity and/or physical clashes with violence between two or more community groups, lasting for a certain time and having a broad impact, resulting in insecurity and social disintegration, disrupting national stability and hindering national development. Furthermore, according to the Law, there are at least five factors that can trigger social conflict: political, economic and socio-cultural issues; inter-religious issues

⁴ Lewis A. Coser, “Social Conflict and the Theory of Social Change,” *The British Journal of Sociology* 8, no. 3 (September 1957): 201, <https://doi.org/10.2307/586859>.

⁵ Lewis Coser, *The Functions of Social Conflict* (New York: The Free Press, 1956), 155.

and/or inter-religious enmity, racial and inter-ethnic tensions; disputes over village, regency/municipal or provincial boundaries; natural resource disputes between communities and/or between communities and business entities; and the unequal distribution of natural resources in society. The Law states that the local government is responsible to maintain peace and a conducive situation against social conflict that may arise in society. From a legal perspective, when a situation indicates there is social conflict, the declaration of such conflict can be made according to the territorial level. This means that such declarations may be issued by mayors at the city/municipality level, governors at the provincial level, and the president at the national level. Subsequently, the mayor, governor and president bear the responsibility for implementing measures to address the situation arising from any social conflict.

In the reality of Indonesia's diverse society reality, social conflicts may occur as both vertical and horizontal conflicts. Vertical conflicts can be characterized as those arising between the government and society. On the other hand, horizontal conflicts manifest among individuals within society, often stemming from factors such as ethnicity, religion, race, and inter-group dynamics. Such horizontal conflicts have been observed with various regions of Indonesia, such as Papua, Poso, Sambas, and Sampit.⁶ Moreover, both vertical and horizontal conflicts have the potential to escalate into severe disintegration. There are many aspects to consider when anticipating the escalation of such conflicts, including intervention by state institutions. As one of the institutions upholding the supremacy of the Constitution, the Constitutional Court plays a significant role in not only preempting social conflict but also in mitigating their adverse impacts on society. The Court issues decisions that can indirectly have a significant impact on preventing social conflicts. As part of legal structure, the Constitutional Court is expected to have the capacity to address uncertainties, abuses of power and social conflicts.⁷

⁶ Herlina Astri, "Penyelesaian Konflik Sosial Melalui Penguatan Kearifan Lokal [Social Conflict Resolution through Strengthening Local Wisdom]," *Aspirasi* 2, no. 2 (December 2011): 153, <https://doi.org/10.46807/aspirasi.v2i2.439>.

⁷ Helmut Goerlich, "The Role of Constitutional Court in Resolution of Constitutional Disputes — A Critical Outline Guided by the German Example," *Journal of the Indian Law Institute* 44, no. 1 (January-March 2002): 31, <http://www.jstor.org/stable/43951792>.

2.2. The Court and Indirect Intervention in Social Conflict Management

In line with the typical functions of a court, one of the Constitutional Court's roles is conflict resolution.⁸ With regard to social conflict, the Constitutional Court may function not only as an institution conducting conflict resolution but also plays a role in minimizing the negative impacts of such conflict through its decisions. In fact, the decisions of the Constitutional Court may have both direct and indirect implications for society. According to César Rodríguez-Garavito, the indirect effects of a court's decision may include a wide range of consequences, affecting not only the parties to a case but also other social entities. Conversely, direct material effects may manifest through the court's mandated policy formation.⁹ These indirect material effects can significantly contribute to social conflict by introducing new actors in debates, reshaping media coverage, or changing public perceptions regarding the decision at hand. Across all of the Indonesian Constitutional Court's five competencies outlined in the Constitution – determining the constitutionality of laws, resolving disputes over the authority of state institutions, deciding on the dissolution of political parties, adjudicating disputed election results, and deciding on parliament's suspicions of alleged violations by the president and/or vice president – the Court is indirectly shaping the dynamics of living society.

Law No. 7/2012 on Social Conflict Management has been an object of judicial review before the Constitutional Court. The main aim of the review was to assess the constitutionality of the president's authority to declare social conflicts at the city/municipality level. The Court's Decision 8/PUU-XII/2014 specifically centered on the judicial review of the constitutionality of Article 16 and Article 26 of Law No. 7/2012. The applicant filed the case to challenge the constitutionality of Article 16 and Article 26. These articles stipulate that the declaration of a social conflict at the regency/city level is the responsibility of regents/mayors after consultation with the local representative (the Regional

⁸ Marcus Mietzner, "Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court," *Journal of East Asian Studies* 10, no. 3 (September–December 2010): 408, <https://doi.org/10.1017/S15398240800003672>.

⁹ César Rodríguez-Garavito, "Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America," *Texas Law Review* 89, no. 7 (2011): 1681, <https://www.corteidh.or.cr/tablas/r27171.pdf>.

House of Representatives, or DPRD), and Article 26 outlines the measures to be taken by the local government once a conflict status is declared. In essence, the applicant drew parallels between the declaration of a dangerous emergency situation by the president and the declaration of a social conflict situation, which, according to Law No. 7/2012, falls under the authority of the regent or mayor. The petitioner stated that this delegation of authority between the central government and local government exceeds reasonable expectations.

In its decision, the Court rejected the application, placing particular emphasis on the differentiation between the concepts of social conflict and an emergency situation. According to the Court, conflict can be understood within a sociological framework, where it signifies a social process involving one or more individuals attempting to eliminate other parties through various violent means. In contrast, the concept of a state of emergency in Indonesia derives its legal basis from the Emergency Law of 23/1959, which defines a state of emergency as civil emergencies, military situations, or wartime scenarios. In general, the concept of a state of emergency covers a broader scope of situations, while the concept of a conflict situation has a more restricted scope, often localized to specific territories or regions. However, in the Law on Social Conflict Management, a state of emergency may be limited to civil emergencies. The Law stipulates that if a social conflict shows signs of evolving into a state of emergency related to war or military operations, the response measures may vary. A state of emergency may be indicated whenever a conflict situation transforms into a scenario that jeopardizes the state's peace and security. This can occur due to a rebellion, an internal disturbance or a natural disaster.

2.3. The Court's Decisions as Suppressors of Social Conflict Triggers

In addition to the Constitutional Court's decision highlighting its stance on distinguishing between the concepts of social conflict and a state emergency, the Court has displayed a tendency for mitigating social conflicts in several of its rulings. This article will examine at least five clusters of aspects that may trigger social conflicts, drawing from the provisions set out in law.

On the aspect of political issues, the Court exercise its competence in accordance with Article 24C (1) of the Constitution, which empowers it to resolve election disputes. While debates often surround the Court's decisions on election results, this competency plays a significant role in protecting society from potential conflicts. This may be because the Court is generally trusted by the society. Since its establishment in 2003, the Court has decided on 676 cases involving disputed national election results and 1,136 local election disputes.¹⁰ Given Indonesia's direct election mechanism for the legislative, presidential, vice presidential and local government positions, any disputes concerning election results fall under the purview of the Constitutional Court. Indeed, the two regimes of direct elections pose potential risks of social conflict, both at the regional and national level. The community always experiences more pressure in the period surrounding both these elections. Social conflicts may arise once the election results are announced, particularly in the case of presidential elections, as losing candidates may incite their supporters to engage in violence. The escalation of social conflict may also arise from issues of ethnicity, race and religion. In this context, the Constitutional Court emerges as an institution that has a significant role to play in reducing the social conflict. It serves as a beacon of hope for election participants seeking electoral justice in disputes over election results. In its experience, the Court has adjudicated cases of disputed results in presidential elections. One such petition was filed by the losing presidential candidate in 2019. In Decision No. 01/PHPU-PRES/XVII/2019, the Court rejected the case and all of the petitioner's arguments, mostly because the applicant failed to produce any strong evidence.¹¹ There was significant societal tension and polarization in period surrounding the 2019 presidential election because of the intense political competition. These circumstances had the potential to contribute to social conflicts. In the current landscape, social conflicts are not limited to physical confrontations among rival supporters, but also include the sensitive issues of race, ethnicity and religion, often exploited through online attacks. In this context, the political cyberwars

¹⁰ The Constitutional Court of the Republic of Indonesia, "Rekapitulasi Putusan [Decision Recapitulation]," The Constitutional of the Republic of Indonesia, accessed August 12, 2020.

¹¹ Constitutional Court Decision No. 01/PHPU-PRES/XVII/2019.

are a serious threat to state security as they can trigger social conflict. During vote counts and the handling of election disputes, the potential for heightened social conflicts is exacerbated when cyber warfare threats are directed towards the stability and security of the state.¹²

In relation to economic and socio-cultural aspects that can trigger or avert social conflict, the Court has established a new framework for marriage, carrying substantial implications for society. In Decision No. 46/PUU-VII/2010, the Court ruled that Article 43 (1) of the Marriage Law was unconstitutional. A judicial review had been filed to challenge the 1974 Marriage Law, which stipulated that only mothers and their immediate families have responsibility for children born out of wedlock. The Court set a new standard for the civil rights of children born to unmarried couples. It was determined that a child has a legal relationship with their biological father, as long as there is scientific and technological evidence supporting the relationship. This decision represented a departure from the prevailing legal framework, which in cases of a child born out of wedlock had only recognized a legal relationship between the child and the mother. The Court's decision suggests its aim is to reduce any societal stigma that might be faced by the child.

In another case, in Decision No. 69/PUU-XII/2015, the Court decided that Article 29 (1) of the Marriage Law upholds the validity of prenuptial agreements. As a result of this decision, a married couple can legally create a pre-marriage agreement at any point, whether before or during the marriage. This decision suggests the Court aims to minimize family conflicts that could have external repercussions on society and potentially incite social conflicts within the community where the couple resides.¹³

Furthermore, the Court has established a new standard for the marriage age limit. In Decision No. 22/PUU-XV/2017, the Court ruled that the marriage age limit

¹² Chastiti Mediafira Wulolo and Edward Samuel Renmaur, "Meredam Konflik dalam Pusaran Siber dalam Proses Penetapan Hasil Rekapitulasi Pemilu Serentak 2019 [Reducing Conflict in the Cyber Vortex in the Process of Determining the Result of the 2019 Simultaneous Election Recapitulation]," *Jurnal Penelitian Politik* 16, no. 2 (2019), <https://doi.org/10.4203/jpp.v16i2.801>.

¹³ Marilang, "Keadilan Sosial Terhadap Anak di Luar Kawin [Social Justice for Child Born to Unmarried Parents]," *Al-Daulah, Jurnal Hukum Pidana dan Ketatanegaraan* 7, no. 2 (December 2018), <https://doi.org/10.24252/ad.v7i2.7549>.

of 16 years old for females is unconstitutional. The Court's rationale was partly based on the fact that child marriage in Indonesia had increased significantly in recent years, which was perceived as a potential trigger for the social conflict within the nation's diverse society. In this context, such a situation could disrupt the social and cultural framework, potentially changing society and provoking social problems leading to conflicts in society. More seriously, child marriage could result in children being deprived of their rights, hindering the achievement of the state's purpose as outlined in the preamble of the Constitution.¹⁴

On the aspect of inter-religious issues and/or inter-religious enmity, racial, and inter-ethnic tensions, in Decision No.97/PUU-XIV/2016, the Court decided that the word "religion" in Article 61(1) and in Article 64 (1) of the Law on Population Administration was unconstitutional unless it also included the word "belief". The Court's decision established a new standard, mandating the inclusion of the word "belief" in the religion column of identity cards and family cards. This landmark decision can reduce the possibility of discrimination in Indonesia. In this context, the Court aims to prevent social conflicts that may arise from discrimination against people who follow beliefs that fall outside the mainstream religions recognized by the Indonesian state.¹⁵ This decision may set a new foundation for religious freedom in Indonesia, reinforcing the constitutional guarantee of protection for the rights of Indonesian citizens to choose their religion and beliefs. The decision also reflects the Court's desire to foster religious harmony in Indonesia. The Court exhibits a clear inclination toward addressing the challenges of managing the diversity of Indonesia's populace and preventing religious tensions by ruling in favor of religious harmony and moderation.¹⁶

On the aspect of disputes over village, regency/municipal and/or provincial boundaries, the Court in Decision No. 3/PUU-XX/2022 reviewed the Village Law.

¹⁴ Hadiati and Ramadhan argue the Court decision is to adjust social values on legal products by the judicial review. See here: Mia Hadiati and Febriansyah Ramadhan, "Observing the Differences in Constitutional Court Decision about the Legal Age of Marriage," *Jurnal Konstitusi* 19, no. 3 (September 2022): 646, <https://doi.org/10.31078/jk1937>.

¹⁵ "Putusan MK 'Angin Segar' dan 'Memulihkan Martabat' Penghayat Kepercayaan [The Constitutional Court Decision a Fresh Wind and Restoring Dignity for the Believers]," BBC News Indonesia, published November 8, 2017.

¹⁶ Hamka Husein Hasibuan, "Moderasi Islam Pencantuman Penghayat Kepercayaan di Kolom KTP/KK dalam Nalar Maqasid [Islamic Moderation, Inclusion of Adherents of Belief in the Column of Identity Card in Maqasid Reason]," *Jurnal AQLAM – Journal of Islam and Plurality* 4, no. 2 (December 2019), <http://dx.doi.org/10.30984/ajip.v4i2.1011>.

Even though the Court ultimately rejected the case, it considered that the term of office for village heads is set at six years, allowing for re-election for up to three terms, thereby permitting a maximum of 18 years. Meanwhile, the Court said the term of office for heads of “Adat” villages will be in accordance with Article 109 of the Village Law, which specifies that the role of the head of the “Adat” village will adhere to customary “Adat” law. This decision signified the Court’s intent to protect indigenous “Adat” communities in line with the Constitution, while also aiming to prevent social conflicts within these indigenous communities. In general, the Court considered the Village Law to be in accordance with local wisdom because it recognizes and respects the diversity of cultural villages that existed before and after the establishment of the Republic of Indonesia. Therefore, the Court recognized that preserving the “Adat” village entails the preservation of the village’s origins without encroaching upon local wisdom. This constitutes an endeavor to prevent social conflicts within Indonesia’s diverse culture and society. The Court’s decision also illustrates its commitment to the goal of averting social conflict within these villages.

In Decision No. 4/PUU-XVII/2020, which concerned the judicial review of Law No. 21/2001 on Special Autonomy for Papua Province, the Court rejected the case. The special status of Papua province (previously known as Irian Jaya) is founded on People’s Consultative Assembly (MPR) Resolution No. IV/MPR/1999 on the Broad Guidelines of State Policy for 1999–2004, which stipulate that, in order to maintain the nation’s integration within the unitary state of the Republic of Indonesia, the socio-cultural equality and diversity of Irian Jaya society will be addressed through special autonomy established by law. Furthermore, in accordance with Article 18B(2) of the Constitution, along with MPR Decree No. IV/MPR/1999 and MPR Decree No. IV/MPR/2000, these provisions have been enshrined in Law No. 21/2001. One of the key points in this law relates to the endorsement of the local representative body in the Papua province, the Papuan People’s Representative Council (DPRP). The Court elucidated that the special autonomy granted to Papua province covers a broader sense of delegating authority. It highlights that the people of Papua possess the right to autonomy

and to establish their administration within the Unitary State of the Republic of Indonesia. The primary objective of this special autonomy is to promote the empowerment of the community in Papua and to provide equitable opportunities for the indigenous people in Papua, including indigenous women, to assume significant roles in public policy and community development, all while preserving their local values and indigenous culture. This endeavor serves as an attempt to mitigate potential social conflicts that may arise from the modernization of communities within the diverse landscape of Indonesia.

Among the various decisions handed down by the Court, Decision No. 35/PUU-XVII/2019 addressed a significant issue concerning the state's integrity and the potential for social conflicts. This decision was on the constitutionality of Law No. 12/1969 on the Establishment of West Irian Autonomous Province and the Autonomous Districts in West Irian Province. This law was the basis for the integration of former Dutch New Guinea into Indonesia following a limited referendum in 1969 called the Act of Free Choice, held under the auspices of the United Nations (UN). A group of Papuan lawyers and traditional leaders challenged the constitutionality of the law at the Constitutional Court, which rejected the case. The Court reasoned there was no constitutional harm arising from the referendum that determined West Irian's status as part of Indonesia. The Court said the Act of Free Choice was an expression of the people's collective aspirations. It further said the referendum process yielded a positive outcome, indicating that the people of West Irian made a conscious choice to become part of Indonesia. The decision to integrate with Indonesia was deemed final and legitimate. In this context, the Court appeared to be resisting the potential conflicts that could emerge concerning the legitimacy of the 1969 referendum. The Court emphatically noted its lack of competence to review a referendum conducted under UN supervision and recognized by the UN General Assembly (UNGA Resolution 2504 (XXIV)).

Papua had earlier been under the Court's focus in 2003, regarding a law that had allowed for the establishment of new provinces and regencies in Irian Jaya. Decision No. 018/PUU-I/2003 concerned the review of Law No. 45/1999

on the Establishment of Central Irian Jaya Province, West Irian Jaya Province, Paniai Regency, Mimika Regency, Puncakjaya Regency, and Sorong City. This law was subsequently modified by Law No. 5/2000, which revised the provisions of Law No. 45/1999 related to the formation of the new provinces, regencies and city. The Court ruled that the law in question was unconstitutional. The Court's reasoning was grounded in the belief that varying interpretations of the law could foster legal ambiguity and, from a social policy perspective, might cause potential social conflicts. The Court stated that to prevent and mitigate legal uncertainty and anticipate social conflicts, divergent interpretations of Law No. 45/1999 were incongruous with the Constitution, particularly Article 18B(1) of the Constitution. However, as previously discussed, Article 18B(1) serves as the constitutional basis for Law No. 21/2001 and can potentially be utilized as the foundation for reviewing the legitimacy of Law No. 45/1999, particularly with regard to the issue of the requirement for the expansion of the province of Papua as outlined in Article 76 and Article 77 of Law No. 21/2001. The Court maintained that these requirements, which could be enforced after the enactment of Law No. 21/2001, do not necessitate the establishment of the provinces of Central Irian Jaya and West Irian Jaya, as stipulated in Law No. 45/1999. The Court took into account that the establishment of West Irian Jaya province had indeed been effectively implemented, with the local government of West Irian Jaya and its provincial House of Representatives (DPRD) having been established through the 2004 general election, along with the local representatives of the Regional Representative Council (DPD) for West Irian Jaya. In contrast, the establishment of the Central Irian Jaya Tengah province had yet to be realized. In light of this, the Court asserted that the existence of West Irian Jaya (later renamed West Papua) and the regent/city already created by Law No. 45/1999 is legitimate.

On the aspect of natural resource disputes, whether between communities or involving business entities, as well as the unequal distribution of natural resources in society, the Court took a stance in 2015 when it revoked the 2004 Law on Water Resources, deeming it unconstitutional because it allowed the private ownership of water resources. More recently, in Decision No. 73/PUU-

XVIII/2020, the Court rejected a petition challenging provisions in the new Water Resources Law (No. 17/2019), ruling that the petitioners, employees of the state-owned electricity firm, lacked legal standing and failed to establish a direct correlation between their interests and the contested provisions related to water resource management fees. In the first decision especially, the Court's decision can be seen as an effort to prevent social conflict over water resources.

Land and agricultural resources were highlighted in cases when the Court issued decisions concerning its reviews of various iterations of the Plantations Law. In its decision on Law No. 39/2014 on Plantations, the cases presented before the Court were related to disputes involving farmers and indigenous communities. The Court also issued Decision No. 55/PUU-VII/2010-2011 on the constitutionality of the Plantations Law (Law No. 18/2004). In this decision, Article 21 and Article 47 of the Plantations Law were revoked and deemed unconstitutional. The Court also reviewed several other articles within the law, including Article 12(1) and Article 13, in response to complaints that the rights of indigenous communities regarding land ownership had been curtailed by discriminatory legal provisions.

In Decision No. 135/PUU-XIII/2015 on the judicial review of Law No. 39/2014 on Plantations, the Court placed strong emphasis on the ability of small-enterprise farmers to engage in seed breeding to discover the most suitable seed varieties. The Court declared that the term "individual" in Article 27, paragraph (3) of the Plantations Law, which states, "The activities of searching and collecting genetic resources as referred to in paragraph (2) can be carried out by individuals or legal entities based on the permission of the Minister," is inconsistent with the Constitution unless it is interpreted to exclude "individual small farmers". Moreover, Article 9, paragraph (3) of Law No. 12 of 1992 on Plant Cultivation Systems, which was conditionally declared unconstitutional in Decision Number 99/PUU-X/2012, essentially acknowledged the individual rights of small farmers to engage in plant breeding without the need to seek permission.

Separately, Court Decision Number 99/PUU-X/2012 ruled that the conditional phrase "can" in Article 29 of the Plantations Law, which states, "The Central

Government, Regional Government, or Plantation Business Actors may carry out plant breeding to find superior varieties,” is unconstitutional unless it is interpreted to include “individual small farmers”. The Court also addressed the phrase “breeding varieties” in Article 30, paragraph (1) of the Plantations Law, which states, “Varieties resulting from breeding or introduction from abroad before being circulated must first be released by the Central Government or launched by the owner of the variety.” The Court also stated that the provisions of Article 30, paragraph (1) of the Plantation Law do not apply to varieties resulting from breeding carried out by individual small domestic farmers for their own communities, in line with the Constitution. Furthermore, the Court’s decision recognized that members of customary law communities may legally use, occupy, and/or control plantation land.

In Decision No. 138/PUU-XIII/2015, the Court emphasized that small farmers can seek and find superior plant breeding varieties without the permission of the Minister of Agriculture. The Court declared the phrase “individual” in Article 27 paragraph (3) and Article 29 of the Plantation Law to be unconstitutional as long as it is interpreted as referring to individuals, including small farmers. One of the considerations was, the Court said, that the norms of Article 27 paragraph (3) of the Plantation Law are the same as the substance of the norms in Article 9 paragraph (3) of Law No. 12 of 1992 on Plant Cultivation Systems, which had been declared conditionally unconstitutional based on Decision No. 99/PUU-X/2012.

The Court also declared as unconstitutional a condition in Article 30 paragraph (1) of the Plantations Law, which stated that (plant) varieties resulting from breeding or introduction from abroad must first obtain approval from the Central Government or be authorized by the variety owner before being circulated. The Court clarified that this condition should not apply to individual small farmers in the country who breed varieties for their own communities. The Court also eliminated a special prohibition on members of legal customary law communities to engage in activities related to plantation business areas or lands, as stipulated in Article 55 of the Plantations Law. The phrase “any person

illegally” in Article 55 of the Plantations Law was declared unconstitutional, provided it is not interpreted to include members of customary law community units who meet the requirements outlined in Constitutional Court Decision No. 31/PUU-V/2007. Another relevant decision aimed at preventing social conflicts in society was Court Decision No. 35/PUU-X/2012, which reviewed Law No. 41/1999 on Forestry and ruled that Customary Forests are those located in indigenous land areas and should no longer be classified as State Forests.

2.4. The Court’s Challenges in Minimizing Social Disintegration

The Constitutional Court may face challenges in carrying out its role as an institution that seeks to minimize social conflicts. The Court might occasionally step out of line and go beyond its jurisdiction. In recent years, several constitutional courts have shown a proclivity for judicial activism. In the context of judicial activism, aimed at preventing social conflicts, the Court may at times make decisions that could be perceived as extending beyond its legal boundaries in an effort to manage and mitigate social conflicts. The Court may resort to judicial activism when it appears to be going beyond the explicit directives of the Constitution to constrain the actions of other government branches.¹⁷ For example, in Court Decision No.97/PUU-XIV/2016, the Court decided that the term “belief” should be incorporated into the religion column on identity cards and family cards, becoming a landmark decision on matters of equality. While the decision was intended to minimize discrimination in Indonesia, it also revealed the Court’s inclination toward judicial activism. This decision, involving the addition of the “belief” column, falls primarily within the executive domain, as the Court’s role should be limited to determining the constitutionality or unconstitutionality of laws.

Another challenge faced by the Court is judicial populism. The Constitutional Court may make decisions that are popular, and in doing so, it may be inclined to address issues it should not.¹⁸ For example, in the Court’s review of the

¹⁷ Keenan D. Kmiec, “The Origin and Current Meanings of ‘Judicial Activism’,” *California Law Review* 92, no. 5 (October 2004): 1441-65, <https://doi.org/10.2307/3481421>.

¹⁸ Mátyás Bencze, “Explaining Judicial Populism in Hungary – a Legal Realist Approach,” *Iuris Diction* 25 (June 2020): 83, <https://doi.org/10.18272/iu.v25i25.1635>.

presidential threshold, it declared that the presidential threshold is an open legal policy. The presidential threshold issue is indeed popular, but the fact that it has been challenged before the Constitutional Court over 30 times indicates that the Court's decisions have not been universally accepted as the definitive solution for electoral justice.¹⁹ In its attempts to balance social conflict, the Court may make decisions that are popular in some segments of society while not being accepted as electoral justice in other parts of society.

Apart from the Court's role in suppressing or minimizing social conflict, there is also the potential tendency for the Court to contribute to conflicts. For instance, the Court's decisions may lack firmness, as seen in cases where it ruled matters both conditionally constitutional and conditionally unconstitutional, indicating hesitancy. Furthermore, the recurrence of filed cases suggests skepticism towards the Court's decisions, which is particularly evident in instances such as the challenges to the presidential threshold. The filing of 28 cases against the norm in Article 222 of Law No. 7/2017 on Elections and the existence of dissenting opinions among constitutional judges shows that the Court played a role in political polarization in the early stages of the 2024 presidential election.²⁰ In Court Decision No. 52/PUU-XX/2022, the Court expressed doubt that eliminating the presidential threshold would eliminate oligarchies and polarization in society.²¹ This may indicate that while the Court is trying to prevent social conflict, its stance on the presidential threshold has seen it justify having oligarchies and social polarization. In its societal role, the Court indirectly contributes to conflict avoidance by maintaining independence from interest groups and proactively communicating its decisions to the public.²² The Court must carefully consider the risk of compromising its independence while aiming for consistency and moderation in its decisions to reconcile public perception.²³

¹⁹ Mahatma Chryshna, "Judicial Review Mahkamah Konstitusi Atas Ketentuan Presidential Threshold [Judicial Review of Constitutional Court on the Presidential Thresholds Rules]," Kompas Pedia, published July 19, 2022.

²⁰ "MK Menyumbang Polarisasi Pilpres 2024 [The Constitutional Court of Republic of Indonesia on Contributing to the Polarization in the 2024 Presidential Election]," Info Riau, published July 10, 2022.

²¹ Tareq Muhammad Aziz Elven, "Masihkah Mahkamah Menjaga Konstitusi? [Does the Constitutional Court Still Uphold the Constitution?]" Detiknews, published July 25, 2022.

²² Andrew Harding, *The Fundamentals of Constitutional Courts* (Sweden: International IDEA Constitution Brief, 2017).

²³ Elven, "Masihkah Mahkamah [Does the Constitutional Court]."

2.5. Ways to Maintain Judicial Independence in a Diverse Society

In a diverse society such as Indonesia, the Constitutional Court has to have strong commitment and show its independence in delivering its decisions. This commitment is essential to anticipate the potential risks of social fragmentation and polarization within Indonesia's diverse society. While marking judicial reform in Indonesia, the Court has not shied away from addressing significant and controversial issues related to religion and ethnicity. It has rendered numerous statutes unconstitutional in these areas over the years.²⁴

Judicial independence should not be confused with judicial autonomy or construed as the principle of rule by judges.²⁵ To uphold judicial independence, the Court must prioritize transparency, accountability, ethics and integrity in its decision-making processes. In this context, the Court must make decisions impartially, based on facts and in accordance with the law, without any constraints, undue influences, incentives, pressures, threats, or interferences, whether direct or indirect, originating from any source or for any societal reasons.²⁶ To this extent, the Court must remain free from external pressures, threats, and other influences that could undermine its independence. For example, when the Court is handling a landmark case that could stir up public emotions, it must make the best decision based on what is right and just, guided by principles of equity and conscience. The Court should prioritize fairness and justice in its decisions, even if it means disregarding potential conflicts in society that may arise as a result of its decision. Furthermore, according to the Bangalore principles of judicial conduct, judges must maintain independence in relation to society as a whole. In their application of the law, judges must also be mindful of and consider the diversity and differences that exist in society, including those based on factors such as race, color, sex, religion, national origin, caste, disability, age,

²⁴ Simon Butt, "The Indonesian Constitutional Court Implying Rights from the 'Rule of Law'," in *The Invisible Constitution in Comparative Perspective*, ed. Rosalind Dixon and Adrienne Stone (Cambridge: Cambridge University Press, 2018), 300.

²⁵ Markus Böckenförde, Nora Hedling, and Winluck Wahiu, *A Practical Guide to Constitution Building: The Design of the Judicial Branch* (Sweden: International IDEA Constitution Brief, 2011), 29.

²⁶ *Rechtens voor Rechtens, Matters of Principle Codes on the Independence and Impartiality of the Judiciary* (The Netherlands: Eleven International Publishing, 2019), 24.

marital status, sexual orientation, social and economic status, and other similar attributes (“irrelevant grounds”).²⁷

In Indonesia, judges play an essential role in the law-finding and interpretation process, to ensure the legitimacy of rights and interests. According to Barack, there exists a relationship between the laws that govern interactions among people and reflects the values of society, and judges have to know the purpose of law in society.²⁸ In this context, the Constitutional Court has to accommodate the different cultures, traditions, and norms in the diverse society of Indonesia. Consequently, the pluralism of cultures and legal traditions in Indonesia are actually contributing to the significant challenges faced by the nation.

Maintaining judicial independence is a vital part of the Court’s broader aim to promote social diversity in a multicultural state. This role may be relevant in fostering widespread tolerance between the majority and minority groups in society. Bridging the gap between majority and minority is one way to prevent complicated social conflicts from occurring in the diverse society of Indonesia. In this context, the Court derives strength from its commitment to consistently embrace differences in society and cultures while ensuring equality among Indonesia’s diverse population. Article 24 (1) of the Constitution serves as the constitutional basis for judicial independence. This article, in alignment with Law No. 48/2009, underscores the importance of an independent judicial branch in upholding the principles of law enforcement, justice for all, and the rule of law.

The composition of the judges in the Constitutional Court, reflecting the diversity of their origin, race, ethnicity, and religion, may be one of the efforts to mitigate the potential risks of social conflicts stemming from the Court’s decisions. In Indonesia, there are no specific rules addressing the proportionality of the judges’ backgrounds. The composition and the background of constitutional judges may also influence the judges’ reasoning when delivering Court decisions. According to the Constitution, the requirements for serving as a constitutional

²⁷ Rechters, *Matters of Principle*, 30.

²⁸ Aharon Barak, “Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy,” *Harvard Law Review* 116, no. 16 (November 2002): 29, <https://doi.org/10.2307/j.ctv19x569.30>.

judge are relatively broad. These requirements indicate that a constitutional judge must possess integrity and an unimpeachable personality, exhibit impartiality, demonstrate statesman-like qualities, possess a deep understanding of the constitution and the constitutional system, and hold no other concurrent public office positions. In this context, the Constitution may offer a means of addressing potential issues related to ethnicity, race, and religion during the process of appointing judges. Beyond concerns of fairness and impartiality, such provisions may also serve as a measure to prevent social conflicts within society. In addition to the Constitution, specific requirements for becoming a constitutional judge are further regulated by the law.

Article 15 paragraph (2) of Law 7/2020 clarifies that a constitutional judge must be an Indonesian citizen; hold a doctoral degree (strata three) with a bachelor's (strata one) background in the field of law; demonstrate a reverence for God Almighty and possess a noble character; be at least 55 years old; be physically and spiritually capable of fulfilling duties and obligations; have no history of imprisonment based on a court decision that has obtained permanent legal force; not be declared bankrupt based on a court decision; and have at least 15 years of work experience in the legal field. For prospective judges originating from the Supreme Court, they should currently be serving as high judges or supreme judges.

The special requirements for being a constitutional judge reflect the professionalism in line with the judge's expertise in constitutional law. The stipulation that a judge must have reverence for God Almighty and possess a noble character is not tied to any specific religion, making these requirements neutral and based on the nominee's professionalism. This requirement primarily addresses the need to avoid bias in judgments, serving as an effort to anticipate controversial decisions that might lead to societal conflicts. However, although the multicultural composition of Constitutional Court judges does not guarantee decisions with a lower risk of contributing to social conflicts, it becomes a proportional composition when judges hail from diverse backgrounds, representing different religions, ethnicities, races and cultures. In the experience of

the Indonesian Constitutional Court, the qualifications for a constitutional judge are both general and specific, centered on professionalism. A study suggests that judgments may vary in relevance to different cultural contexts.²⁹ Through several terms of judges' offices at the Constitutional Court, the composition consistently reflects diverse origins and cultural, religious, and ethnic backgrounds. There is an assumption that a diverse composition in terms of ethnicity, religion and race among judges contributes to a proportional composition, potentially impacting judgments for fairness and justice.

Lastly, as Mietzner has argued, the Constitutional Court serves as an institutional mechanism for political conflict resolution.³⁰ In addition, for social conflict resolution, the Court also offers a legitimate avenue for settling disputes that may trigger social conflicts. In this regard, the Court plays a role in preventing the exacerbation of conflicts in a diverse society, potentially mitigating their adverse impacts. Conversely, the Court's decisions can serve as indicators of the conclusion of a social conflict. These decisions may symbolize the potential termination of conflicts through their legal ramifications, although they may not directly resolve the conflicts in practice.³¹ In this regard, the Court can offer a legitimate legal alternative through its decisions to manage the triggers for social conflicts. Nonetheless, in order to address public concerns about the Court's role in preventing social conflicts, the Court must maintain communication with the public. This is essential to raise public awareness regarding the Court's message in its decisions, signaling its commitment to providing dispute resolution for potential or existing social conflicts within society. Several conditions must be met for the Court to effectively communicate its judicial decisions, including ensuring that the decisions are tailored to the prevailing circumstances and the specific target audience that the Court aims to reach.³²

²⁹ Karlsson BSA and Allwood CM, "Cultural Differences in Answerability Judgments," *Front Psychol* 9 (September 2018): 1641, <https://doi.org/10.3389/fpsyg.2018.01641>.

³⁰ Marcus Mietzner, "Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court," *Journal of East Asian Studies* 10, no. 3 (September-December 2010): 397-424, <https://doi.org/10.1017/S1598240800003672>.

³¹ Austin T. Turk, "Law as a Weapon in Social Conflict," *Social Problems* 23, no. 3 (February 1976): 286, <http://dx.doi.org/10.4324/9781315091983-10>.

³² Turk, "Law as a Weapon," 245.

III. CONCLUSION

Social conflicts are a common occurrence in the diverse society of Indonesia, with the potential to yield both negative and positive impacts on the development of society. These conflicts can manifest in various forms, particularly within the context of today's globalized digital society. Any social conflict has the potential to escalate into a chaotic situation, necessitating government intervention to address the situation. In accordance with the law, measures taken to address social conflicts may be legally justified. The authority to take such measures lies with the executive branch, with the president at the national level and the heads of local governments in their respective territorial jurisdictions within Indonesia.

With regard to social conflicts and their detrimental impacts, the Constitutional Court, as authorized by the Constitution, may indirectly play a role in helping to minimize and eliminate potential factors contributing to social conflicts, thereby reducing the tensions arising from such conflicts within Indonesia's diverse society, and also to guard national unity. Through its decisions, the Court can be perceived as an institution that offers conflict resolution and delivers justice to society. Nonetheless, the Court's role is not without its challenges. In the process of making decisions, the Court may even inadvertently exacerbate social conflicts. While on the one hand, the Court's decisions are in line with what should be determined legally, they can serve as triggers for social conflicts in Indonesia's diverse society. In this context, the Court must avoid any self-interest and maintain its independence. This aligns with Barack's argument that a judge must reflect the beliefs of society, even when those beliefs are not his or her own beliefs. This is because the values of the Constitution may find expression in the judges' decisions as they are understood through the lens of the cultures and traditions of the population as it evolves over time.³³

³³ Barak, "Foreword: A Judge."

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