

Research Article

Reform of the Judicial Review System: Evaluation of the Constitutional Court's Authority in Maintaining Constitutional Supremacy

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Abstract: This study evaluates the effectiveness of the Constitutional Court's authority in reviewing laws and regulations as a means of upholding constitutional supremacy in Indonesia. Employing both normative and empirical legal research methods, it examines the Constitutional Court's rulings from 2019 to 2024 and assesses their broader implications for the national constitutional system. The findings reveal several structural weaknesses in the review mechanism, particularly related to the enforcement of decisions and the existence of dualism between the Constitutional Court and the Supreme Court in conducting judicial reviews. These shortcomings have created inconsistencies and reduced the optimal impact of the Constitutional Court's role. To address these issues, the research recommends comprehensive reforms, including the unification of judicial review authority, enhancement of the Constitutional Court's executorial powers, and expansion of public access to constitutional review procedures. Such measures are expected to strengthen the Court's role as the guardian of the constitution, improve legal certainty, and support the creation of a more coherent and harmonious legal system in Indonesia.

Keywords: Constitutional Court; Constitutional Supremacy; Indonesia; Judicial Review; Legal Reform; Separation of Powers.

1. Introduction

The establishment of Indonesia's Constitutional Court (Mahkamah Konstitusi, MK) in 2003 marked a significant milestone in the country's constitutional history, particularly in upholding the supremacy of the 1945 Constitution. As one of the institutional products of the constitutional amendments following the fall of the New Order regime, the Constitutional Court was designed to function as "the guardian of the constitution," with the authority to review laws against the constitution. This authority represents a crucial mechanism for ensuring that legislative products align with constitutional norms and values.

Two decades after its establishment, critical evaluation of the Constitutional Court's effectiveness in exercising its judicial review authority has become essential. While the Court has made substantial contributions to Indonesia's constitutional development through numerous landmark decisions, structural limitations continue to challenge its ability to fully realize its mandate. These challenges include the bifurcated review system between the Constitutional Court and the Supreme Court (Mahkamah Agung, MA), issues related to the implementation of decisions, and questions regarding access to constitutional justice.

The divided judicial review authority in Indonesia presents a unique case in comparative constitutional law. The Constitutional Court possesses the authority to review laws (undang-undang) against the Constitution, while the Supreme Court reviews regulations below the level of law against higher regulations. This bifurcated system creates potential for

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inconsistency in legal interpretation and hampers the development of a coherent jurisprudential framework for constitutional review.

This research examines the Constitutional Court's judicial review decisions from 2019 to 2024, analyzing their substantive content, implementation challenges, and systemic implications. By identifying structural limitations and evaluating international best practices, this study proposes comprehensive reforms to strengthen the judicial review system in Indonesia, ultimately enhancing the Court's capacity to maintain constitutional supremacy.

2. Research Methodology

This study employs a combination of normative legal research and empirical methods to comprehensively evaluate the Constitutional Court's judicial review authority. The normative component involves doctrinal analysis of constitutional provisions, statutory frameworks, and judicial decisions relevant to Indonesia's judicial review system. The empirical component incorporates quantitative and qualitative assessment of the Constitutional Court's decisions during the 2019-2024 period.

2.1. Data Collection

Primary data sources include:

- a. The 1945 Constitution of the Republic of Indonesia (post-amendment)
- b. Law No. 24 of 2003 on the Constitutional Court, as amended by Law No. 7 of 2020
- c. Law No. 48 of 2009 on Judicial Power
- d. Constitutional Court decisions on judicial review cases during 2019-2024
- e. Supreme Court decisions on judicial review cases with constitutional dimensions during 2019-2024
- f. Official implementation reports and relevant government documents

Secondary data sources encompass academic literature, legal commentaries, and comparative studies on judicial review systems from selected jurisdictions.

2.2. Analytical Framework

The analysis employs several key frameworks:

- a. Constitutional interpretation theory, examining how the Court develops constitutional doctrines
- b. Institutional capacity assessment, focusing on the Court's ability to enforce decisions
- c. Access to justice evaluation, measuring public engagement with constitutional review mechanisms
- d. Comparative constitutional analysis, examining alternative models in other jurisdictions
- e. Systems theory, analyzing interactions between different components of Indonesia's judicial review framework

2.3. Research Limitations

The study acknowledges limitations in data availability regarding implementation of Court decisions, as no comprehensive government tracking system exists. Additionally, the research primarily examines formal legal frameworks and decisions, with recognition that informal political dynamics also significantly influence constitutional practice but are more difficult to systematically evaluate.

3. Theoretical Framework and Literature Review

3.1 Constitutional Supremacy and Judicial Review

Constitutional supremacy represents the foundational principle that a constitution stands as the highest law within a legal system, with all other laws and government actions subordinate to and measured against it. As Kelsen (1945) articulated in his theory of legal hierarchy, a constitution serves as the *grundnorm* or basic norm from which all other legal norms derive their validity. Within this framework, judicial review emerges as the primary mechanism for maintaining constitutional supremacy by empowering courts to invalidate laws and government actions that contravene constitutional provisions.

The global expansion of judicial review during the "third wave" of democratization has generated extensive scholarship on its theoretical foundations. Ginsburg (2003) frames judicial review as an "insurance model" for political actors uncertain about their future political prospects, while Hirschl (2004) presents a "hegemonic preservation" thesis wherein

elites empower courts to protect their interests against majoritarian threats. In the Indonesian context, Butt (2019) argues that the establishment of the Constitutional Court reflected both democratic aspirations and elite political calculations during the transition from authoritarianism.

Despite conceptual disagreements regarding the democratic legitimacy of judicial review (Waldron, 2006; Tushnet, 2008), its instrumental value in constitutional systems has gained widespread acceptance. As Grimm (2018) observes, judicial review serves multiple functions in democratic systems: protecting fundamental rights, maintaining separation of powers, preserving federal arrangements, and ensuring procedural regularity in lawmaking.

3.2 Models of Judicial Review

Comparative constitutional scholarship identifies several institutional models for organizing judicial review:

- a. **Centralized vs. Decentralized Review:** The Austrian-Kelsenian model establishes a specialized constitutional court with exclusive jurisdiction over constitutional questions, while the American model empowers all courts within the judicial hierarchy to review constitutionality (Ferrerés Comella, 2009).
- b. **Abstract vs. Concrete Review:** Abstract review examines legislation's constitutionality independent of specific cases, while concrete review arises within particular disputes (Stone Sweet, 2000).
- c. **A Priori vs. A Posteriori Review:** A priori review examines legislation before promulgation, while a posteriori review assesses laws already in force (Brewer-Carías, 2011).
- d. **Strong vs. Weak Review:** Strong review empowers courts to invalidate unconstitutional legislation, while weak review permits courts to identify but not strike down unconstitutional provisions (Tushnet, 2008).

Indonesia's judicial review system incorporates elements from several models, with the Constitutional Court conducting centralized, abstract, a posteriori, and strong review of laws, while the Supreme Court conducts decentralized, concrete, a posteriori, and strong review of regulations below the legislative level. This hybrid approach creates distinctive challenges addressed in this research.

3.3 The Indonesian Constitutional Court in Comparative Perspective

The Indonesian Constitutional Court was established following the 1999-2002 constitutional amendments, drawing inspiration from various international models, particularly the German Federal Constitutional Court. Asshiddiqie (2017), the Court's first Chief Justice, notes that Indonesia adapted the Kelsenian model to its specific context, creating a specialized tribunal with limited jurisdiction rather than following the American model of diffuse review.

Comparative scholarship positions Indonesia's Constitutional Court within the broader "Asian model" of constitutional courts, characterized by post-authoritarian establishment, transformative ambitions, and pragmatic limitations (Ginsburg & Chen, 2021). Like its counterparts in South Korea and Thailand, Indonesia's Court emerged during democratic transition with a mandate to break from authoritarian legacies while navigating significant political constraints (Hendrianto, 2018).

Indonesia's bifurcated review system, however, represents a distinctive institutional arrangement compared to most other jurisdictions. Few countries maintain such a rigid division between review of legislation and subordinate regulations (Butt & Lindsey, 2012). This arrangement creates unique challenges for maintaining doctrinal coherence and developing consistent constitutional jurisprudence across the legal hierarchy.

3.4 Limitations of Judicial Review

Critical scholarship identifies several inherent limitations of judicial review as a mechanism for constitutional enforcement:

- a. **Implementation Challenges:** Constitutional court decisions often depend on other branches for implementation, creating potential for non-compliance (Kapiszewski & Taylor, 2013).
- b. **Countermajoritarian Difficulty:** Courts may lack democratic legitimacy when invalidating legislation enacted by elected representatives (Bickel, 1962).

- c. Institutional Capacity Constraints: Courts face limitations in technical expertise, information access, and resources when addressing complex policy matters (Horowitz, 1977).
- d. Elite Capture: Judicial review mechanisms may disproportionately serve elite interests rather than marginalized communities due to access barriers (Gauri & Brinks, 2008).
- e. Judicial Politics: Judicial decision-making inevitably reflects political influences despite formal independence (Hirschl, 2008).

These theoretical limitations provide an analytical framework for evaluating the specific challenges facing Indonesia's judicial review system, as examined in subsequent sections of this research.

4. Results and Discussion

The findings of this study demonstrate that the evolution of judicial review in Indonesia reflects a complex constitutional history. At the outset of independence, judicial review was rejected in the 1945 Constitution due to the dominance of parliamentary supremacy and doubts regarding judicial capacity. During the Parliamentary Democracy period (1949–1959), limited practices of judicial review briefly emerged under the 1949 RIS Constitution and the 1950 Provisional Constitution, but these were abolished with the return to the 1945 Constitution under Guided Democracy. During the New Order era, the judiciary was tightly controlled by the regime, and constitutional review remained merely an academic discourse without implementation. The Reform era of 1998 became the turning point for the institutionalization of judicial review, formally entrenched through the four amendments to the 1945 Constitution (1999–2002). These amendments established a bifurcated system: the Constitutional Court (MK) was vested with the authority to review statutes against the Constitution (Article 24C), while the Supreme Court (MA) retained the authority to review regulations below statutes against higher laws (Article 24A).

The current legal framework is supported by a combination of constitutional norms, statutory provisions, and procedural regulations. Article 28D of the 1945 Constitution guarantees the right to equality before the law, forming the basis for citizens' access to judicial review. Substantively, the framework is elaborated in Law No. 24 of 2003 on the Constitutional Court (as amended by Law No. 7 of 2020), Law No. 48 of 2009 on Judicial Power, Law No. 12 of 2011 on Lawmaking (as amended by Law No. 13 of 2022), and Supreme Court Regulation No. 1 of 2011 on Judicial Review. Procedural aspects are regulated through Constitutional Court Regulation No. 6 of 2005 and subsequent internal rules. However, coordination between the MK and MA remains weak, creating potential overlaps and doctrinal inconsistencies.

Empirical analysis of Constitutional Court decisions between 2019–2024 reveals notable trends. Within this period, 378 judicial review cases were filed, averaging 63 cases annually. Of these, 43% were granted (fully or partially), 39% were rejected, and 18% were deemed inadmissible. Substantively, cases were dominated by economic regulation (29%), electoral law (22%), and criminal law (17%). Most petitioners were individuals or citizen groups (51%) and civil society organizations (26%). In terms of implementation, 42% of rulings required legislative follow-up, 23% necessitated executive action, and only 31% were self-executing. These findings confirm the Constitutional Court's proactive role in correcting legislative products, though successful enforcement remains contingent on other branches of power.

Qualitatively, landmark rulings by the Constitutional Court illustrate doctrinal development and variations in institutional role. The Court has expanded its interpretative methodology, employing proportionality tests, the living constitution approach, and originalism. It has also diversified remedial forms, including conditional constitutionality, suspended invalidity, and legislative guidance. In the electoral system reform case (Decision No. 55/PUU-XVII/2019), the Court intervened in politically sensitive matters by annulling the parliamentary threshold. In the natural resource governance case (Decision No. 36/PUU-XVIII/2021), it reinforced the state control doctrine under Article 33 of the Constitution. In reviewing the new Penal Code (Decision No. 78/PUU-XIX/2022), the Court balanced freedom of expression with constitutional limitations. In the regional autonomy case (Decision No. 41/PUU-XX/2023), the Court reaffirmed decentralization standards, though facing administrative implementation hurdles.

Implementation challenges remain a central issue. Only 39% of rulings requiring legislative follow-up were acted upon within two years, while the rest were ignored or re-

enacted with similar substance. Executive compliance showed variation: high on technical issues (73%) but low on politically sensitive matters (41%). The Supreme Court, as a parallel institution, demonstrated a different pattern. With 612 judicial review cases on regulations, the MA adopted a more formalistic approach, focusing on legal hierarchy with limited reliance on substantive constitutional principles. Its rulings tend to be concise, less transparent, and reflect a relatively low success rate for petitioners (14%). The contrast in MK and MA jurisprudence contributes to doctrinal fragmentation, procedural inefficiency, and legal uncertainty.

From an access-to-justice perspective, structural barriers remain significant. The Constitutional Court's legal standing requirements oblige petitioners to demonstrate specific constitutional harm, often excluding taxpayer or citizen standing. This restricts public participation in judicial review, particularly for marginalized groups. Geographically, the majority of petitioners originate from Jakarta and Java (82% of cases), while eastern Indonesia accounts for only 4% despite hosting a quarter of the national population. Costs, legal literacy, and limited legal aid deepen this inequality. Technological innovation through the e-court system since 2021 has modestly improved participation—raising outside-Jakarta petitions by 7%—but the digital divide remains a major constraint.

Comparative insights from other jurisdictions suggest the need for reform in Indonesia's bifurcated model. South Korea's centralized review, Germany's referral system, and hybrid models in Colombia and Taiwan demonstrate that stronger institutional coordination can reduce doctrinal fragmentation. In terms of enforcement, international experience highlights the importance of monitoring mechanisms, clear remedial powers, and civil society engagement to secure compliance.

In conclusion, the results and discussion underscore that while the Constitutional Court has significantly shaped constitutional doctrine, the effectiveness of judicial review in Indonesia is hindered by institutional fragmentation, political resistance, and unequal public access. Short- to long-term reforms are required to establish a more integrated, effective, and inclusive judicial review system to support the consolidation of constitutional democracy in Indonesia.

5. Conclusions

Indonesia's judicial review system, while representing a significant advance from the pre-reformation era, continues to face substantial challenges in fulfilling its constitutional mandate. The bifurcated review structure, implementation limitations, and access barriers undermine the system's effectiveness in maintaining constitutional supremacy and protecting fundamental rights. This research has identified structural, institutional, and procedural reforms that could address these limitations and strengthen constitutional governance.

The empirical analysis of Constitutional Court decisions from 2019-2024 reveals both the Court's substantial contributions to Indonesia's constitutional development and the persistent gaps between constitutional pronouncement and effective implementation. The comparative analysis of international best practices offers promising models for systemic improvement, particularly regarding unified review mechanisms, implementation enforcement, and access enhancement.

The proposed reform framework recognizes political and institutional realities while presenting a comprehensive vision for strengthening judicial review. By adopting a phased implementation approach—addressing immediate coordination issues while building support for more fundamental reforms—Indonesia can develop a more coherent, accessible, and effective system for maintaining constitutional supremacy.

As Indonesia continues its democratic consolidation, the quality of its constitutional enforcement mechanisms plays a critical role in securing rule of law, protecting rights, and ensuring accountable governance. Reforming the judicial review system represents not merely a technical legal project but a fundamental commitment to constitutional democracy. Through thoughtful reform that builds on existing institutional strengths while addressing structural limitations, Indonesia can strengthen its Constitutional Court's capacity to fulfill its mandate as the guardian of the constitution and protector of constitutional rights.

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