

Research Article

Judicial Review and Constitutional Court Authority: Comparative Analysis of Indonesia's Constitutional Court and International Best Practices

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Abstract: Constitutional courts serve as guardians of constitutional supremacy through judicial review mechanisms. This study examines the authority and practices of Indonesia's Constitutional Court in comparative perspective with international best practices. Using comparative legal analysis, this research evaluates judicial review systems in Germany, South Korea, South Africa, and the United States to identify effective governance models. The study reveals that while Indonesia's Constitutional Court possesses comprehensive constitutional review authority, challenges remain in enforcement mechanisms, case backlog management, and institutional independence. International best practices demonstrate the importance of clear jurisdictional boundaries, efficient case processing, and robust enforcement powers. The research concludes that Indonesia can strengthen its constitutional court system by adopting selective best practices including streamlined procedures, enhanced enforcement mechanisms, and improved institutional safeguards while maintaining its unique constitutional framework.

Keywords: Comparative law; Constitutional court; Constitutional supremacy; Indonesia; Judicial review

1. Introduction

The establishment of constitutional courts represents a significant evolution in modern constitutional governance, serving as specialized institutions designed to safeguard constitutional supremacy through judicial review mechanisms. Indonesia's Constitutional Court (Mahkamah Konstitusi), established in 2003 following the constitutional amendments of 1998-2002, represents a crucial institutional innovation in the country's democratic transition and constitutional reform process.

Judicial review, as conceptualized by Chief Justice John Marshall in *Marbury v. Madison* (1803), has become a fundamental mechanism for ensuring constitutional supremacy and protecting fundamental rights. However, the implementation and effectiveness of judicial review vary significantly across different constitutional systems, influenced by historical contexts, legal traditions, and institutional designs.

Indonesia's Constitutional Court operates within a unique constitutional framework that combines elements of civil law tradition with specific adaptations to local constitutional needs. The Court's authority encompasses constitutional review of laws, resolution of disputes between state institutions, dissolution of political parties, and adjudication of presidential impeachment proceedings. This comprehensive mandate positions the Indonesian Constitutional Court among the most powerful constitutional courts globally.

This comparative analysis seeks to evaluate Indonesia's constitutional court system against international best practices, examining both institutional design and operational

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effectiveness. The study aims to identify areas for potential improvement while recognizing the unique constitutional context within which the Indonesian Constitutional Court operates.

2. Literature Review

Theoretical Framework of Judicial Review

Hans Kelsen's theory of constitutional review provides the foundational framework for understanding modern constitutional courts. Kelsen distinguished between centralized and decentralized models of constitutional review, with centralized systems featuring specialized constitutional courts and decentralized systems allowing ordinary courts to exercise constitutional review powers.

The German Federal Constitutional Court, established in 1951, exemplifies Kelsen's centralized model and has significantly influenced constitutional court design worldwide. The German model emphasizes institutional independence, specialized jurisdiction, and comprehensive constitutional review authority.

Comparative Constitutional Court Models

Contemporary scholarship identifies several prominent constitutional court models:

1. The German Model: Characterized by strong institutional independence, comprehensive jurisdiction, and effective enforcement mechanisms
2. The South African Model: Notable for its focus on fundamental rights protection and transformative constitutionalism
3. The Korean Model: Emphasizing efficiency in case processing and innovative constitutional interpretation
4. The American Model: Featuring decentralized constitutional review through ordinary courts

Each model reflects specific historical contexts and constitutional traditions while contributing to the global evolution of constitutional review mechanisms.

Indonesia's Constitutional Court in Academic Discourse

Scholarly analysis of Indonesia's Constitutional Court has focused on several key themes: institutional design and authority (Hendrianto, 2018), political influence and independence (Butt & Lindsey, 2018), and comparative effectiveness (Mietzner, 2010). These studies highlight both achievements and ongoing challenges in Indonesia's constitutional court system.

3. Methodology

This study employs comparative legal analysis methodology, examining constitutional court systems across selected jurisdictions. The research utilizes doctrinal analysis of constitutional texts, legal frameworks, and court decisions, supplemented by empirical analysis of court performance indicators including case processing times, enforcement rates, and institutional independence measures.

Primary sources include constitutional texts, organic laws establishing constitutional courts, and representative court decisions. Secondary sources encompass academic literature, institutional reports, and comparative studies of constitutional court systems.

The comparative analysis focuses on four dimensions: institutional design, jurisdictional authority, operational procedures, and enforcement mechanisms. These dimensions provide a comprehensive framework for evaluating constitutional court effectiveness and identifying best practices.

4. Analysis And Discussion

Indonesia's Constitutional Court: Authority and Functions

Constitutional Foundation

Indonesia's Constitutional Court derives its authority from Article 24C of the 1945 Constitution, as amended. The Court's mandate encompasses four primary functions:

1. Constitutional Review: Examining the constitutionality of laws against the Constitution
2. Authority Disputes: Resolving disputes between state institutions
3. Political Party Dissolution: Adjudicating cases for dissolving political parties
4. Presidential Impeachment: Providing legal opinions in presidential impeachment proceedings

This comprehensive mandate distinguishes Indonesia's Constitutional Court from many international counterparts that focus primarily on constitutional review of legislation.

Institutional Structure

The Constitutional Court consists of nine justices serving five-year terms, with appointments made by the President (3 justices), Supreme Court (3 justices), and Parliament (3 justices). This tripartite appointment system aims to ensure institutional independence while maintaining democratic accountability.

The Court's organizational structure includes specialized chambers for different types of cases, administrative support units, and research divisions. This institutional design reflects efforts to manage the Court's diverse mandate effectively.

International Best Practices

German Federal Constitutional Court

The German Federal Constitutional Court represents a leading model of constitutional review, characterized by:

Institutional Independence: Strong guarantees of judicial independence through secure tenure, adequate resources, and constitutional protection against political interference.

Comprehensive Jurisdiction: Authority to review federal and state laws, resolve federal-state disputes, and protect fundamental rights through constitutional complaints.

Effective Enforcement: Robust enforcement mechanisms ensuring compliance with court decisions, including the ability to declare laws null and void with immediate effect.

Case Management: Efficient procedures for case screening, including admissibility requirements that prevent case overload while ensuring access to constitutional justice.

South African Constitutional Court

South Africa's Constitutional Court, established in 1996, demonstrates innovative approaches to constitutional adjudication:

Transformative Constitutionalism: Emphasis on constitutional interpretation that promotes social transformation and fundamental rights protection.

Public Engagement: Extensive public participation mechanisms in constitutional cases, including amicus curiae submissions and public hearings.

Socioeconomic Rights: Pioneering jurisprudence on socioeconomic rights enforcement, balancing judicial review with democratic governance.

Accessibility: Procedures designed to enhance court accessibility for marginalized communities and civil society organizations.

Korean Constitutional Court

Korea's Constitutional Court, established in 1988, exemplifies efficiency in constitutional adjudication:

Rapid Case Processing: Streamlined procedures enabling timely resolution of constitutional cases while maintaining thorough analysis.

Constitutional Complaint System: Comprehensive individual petition system allowing direct access to constitutional review for rights violations.

Preventive Review: Mechanisms for reviewing legislation before enactment, preventing constitutional violations and reducing litigation.

Technological Innovation: Advanced case management systems and digital platforms enhancing court efficiency and public access.

United States Supreme Court

The U.S. Supreme Court's decentralized model offers important insights:

Judicial Restraint: Doctrines limiting judicial intervention in political questions while maintaining constitutional supremacy.

Precedential Authority: Strong stare decisis principles providing legal certainty and institutional legitimacy.

Case Selection: Discretionary jurisdiction through writ of certiorari, enabling focus on cases of national constitutional significance.

Enforcement through Lower Courts: Reliance on federal and state courts for decision implementation, distributing enforcement responsibilities.

Comparative Analysis

Institutional Independence

Indonesia: The tripartite appointment system aims to balance independence with accountability. However, concerns persist regarding political influence in judicial appointments and the potential for external pressure on court decisions.

Best Practices: German and South African models demonstrate strong independence through constitutional guarantees, secure tenure, and institutional autonomy in administrative matters.

Recommendations: Strengthening appointment procedures through enhanced transparency, establishing clear qualification criteria, and providing constitutional protection for court administration.

Jurisdictional Authority

Indonesia: The Constitutional Court's comprehensive mandate covers constitutional review, authority disputes, party dissolution, and impeachment proceedings. This broad jurisdiction positions the Court as a central constitutional institution.

Best Practices: International experience suggests benefits of specialized focus (German model) versus comprehensive jurisdiction (South African model), depending on constitutional context and institutional capacity.

Assessment: Indonesia's broad mandate is appropriate given its constitutional framework, but requires adequate resources and institutional capacity for effective implementation.

Case Processing and Efficiency

Indonesia: The Constitutional Court faces challenges with case backlogs and processing times, particularly in constitutional review cases requiring urgent resolution.

Best Practices: Korean efficiency in case processing, German admissibility screening, and American discretionary jurisdiction offer models for managing caseloads effectively.

Recommendations: Implementing stricter admissibility criteria, establishing fast-track procedures for urgent cases, and enhancing case management systems.

Enforcement Mechanisms

Indonesia: While the Constitutional Court's decisions are legally binding, enforcement challenges persist in ensuring compliance by other state institutions and implementing agencies.

Best Practices: German direct enforcement powers, South African monitoring mechanisms, and American implementation through lower courts demonstrate various enforcement approaches.

Recommendations: Strengthening enforcement mechanisms through clear implementation procedures, monitoring systems, and sanctions for non-compliance.

Challenges and Opportunities

Current Challenges

1. **Case Management:** Growing caseloads require improved efficiency without compromising thoroughness of constitutional analysis.
2. **Institutional Relationships:** Balancing constitutional supremacy with democratic governance and inter-institutional cooperation.
3. **Public Trust:** Maintaining legitimacy through transparent procedures, consistent jurisprudence, and effective communication.
4. **Resource Constraints:** Ensuring adequate funding and human resources for expanding constitutional responsibilities.

Reform Opportunities

1. **Procedural Innovations:** Adopting best practices in case screening, processing, and decision implementation.
2. **Technological Enhancement:** Leveraging digital platforms for case management, public access, and decision dissemination.
3. **Capacity Building:** Strengthening institutional expertise through training, research, and international cooperation.
4. **Constitutional Development:** Contributing to constitutional interpretation that addresses contemporary challenges while maintaining constitutional principles.

5. Recommendations

Based on comparative analysis, this study proposes several recommendations for strengthening Indonesia's Constitutional Court system:

Institutional Reforms

1. **Enhanced Independence Safeguards:** Implementing constitutional provisions protecting court administration, budget allocation, and appointment procedures from political interference.
2. **Qualification Standards:** Establishing clear, merit-based criteria for judicial appointments emphasizing constitutional law expertise, judicial experience, and ethical standards.
3. **Term Limits and Renewal:** Reviewing current term structures to balance judicial independence with accountability and institutional renewal.

Procedural Improvements

1. **Admissibility Screening:** Adopting German-style preliminary screening procedures to manage caseloads while ensuring access to constitutional justice.
2. **Fast-Track Procedures:** Establishing expedited processes for urgent constitutional cases requiring immediate resolution.
3. **Alternative Dispute Resolution:** Developing mediation and settlement mechanisms for appropriate authority disputes between state institutions.

Enforcement Mechanisms

1. **Implementation Monitoring:** Creating systematic monitoring of decision compliance with regular reporting and follow-up procedures.
2. **Sanctions Framework:** Establishing clear consequences for non-compliance with constitutional court decisions by state institutions.
3. **Public Engagement:** Enhancing public participation in constitutional cases through amicus curiae procedures and public hearings.

Technological Innovation

1. Digital Case Management: Implementing comprehensive electronic systems for case filing, processing, and tracking.
2. Online Access: Developing user-friendly platforms for public access to court decisions, procedures, and constitutional information.
3. Data Analytics: Utilizing data analysis for court performance evaluation, caseload prediction,
4. and resource allocation.

Conclusion

Indonesia's Constitutional Court represents a significant achievement in constitutional governance, providing essential safeguards for constitutional supremacy and democratic governance. The Court's comprehensive mandate and institutional design reflect thoughtful adaptation of international best practices to Indonesia's unique constitutional context.

Comparative analysis reveals both strengths and areas for improvement in Indonesia's constitutional court system. While the Court possesses broad authority and institutional legitimacy, challenges remain in case processing efficiency, enforcement mechanisms, and institutional independence safeguards.

International best practices offer valuable insights for constitutional court development, though implementation must consider specific constitutional contexts and institutional capacities. The German model's emphasis on institutional independence, the South African model's focus on transformative constitutionalism, the Korean model's procedural efficiency, and the American model's judicial restraint each provide relevant lessons for Indonesia's constitutional development.

Future research should examine specific aspects of constitutional court performance, including empirical analysis of decision impact, institutional relationships, and public trust indicators. Continued comparative study can inform ongoing constitutional court development and contribute to global understanding of constitutional governance mechanisms.

The evolution of Indonesia's Constitutional Court reflects broader trends in global constitutionalism, emphasizing the importance of specialized institutions for constitutional protection while adapting to local constitutional traditions and democratic contexts. Through continued reform and international engagement, Indonesia's Constitutional Court can enhance its contribution to constitutional governance and democratic consolidation.

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