

The Constitutional Adjudication in Indonesia: Bridging Political Legitimacy and the Supremacy of Law

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Abstract

Judicial review in Indonesia occupies a strategic position as a guardian of constitutional supremacy and an arena for tensions between the principles of the rule of law and popular sovereignty. This article aims to assess the effectiveness of judicial review in protecting citizens' constitutional rights and unravel the challenges of independence, public access, and compliance with decisions. Using a juridical-normative method through statutory, case, and conceptual approaches, the study describes norms, interprets constitutional provisions, and evaluates the practice of constitutional justice. The findings reveal three key issues: first, the vulnerability of independence due to recruitment processes that overlap with political interests and lead to inconsistent reasoning; second, barriers to access in the form of strict legal standing requirements, procedural complexity, costs, and low legal literacy; and third, weak implementation of decisions that give rise to "constitutional non-compliance," eroding the coercive power of judicial review and creating legal uncertainty. Although there are progressive decisions that expand rights protection, their implementation impact is often diminished by institutional resistance. This article recommends reforms to more independent and transparent judicial selection, expanding access through constitutional legal aid and simplifying procedures, and strengthening monitoring mechanisms and sanctions for the implementation of decisions. Synergy of these steps is necessary so that judicial review truly becomes an effective instrument for enforcing the constitution and supporting people's sovereignty.

1. Introduction

Judicial review in Indonesia is regulated by the 1945 Constitution, specifically Article 24C, which grants the Constitutional Court (MK) the authority to review laws against the Constitution. This authority is part of the checks and balances mechanism in the Indonesian constitutional system, which aims to ensure that laws produced by lawmakers align with constitutional principles as the basic law of the state. Thus, judicial review plays a strategic role in upholding the principles of the rule of law and popular sovereignty as mandated by the 1945 Constitution. In its implementation, judicial review aims to protect citizens' constitutional rights from potential abuse of authority by policymakers. As a form of constitutional oversight of the legislature, judicial review ensures that laws enacted are not only procedurally but also substantively valid, in accordance with the values of justice embodied in the constitution.¹ This demonstrates that judicial review is a crucial element in building a democratic state based on the rule of law.

However, despite its strong legal basis, the implementation of judicial review in Indonesia faces several serious challenges. One of the main challenges is the alleged political bias in several Constitutional Court (MK) decisions. This political bias often manifests itself in decisions that, in substance or at the time of their announcement, are strongly suspected of serving the interests of political actors or ruling coalitions, for example through "loose" or "expansive" interpretations of the statutory norms being reviewed to accommodate certain power ambitions, such as term extensions, easing electoral requirements for certain candidates, or revoking provisions that disrupt the legislative or executive agenda. These allegations are further strengthened when there is a significant pattern of dissenting opinions from certain judges or when issues of conflict of interest arise among the constitutional judges involved. This situation creates a public perception that the Constitutional Court's decisions often reflect bargaining and short-term political interests, such as perpetuating the political status quo or supporting the narrative of the majority group, rather than the principles of constitutional justice and the protection of human rights. This fundamentally threatens the independence and credibility of the Constitutional Court as the guardian of the constitution and the sole interpreter of the 1945 Constitution.

Furthermore, public access to judicial review mechanisms is also a significant issue. The high cost of filing applications, the complexity of legal procedures, and the public's lack of legal literacy regarding the judicial review process hinder citizens from pursuing their constitutional rights. As a result, many people are unable to utilize this mechanism even though their rights have been violated. Furthermore, another emerging issue is the weak implementation of Constitutional Court decisions. Several Constitutional Court decisions are not properly implemented by the responsible parties, either due to a lack of oversight or resistance from certain stakeholders.² The weak implementation of Constitutional Court (MK) decisions is a crucial issue that undermines the supremacy of the constitution and the

¹ Shyam Kumar Bhattarai, "Conceptual Framework of Judicial Review with Reference to Nepal," *Advances in Sciences and Humanities* 9, no. 2 (2023): 52–57, <https://doi.org/10.11648/j.ash.20230902.16>.

² Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia," *Jurnal Konstitusi* 20, no. 2 (2023): 279–99, <https://doi.org/10.31078/jk2026>.



effectiveness of judicial review in Indonesia. This problem is not only caused by the lack of an explicit and robust oversight mechanism for the follow-up of Constitutional Court decisions but is also often exacerbated by political and bureaucratic resistance from executive or legislative bodies that have an interest in the status quo or are directly affected by the mandated legal changes. For example, in the case of judicial review of laws related to general elections where the Constitutional Court has ordered adjustments to regulations or even the cancellation of certain articles, often the Ministry of Home Affairs (Kemendagri) or the House of Representatives (DPR) are slow or reluctant to immediately amend or adjust the implementing regulations, sometimes even trying to find loopholes to interpret the decision narrowly so that the essence of constitutional justice decided by the Constitutional Court becomes distorted or its implementation is delayed, giving rise to legal uncertainty and a crisis of compliance with the final and binding decisions of high state institutions.

This indicates that judicial review in Indonesia has not been fully effective in upholding constitutional supremacy. This situation raises fundamental questions about whether the implementation of judicial review in Indonesia reflects the principles of a just state based on the rule of law and is capable of safeguarding popular sovereignty. In a state based on the rule of law, judicial review should be a tool that is responsive to the needs of the community and capable of upholding the rule of law without compromising political interests. Therefore, an in-depth study is needed to understand the dynamics of judicial review in Indonesia, including how its implementation reflects the principles of the rule of law. Furthermore, it is crucial to evaluate whether this mechanism is adequate in safeguarding popular sovereignty and to identify strategic steps to improve its implementation to make it more effective and accountable.

Judicial review in Indonesia serves not only as a technical mechanism for testing norms, but also reflects the tension between two fundamental principles: the rule of law and popular sovereignty. Within the context of a state based on the rule of law, judicial review is the primary instrument for ensuring that all legislation adheres to constitutional supremacy. However, within the framework of popular sovereignty, a philosophical dilemma arises: to what extent can the judiciary overturn legal products born of a democratic process through popular representation in parliament? This dilemma makes judicial review in Indonesia fraught with dynamics, both in theory and practice.

Furthermore, the problematic nature of judicial review cannot be separated from the political realities of law in Indonesia. The Constitutional Court, although normatively positioned as an independent institution, is not entirely immune from the political context surrounding it. The selection of constitutional judges through political mechanisms in the legislative, executive, and judicial branches inherently carries the potential for vested interests to intervene in decisions. For example, decisions related to the presidential threshold, disputes over general election results, or decisions regarding the minimum age for regional head candidates have sparked intense public debate regarding allegations that normative legal considerations have shifted to pragmatic considerations influenced by the constellation and short-term political interests of the actors involved in the selection



and appointment process. This creates a paradox: on the one hand, the Constitutional Court is the guardian of the constitution, but on the other, it is vulnerable to being perceived as an arena for political compromise. This paradox raises serious debate about the extent to which the independence of judicial review is truly guaranteed in Indonesian constitutional practice.³

Furthermore, the effectiveness of judicial review also depends on the level of institutional compliance with Constitutional Court decisions. Final and binding decisions are often not followed by concrete action from the legislature or executive, giving rise to the phenomenon of "constitutional disobedience." This phenomenon not only diminishes the Constitutional Court's authority but also erodes the principle of the rule of law itself. If the decisions of the guardian of the constitution are ignored, judicial review becomes merely a symbolic procedure without substantive coercive power. Therefore, research into the dynamics of judicial review in Indonesia is relevant and urgent, examining not only how it works in theory, but also how it is operationalized and complied with in political and legal reality.

Based on this background, this research proposes the following research questions:

1. What are the dynamics of the implementation of judicial review in Indonesia in relation to the principles of the rule of law and popular sovereignty?
2. What challenges does the Constitutional Court face, in terms of independence, public access, and implementation of decisions, in carrying out its judicial review function?
3. To what extent is judicial review effective in upholding the supremacy of the constitution and protecting citizens' constitutional rights, and what strategic steps are needed to strengthen its role in the Indonesian legal system?

In this context, criticism of judicial review in Indonesia cannot be viewed merely as a technical weakness of the institution, but also as a reflection of the quality of the constitutional democracy being built. Judicial review should function as a corrective mechanism that not only upholds constitutional norms but also bridges the tension between legality and legitimacy, between applicable law and the aspirations of the sovereign people. However, when its implementation is held hostage by political interests, limited access, and weak implementation of decisions, judicial review risks being delegitimized in the eyes of the public. As a fundamental corrective mechanism in the constitutional system, judicial review essentially serves a dual function: upholding the supremacy of constitutional norms and bridging the gap between formal legality (applicable law) and substantive legitimacy (the aspirations of the sovereign people). However, this ideal potential is often hampered in its implementation. The institution implementing judicial review (the Constitutional Court) is often held hostage by the practical political interests of powerful or vested

³ David Edyson et al., "Peran Mahkamah Konstitusi Dalam Menjaga Demokrasi Dan Memperkuat Supremasi Hukum : Evaluasi Kritis," *QISTINA: Jurnal Multidisiplin Indonesia* 3, no. 1 (2024): 908–11.

interests, resulting in decisions that are perceived as politically motivated and lacking independence. Furthermore, access to judicial review is often limited for marginalized groups or ordinary civil society due to cost constraints, complicated procedures, and a lack of legal awareness. For example, a judicial review decision that ideally protects the rights of vulnerable minorities can be undermined by a complicated trial process or the neglect of *amicus curiae* (friends of the court) from non-governmental organizations. If these obstacles, coupled with weak implementation of decisions by an unwilling executive or legislative branch, persist, judicial review risks serious delegitimization in the public eye, undermining trust in the judiciary as a bulwark of the constitution and the rule of law. This situation demands a serious reorientation, both in institutional design and in strengthening legal culture, so that judicial review truly becomes an instrument that upholds the constitution, protects the people, and authentically safeguards the principles of the rule of law.

2. Method

This research uses a juridical-normative method. The juridical-normative approach was chosen because the focus of this research study is the legal norms governing judicial review in the Indonesian constitutional system, specifically the provisions of the 1945 Constitution, laws related to the Constitutional Court, and the doctrines and theories of constitutional law.

In its implementation, this research uses several approaches, namely:

1. A statute approach, which systematically examines laws and regulations relating to the authority and implementation of judicial review, including the 1945 Constitution, the Constitutional Court Law, and other related regulations.
2. A case approach, which analyzes relevant Constitutional Court decisions to examine how the principles of the rule of law and popular sovereignty are applied in the practice of judicial review.

A conceptual approach, which examines legal theories, the doctrine of the rule of law, and the concept of popular sovereignty to understand the philosophical and conceptual framework underlying judicial review.

The legal sources used in this research consist of:

1. Primary legal materials, namely statutory regulations (the 1945 Constitution, the Constitutional Court Law, and related regulations) and Constitutional Court decisions.
2. Secondary legal materials, namely literature, scientific journals, academic articles, and books relevant to the topics of judicial review, the rule of law, and popular sovereignty.
3. Tertiary legal materials, namely legal dictionaries, encyclopedias, and other supporting references.

Data analysis was conducted qualitatively using legal interpretation and argumentation methods. The analytical techniques applied include:

1. Description: Systematically describing the norms governing judicial review and the practices occurring at the Constitutional Court.
2. Legal Interpretation: Interpreting the meaning of the provisions of the 1945 Constitution and the laws being reviewed, primarily using systematic, historical, and teleological (purposeful) interpretations.
3. Critical Evaluation: Analyzing and evaluating the practice of constitutional adjudication in the context of independence, access, and implementation, and identifying any deviations or tensions between constitutional legality and political legitimacy/institutional compliance.
4. Synthesis: Formulating conclusions and strategic recommendations based on the analyzed legal findings to strengthen the role of judicial review in substantively upholding the principles of the Rule of Law and Popular Sovereignty.

With this method, the research is expected to provide an in-depth understanding of the effectiveness of judicial review in maintaining the principles of the rule of law while protecting the sovereignty of the people.

3. Analysis or Discussion

3.1. The dynamics of the implementation of judicial review in Indonesia in relation to the principles of the rule of law and people's sovereignty

The implementation of judicial review in Indonesia is essentially a manifestation of the principle of a state based on the rule of law, which places the constitution as the highest norm. It also serves as an important instrument to ensure that legislative products do not deviate from the fundamental values of the 1945 Constitution.⁴ In the context of constitutional democracy, the supremacy of law and popular sovereignty coexist, creating a productive tension. Judicial review, through the authority of the Constitutional Court (MK) as stipulated in Article 24C of the 1945 Constitution, functions as a mediating institution. Its task is to ensure that the will of the people, as manifested through legislative products, is expressed within the boundaries of constitutional legality.

This dynamic inherently contains the Counter-Majoritarian Dilemma as proposed by Alexander Bickel. On the one hand, judicial review is seen as a form of strengthening the rule of law that ensures the law is run in accordance with the Constitution as the guardian of the constitution. However, on the other hand, a legitimacy dilemma arises when the decisions of the Constitutional Court, consisting of non-elected judges, are considered to "correct" political products born of the mechanism of democratic majority through the people's representatives in parliament. This tension raises critical questions about the extent to which the

⁴ Jamri Muhsin, "Penguujian Peraturan Perundang-Undangan," *Fakultas Hukum Universitas Islam Malang*, 2015, 215–21, https://www.researchgate.net/profile/Ahmad-Siboy/publication/310969545_PENGUJIAN_PERATURAN_PERUNDANG-UNDANGAN/links/583bf5a708ae3a74b4a1734f/PENGUJIAN-PERATURAN-PERUNDANG-UNDANGAN.



Constitutional Court can balance the ideals of the rule of law with the validity of popular sovereignty.

Temporarily, the dynamics of judicial review in Indonesia have shown significant evolution. Post-Reformasi and the establishment of the Constitutional Court in 2003, this authority initially served as a reformist tool to assert constitutional supremacy (for example, through rulings on judicial reviews of the Judicial Commission). However, over time, the Constitutional Court's function has transformed into a more politically negotiated mechanism. This is evident, for example, in the controversial rulings on the Job Creation Law (Omnibus Law) or changes to election regulations that substantially touch on highly political public policy areas. This interpretive shift demonstrates that the Constitutional Court's corrective function confronts the potential for abuse of authority by lawmakers, yet at the same time, it must maintain its independence from the political compromises that gave rise to it.

This constitutional struggle is not merely a domestic phenomenon. Other jurisdictions, such as the United States (through the supremacy of the Supreme Court) and Germany (through the *Bundesverfassungsgericht*), also grapple with similar challenges in maintaining the legitimacy of judicial decisions in the face of political power. This comparative experience confirms that the success of judicial review lies not only in the text of the Constitution, but also in the Constitutional Court's institutional capacity to resist political temptations, especially considering that the appointment of constitutional judges in Indonesia involves political mechanisms. Essentially, judicial review in Indonesia remains a fragile balance between law and democracy. The continued function of the Constitutional Court as guardian of the constitution depends heavily on the development of a culture of constitutionalism in which the will of the people is expressed not in opposition to the law, but through the law.⁵

From the perspective of popular sovereignty, judicial review presents a more complex dilemma. Laws are political products formally born from the people's representation in parliament. When the Constitutional Court annuls a law, the judicial institution is seen as indirectly correcting the will of the people, expressed through the mechanisms of representative democracy. At this point, debate arises as to whether judicial review strengthens or weakens popular sovereignty. A more critical view reveals that judicial review is not a denial of popular sovereignty, but rather a safeguard to ensure that legislative products truly reflect the people's aspirations within the framework of the constitution. In other words, judicial review

⁵ Aditya Yuli Sulistyawan and I Putu Eka Cakra, "Examine The Constitutionality Of Regulations Under Laws That Are Not Contrary To The Law But Contrary To The Constitution," *Administrative Law and Governance Journal* 3, no. 1 (2020): 104–113, <https://doi.org/10.14710/alj.v3i1.104-113>.

is a bridge between the procedural legality of democracy and the substantive legitimacy of justice for the people.

The dynamics of judicial review implementation in Indonesia also demonstrate that it is not merely a matter of legal interpretation, but also touches on aspects of political and social legitimacy. Final and binding Constitutional Court decisions are often ignored or implemented halfheartedly by lawmakers and the executive.⁶ This phenomenon of constitutional disobedience demonstrates the gap between constitutional ideals and state practice. This phenomenon is clearly reflected, for example, in Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the judicial review of Law No. 21 of 2001 concerning Special Autonomy for Papua (which ordered the establishment of a Truth and Reconciliation Commission, but has yet to be realized) and also in Constitutional Court Decision No. 91/PUU-XVIII/2020 concerning the judicial review of Law No. 11 of 2020 concerning Job Creation (which declared the law conditionally unconstitutional and ordered revisions within two years, but its implementation was deemed to lack substantive and procedural compliance by various groups). If this situation persists, judicial review risks being reduced to a mere procedural symbol without substantive coercive power. Therefore, the discourse on judicial review must not stop at mere normative recognition, but must expand to how to ensure its effectiveness and authority in upholding the principles of the rule of law while safeguarding the essence of popular sovereignty.

Normatively, the position of judicial review in Indonesia is very clearly regulated. Article 24C paragraph (1) of the 1945 Constitution stipulates that the Constitutional Court has the authority to test laws against the Constitution. This authority is then detailed in Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020, which states that the Constitutional Court can test both the formal and material aspects of a law. This regulation positions the Constitutional Court as the guardian of the constitution and also the protector of the constitutional rights of citizens. Doctrinally, this is a concrete form of the rule of law principle that requires every legal product to be subject to the hierarchy of norms, as emphasized in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation.⁷

In the context of the practice of judicial review by the Constitutional Court (MK), it is a reality that although this institution acts as the final interpreter of the constitution, its decisions often spark controversy and public debate. This phenomenon is clearly visible, for example, in crucial decisions regarding the

⁶ Amien Ru'ati, Garciano Nirahua, and Ronny Soplantila, "Kekuatan Eksekutorial Putusan Mahkamah Konstitusi Yang Bersifat Final Dan Mengikat Di Indonesia," *PATTIMURA Legal Journal* 1, no. 1 (2022): 15–29, <https://doi.org/10.47268/pela.v1i1.5899>.

⁷ M Noor Harisudin and Fika Alfiella, "Kewenangan Positive Legislature Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945," *Constitution Jurnal* 1, no. 1 (2022): 1–18.

Election Law and the Job Creation Law, where the judicial review process is perceived as an arena fraught with political tug-of-war and not merely a pure enforcement of constitutional norms. In fact, some decisions are considered inconsistent because in similar cases the Constitutional Court can take different legal positions, the Constitutional Court does not always strictly adhere to the principle of *stare decisis*, so that the legal reasoning (*ratio decidendi*) used to reject or grant a petition can be changed or set aside in another petition with similar or even the same substance or object of review, which has the potential to create legal uncertainty and give the impression that changes in the composition of judges or external pressure influence the interpretation of the constitution, not only developments or changes in socio-political conditions and legal science. This reinforces the public perception that the independence of the Constitutional Court is still vulnerable to influence from the political context, even though the Constitutional Court is normatively positioned as an independent institution. This condition raises a serious problem: how to ensure that judicial review truly becomes an instrument for enforcing the constitution, not a tool for legitimizing political power.

Furthermore, the dynamics of judicial review can also be seen from the level of institutional compliance with Constitutional Court decisions. Although Constitutional Court decisions are final and binding as stipulated in Article 10 paragraph (1) of Law Number 24 of 2003, in reality not all decisions are implemented consistently by the government and the House of Representatives. Constitutional Court decisions that annul several articles in laws are sometimes responded to only with partial revisions or are even ignored. An example is Constitutional Court Decision Number 138/PUU-VII/2009 regarding the judicial review of Article 7 letter g of Law Number 42 of 2008 concerning the General Election of the President and Vice President, which states that the phrase "who has never been sentenced to imprisonment" is contrary to the 1945 Constitution of the Republic of Indonesia. However, its implementation through revision of the relevant law does not immediately resolve the issue of disqualification consistently, indicating institutional resistance that weakens the coercive power of Constitutional Court decisions in ensuring the full enforcement of the constitution. This phenomenon gives rise to constitutional disobedience that erodes the authority of the constitution and the principle of the rule of law.⁸ From the perspective of popular sovereignty, this is also problematic because the aspirations of the people protected through Constitutional Court decisions are not realized in practice. Thus, the dynamics of judicial review in Indonesia show that there is a fairly wide gap between ideal legal norms and the factual reality of legal politics.

⁸ Lego Karjoko et al., "Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Prundang-Undang Di Indonesia," *Jurnal Nasional Pengujian Konstitusi* 7, no. 1 (2019): 36–46.



In addition to normative and political issues, the dynamics of judicial review in Indonesia also concern public accessibility in fighting for their constitutional rights. Legally, Article 51 paragraph (1) of the Constitutional Court Law states that only certain parties with legal standing can submit an application, namely citizens, community groups, or state institutions whose constitutional rights have been violated. However, in practice, the procedure for submitting a judicial review is often considered complicated and not all citizens have sufficient legal understanding to undertake it. As a result, only certain groups are able to access this mechanism, so that the principle of constitutional protection cannot be fully felt equally by all citizens.

On the other hand, the dynamics of judicial review can also be examined from the aspect of the consistency of Constitutional Court decisions. Consistency is an important indicator of ensuring legal certainty as part of the principle of the rule of law. However, several Constitutional Court decisions are considered inconsistent, both in terms of legal considerations and the resulting legal policy direction.⁹ For example, in cases related to the election system and presidential nomination, the Constitutional Court often bases its decisions on different considerations even though the issues being examined are relatively similar. This inconsistency can undermine the credibility of judicial review, as it creates the impression that decisions are influenced more by the current political situation than by sound constitutional principles.

Ultimately, the dynamics of judicial review in Indonesia demonstrate both structural and cultural tensions. Structurally, the challenge lies in how to organize the system and mechanisms for appointing judges, implementing decisions, and ensuring public access to justice. Culturally, the primary challenge is building collective awareness that judicial review is not merely a legal forum, but rather part of an effort to uphold the dignity of the constitution and ensure the substantive guarantee of popular sovereignty. Therefore, addressing the dynamics of judicial review is not merely a matter of improving regulations but also involves reforming Indonesia's political and legal culture, ensuring that the principles of the rule of law and popular sovereignty can coexist without neglecting each other.

3.2. Challenges faced by the Constitutional Court, both in terms of independence, public access, and implementation of decisions, in carrying out its judicial review function

The first challenge facing the Constitutional Court concerns its institutional independence. Normatively, the 1945 Constitution and the Constitutional Court Law affirm the Constitutional Court's position as an independent judicial institution.

⁹ Alan Bayu Aji, "Inkonsistensi Mahkamah Konstitusi Tentang Pemberian Kedudukan Hukum Pemohon Dalam Putusan Nomor 90/PUU-XXI/2023 Dengan Putusan Nomor 74/PUU-XVIII/2020.," *Soedirman Law Review* 5, no. 4 (2024): 39–56, <https://doi.org/10.20884/1.slr.2023.5.4.16059>.

However, the recruitment mechanism for constitutional judges, which involves political institutions (the President, the House of Representatives, and the Supreme Court), carries the risk of interference by vested interests.¹⁰ This is evident in several decisions that have drawn criticism for being fraught with political overtones, particularly in cases involving electoral interests or strategic economic regulations. Uncertainty regarding the extent to which constitutional judges are able to maintain their objectivity, makes the issue of independence a persistent problem in the practice of judicial review in Indonesia.

The second challenge lies in public access to judicial review. Although Article 51 of the Constitutional Court Law allows individuals, groups, and state institutions to file petitions, strict legal standing requirements often present obstacles. Furthermore, limited legal literacy, the cost of filing cases, and the complexity of procedures make judicial review inaccessible to all levels of society. As a result, this mechanism tends to be used more by groups with legal capacity and resources, such as civil society organizations or political parties, while smaller groups affected by policies often struggle to assert their constitutional rights.

The next challenge is the implementation of Constitutional Court decisions, which still face resistance. Although Constitutional Court decisions are final and binding as stipulated in Article 10 paragraph (1) of the Constitutional Court Law, in reality, many decisions are not implemented consistently by lawmakers or the government. This phenomenon of constitutional disobedience creates a gap between the authority of the constitution and political reality. Some decisions are only partially followed up or even ignored, giving the impression that judicial review stops at the declarative level. This non-compliance has direct implications for weakening the principle of the rule of law, because constitutional norms that should be binding are instead treated selectively by state institutions.¹¹

Thus, it is clear that the Constitutional Court faces complex challenges in carrying out its judicial review function, namely maintaining independence from political influence, expanding public access to constitutional justice, and ensuring the effective implementation of its decisions. These challenges emphasize that the problematic of judicial review concerns not only normative legal aspects but is also closely related to political culture, public legal awareness, and the commitment of state institutions to the principles of constitutionalism. Therefore, further discussion needs to be directed at strategies that can strengthen the Constitutional Court's role, whether through institutional reform, increased accessibility, or oversight mechanisms for the implementation of its decisions.

The challenges facing the Indonesian Constitutional Court (MK), namely institutional independence, public accessibility, and the actual implementation of decisions, reflect structural tensions in the practice of constitutional review in transitional democracies. To analyze this issue systematically, these challenges can be understood through a conceptual triad framework: structural independence, procedural accessibility, and normative authority (implementation). Each

¹⁰ Hendi Gusta Rianda, "Rekrutmen Hakim Pengadilan Tingkat Pertama Dalam Perspektif Ketatanegaraan Di Indonesia," *Constitutionale* 1, no. 1 (2020): 21.

¹¹ Tri Sulistyowati, Ali Rido, and M. Imam Nasef, "Constitutional Compliance Solution to Law Testing Rulings in the Constitutional Court," *Jambura Law Review* 3, no. Special issue (2021): 117–34, <https://doi.org/10.33756/jlr.v3i0.10735>.

dimension represents a distinct but interdependent aspect of constitutional effectiveness, and together they determine the extent to which the Constitutional Court can function effectively as an impartial guardian of the constitution. A thorough analysis of judicial independence must go beyond the normative (de jure) dimension and incorporate empirical (de facto) considerations. Although the 1945 Constitution guarantees the Constitutional Court's freedom from intervention, political realities, culminating in Decision Number 90/PUU-XXI/2023, demonstrate the vulnerability of de facto independence to judicial appointment mechanisms that involve branches of political power. This places the Constitutional Court in a dilemma between maintaining independence and demands for accountability, where every strategic decision has the potential to be perceived as a political instrument, rather than simply an enforcement of constitutional law. Constitutional Court Decision No. 90/PUU-XXI/2023 concerning the requirements for presidential and vice presidential nominations. This decision has drawn widespread criticism for being fraught with political interests, particularly due to its link to the issue of political dynasties. This criticism reinforces the argument that the independence of constitutional judges is highly susceptible to influence by political actors with authority over the judicial appointment process. This case demonstrates how a supposedly neutral legal mechanism can be perceived by the public as a tool for legitimizing power.¹²

In terms of public access, the norm in Article 51 of the Constitutional Court Law, which requires legal standing, is intended to ensure that only parties who have been truly harmed constitutionally can file a petition. However, in practice, this requirement often creates exclusivity. For example, in several judicial review cases related to the Mineral and Coal Mining Law, indigenous peoples or small groups often struggle to directly prove constitutional harm, resulting in their petitions being rejected. This situation has given rise to criticism that judicial review in Indonesia tends to be more accessible to organized groups with strong advocacy support, while ordinary people whose rights are significantly impacted are marginalized from the constitutionality review mechanism.¹³

The issue of access to judicial review requires a more sociological and philosophical approach, not limited to legal standing and strict procedural barriers. Based on the idea of constitutionalizing access to justice, true access requires an adequate informational dimension and civic literacy, as well as a constitutional legal aid mechanism that ensures that vulnerable or poor groups can effectively pursue their constitutional rights. Without guaranteed inclusive access, judicial review risks becoming an elitist mechanism, accessible only to organized groups, while marginalizing the popular sovereignty it seeks to protect. In this context, the experiences of other countries, such as Public Interest Litigation (PIL) in India, which broadened the locus standi, serve as important references for making the Constitutional Court more responsive to broader public interests.

¹² Dede Irman Pirdaus, Fahmi Sidiq, and Volodymyr Rusyn, "Violation of the Code of Ethics for Constitutional Judges in the Constitutional Court's Decision on Requirements for Presidential and Vice Presidential Candidates," *International Journal of Humanities, Law, and Politics* 2, no. 1 (2024): 7–11, <https://doi.org/10.46336/ijhlp.v2i1.84>.

¹³ Stefanus Hendrianto, "Convergence or Borrowing: Standing in The Indonesi An Constitutional Court," *Constitutional Review* 1, no. 1 (2015): 28–49, <https://doi.org/10.31078/consrev112>.



Another crucial issue is the implementation of the Constitutional Court's ruling. Legally, Article 10 paragraph (1) of the Constitutional Court Law affirms the final and binding nature of the ruling, meaning no other institution can overturn or ignore it. However, constitutional practice demonstrates a low level of compliance. One example is the Constitutional Court's ruling on the Job Creation Law (Number 91/PUU-XVIII/2020), which declared the law conditionally unconstitutional and ordered revisions within two years. Instead of implementing the procedural revisions ordered, the government and the House of Representatives (DPR) chose to issue a regulation in lieu of law (Perppu), which was then passed into law. This phenomenon clearly demonstrates the practice of constitutional disobedience that weakens the Constitutional Court's authority and erodes the principle of the rule of law.

These challenges demonstrate the gap between legal ideals and political realities in the implementation of judicial review in Indonesia. Normatively, the 1945 Constitution and the Constitutional Court Law provide a strong legal basis for maintaining independence, accessibility, and the implementation of decisions. However, empirically, the Constitutional Court still faces political pressure, procedural obstacles that limit public participation, and a weak commitment by state institutions to comply with decisions. This situation not only reduces the effectiveness of judicial review but also threatens the Constitutional Court's legitimacy as a guardian of the constitution. Therefore, institutional strengthening, oversight mechanisms, and procedural reform are needed so that judicial review can truly function as an instrument for safeguarding the rule of law and protecting the sovereignty of the people.

Major cases such as the judicial review of the Election Law, the Mineral and Coal Mining Law, and the Job Creation Law demonstrate that the Constitutional Court is at a crossroads between upholding constitutional principles and the political pressures surrounding it. These decisions demonstrate that although the Constitutional Court strives to uphold the rule of law, its decisions often generate public controversy because they are perceived as inconsistent or even contradictory to the spirit of popular sovereignty. This criticism demonstrates that the challenge to independence is not merely a theoretical issue, but a recurring practical reality in strategic cases that directly impact the interests of political and economic elites.

Furthermore, the Job Creation Law case specifically highlights the weak implementation of the Constitutional Court's ruling. Decision No. 91/PUU-XVIII/2020, which declared the law conditionally unconstitutional, should have been a significant step for lawmakers to correct the situation. However, the government and the House of Representatives (DPR)'s decision to issue Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 without amending the lawmaking procedures in accordance with the Constitutional Court's ruling is a clear example of constitutional disobedience. This situation not only diminishes the Constitutional Court's authority but also sets a bad precedent that legislative and executive bodies can ignore Constitutional Court rulings without any clear consequences.¹⁴

¹⁴ Dharma Setiawan Negara, Lufsiana Lufsiana, and Samuel Dharma Putra Nainggolan, "Constitutionality of PERPU Number 2 of 2022 Concerning Job Creation Based on the Ruling of the Constitutional Court

These various cases demonstrate that the challenges facing the Constitutional Court lie not solely at the level of normative law, but also at the level of political and institutional compliance. The susceptibility of judicial independence to political mechanisms, limited public access, and the state's weak commitment to the Constitutional Court's decisions are structural problems that hamper the effectiveness of judicial review. If these issues are not addressed, the Constitutional Court risks losing its legitimacy as the guardian of the constitution. Therefore, further discussions should focus on strategic steps to strengthen the Constitutional Court's position, including through reforms in judicial recruitment, increased public access to constitutional justice, and mechanisms for enforcing compliance with decisions. This will ensure that judicial review truly serves as an instrument that upholds the principles of the rule of law and guarantees the sovereignty of the people.

By situating Indonesia's challenges within the global dialogue, particularly through comparative experience, it is clear that the problems faced by the Indonesian Constitutional Court are part of the global issue of judicial resilience. As countries like Poland and Hungary face attempts by illiberal regimes to undermine judicial independence, Indonesia must learn that independence is an ongoing structural struggle. On the other hand, the practice of countries like South Africa, which strive to build a culture of compliance within the context of transformative constitutionalism, offers the perspective that the effectiveness of judicial review is highly dependent on the commitment of state institutions. Therefore, the way forward cannot be limited to normative improvements but must involve systemic reforms that include reforming the judicial recruitment mechanism to minimize political influence, increasing inclusive access to justice, and establishing an effective mechanism for enforcing decisions, to ensure that judicial review truly serves as a key pillar in safeguarding the constitution and popular sovereignty.

3.3. To what extent is judicial review effective in upholding the supremacy of the constitution and protecting the constitutional rights of citizens, as well as the strategic steps needed to strengthen its role in the Indonesian legal system

Normatively, judicial review in Indonesia has provided a crucial foundation for upholding constitutional supremacy. Since the Constitutional Court's establishment in 2003, several landmark rulings have demonstrated the effectiveness of this mechanism in invalidating legal norms that conflict with the 1945 Constitution. For example, Constitutional Court Decision No. 46/PUU-VIII/2010, which expanded the recognition of children born out of wedlock, or Constitutional Court Decision No. 5/PUU-V/2007, which invalidated the article on criminal defamation in the Broadcasting Law. These decisions demonstrate that judicial review is capable of protecting citizens' constitutional rights by holding the constitution as the highest standard. However, this effectiveness remains partial and

Number 91/PUU-XVIII/2020," *Al-Daulah Jurnal Hukum Dan Perundangan Islam* 13, no. 1 (2023): 159–79, <https://doi.org/10.15642/ad.2023.13.1.159-179>.



inconsistent, particularly when dealing with strategic laws related to national political and economic interests.

From the perspective of protecting citizens' constitutional rights, the effectiveness of judicial review also faces serious challenges. Indeed, there are many cases where the Constitutional Court has sided with the common people, such as in Constitutional Court Decision Number 35/PUU-X/2012, which recognized the rights of indigenous peoples to customary forests. However, many constitutional rights remain difficult to protect due to limited public access to submit applications and the failure of state institutions to implement decisions. The Job Creation Law case is a clear example: despite the Constitutional Court declaring the law conditionally unconstitutional, government and House of Representatives policies have proceeded in a manner that ignores the ruling. This demonstrates that without strong political commitment and enforcement instruments, judicial review is only effective on paper but weak in implementation.

To strengthen the role of judicial review, strategic steps are needed at three levels. First, institutional reform, particularly in the recruitment mechanism for constitutional judges to better guarantee their independence. An alternative that could be considered is the establishment of an independent selection committee involving academics, the legal profession, and civil society, rather than solely political institutions. Second, increasing public access, whether by simplifying application procedures, providing constitutional legal aid, or strengthening public legal literacy. In this way, judicial review can become a more inclusive means of justice. Third, strengthening the mechanism for implementing Constitutional Court decisions, for example by establishing constitutional sanctions for state institutions that ignore decisions, or establishing a body overseeing the implementation of Constitutional Court decisions with clear authority. Without these strategic steps, the effectiveness of judicial review will continue to face structural and cultural obstacles within the Indonesian legal system.

Thus, the effectiveness of judicial review in the Indonesian legal system, particularly through the Constitutional Court (MK), demonstrates an inherently inconsistent and problematic nature. To analyze this phenomenon, this paper adopts a conceptual framework of judicial effectiveness that clearly distinguishes between normative outputs, namely the substance and progressiveness of decisions made, and implementative outcomes, namely the degree of political compliance and the socio-economic impact of those decisions. Although normatively, the Constitutional Court has succeeded in delivering a number of progressive decisions, in practice, this authority remains hampered by strong political factors, limited access to litigation for citizens, and a weak culture of compliance among other state institutions. This condition creates a serious gap that weakens the position of judicial review as the ultimate instrument for upholding constitutional supremacy and safeguarding the principles of the rule of law.



From the Normative Output dimension, the effectiveness of the Constitutional Court is prominent through a number of transformative breakthroughs. A prime example is the Constitutional Court Decision Number 35/PUU-X/2012 concerning Customary Forests. This decision not only changed the legal classification of customary forests from part of state forests to a separate entity, but also fundamentally expanded the meaning of constitutional rights in Article 18B paragraph (2) of the 1945 Constitution.¹⁵ This affirmation is in line with Ronald Dworkin's philosophical view regarding "rights as trumps," where the constitutional rights of indigenous peoples must trump the considerations of majority (state) policies in the management of natural resources. This decision affirms that the function of the rule of law is to protect minority groups and guarantee substantive equality. However, the Implementation Results of this decision are still limited because implementation at the regional level is often hampered by bureaucratic resistance, overlapping derivative regulations, and minimal local political commitment.

Similar inconsistencies are evident in the context of protecting citizens' constitutional rights. On the one hand, the Constitutional Court appears highly progressive, as in Constitutional Court Decision Number 46/PUU-VIII/2010, which expanded the rights of children born outside of marriage, effectively eliminating discrimination and affirming the principle of non-discrimination enshrined in the 1945 Constitution.¹⁶ On the other hand, in sensitive cases with high political dimensions, such as the judicial review related to the presidential threshold, the Constitutional Court is deemed insufficiently courageous in protecting citizens' constitutional rights to vote and be elected more openly, a finding that directly impacts the quality of substantive democracy. This fluctuation underscores that the effectiveness of judicial review in the context of rights protection depends not only on the text of the law, but is largely determined by the legal constructions constructed by judges in response to the political tensions surrounding it.

The most significant challenge to the implementation of judicial review is the phenomenon of political disobedience, most evident in the case of the Job Creation Law. Constitutional Court Decision No. 91/PUU-XVIII/2020, which declared the law conditionally unconstitutional and ordered procedural improvements within two years, was responded to by the Government and the House of Representatives by issuing Government Regulation in Lieu of Law (Perppu) No. 2 of 2022. This phenomenon revived the Counter-Majority Dilemma first proposed by Alexander Bickel, in which a non-elective institution (the Constitutional Court) confronts the

¹⁵ Taufik Qul Basyar, Arfa'i Arfa'i, and Iswandi Iswandi, "Analisis Pengelolaan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012," *Limbago: Journal of Constitutional Law* 4, no. 1 (2024): 30–45, <https://doi.org/10.22437/limbago.v4i1.20000>.

¹⁶ Nailah Ariqah, Rabbil Arya Pasyah, and Ahmad Muzacky, "Status of Children from Siri's Marriage (Case Study of Constitutional Court Decision No. 46/PUU-VIII/2010)," *AURELIA: Jurnal Penelitian Dan Pengabdian Masyarakat Indonesia* 2, no. 2 (2023): 1197–1202, <https://doi.org/10.57235/aurelia.v2i2.716>.



legitimacy of the power of elective institutions (the House of Representatives and the Government). Comparatively, constitutional courts in post-authoritarian democracies, such as the Constitutional Court of South Africa, also face a similar problem: compliance with substantial decisions is not guaranteed by other branches of government. This case indicates a structural weakness, namely the absence of a clear and immediate legal mechanism to enforce compliance with Constitutional Court decisions.

Therefore, future strengthening of judicial review must be designed holistically, going beyond simply changing the legal dimension. This strengthening must encompass not only improving the integrity and accessibility of the judiciary, but also reforms focused on the political and cultural dimensions of law. Adopting Jürgen Habermas's deliberative model, the enforcement of constitutional supremacy must be integrated into a rational public discourse process, where Constitutional Court decisions serve as catalysts for democratic debate. Thus, judicial review will be truly effective as a constitutional safeguard capable of converting normative outputs into concrete implementable outcomes, ensuring that the principles of the rule of law function while safeguarding popular sovereignty through institutional compliance and a mature legal culture.

From all these cases, it can be seen that the effectiveness of judicial review in Indonesia is still half-way. On the one hand, it is able to produce progressive decisions that strengthen the rule of law and protect vulnerable groups, but on the other hand, it often loses its coercive power in the face of political resistance and weak implementation. The novelty of this research lies in the assertion that the weaknesses of judicial review stem not only from legal norms, but more from political culture and institutional compliance. Therefore, strategic steps that need to be considered include not only regulatory reform, but also the establishment of a mechanism for monitoring the implementation of decisions and strengthening public participation in overseeing the process of judicial review. This is crucial so that the Constitutional Court's role as guardian of the constitution does not stop at a normative symbol, but rather truly functions to protect the sovereignty of the people in the practice of state administration.

Judicial review in Indonesia has made a significant contribution to upholding constitutional supremacy through various progressive decisions. Decisions regarding customary forests and the recognition of illegitimate children demonstrate how the Constitutional Court is able to dynamically interpret the constitution to protect citizens' rights. However, research findings indicate that this success remains partial and uneven, as not all decisions have the same coercive force in state practice. In other words, the effectiveness of judicial review still faces significant limitations.

Another prominent finding is the gap between norms and practice. Normatively, the Constitutional Court's decisions are final and binding, as stipulated

in the 1945 Constitution and the Constitutional Court Law. However, constitutional practice demonstrates the phenomenon of constitutional disobedience, as seen in the Job Creation Law case, where lawmakers failed to fully implement the ruling. This weakens the Constitutional Court's authority and erodes the principle of the rule of law. This situation emphasizes that the primary challenge of judicial review lies not only in the regulatory aspect, but also in political commitment and a culture of constitutional compliance.

Furthermore, the effectiveness of judicial review in protecting citizens' constitutional rights remains inconsistent. While the Constitutional Court has issued rulings expanding civil and social rights, it has been viewed as less progressive on electoral political issues such as the presidential threshold. These findings demonstrate that judicial review in Indonesia still faces a dilemma between maintaining political stability and upholding the principles of substantive democracy. As a result, people's political rights have not been fully protected through the constitutional review mechanism. This inconsistency poses a serious challenge to the Constitutional Court's legitimacy as the guardian of the constitution.

Thus, the novelty of this research confirms that the effectiveness of judicial review in Indonesia cannot be measured solely by the number or content of decisions, but rather by the extent to which those decisions are implemented and have a real impact on protecting the people's constitutional rights. To strengthen the role of judicial review, strategic steps are needed, including reforming the judicial recruitment mechanism to ensure independence, increasing public access through simplified procedures and constitutional legal aid, and establishing a more robust decision enforcement mechanism. Without these improvements, judicial review risks being reduced to a mere normative symbol, rather than a substantive instrument for upholding the rule of law and people's sovereignty in Indonesia.

4. Conclusion

Firstly, this research finds that the dynamics of judicial review implementation in Indonesia reflect the tension between the principles of the rule of law and popular sovereignty. While judicial review serves to uphold constitutional supremacy, in practice it often faces a philosophical dilemma: are Constitutional Court decisions merely corrections to legislation, or are they also a form of safeguarding the aspirations of the people represented in parliament? These findings demonstrate that judicial review is not a static legal mechanism, but rather a constitutional arena rife with debates about democratic legitimacy and constitutional justice.

Secondly, the effectiveness of judicial review remains hampered by three main challenges: institutional independence, public access, and the implementation of decisions. The Constitutional Court's independence is influenced by the politically charged recruitment process for judges while the public access is limited by legal standing requirements and procedural complexity. The implementation of decisions



is often undermined by the phenomenon of constitutional disobedience. These three challenges indicate that the Constitutional Court's role in upholding the constitution is not yet fully established and is still heavily influenced by the political landscape and the low culture of legal compliance in Indonesia.

Finally, in the context of protecting citizens' constitutional rights, judicial review has been proven to produce a number of progressive decisions, such as the recognition of customary forests and the expansion of the rights of children born out of wedlock. However, research findings also demonstrate the Constitutional Court's inconsistent stance on electoral political issues, such as the presidential threshold, which is deemed less responsive to the principle of popular sovereignty. This suggests that judicial review in Indonesia remains ineffective as an instrument of constitutional democracy, as the protection of citizens' political rights is often overridden by considerations of political stability.

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