# Artificial Intelligence and the Constitutional Court: A Newpath of Making Independent Decisions?

## Vicko Taniady*
*Universitas of Jember, Jember, Indonesia*

## Steven Theonald Siahaan
*University of Antwerp, Antwerp, Belgium*

**ABSTRACT:** The Constitutional Court is facing problems because many decisions are not in favor of the community and are not independent. The constitutional judges are sometimes not independent, as in cases of corruption, and there are indications of a change in the substance of the decision. This study aims to analyze how the procedures for constitutional judges make decisions, and then the authors relate it to the urgency of implementing AI in helping judges make decisions. The research method used is doctrinal and socio-legal. This research uses literature study techniques to obtain secondary data. The study results show that constitutional judges' existence is essential in maintaining the rule of law and democracy in Indonesia today. So, to face the problems today, AI is needed. AI is expected to assist constitutional judges in making decisions, document review, and predictive analysis. The application of AI has been carried out by many countries, which have succeeded in helping judges make decisions. However, several challenges must be prepared, such as the need for regular AI inspections, supervision of the use of AI by the Constitutional Court Honorary Council and the independent Constitutional Court technicians, and the need for a legal umbrella for the application of AI within the Constitutional Court.

**KEYWORDS:** Artificial Intelligence; Constitutional Court; Independent Decisions.

# I. INTRODUCTION

The Constitutional Court is one of the new State Institutions born after the third amendment to the 1945 Constitution of the Republic of

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\* Corresponding author's e-mail: vickotan21@gmail.com

Indonesia (1945 Constitution), ratified on November 9, 2001.[1] The Constitutional Court's presence in Indonesia is inseparable from the views of Hans Kelsen, who pioneered the Constitutional Court in the 1919-1920 Austrian Constitution and became the first Constitutional Court in the world.[2] Hans Kelsen argues that making a constitutional regulation regarding statutory regulations can be guaranteed by granting authority to a particular organ capable of examining whether or not a product of constitutional law is appropriate.[3] For that, the existence of the Constitutional Court has the focus and purpose of being the guardian of the constitution.[4] In carrying out its duties, the Indonesian Constitutional Court has a vision: "Upholding the constitution in the framework of realizing love for the rule of law and democracy for the life of a dignified nation and state".[5] In addition, the Constitutional Court is also tasked with guarding democracy, protecting constitutional rights, and protecting human rights.[6]

Based on Jimly Asshiddiqie's view, the existence of the Constitutional Court has at least two ideal functions in the 1945 Constitution, namely:[7] First, the Constitutional Court is mandated as guardian of the constitution

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[1] Yoyon Mulyana Darusman, Bambang Wiyono & Guntarto Widodo, "The Importance of Good Constitution for Resulting Good Governance and Clean Goverment" (2020) 19:3 Jurnal Dinamika Hukum 590–611.

[2] Bagus Hermanto & I Gede Yusa, "Children Rights and The Age Limit: The Ruling of The Indonesian Constitutional Court" (2018) 40:2 Kertha Patrika 61–70.

[3] Muhammad Iqbal Samsudin, "A Comparison of Judicial Review in Indonesian Constitutional Court and French Constitutional Council" (2022) 5:1 Indonesian Comparative Law Review 31–42.

[4] Tanto Lailam, Putri Anggia & Irwansyah Irwansyah, "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court" (2022) 19:3 Jurnal Konstitusi 693–719.

[5] Desti Fadhilla Zahra & Maria Madalina, "Peradilan Konstitusi Dalam Sejarah, Perkembangan, dan Urgensinya di Indonesia" (2022) 1:3 Souvereignty Jurnal Demokrasi dan Ketahanan Nasional 539–549.

[6] Nano Tresna Arfana, "Hak Asasi Manusia dan Hak Warga Negara Menurut Jimly Asshiddiqie | Mahkamah Konstitusi Republik Indonesia", (September 2021), online: <https://www.mkri.id/index.php?page=web.Berita&id=17582&menu=2>.

[7] Kukuh Fadli Prasetyo, "Two Ideas of Economic Democracy: Contextual Analysis On Role Of Indonesian Constitutional Court As A Guardian Of Democracy" (2019) 9:1 Indonesia Law Review, online: <https://scholarhub.ui.ac.id/ilrev/vol9/iss1/5>.

to guarantee, encourage, direct, guide, and ensure that state administrators properly implement the 1945 Constitution and comply with constitutional law; And second, the Constitutional Court is the interpreter of the 1945 Constitution. Furthermore, if examined through Article 24C of the 1945 Constitution, Article 7B of the 1945 Constitution, and the Law of the Republic of Indonesia Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Act), there are four the powers of the Constitutional Court, namely:[8] First, review the law against the constitution; Second, decide disputes between state institutions; Third, decide on the dissolution of political parties; and Fourth, decide general disputes. On the other hand, there is also the obligation of the Constitutional Court, namely, to decide on the views of the DPR on alleged violations committed by the President and/or Vice President. The authority of the Constitutional Court can also be seen from the relationship between state institutions and democratic institutions, which are based on law.

The presence of the Constitutional Court is undoubtedly a new hope for the people to get justice after the fall of the New Order era. However, the current public expectation is the opposite, where the level of trust in the Constitutional Court is decreasing. This problem can be seen from the May 2022 Indonesian Political Opinion survey data, where the level of trust in the Constitutional Court is only 60%.[9] Meanwhile, based on data from the Indonesian Survey Institute (LSI) in October 2022, the level of trust in the Constitutional Court is 62%.[10] That level of trust has fallen since the Chief Justice of the Constitutional Court, Akil Mochtar, was

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[8] Muchamad Ali Safa'at, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations" (2022) 8:1 Journal Constitutional Review 113–150.

[9] Vika Azkiya Dihni, "Survei: Warga Lebih Percaya TNI Ketimbang Presiden", (2022), online: *Databoks* <https://databoks.katadata.co.id/datapublish/2022/06/06/survei-warga-lebih-percaya-tni-ketimbang-presiden>.

[10] Viva Budy Kusnandar, "Survei LSI: TNI dan Presiden Paling Dipercaya Publik", (2022), online: *Databoks* <https://databoks.katadata.co.id/datapublish/2022/10/24/survei-lsi-tni-dan-presidenpaling-dipercaya-publik>.

arrested by the Corruption Eradication Commission.[11] In addition, the decisions made by the judges of the Constitutional Court are currently controversial and raise suspicions that these decisions are not independent and tend to be intervened by groups that have power or the so-called elites.[12] Even though the independence of the judiciary is one of the basic principles in a rule of law.[13] Moreover, the Constitutional Court's decision is important because it concerns human rights.[14] For this reason, strategic efforts are needed to restore the dignity of the Constitutional Court and increase the role of independent constitutional judges in making court decisions.

In this study, the authors try to analyse the urgency of implementing Artificial Intelligence (AI) to an effort to create independent decisions by judges of the Constitutional Court. This research is based on the development of AI, which has touched the current justice system, so the authors want to examine it further related to efforts to produce independent judicial decisions at the Constitutional Court. Research that examines the application of AI in the justice system has been carried out several times, such as 1) Research conducted by Mehmet Fatih Sert et al. with the title "Using Artificial Intelligence to Predict Decisions of the

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[11] Sutan Sorik, Mirza Nasution & Nazaruddin Nazaruddin, "Eksistensi Majelis Kehormatan Mahkamah Konstitusi (Studi Keputusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01/MKMK/X/2013)" (2018) 15:3 Jurnal Konstitusi 666–687.

[12] M L Aldila Tanjung, "Menyoal Kontroversi Putusan MK tentang Undang-Undang Cipta Kerja", (2021), online: *kumparan* <https://kumparan.com/aldila-tanjung/menyoal-kontroversi-putusan-mk-tentang-undang-undang-cipta-kerja-1x1PP6UWMA6>; Andi Saputra, "5 Putusan MK Terheboh Kurun 2021: Dari UU KPK hingga UU Ciptaker", (2021), online: *Kompas.com* <https://news.detik.com/berita/d-5876510/5-putusan-mk-terheboh-kurun-2021-dari-uu-kpk-hingga-uu-ciptaker>; Singgih Wiryono, "Saat MK Disebut sebagai Mahkamah Keluarga dan Mahkamah Kontroversial...", (2023), online: *Kompas.com* <https://nasional.kompas.com/read/2023/06/14/23450891/saat-mk-disebut-sebagai-mahkamah-keluarga-dan-mahkamah-kontroversial>.

[13] Muh Ridha Hakim, "Tafsir Independensi Kekuasaan Kehakiman Dalam Putusan Mahkamah Konstitusi" (2018) 7:2 Jurnal Hukum Dan Peradilan 279–296.

[14] Bagus Hermanto, "Dynamics on Constitutional Court Decision towards Indonesia Citizenship Arrangement" (2023) 20:2 Jurnal Konstitusi 216–237; Luthfi Widagdo Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia" (2018) 15:1 Jurnal Konstitusi 1–26.

Turkish Constitutional Court".[15] This study analyzes the decisions of the Turkish Constitutional Court that lead to "offenses" or "non-offenses" decisions. The results of this study indicate that the basic technique of AI, namely the multilayer perceptron[16] used by researchers, can predict court decisions in these cases with an accuracy rate above 90% using only the subject or reasoning part of the case text as data. ; 2) Research conducted by A.D. (Dory) Reiling with the title "Courts and Artificial Intelligence".[17] This study analyzes the potential and risks of AI in court. The study's results explain that the presence of AI will assist judges and courts. But courts must continuously monitor the effectiveness of AI systems and make adjustments if necessary; and 3) Research conducted by Cinara Rocha and João Carvalho with the title "Artificial Intelligence in the Judiciary: Uses and Threats".[18] This study analyzes the application of AI in supporting judges' work and threats to justice's value. The results of the study show that the presence of AI can promise a future of fair justice and can overcome the problem of delays up to a large pile of cases. However, there are challenges to implementing AI (despite its predictive nature), such as data opacity issues, biased algorithm development, and the emergence of discrimination.

In this study, three important discussions will be examined: First, this study attempts to analyze the decision-making process by judges of the Constitutional Court. Second, this research will look at the relevance of implementing AI in the Constitutional Court, such as the application of AI

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[15] Mehmet Fatih Sert, Engin Yıldırım & İrfan Haşlak, "Using Artificial Intelligence to Predict Decisions of the Turkish Constitutional Court" (2022) 40:6 Social Science Computer Review 1416–1435.

[16] Multilayer Perceptron (MLP) is an artificial neural network consisting of multiple layers of neurons. MLP is used to study complex and non-linear patterns in input data. MLP can also be used to perform classification, regression, and prediction. Aji Prasetya Wibawa et al, "Multilayer Perceptron untuk Prediksi Sessions pada Sebuah Website Journal Elektronik" (2020) 1:3 Indonesia Journal of Data Science 57–67; Jamal Nazzal, Ibrahim El-Emary & Salam Najim, "Multilayer Perceptron Neural Network (MLPs) For Analyzing the Properties of Jordan Oil Shale" (2008) 5:5 World Applied Science Journal 546-552.

[17] A D (Dory) Reiling, "Courts and Artificial Intelligence" (2020) 11:2 International Journal Court Administration 8.

[18] Cinara Rocha & João Carvalho, *Artificial Intelligence in the Judiciary: Uses and Threats* (Sweden: Linköping University, 2022).

in other countries, and the potential for implementing AI in the justice system. Third, this research will look at the challenges of AI implementation and provide AI implementation solutions to help constitutional judges make an independent decisions.

## II. METHODS

This research will elaborate doctrinal research methods with socio-legal. Doctrinal research was carried out to analyze the arrangements regarding the decision-making process by the Constitutional Court and to analyze AI in the construction of national and international law. Furthermore, socio-legal research is used to analyze regulations and their relation to other disciplines related to law enforcement, particularly in creating independent court decisions.[19] This research uses literature study techniques to obtain secondary data in law and other social sciences, including books, journals, media/news, and others.

## III. OBSERVING DECISION MAKING AT THE CONSTITUTIONAL COURT

### A. The Process of Judges in Making Decisions at the Constitutional Court

Judicial power is a form of independent state power in carrying out judicial processes to uphold law and justice by the principles and values contained in the 1945 Constitution.[20] In this regard, judicial power is a power that cannot be intervened by anything whatsoever.[21] This is because the independence of the judiciary is the primary key to a rule of law and

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[19] Herlambang P Wiratraman, "Good Governance Dan Pembaruan Hukum Di Indonesia: Refleksi Dalam Penelitian Sosio-Legal" (2013) 2:1 Jurnal Hukum dan Peradilan 21–34.

[20] Sobandi Sobandi, "The Judicial Power Limitation Of Commercial Courts Competency In Commercial Disputes" (2021) 5:2 International Journal of Law Reconstruction 292–305.

[21] Magabe T Thabo & Kola O Odeku, "Separation of powers, checks and balances and judicial exercise of self-restraint: an analysis of case law" (2021) 42:3 Obiter 547–560.

democracy. [22] One of the judicial institutions that play an essential role in mandating the concept of the rule of law and the spirit of democracy is the Constitutional Court. Institutionally, the Constitutional Court plays a role in conveying the public mandate and safeguarding the public interest.[23] By looking at the existence of a large and noble Constitutional Court, of course, requires an organ with the capacity and competence in the law field and strong integrity. Judges, as the judiciary's leading actors, are vital in deciding a case because they must be accountable horizontally to the community and vertically to God Almighty.[24] Thus the competence and capacity of constitutional judges are essential because constitutional judges have the authority to review laws both formally and materially, interpret constitutional authority, and resolve disputes between institutions. In addition, constitutional judges are also required to have high integrity because it involves the nature of final and binding decisions.[25]

In carrying out its functions, the Constitutional Court is assisted by nine constitutional judges, although in extraordinary circumstances, it can be performed by seven constitutional judges.[26] Nine constitutional judges are proposed by the House Representative, the President, and the Supreme

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[22] Panji Erawan, "Ketua MK: Supremasi Hukum Harus Disertai Kemampuan Menegakkan Kaidah Hukum | Mahkamah Konstitusi Republik Indonesia", (September 2017), online: <https://www.mkri.id/index.php?page=web.Berita&id=8923>.

[23] Eddyono, *supra* note 14.

[24] Fence Wantu et al, "Proses Seleksi Hakim Konstitusi: Problematika dan Model Ke Depan" (2021) 18:2 Jurnal Konstitusi 241–261.

[25] Antoni Putra, "Sifat Final Dan Mengikat Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang" (2022) 14:3 Jurnal Yudisial 291–311.

[26] Regulated in Article 28 paragraph (1) of the Constitutional Court Act. The choice of odd numbers is not without purpose. Numerically, an odd number leaves 1 (one) compared to the previous even number. If the odd number is divided by 2 (two) groups, then one group will receive an excess of 1 (one) vote for the number distribution to be round. A vote is the best way to resolve a decision that does not reach an agreement. To achieve the judge's vote necessary to get a judge's agreement, all judges must be present at the trial. An excess of 1 (one) judge's vote results in 1 (one) group of judges who, in their opinion, obtain the most votes. The group of judges' principal opinion is the majority group making the primary decision. Chandra Yusuf, "Dampak Pemisahan Kewenangan antara Mahkamah Konstitusi dan Mahkamah Agung dalam Menginterpretasikan Undang-undang dan Peraturan Dibawahnya" (2021) 37:2 Jurnal Hukum Universitas Islam Sultan Agung 85–100.

Court with three persons each, and are determined by Presidential Decree.[27] Furthermore, in practice, constitutional judges have a code of ethics that must be obeyed as stated in the Constitutional Court Regulation Number 09/PMK/2006 of 2006 concerning the Enforcement of the Declaration of the Code of Ethics and Constitutional Court Regulations. (Regulation of the Constitutional Court Number 09/PMK/2006). The provisions of the Constitutional Court Regulation Number 09/PMK/2006 also contain principles that must be obeyed by constitutional judges by referring to the "2002 Bangalore Judicial Conduct Principles"[28] such as the principles of independence, impartiality, integrity, decency and decency, equality, ability, and thoroughness, as well as the values that live in Indonesian society, namely principles wisdom and expertise as a code of ethics of constitutional judges and their application, is used as a reference and benchmark in assessing the behavior of constitutional judges, which includes honesty, trustworthiness, exemplary, politeness, sportsmanship, discipline, hard work, independence, shame, responsibility, honor, and dignity as a constitutional judge. In this case, in deciding a case at the Constitutional Court, constitutional judges must determine and uphold the code of ethics and applicable principles.[29]

The Constitutional Court judges, in making decisions, always follow state administration developments and answer every problem raised by the Petitioner and the Respondent..[30] Basically, there are three types of decisions in the Constitutional Court, namely decisions granted, rejected,

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[27] Indriati Amarini, "Generating A High Quality and Integrity Career Judges Recruitment Post-Constitutional Court Decision Number 43/PUU-XIII/2015" (2018) 18:3 Jurnal Dinamika Hukum 301–308.

[28] Luthfi Widagdo Eddyono, "Independence of the Indonesian Constitutional Court in Norms and Practices" (2017) 3:1 Constitutional Review 71–97.

[29] N Nadir & Win Yuli Wardani, "The Evaluation Of Independent Norm Text And Impartial Judge On The Constitutional Court Of Indonesia" (2019) 2:1 Sociological Jurisprudence Journal 13–25.

[30] Intan Permata Putri & Mohammad Mahrus Ali, "Karakteristik Judicial Order dalam Putusan Mahkamah Konstitusi dengan Amar Tidak Dapat Diterima" (2019) 16:4 Jurnal Konstitusi 883–904.

and unacceptable.[31] However, in its development, constitution judges created variants of decisions, such as constitutional requirements, unconstitutional requirements, decisions that suspended the validity of decisions, and decisions that formulated new norms.[32] Of course, in deciding a case, the judge must include the facts revealed at the trial and the legal considerations that form the basis of his decision. The judge needs decision making in deciding the decision to be decided on the case being applied for. The judge must be able to process and process the data obtained during the trial process in this case, evidence, witness statements, others, so that the decision to be annulled can be borne by the public interest. There are at least three ways for constitutional judges to make decisions, namely deliberation, majority vote, and decision-making based on the considerations of the chairman of the panel of constitutional judges.[33]
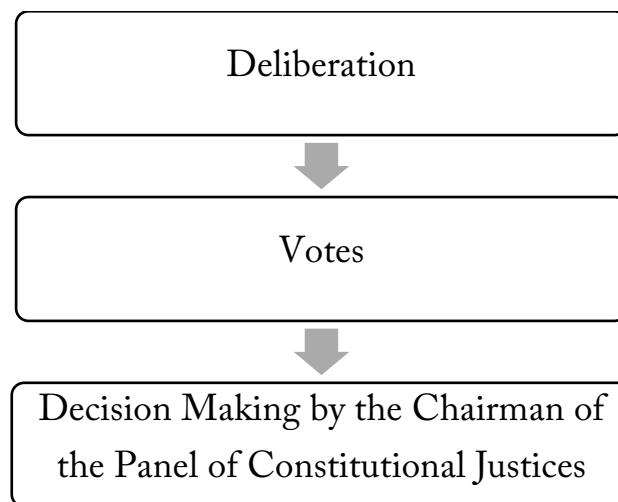


**Figure 1.** *Stages of Judges in Delivering Decisions*

[31] Vera Wheni S Soemarwi, Yeremia Wijaya & Arthuro Richie Gunawan, "The Absence of Constitutional Court's Decision Follow Up: Is it A Loss?" (2022) 19:3 Jurnal Konstitusi 720–740.

[32] Syukri Asy'ari, Meyrinda Rahmawaty Hilipito & Mohammad Mahrus Ali, "Model dan Implementasi Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012)" (2013) 10:4 Jurnal Konstitusi 675–708.

[33] Yusuf, *supra* note 26; Yostinus tomi aryanto TNR, "Tiga Langkah Bagaimana Putusan MK Dibuat", (2014), online: *Tempo* <https://nasional.tempo.co/read/601119/tiga-langkah-bagaimana-putusan-mk-dibuat>.

### 1. Deliberation

In the context of deliberations, of course, this is not strange in Indonesia because deliberations are part of the mandate of the 4th precept of Pancasila.[34] Deliberation is a way of formulating or deciding something based on the will of many people, seeking approval from many people in order to achieve unanimity; decisions do not have to be based on majority votes but decisions taken based on agreement and consensus. Deliberations are carried out by the panel of judges, aiming to seek harmony between the panel of judges in rendering decisions on cases that have reached the decision process.[35] Decision-making by constitutional judges through deliberation has been regulated in Article 45 paragraphs (4) and (5) of the Constitutional Court Law, which states that decisions are taken by deliberation to reach a consensus in a plenary meeting of constitutional judges chaired by the chairman from the Constitutional Court hearing. In a deliberative session, every constitutional judge must submit a written consideration or opinion on the application. Furthermore, if the deliberations in the plenary session of the constitutional judges cannot produce a decision, then the deliberations are postponed until the deliberations of the next plenary session of constitutional judges. One example of a constitutional judge's decision using deliberation is the Constitutional Court Decision Number 53/PUU-XXI/2023.

### 2. Votes

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[34] Siti Afifatul Mukaromah, Ari Gusmawan & Jeremiah Munandar, "The Lunge of Global Ideologies: The Challenges of Pancasila Ideology Education in the Middle of Global Existence in the Era of Globalization" (2022) 4:1 Jurnal Panjar Pengabdian Bidang Pembelajaran 1–30.

[35] Redy Giles T, "Perbedaan Pendapat (Dissenting Opinion) Penilaian Alasan Kasasi Penuntut Umum Berdasarkan Kesalahan Hakim Menentukan Tindak Pidana Narkotika Terhadap Terdakwa" (2016) 4:3 Verstek 156–164.

Article 45 paragraph (7) of the Constitutional Court Act states that if deliberations in a plenary session of constitutional judges cannot reach a consensus, then the decision is taken with a majority of votes. Judges who reject the results and reasons can submit a dissenting opinion.[36] Meanwhile, judges who approve can be divided into two parts: judges who fully approve of both the results and reasons and judges who accept the results but reject the reasons that form the legal basis. One example of a constitutional judge's decision using the most votes is the Constitutional Court Decision Number 112/PUU-XX/2022 concerning testing the term of office of the Corruption Eradication Commission leadership.

### 3. Decision Making by the Chairman of the Panel of Constitutional Justices

A decision in the form of acceptance or protection can reach a stalemate if one of the judges abstains and the voting results are balanced. If there is an impasse, the judges will undergo the final stage, which is to decide based on the consideration of the head of the panel of judges.[37]

### B. Problems with Current Constitutional Court Decisions: The End of Judicial Independence?

The decisions of the Constitutional Court, which are final and binding, have a significant impact on the interests of society. In this regard, the decisions of constitutional judges must be independent or without interference from other parties or a modus operandi that favors individual interests. Furthermore, the independence of the judiciary has rights and demands that the judiciary ensure that the judicial process is carried out fairly and respects the parties' rights. However, in its development, the

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[36] Simon Butt, "The Function of Judicial Dissent in Indonesia's Constitutional Court" (2018) 4:1 Constitutional Review 1–26.

[37] TNR, *supra* note 33.

decisions of the Constitutional Court often become public attention because they are controversial and do not carry the public interest. Zainal Arifin Mochtar, in a discussion entitled "The Role of the Constitutional Court in the Middle of Democratic Regression," underlined that many decisions issued by the Constitutional Court tend to be political.[38] The Constitutional Court, which should have been held with the independence of the judiciary, turned out to be only an extension of the government and the legislature. According to Zainal, this is reflected in the decision to review regulations made by the Constitutional Court which is not in line with the public interest and only helps legalize problematic regulations widely questioned by the public. In addition, other problems also occurred, such as the Akil Mochtar case[39] to the constitutional judge Patrialis Akbar.[40] The question that reappears whether the decisions of the constitutional judges are independent or not is currently reappearing after the change in the substance of the Constitutional Court's decision in case Number 103/PUU-XX/2022.[41] In addition, the large number of cases submitted to the Constitutional Court also raises doubts about the quality of the judge's decisions.

By looking at the various problems currently faced by the Constitutional Court, especially in independent decision-making, this study proposes using AI. AI can help in independent decision-making because, in practice, AI is used to detect and predict a system. In addition, AI will also assist constitutional judges in evaluating data and assessing the implications of future decisions so the following discussion will discuss the more complex application of AI in the Constitutional Court.

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[38] Sekolah Tinggi Hukum Indonesia, "Mahkamah Konstitusi Harus Independen dan Mengedepankan Kepentingan Publik — Sekolah Tinggi Hukum Indonesia Jentera", (19 December 2022), online: <https://www.jentera.ac.id/kabar/mahkamah-konstitusi-harus-independen-dan-mengedepankan-kepentingan-publik>.

[39] Nur Rohim Yunus et al, "Corruption as an Extra-Ordinary Crime: Elements and Eradication Efforts in Indonesia" (2021) 6:2 Journal Creativity Student 131–150.

[40] Tanto Lailam, "Membangun Constitutional Morality Hakim Konstitusi di Indonesia" (2020) 20:4 Jurnal Penelitan Hukum De Jure 511–530.

[41] Vitorio Mantalean, "Perubahan Substansi Putusan MK Disebut Hanya Butuh 49 Menit", (2023), online: *Kompas.com* <https://nasional.kompas.com/read/2023/02/09/14574181/perubahan-substansi-putusan-mk-disebut-hanya-butuh-49-menit>.

## IV. RELEVANCE APPLICATION OF AI IN THE CONSTITUTIONAL COURT

### A. Application of AI in Justice Systems in other countries

Judicial independence is a central principle of the justice system and the essence of a democratic government. The independence of the judiciary has a crucial position in protecting human rights, the rule of law, justice and legal certainty.[42] Based on Lord McKay's view, judicial independence is an essential part because the implementation of judicial independence requires judges to carry out their judicial duties by judicial oaths and state law without interference or influence or pressure from any party.[43] In this regard, judges have a vital role in maintaining the independence component of certain powers to administer justice impartially. Seeing this, to create the independence of judges, especially in making decisions, they can utilize information technology within the scope of justice.

Information technology, or AI, has been adopted and used in the justice system in several countries. The application of AI in the justice system has been used in Canada as a "robot mediator".[44] Canadian robot mediators have settled their first lawsuit case, with a fundamental dispute over unpaid fees of around 2,000 British pounds, which allegedly occurred after the end of a private counselling session.[45] The dispute has been going on for three months, but Graham Ross, a mediator and attorney, recommends using Smartsettle One developed in British Columbia, which uses an algorithm with bidding techniques and prioritizes the parties to the dispute and helps

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[42] Ananthia Ayu Devitasari, "Menakar Independensi Hakim Pengadilan Pajak Pasca Putusan Mahkamah Konstitusi Nomor 10/PUU-XVIII/2020" (2020) 17:4 Jurnal Konstitusi 879–898.

[43] *Ibid.*

[44] Mahnoor Waqar, *The Use of AI in Arbitral Proceedings* (Rochester, NY, 2021).

[45] Remote Law Canada, "Robot Mediator Settles Court Case for the First time in UK, Canada", (2019), online: <https://www.remotelawcanada.com/post/robot-mediator-settles-court-case-for-the-first-time-in-uk-canada>.

solve the problem.[46] Through this system, conflict parties assess what they want to resolve and what they are willing to agree to or offer to resolve the issue.[47] Furthermore, AI will process the information provided as well as the bids submitted by the parties in less than an hour.[48]

Furthermore, the application of AI as a judge has also been carried out in China. The Chief Justice of the Supreme Court, Qiang Zhou, has explained the concept of a "Smart Court" with features that should ensure fairness and efficiency of the judiciary and enhance the credibility of the judiciary by leveraging technologies such as the internet, AI, cloud computing, big data, and being able to modernize China's courts and achieve intelligent people's court function.[49] In addition, the presence of Smart Courts in China is based on the increasing number of cases and inadequate judicial capacity.[50] The application of AI judges in China has had positive impacts, such as cutting the workload by more than a third and saving 1.7 billion hours of working time for Chinese citizens from 2019 to 2021.[51] The presence of AI also saved more than 300 billion yuan (or the equivalent of US $ 45 billion) during the same period.[52] Smart Court SoS powered by Machine Learning has disclosed dispute cases for reference and can provide recommendations to judges regarding laws and

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[46] Nick Hilborne, "Robot mediator settles first ever court case", (2021), online: *ADR Inst Can* <https://adric.ca/robot-mediator-settles-first-ever-court-case/>.

[47] Tara Vasdani, "From Estonian AI judges to robot mediators in Canada, U.K.", (2019), online: *LexisNexis* <https://www.lexisnexis.ca/en-ca/ihc/2019-06/from-estonian-ai-judges-to-robot-mediators-in-canada-uk.page>.

[48] *Ibid.*

[49] Changqing Shi, Tania Sourdin & Bin Li, "The Smart Court – A New Pathway to Justice in China?" (2021) 12:1 International Journal for Court Administration 4.

[50] *Ibid.*

[51] Stephen Chen, "China's court AI reaches into every corner of justice system: report", (2022), online: *South China Morning Post* <https://www.scmp.com/news/china/science/article/3185140/chinas-court-ai-reaches-every-corner-justice-system-advising>.

[52] *Ibid.*

regulations.[53] In addition, AI judges are also able to compile documents and can change errors in decisions.[54]

AI is currently making a significant impact in the legal sector revolution. This has also been seen in the Punjab and Haryana High Courts in India, using an AI chatbot called ChatGPT to help judges hear bail petitions.[55] Even Judge Annop Chitkara asked ChatGPT for input regarding bail jurisprudence when the assailant showed cruelty.[56] ChatGPT provides a three-paragraph answer and offers a comprehensive review of warranty jurisprudence. The AI chatbot highlights that the decision to provide bail to attackers who have shown cruelty depends on the circumstances of a particular case, laws, and jurisdictional regulations. This isn't the first time AI has played a role in a court decision. In January 2023, Colombian Judge Juan Manuel Padilla Garcia used ChatGPT to make a court decision.[57] The First Circuit Court in Cartagena, presided over by Judge Garcia, used an AI tool to ask legal questions about the case and incorporate his responses into its decision.[58] Meanwhile, a Colombian court demonstrated that AI could speed up decision-making and fact-check responses.[59] This clearly indicates that more AI involvement in legal proceedings is imminent.

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[53] Junlin Peng & Wen Xiang, "The Rise of Smart Courts in China: Opportunities and Challenges to the Judiciary in a Digital Age" (2019) 9 NAVEIÑ REET: Nordic Journal of Law and Social Research 345–372.

[54] Ben Wodecki, "AI helps judges decide court cases in China", (2022), online: *AI Bus* <https://aibusiness.com/verticals/ai-helps-judges-decide-court-cases-in-china>.

[55] Jagpreet Singh Sandhu, "In a first, Punjab and Haryana HC turns to ChatGPT for view on bail in murder case", online: *Indian Express* <https://indianexpress.com/article/cities/chandigarh/in-a-first-hc-turns-to-chatgpt-for-view-on-bail-in-murder-case-8522544/>.

[56] Brian Flood, "Indian judge asks ChatGPT to help decide bail for murder suspect", (2023), online: *FOXBusiness* <https://www.foxbusiness.com/media/indian-judge-asks-chatgpt-decide-bail-for-murder-suspect>.

[57] Amy Guthrie, "Colombian Judge Uses AI Tool ChatGPT in Court Ruling", (2023), online: *Law.com* <https://www.law.com/international-edition/2023/02/08/colombian-judge-uses-ai-tool-chatgpt-in-court-ruling/?slreturn=20230619083335>.

[58] Janus Rose, "A Judge Just Used ChatGPT to Make a Court Decision", (2023), online: *Vice* <https://www.vice.com/en/article/k7bdmv/judge-used-chatgpt-to-make-court-decision>.

[59] *Ibid.*

### B. Potential Application of AI in the Constitutional Court

AI is currently making a significant impact in the legal sector revolution. This has also been seen in the Punjab and Haryana High Courts in India, using an AI chatbot called ChatGPT to help judges hear bail petitions.[60] Even Judge Annop Chitkara asked ChatGPT for input regarding bail jurisprudence when the assailant showed cruelty

The development of AI technology has implications for the existing justice system because AI has been explored in various services such as prosecution services, providing investigative assistance, decision-making, and others.[61] Based on the views of A.D. (Dory) Reiling, the presence of AI can help individuals, litigants, and judges, so trials need to digitize their information and provide it with legal interpretations so that they can use AI.[62] The presence of AI can assist judges in deciding a case, such as preparing documents, predicting decisions, and changing decisions that have errors.

The use of AI as a tool of the justice system is rational because judges handle many cases with varying degrees of difficulty. The context of using AI is indirectly needed by the Constitutional Court, which currently has problems related to the large number of cases handled. Based on data obtained through the official website of the Constitutional Court as of 14 July 2023, there have been 3,503 decisions handed down by the Constitutional Court.[63] More about the potential for the application of AI in the Constitutional Court, the author divides it into three parts, which include:

1. **Make Decisions**

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[60] Jagpreet Singh Sandhu, *supra* note 55.

[61] Aleš Završnik, "Criminal justice, artificial intelligence systems, and human rights" (2020) 20:4 ERA Forum 567–583.

[62] Reiling, *supra* note 17.

[63] Mahkamah Konstitusi Mahkamah Konstitusi, "Rekapitulasi Perkara Pengujian Undang-Undang | Mahkamah Konstitusi RI," 2023, https://www.mkri.id/index.php?page=web.RekapPUU&menu=4.

The presence of AI at this time is able to provide convenience in making decisions faster than humans.[64] In this case, AI is able to make decisions with more effective and efficient risk analysis.[65] Of course, the ability of AI will significantly assist the performance of constitutional judges in making more effective and efficient decisions. Furthermore, the use of AI by constitutional judges is expected to produce independent decisions. It should be emphasized that the use of AI by constitutional judges is only limited to helping and requires a combination of humans and AI. This is because the Constitutional Court's decision not only creates legal certainty but also has morals, ethics, and justice that judges must fulfill and interpret.[66]

## 2. Document Review

The AI created by a US company called "LawGeex" managed to win the analysis competition in the problems and terms of the agreement.[67] The AI program owned by LawGeex is able to collect available data which is then carried out by logical reasoning and interpretation.[68] Even the presence of LawGeex is able to beat lawyers who have experience, cognitive abilities, and problem solving.[69] Therefore, the existence of AI has a better analytical

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[64] Michael Cheng-Tek Tai, "The impact of artificial intelligence on human society and bioethics" (2020) 32:4 Tzu-Chi Medical Journal 339–343.

[65] Jingchen Zhao & Beatriz Gómez Fariñas, "Artificial Intelligence and Sustainable Decisions" (2023) 24:1 European Business Organization Law Review 1–39.

[66] Sekretariat Jendera Komisi Yudisial, "Komisi Yudisial Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia", (July 2019), online: <https://komisiyudisial.go.id/frontend/publication_detail/61/memperkuat-peradaban-hukum-dan-ketatanegaraan-indonesia>.

[67] Steve Juumta, "AI in Law and Legal Practice - A Comprehensive View of 35 Current Applications", (2021), online: *Emerj Artificial Intellegence Res* <https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/>.

[68] Hary Abdul Hakim, Chrisna Bagus Edhita Praja & Sung Ming-Hsi, "AI in Law: Urgency of the Implementation of Artificial Intelligence on Law Enforcement in Indonesia" (2023) 14:1 Jurnal Hukum Novelty 122–134.

[69] Zaki Priambudi, Namira Hilda Papuani & Ramdhan Prawira Mulya Iskandar, "Optimizing Omnibus Law in Indonesia: A Legal Enquiry on the Use of Artificial

advantage over humans. AI can classify and track the relationship between laws, regulations, available data, and scan documents with high accuracy.[70]

Thus, the existence of AI in MK is an urgent that must be carried out. This was due to the emergence of a case of changing the substance of the Constitutional Court decision Number 103/PUU-XX/2022.[71] AI can be used as a document review tool to prevent the same problem from happening in the future. Furthermore, AI may read out the decision by replacing the constitutional judges. So that, through the use of AI, is able to make decisions independently.

3. **Predictive Analysis**

AI, through the correct formulation, can carry out a proportional analysis of data from various parties, which will later help constitutional judges decide a case. Because the law will work effectively if the regulations are measured properly.[72] The advantage of AI in making measurable predictions with existing data will undoubtedly have a positive impact in deciding cases because it will be helpful now and in the future. Moreover, as the adage "Het recht think anter de feiten an," then by using AI, the law will no longer be left behind in the development of society.

Through predictive analysis, AI can accurately and quickly project the legal implications of decisions to be taken by constitutional judges based on available data. This can be seen in an AI program called Lex Machina. Lex Machina is a platform that provides legal

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Intelligence for Legislative Drafting" (2021) 2:1 Indonesian Journal Law and Society 79–104.

[70] Riccardo Ghioni, Mariarosaria Taddeo & Luciano Floridi, "Open source intelligence and AI: a systematic review of the GELSI literature" (2023) AI Soc, online: <https://doi.org/10.1007/s00146-023-01628-x>; Rowena Rodrigues, "Legal and human rights issues of AI: Gaps, challenges and vulnerabilities" (2020) 4 Journal Responsible Technology, online: <https://www.sciencedirect.com/science/article/pii/S2666659620300056>.

[71] Mantalean, *supra* note 41.

[72] Priambudi, Papuani & Iskandar, "Optimizing Omnibus Law in Indonesia", *supra* note 69.

analysis and enables strategies to win existing cases.[73] Lex Machina has complete, accurate and transparent analytical data.[74]

The existence of AI in Indonesia has been glimpsed in the law enforcement process, such as the emergence of a chatbot created by Hukumonline.com.[75] Furthermore, if seen at the Indonesian Supreme Court, AI has developed, where AI will be used as a calculation based on competence and workload for cassation or judicial review cases.[76] It is hoped that the cassation decision and review will be read via live streaming as a form of encouragement so that the minutes of cassation and review can be made more quickly and the litigants can accept a copy of the decision on time.

## V. CHALLENGES AND SOLUTIONS TO THE APPLICATION OF AI IN THE CONSTITUTIONAL COURT

The presence of AI has a positive impact on constitutional judges in making independent decisions. However, it should be realized that there are challenges to applying AI in the justice system at the Constitutional Court, such as: First, there are AI problems in terms of supervision.[77] AI regulations have similarities with Electronic Agents as stipulated in Article 1 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as UU ITE) and Article 1 point 3 of Government Regulation

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[73] Qur'ani Dewi Kusumawardani, "Hukum Progresif Dan Perkembangan Teknologi Kecerdasan Buatan" (2019) 5:1 Journal Veritas Justitia 166–190.

[74] Christopher Markou & Simon Deakin, *Ex Machina Lex: Exploring the Limits of Legal Computability* (Rochester, NY, 2019).

[75] Ady Thea DA, "Hukumonline Kembangkan Chatbot Berbasis Teknologi GPT", (2023), online: *hukumonline.com* <https://www.hukumonline.com/berita/a/hukumonline-kembangkan-chatbot-berbasis-teknologi-gpt-lt643e54b6eb6a4/>.

[76] KlikLegal, "Mahkamah Agung Kembangkan Artificial Intelligence, Ini Fungsinya", (23 February 2023), online: <https://kliklegal.com/mahkamah-agung-kembangkan-artificial-intelligence-ini-fungsinya/>.

[77] John Davis Akkara & Anju Kuriakose, "Commentary: Is human supervision needed for artificial intelligence?" (2022) 70:4 Indian Journal of Ophthalmology 1138–1139; Sarah Bankins & Paul Formosa, "The Ethical Implications of Artificial Intelligence (AI) For Meaningful Work" (2023) 185:4 Journal Business Ethics 725–740.

Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as PP PSTE). Article 1 of UU ITE and Article 1 point 3 of PP PSTE define Electronic Agent as a device that is part of an electronic system that performs actions in terms of electronic information that individuals or companies automatically organize. If you look at the phrase "organized", it can be concluded that there is an Electronic System Operator (which also controls the Electronic Agent). The Electronic System Operator can be intended as the AI Creator. For this reason, it is necessary to supervise AI Maker or Electronic System Operator to prevent misuse. In addition, it is necessary to register PSEs that will provide services, in this case AI, that will assist the Court. Second, there is no clear legal framework for building and implementing AI in Indonesia.[78] Currently, there is an ITE Law and Law No. 27 of 2022 on the Protection of Personal Data ("PDP Law"). However, these regulations do not yet regulate the use of privacy-preserving AI to assist the Constitutional Court; And Third, the rise of hackers who can break into the system makes AI worry about data security.[79]

By constructing the existing problems, the authors also offer three appropriate solutions to answer these problems: *First,* In carrying out supervision, it is necessary to have the responsibility of the Honorary Council of the Constitutional Court and the independent Constitutional Court technicians. Through ethical and digital supervision, constitutional judges are expected to carry out their duties and responsibilities independently. *Second,* It is necessary to establish a legal framework that regulates the existence of AI both within the scope of national law and within the internal scope of the Constitutional Court. And *Third,* There needs to be an effort to systematically check AI so that it can be prevented from hackers in a preventive manner. The existence of AI is a tool for constitutional judges. So AI and constitutional judges must walk together

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[78] Meirza Aulia Chairani, Taufiq Yuli purnama, & Anggra Pramodya Pradhana, "The Urgency Of Developing Law As A Legal Basis For The Implementation Of Artificial Intelligence In Indonesia | Law and Justice" (2022), online: <https://journals2.ums.ac.id/index.php/laj/article/view/760>; Hakim, Praja & Ming-Hsi, "AI in Law", *supra* note 68.

[79] Rammanohar Das & Raghav Sandhane, "Artificial Intelligence in Cyber Security" (2021) 1964:4 Journal of Physics: Conference Series 042072.

in making decisions. For this reason, AI and humans can collaborate to create a better life per the concept of a rule of law and democracy.

# VI. CONCLUSION

Decisions of constitutional judges that are final and binding have an important role in maintaining the concept of a rule of law, democracy and protection of human rights. In the process, there are three ways for judges to make decisions, namely through deliberations, voting, and based on the considerations of the chairman of the panel of constitutional judges. In addition, constitutional judges are required to comply with applicable principles and ethics. However, in its development, current constitutional judges often make decisions that are not in favor of society or the public interest. So that many consider the current constitutional judges are not independent. This is reinforced by cases of corruption that befell constitutional judges, and recent changes to constitutional judges' decisions. For this reason, it is necessary to adopt new ones and find solutions to minimize cases that have already occurred. The application of AI can be the answer for making independent decisions. Basically, AI has entered the world of justice, such as in India, China, Colombia, and Canada. For this reason, the application of AI can be applied to three tasks, namely assisting decision making, reviewing documents, and predictive analysis. However, regular monitoring efforts and a legal basis for the application of AI in Indonesia are needed.

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