

The Authority of Judicial Review of the Constitutional Court in Strengthening Constitutional Democracy in Indonesia

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Abstract

This article examines the role of the Constitutional Court's judicial review authority in strengthening constitutional democracy in Indonesia. The problems raised departed from the debate about the limits of the Constitutional Court's authority and the influence of its decisions on the balance of power between state institutions. This research aims to analyze how judicial review functions in maintaining the supremacy of the constitution, protecting the constitutional rights of citizens, and strengthening the checks and balances mechanism in a democratic system. The method used is normative legal research with a legislative, conceptual, and case approach through analysis of constitutional provisions, laws and regulations, and Constitutional Court decisions. The results of the study show that judicial review is an important instrument in preventing the birth of laws that are contrary to the constitution and ensuring that the administration of the state runs according to the principles of the state of law. However, its effectiveness is influenced by the independence of the institution, the consistency of the decisions, and the compliance of the lawmakers with the decisions of the Constitutional Court. In conclusion, judicial review contributes significantly to strengthening constitutional democracy in Indonesia. Therefore, it is necessary to strengthen the mechanism for

implementing the Constitutional Court's decisions and increase constitutional awareness among state administrators so that the constitutional supervision function can run optimally.

Keywords *judicial review, Constitutional Court, constitutional democracy, state of law, checks and balances*

A. Introduction

The establishment of the Constitutional Court in Indonesia cannot be separated from the grand agenda of constitutional reform after the collapse of the New Order in 1998 which demanded a more democratic, transparent, and upholding constitutional constitutional system. Through four amendments to the 1945 Constitution, especially the third amendment in 2001, the Constitutional Court is presented as a constitutional judicial institution that has the authority to test laws against the 1945 Constitution, resolve disputes over the authority of state institutions, decide disputes over election results, decide on the dissolution of political parties, and decide the opinion of the House of Representatives regarding alleged violations of the law by the President and/or Vice President.¹ The presence of the Constitutional Court is intended as a correction to the past when executive power was very dominant and the checks and balances mechanism did not run effectively, so an independent institution is needed to keep the administration of the state in line with the constitution.²

Since its inception, the Constitutional Court has carried out a central role as the guardian of the constitution through the authority to judicial review laws that are considered contrary to the constitution. Through the decision of annulment and interpretation of the norms of the law, the Constitutional Court not only ensures that the legislation product is in line with the principles of democracy, human rights, and the rule of law, but also interprets the constitution progressively with a teleological and sociological approach to remain relevant to the development of society. In various decisions, the Constitutional Court has expanded the meaning of citizens' constitutional rights, for example in the fields of social, economic, and political rights, so that the

¹ Adi Putra, "Peran Mahkamah Konstitusi Dalam Menjaga Keseimbangan Kekuasaan Di Sistem Pemerintahan Indonesia," *Warta Dharmawangsa* 18, no. 4 (Oktober 2024): 1451–62, <https://doi.org/10.46576/wdw.v18i4.5690>.

² Farah Syah Rezah dan Andi Tenri Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia," *SIGn Jurnal Hukum* 4, no. 2 (2022): 247–60, <https://doi.org/10.37276/sjh.v4i2.166>.

constitution is understood as a living document that is able to answer new challenges, including in the era of globalization and digitalization.³

Various previous studies have examined the position of the Constitutional Court as the guardian of the constitution and the protector of human rights, including studies on the history of the establishment of the Constitutional Court, institutional design, and judicial review practices in the Indonesian legal system.⁴ However, many of these studies are still partial, for example, only highlighting one of the Constitutional Court's powers, or have not comprehensively linked judicial review to strengthening constitutional democracy in a broad spectrum, ranging from the protection of citizens' constitutional rights, the monitoring of the quality of electoral democracy, to the problem of implementing decisions at the law-making level and executive board. In addition, there are still limitations in explaining how the dynamics of the Constitutional Court's relationship with other state institutions affect the effectiveness of checks and balances and the quality of democracy itself.

This article seeks to fill this gap by analyzing the judicial review authority of the Constitutional Court and its contribution to strengthening constitutional democracy in Indonesia more comprehensively. The focus of the discussion was directed to three main aspects: first, the role of judicial review in the protection of citizens' constitutional rights; second, the contribution of the Constitutional Court's decision to improving the quality of electoral democracy; and third, the challenges of implementing judicial review decisions in constitutional practice. Thus, this article offers a novelty value in the form of a comprehensive mapping of how the judicial review of the Constitutional Court works as a corrective and constructive instrument for the formation of law and the strengthening of constitutional democracy, while highlighting the factors that hinder its effectiveness.

This study uses a normative legal research method that focuses on the analysis of the legal norms that govern the authority of the Constitutional Court in conducting judicial review in the Indonesian

³ Universitas Sebelas Maret, Surakarta dan Yazid Bustomi, "Politik Hukum Putusan MK No. 46/PUU-VIII/2010 sebagai Upaya Pembangunan Hukum Nasional," *Jurnal Ilmiah Hukum dan Hak Asasi Manusia* 3, no. 1 (Juli 2023): 9–20, <https://doi.org/10.35912/jihham.v3i1.1795>.

⁴ Diyar Ginanjar Andiraharja, "Judicial Review oleh Mahkamah Konstitusi sebagai Fungsi Ajudikasi Konstitusional di Indonesia," *Khazanah Hukum* 3, no. 2 (April 2021): 70–79, <https://doi.org/10.15575/kh.v3i2.9012>.

constitutional system. The approach used includes a statute approach by examining the provisions of the Constitution of the Republic of Indonesia in 1945 as well as laws and regulations related to the authority of the Constitutional Court, a conceptual approach through a study of the concept of the state of law, constitutional democracy, and judicial review, as well as a case approach by analyzing several Constitutional Court decisions relevant. The legal materials used in this study consist of primary legal materials in the form of laws and regulations and decisions of the Constitutional Court, as well as secondary legal materials in the form of books, scientific journals, and literature related to constitutional law. All of these legal materials are analyzed qualitatively to gain a comprehensive understanding of the role of judicial review of the Constitutional Court in strengthening constitutional democracy in Indonesia.

B. The Position of the Constitutional Court in the Indonesian Constitutional System

The Constitutional Court (MK) is one of the state institutions formed as a result of the amendment of the 1945 Constitution, which is part of the reform of the government system to strengthen the principles of the rule of law and democracy. The presence of the Constitutional Court signifies a major shift in Indonesia's direction towards constitutional supremacy, where the constitution becomes the supreme law that binds all state institutions without exception.⁵ In the order of government, the Constitutional Court has a position on par with other high institutions, but has a special responsibility as the protector of the constitution and the final interpreter of the constitution. Therefore, discussing the position of the Constitutional Court is very important so that we can understand its crucial function in maintaining the balance of power, upholding the principle of mutual supervision between institutions, and ensuring that all state activities remain in accordance with the provisions of the constitution that have been set. Without a strong Constitutional Court, there is a risk that our system can become irregular and unfair to society.⁶

⁵ Selamat Sentosa Hasibuan, Nurul Rizki, dan Ivanda Yusuf Siregar, "Peran Mahkamah Konstitusi dalam Penegakan Hukum dan Mempertahankan Keseimbangan Kekuasaan dalam Sistem Pemerintahan Indonesia," *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 5 (September 2024), <https://doi.org/10.47467/elmujtama.v4i5.3588>.

⁶ Putra, "Peran Mahkamah Konstitusi Dalam Menjaga Keseimbangan Kekuasaan Di Sistem Pemerintahan Indonesia."

1. Background of the Establishment of the Constitutional Court

The establishment of the Constitutional Court (MK) is closely related to major changes in the Indonesian government system after the collapse of the New Order regime in 1998. The reform also expresses a strong desire to create a more democratic, transparent, and constitutionally compliant state system. One of the main things that was done was to amend the 1945 Constitution of the Republic of Indonesia through four amendments between 1999 and 2002.⁷ The third amendment, which was implemented in 2001, became an important point because it added the Constitutional Court as a new institution in the branch of judicial power, through Article 24 paragraph (2) and Article 24C of the 1945 Constitution. The regulation clearly authorizes the Constitutional Court to conduct legal testing of the 1945 Constitution, resolve disputes between state institutions, decide on the dissolution of political parties, resolve disputes over election results, and render decisions on the opinion of the House of Representatives regarding alleged violations of the law committed by the President or Vice President.

Historically, the formation of the Constitutional Court was motivated by a long experience in which executive power was very dominant during the New Order which led to the weakening of the constitutional oversight mechanism. During that period, the legislative and judicial institutions tended to be in the shadow of the president's power, so that the function of checks and balances between the branches of power could not run smoothly.⁸ Constitutional practices such as the issuance of Supersemar 1966 and the establishment of the DPR-GR are clear examples of how state power can be concentrated without effective constitutional supervision. This situation drives the urgent need for an independent institution that can maintain the supremacy of the constitution and protect the rights of citizens from the risk of abuse of power.⁹

⁷ Damrah Mamang dan Hamdan Zoelva, *Strengthening Presidentialism in Indonesia After the Amendment to the 1945 Constitution of the Republic of Indonesia*, 8, no. 7 (2023).

⁸ "Peran Dan Implementasi Dpr Sebagai Bentuk Checks And Balances Terhadap Kebijakan Kepala Otorita Ikn," *Jurnal Konstitusi dan Demokrasi* 3, no. 2 (Desember 2023), <https://doi.org/10.7454/JKD.v3i2.1308>.

⁹ Rezah dan Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia."

Prior to the existence of the Constitutional Court, the authority to test laws and regulations on the constitution was limited to the Supreme Court. Prior to the existence of the Constitutional Court, the authority to test laws and regulations on the constitution was limited to the Supreme Court. However, the system is considered less effective because the Supreme Court focuses more on cassation court affairs and checking regulations under the law. Therefore, the establishment of the Constitutional Court adopted the constitutional court model that had developed in many countries, especially the model from Continental Europe pioneered by Hans Kelsen. This model makes the constitutional judiciary a specialized institution that has the authority to test whether a law is constitutional, both general and concrete.¹⁰ The implementation of the model aims to create a more systematic, professional, and independent constitutional oversight system.

In its development, the Constitutional Court has played a strategic role in building Indonesia's constitutional democracy. Based on the Constitutional Court's annual report, from its inception to the mid-2020s, this institution has canceled many legal rules that are not in accordance with the 1945 Constitution. These rulings not only make the law more effective, but also strengthen the protection of citizens' rights and ensure the highest constitutional principles in the Indonesian system of government.¹¹

2. *The Constitutional Court as the Guardian of the Constitution*

The Constitutional Court has a fundamental role as the guardian of the constitution, which is the institution tasked with maintaining the authenticity and supreme power of the 1945 Constitution as the highest law in the country. This function is carried out through the authority of judicial review on laws that are considered contrary to the constitution.¹² Through this method, the Constitutional Court ensures that all legislators' work remains in accordance with constitutional values, such

¹⁰ . Rudy, Ryzal Perdana, dan Rudi Wijaya, "The Recognition of Customary Rights by Indonesian Constitutional Court," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (Mei 2021): 308, <https://doi.org/10.36941/ajis-2021-0086>.

¹¹ Diya Ul Akmal dan Dea Linta Arlianti, "Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi," *Mulawarman Law Review*, 30 Juni 2022, 49–70, <https://doi.org/10.30872/mulrev.v7i1.780>.

¹² Rezah dan Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia."

as the protection of human rights, democratic principles, and the rule of law.

As the guardian of the constitution, the Constitutional Court not only plays a role in formally examining legal norms, but also interprets the constitution progressively and contextually. The interpretation of the constitution by the Constitutional Court often uses a teleological and sociological approach that considers the development of society, the values of Pancasila, and the challenges of globalization. This approach shows that the constitution is understood as a flexible legal document and can keep up with the changing times. Thus, the Constitutional Court has an important role to maintain the relevance of the constitution in the midst of the current social and political dynamics.¹³

In addition, the Constitutional Court's decision is final and applies to all people and institutions (*erga omnes*), so it cannot be challenged again. These characteristics strengthen the Constitutional Court's position as the main guardian of constitutional supremacy while ensuring legal certainty. In practice, the Constitutional Court also provides broad access to the public to apply for judicial review, thereby strengthening public participation in constitutional supervision.¹⁴ Through this mechanism, citizens have the means to challenge legal norms that are perceived to be detrimental to their constitutional rights.

The role of the Constitutional Court as the guardian of the constitution is increasingly evident from various decisions related to the protection of citizens' social, political, and economic rights. For example, several Constitutional Court rulings related to the right to health during the COVID-19 pandemic show how the Constitutional Court plays a role in ensuring that state policies continue to respect the principles of human rights and social justice. Other decisions related to setting the requirements for the candidacy of national leaders also reflect the role of the Constitutional Court in maintaining a balance between political stability and the principles of electoral democracy.¹⁵

¹³ El Renova Ed Siregar dan Adya Paramita Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi: Perspektif Konflik Dan Kolaborasi," *JURNAL USM LAW REVIEW* 7, no. 2 (Juni 2024): 729–39, <https://doi.org/10.26623/julr.v7i2.8833>.

¹⁴ Andiraharja, "Judicial Review oleh Mahkamah Konstitusi sebagai Fungsi Ajudikasi Konstitusional di Indonesia."

¹⁵ Muhammad Fajar Sidiq Widodo, Munajad Munajad, dan Bahru Rosyid Bazla, "Judicial Review terkait Presidential Threshold di Mahkamah Konstitusi dalam Optik Hak Asasi Manusia," *Verfassung: Jurnal Hukum Tata Negara* 1, no. 2 (Desember 2022): 181–204, <https://doi.org/10.30762/vjhtn.v1i2.188>.

3. *The Relationship of the Constitutional Court with Other State Institutions*

In Indonesia's constitutional system, the relationship between the Constitutional Court and other state institutions, especially the House of Representatives and the President, reflects the checks and balances mechanism that is the foundation of a modern democratic state. The House of Representatives together with the President has the authority to make laws, while the Constitutional Court has the authority to test the constitutionality of the law.¹⁶ This relationship creates a horizontal surveillance system that aims to prevent the dominance of one of the branches of state power.

In practice, the relationship between the Constitutional Court and the legislative and executive institutions often gives rise to complex political and legal dynamics. Constitutional Court decisions that cancel or change legal norms often cause political reactions, especially when it comes to strategic regulations such as economic policy, employment, or the eradication of corruption.¹⁷ However, these dynamics reflect the running of a healthy constitutional democratic system, where each branch of power supervises and balances each other.

In addition, the Constitutional Court also has the authority to resolve authority disputes between state institutions whose authority is given by the 1945 Constitution. This authority places the Constitutional Court as a constitutional mediator in maintaining harmonization of relations between state institutions.¹⁸ In some cases, the Constitutional Court has resolved disputes between the House of Representatives and the DPD as well as between independent state institutions and other branches of power. The settlement of these disputes contributes to creating legal certainty and stability of the government system.

In the perspective of Montesquieu's theory of separation of powers adapted in the Indonesian constitutional system, the

¹⁶ Tohadi Tohadi dan Dian Eka Prastiwi, "Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks And Balances," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 2022): 19, <https://doi.org/10.33331/rechtsvinding.v11i1.849>.

¹⁷ Basuki Kurniawan dkk., "Controversy of Constitutional Court's Role as Positive Legislator in Decision 90/PUU-XXI/2023," *Fenomena* 24, no. 1 (Mei 2024): 1–14, <https://doi.org/10.35719/fenomena.v24i1.192>.

¹⁸ Putra, "Peran Mahkamah Konstitusi Dalam Menjaga Keseimbangan Kekuasaan Di Sistem Pemerintahan Indonesia."

Constitutional Court functions as a balance between the legislative, executive, and judicial branches of power.¹⁹ Although the Constitutional Court's decision has a very strong position, this institution cannot be considered as absolute power because it remains within the framework of the constitution. Instead, the Constitutional Court acts as a catalyst that ensures that all branches of state power exercise their authority in accordance with the principles of constitutional democracy and the rule of law.²⁰

C. Judicial Review Authority of the Constitutional Court

One of the Constitutional Court's main strengths is its ability to re-examine laws to bring them into line with the 1945 Constitution, known as judicial review. This function is essential in the modern system of government to ensure that all legal regulations made do not conflict with the constitution which is the supreme law. Through this mechanism, the Constitutional Court functions as a supervisor of the power of the House of Representatives and the President, as well as protecting the constitutional rights of citizens so that no one is harmed carelessly.²¹ In practice, however, this power often sparks debate about how far the judiciary should be involved in public policy, especially when the Constitutional Court's decision is considered to be overstepping the bounds by creating new norms that are actually the domain of lawmakers. This debate gave rise to a discussion about judicial activism in judicial review. Therefore, the analysis of this power includes not only its legal basis and scope, but also its theoretical and practical implications for the relationship between state institutions in the Indonesian constitutional system. This is important so that we can understand whether judicial review can maintain a balance or actually

¹⁹ Hasibuan, Rizki, dan Siregar, "Peran Mahkamah Konstitusi dalam Penegakan Hukum dan Mempertahankan Keseimbangan Kekuasaan dalam Sistem Pemerintahan Indonesia."

²⁰ Rezah dan Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia."

²¹ Agung Tri Wicaksono dkk., "Praktik Inkonstitusional Pemberhentian Hakim Konstitusi pada Mahkamah Konstitusi Republik Indonesia," *Verfassung: Jurnal Hukum Tata Negara* 2, no. 1 (Juni 2023): 1–24, <https://doi.org/10.30762/vjhtn.v2i1.217>.

create new problems. Without a deep understanding, judicial review may become a source of tension rather than a truly beneficial solution.²²

1. Understanding Judicial Review

In theory, judicial review is a mechanism to check the rule of law carried out by judicial institutions against legal regulations, to see the conformity between the higher rule of law, especially the constitution which is the highest law in the modern legal state. The concept of judicial review comes from the principle of constitutional supremacy, which makes the constitution a source of legitimacy for all legal regulations and government actions.²³

Historically, the concept of judicial review first emerged in the United States through the Supreme Court's decision in the case of *Marbury v. Madison* in 1803, presided over by Chief Justice John Marshall.²⁴ The ruling affirmed that the court has the right to declare a law invalid if it is contrary to the constitution. This principle ultimately became an important basis for a constitutional democracy, as it provided a guarantee that the power of legislators was not absolute.

In Indonesia, judicial review is carried out by the Constitutional Court as a constitutional guardian institution. The Constitutional Court has a crucial role in ensuring that laws made by the House of Representatives together with the President do not contradict the 1945 Constitution, as well as protecting the rights of citizens from the risk of abuse of authority by lawmakers. The existence of the Constitutional Court shows a major change in the Indonesian system of government, from parliamentary dominance to constitutional supremacy after reform.

Conceptually, judicial review is often distinguished from constitutional review. Judicial review has a wider scope because it can be carried out by ordinary courts on various types of legal regulations, while constitutional review is carried out specifically for the testing of

²² Andiraharja, "Judicial Review oleh Mahkamah Konstitusi sebagai Fungsi Ajudikasi Konstitusional di Indonesia."

²³ Ahmad Fauzan, Ayon Diniyanto, dan Abdul Hamid, "Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court," *Journal of Law and Legal Reform* 3, no. 3 (Juli 2022): 403–30, <https://doi.org/10.15294/jllr.v3i3.58317>.

²⁴ South East European University, Tetovo, Republic of North Macedonia dan Blerton Sinani, "Global Patterns of Constitutional Judicial Review Systems: Two Major Models of Constitutional Judicial Review in the World," *Juridical Tribune - Review of Comparative and International Law* 14, no. 1 (Maret 2024): 156–73, <https://doi.org/10.62768/TBJ/2024/14/1/10>.

laws against the constitution carried out by constitutional courts.²⁵ In the Indonesian constitutional system, the Constitutional Court conducts constitutional review for laws against the 1945 Constitution, while the Supreme Court conducts judicial review for regulations under the law against laws.²⁶

2. *Legal Basis of Judicial Review in Indonesia*

The legal basis regarding the authority of judicial review in the Constitutional Court is regulated directly in the constitution through Article 24C paragraph (1) of the 1945 Constitution, which states that the Constitutional Court has the right to adjudicate at the first and last level, with a final decision, to test whether the law is compatible with the Constitution.²⁷ This rule makes the Constitutional Court have official legitimacy as an institution that maintains the constitution, as well as control of legal products from legislators so that they remain in accordance with constitutional values.

In addition, Article 24C of the 1945 Constitution also gives additional authority to the Constitutional Court, such as resolving disputes between state institutions, deciding on the dissolution of political parties, and resolving disputes over election results. These authorities show that the Constitutional Court has an important role to maintain democratic stability and ensure the implementation of the principle of checks and balances between state institutions.²⁸

More detailed arrangements regarding the judicial review authority of the Constitutional Court are contained in Law Number 24 of 2003 concerning the Constitutional Court, which has been amended several times, most recently through Law Number 7 of 2020. The law fully regulates how to submit an application, the trial process, and the types of legal testing that can be carried out by the Constitutional Court.²⁹

These rules also make the independence of the Constitutional Court as a constitutional judicial institution stronger. This independence is the main requirement for upholding constitutional supremacy,

²⁵ South East European University, Tetovo, Republic of North Macedonia dan Sinani.

²⁶ Andiraharja, "Judicial Review oleh Mahkamah Konstitusi sebagai Fungsi Ajudikasi Konstitusional di Indonesia."

²⁷ "Pasal 24C ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945".

²⁸ Wira Purwadi dkk., "Putusan Konstitusional Demokratis Terhadap Sengketa Pemilu Serentak Menurut Fiqih Siyasah," *Al-Mizan* 18, no. 2 (Desember 2022): 225–42, <https://doi.org/10.30603/am.v18i2.2058>.

²⁹ Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

because the Constitutional Court's decision can cancel legal products from political institutions.³⁰ Thus, the existence of a solid legal basis, the authority of judicial review is not only based on theory, but also effective in the practice of the Indonesian government system.

3. *Scope of Legal Testing*

The scope of legal testing by the Constitutional Court includes two main types, namely formal testing and material testing. Formal testing focuses on the law-making process, such as testing whether the procedures for discussion, ratification, and involvement of authorized institutions are in accordance with the rules in Article 20, Article 21, and Article 22 of the 1945 Constitution. The goal is to ensure that laws are formed through transparent and participatory democratic means.³¹

In practice, the Constitutional Court shows that there is an expansion of interpretation in formal testing. For example, in the Constitutional Court's Decision Number 145/PUU-XXI/2023, the Constitutional Court stated that formal testing does not only look at the stages of lawmaking, but also procedural aspects that can affect the legitimacy of the rule of law itself.³² This shows that the Constitutional Court is active in maintaining the quality of laws at the national level.

Meanwhile, the material test focuses on the content or substance of the law, to assess whether the norm is not in accordance with constitutional principles, such as the protection of human rights, democracy, and the principle of the rule of law. Material testing is carried out by constitutional interpretation methods which include textual, historical, systematic, and teleological approaches.³³

Material testing has a great influence on the development of the law in Indonesia. For example, in checking the Job Creation Law, the Constitutional Court assessed that there was a risk of violating the

³⁰ Siregar dan Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi."

³¹ Angga Prastyo, "Limitation Of Meaningful Participation Requirements In The Indonesian Law-Making Process," *Jurnal Hukum dan Peradilan* 11, no. 3 (Desember 2022): 405, <https://doi.org/10.25216/jhp.11.3.2022.405-436>.

³² Putusan Mahkamah Konstitusi Nomor 145/PUU-XXI/2023.

³³ Ismail Hasani, Halili Halili, dan Vishalache Balakrishnan, "Undelivered constitutional justice? Study on how the decisions of the Constitutional Court of the Republic of Indonesia are executed," *Jurnal Civics: Media Kajian Kewarganegaraan* 19, no. 1 (Mei 2022): 45–52, <https://doi.org/10.21831/jc.v19i1.48378>.

principles of community participation and workers' rights.³⁴ A ruling like this shows that judicial review is not only a mechanism for assessing the rule of law, but also a tool to protect the constitutional rights of citizens.

4. Legal Testing Procedures

The process of testing the law at the Constitutional Court begins with the submission of an application from a party that has legal standing. Based on Article 51 of the Constitutional Court Law, the parties who can submit the application include Indonesian citizens, indigenous peoples, public or private legal entities, and state institutions whose constitutional rights are harmed because the law applies.³⁵

After the application is submitted, the Court conducts an administrative examination to ensure the completeness of the documents. The next stage is a preliminary examination to assess the feasibility of the application and the applicant's legal standing. If the application is declared eligible, the trial will proceed to the evidentiary stage involving witness statements, experts, as well as statements from the House of Representatives and the government as lawmakers.

The Constitutional Court trial is open to the public as a form of transparency of the constitutional judiciary. After all stages of the trial were completed, the constitutional judge conducted a closed deliberation to formulate a verdict. Based on the judicial practice of the Constitutional Court, the settlement of judicial review cases is generally carried out within a maximum period of 90 working days from the time the case is registered.³⁶

Decisions from the Constitutional Court are irreversible in nature and must be fully obeyed, so there is no possibility of appeals or other legal remedies against them.³⁷ Decisions issued by the Constitutional Court can be accepted, rejected, or declared unfit for processing. Moreover, this institution is also authorized to issue rulings declaring a rule constitutional with certain conditions or unconstitutional with

³⁴ Anggita Mustika Dewi, "Dinamika Pengaturan Kriteria Pengalihfungsian Lp2b Sampai Dengan Berlakunya Undang-Undang Cipta Kerja," *Refleksi Hukum: Jurnal Ilmu Hukum* 7, no. 1 (Desember 2022): 83–102, <https://doi.org/10.24246/jrh.2022.v7.i1.p83-102>.

³⁵ Pasal 51 Undang-Undang Mahkamah Konstitusi.

³⁶ Akmal dan Arlianti, "Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi."

³⁷ Antoni Putra, "Sifat Final Dan Mengikat Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang," *Jurnal Yudisial* 14, no. 3 (Maret 2022): 291, <https://doi.org/10.29123/jy.v14i3.425>.

certain conditions, and in some cases, even creating new rules to cover loopholes in the law. The decision of the Constitutional Court applies to all people without exception and must be followed by all the people and state institutions, which ultimately helps to reinforce the application of the principle that the constitution is supreme.³⁸

D. The Role of Judicial Review in Strengthening Constitutional Democracy

In a country like Indonesia that implements constitutional democracy, the constitution is not just a legal document, but also serves as a tool to limit government power and protect citizens' rights from abuse. In this case, the role of judicial review carried out by the Constitutional Court is very significant to ensure that democratic principles are implemented in accordance with the values contained in the constitution. Constitutional Court decisions often have a direct impact on the quality of our democracy, whether through the protection of human rights, the enforcement of true justice, or the strengthening of the system of checks and balances between state institutions, so that no one has excessive power.³⁹ Therefore, the discussion of the role of judicial review is very important to evaluate how effectively the Constitutional Court acts as a guardian of democracy and the protector of constitutional supremacy in Indonesia. Without this role, our democracy has the potential to become weak and can easily be influenced by unhealthy political interests, ultimately to the detriment of society. So, it is important for us to understand how the Constitutional Court through judicial review helps to keep the government system fair and in accordance with the country's policy.

1. Protection of Citizens' Constitutional Rights

The constitutional court acts as the main guardian of citizens' constitutional rights through its authority to recheck laws that may restrict or even deprive people of their basic rights.⁴⁰ In a country that

³⁸ Rezah dan Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia."

³⁹ Achmadudin Rajab, "Kewenangan Komisi Pemilihan Umum Dalam Mengaktifkan Kembali Anggota Komisi Pemilihan Umum," *JURNAL USM LAW REVIEW* 4, no. 1 (Juni 2021): 343–61, <https://doi.org/10.26623/julr.v4i1.2702>.

⁴⁰ Tarsan Umarama, "Constitutional Question di Mahkamah Konstitusi Sebagai Pelindung Hak Konstitusional Warga Negara Perspektif Siyasah Qadlaiyyah," *KRTHA BHAYANGKARA* 15, no. 1 (Mei 2021): 54–68, <https://doi.org/10.31599/krtha.v15i1.511>.

adheres to constitutional democracy such as Indonesia, the protection of human rights and political rights is the main sign that the democratic system is doing well. Judicial review creates a mechanism for individuals or groups of people to be able to challenge the rule of law that is considered irrelevant to the constitution, thus increasing access to constitutional justice, and can prevent systemic discrimination in the public policy-making process.⁴¹

This role is relevant to Article 28I of the 1945 Constitution, which expressly states that human rights are fundamental rights that cannot be reduced under any circumstances, including the right to life, the right to religion, and the right to be free from discriminatory treatment.⁴² Through these rulings, the Constitutional Court often develops a way of interpreting citizens' constitutional rights with an advanced approach, considering the constitution as a living document that must be able to respond to the social changes of today's society.

The role of protecting constitutional rights is clearly seen from the example of the Constitutional Court Decision Number 20/PUU-XXI/2023, which canceled the expansion of the prosecutor's authority to file a review (PK).⁴³ The Constitutional Court considered that the expansion could violate the principle of legal certainty and the protection of the human rights of convicts. The ruling explains how important it is to strike a balance between law enforcement and the protection of citizens' civil rights in the criminal justice system. Therefore, the Constitutional Court not only maintains the rules, but also helps citizens so that their rights are not trampled on.⁴⁴

In addition, the test of the Electronic Information and Transaction Law (UU ITE) decided by the Constitutional Court in 2025 shows the Court's role in strengthening freedom of expression as a pillar of democracy. In the decision, the Court placed restrictions on the application of defamation offenses so that they are not used repressively

⁴¹ Tanto Lailam dan Putri Anggia, "The Indonesian Constitutional Court Approaches the Proportionality Principle to the Cases Involving Competing Rights," *LAW REFORM* 19, no. 1 (Agustus 2023): 110–27, <https://doi.org/10.14710/lr.v19i1.54087>.

⁴² Pasal 28I Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

⁴³ Putusan Mahkamah Konstitusi Nomor 20/PUU-XXI/2023.

⁴⁴ Rezah dan Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia."

by state institutions against citizens, thereby strengthening the guarantee of freedom of opinion in the digital space.⁴⁵

Through these various rulings, the Constitutional Court not only acts as an examiner of the constitutionality of laws, but also as an institution that develops progressive standards of human rights protection. Judicial review in this context is an important instrument in strengthening constitutional democracy by ensuring that state power is always subject to the principle of protecting citizens' rights.⁴⁶

2. Strengthening the Principle of the Rule of Law

Judicial review itself can be likened to a super-important tool for making the principle of the state law (*rechtsstaat*) really work, where the law itself is the main foundation for all state power activities.⁴⁷ In a constitutional democratic system, the Constitutional Court plays a role as a strict supervisor of the legislative work of the House of Representatives and the President, so that all rules do not go off the constitutional rail.⁴⁸

Through the power of judicial review, the Constitutional Court can directly invalidate parts of the law that are in fact incompatible with the principle of the rule of law, such as legal certainty, justice, and the protection of human rights that should not be ignored. This function is not only corrective by canceling incorrect rules, but also preventive because it encourages lawmakers to be more careful and always keep constitutional values in mind when drafting new laws.⁴⁹

For example, when the Constitutional Court examined the Job Creation Law, they declared that the law was conditionally

⁴⁵ Firman Satrio Hutomo, "Pertanggungjawaban Pidana Pencemaran Nama Baik Melalui Media Sosial," *Jurist-Diction* 4, no. 2 (Maret 2021): 651, <https://doi.org/10.20473/jd.v4i2.25783>.

⁴⁶ Rahmad Satria, "Judicial Review and Its Role in Safeguarding Constitutional Rights in Modern Democracies," *Riwayat: Educational Journal of History and Humanities* 8, no. 1 (Januari 2025): 860–71, <https://doi.org/10.24815/jr.v8i1.44832>.

⁴⁷ Indah Dwi Qurbani dan Zamzabila Abdillah Syakur, "Implementasi Prinsip Negara Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia: Studi Perbandingan Dengan Amerika Serikat," *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara dan Hukum Administrasi Negara* 1, no. 1 (Desember 2023): 485–516, <https://doi.org/10.55292/03vrfy61>.

⁴⁸ Hasibuan, Rizki, dan Siregar, "Peran Mahkamah Konstitusi dalam Penegakan Hukum dan Mempertahankan Keseimbangan Kekuasaan dalam Sistem Pemerintahan Indonesia."

⁴⁹ Akmal dan Arlianti, "Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi."

unconstitutional. The reason is that the law-making process does not involve meaningful public participation, as well as the risk of harming workers' rights and environmental conditions.⁵⁰ The decision finally forced the lawmakers to justify the procedures and content of the law to be more in line with the values of the constitution, so that it is no longer done carelessly.

Thus, judicial review helps strengthen the hierarchy of laws and regulations, where the 1945 Constitution remains the supreme law. This is important to keep all legal rules consistent with each other, and ultimately stabilize the democratic system. Without this mechanism, the law can actually become a tool to legitimize arbitrary political power, by ignoring the principle of the rule of law which should be the grip of all citizens.⁵¹ Through the judicial review mechanism, the Constitutional Court ensures that the law continues to run fairly and is not used arbitrarily.

3. Strengthening the Checks and Balances System

The Constitutional Court has a very important task in maintaining the balance of power between state institutions through a judicial review mechanism. In the modern system of government, the principle of checks and balances is designed to prevent the dominance of one branch of power while ensuring effective mutual supervision between state institutions.⁵²

The decision of the Constitutional Court is final and binding in general (*erga omnes*), so that no further legal remedies can be submitted and apply to all parties. This nature requires legislative and executive institutions to adjust their policies and legal products to be in line with the constitution.⁵³ Thus, the Constitutional Court plays a role as an

⁵⁰ Prastyo, "Limitation of Meaningful Participation Requirements In The Indonesian Law-Making Process."

⁵¹ Qurbani Dan Syakur, "Implementasi Prinsip Negara Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia."

⁵² Tyara Devy Purnamasari dan Jadmiko Anom Husodo, "Constitutional Court as an Actor That Maintains Check and Balance System Through the Judicial Review Process in Indonesia," dalam *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)*, vol. 869, ed. oleh Abdul Kadir Jaelani dkk., Advances in Social Science, Education and Humanities Research (Paris: Atlantis Press SARL, 2024), 628–33, https://doi.org/10.2991/978-2-38476-315-3_85.

⁵³ Rocky Marbun, "Trikotomi Relasi dalam Penetapan Tersangka: Menguji Frasa 'Pemeriksaan Calon Tersangka' Melalui Praperadilan," *Undang: Jurnal Hukum* 4, no. 1 (Juni 2021): 159–90, <https://doi.org/10.22437/ujh.4.1.159-190>.

independent supervisor of the implementation of state power while maintaining the stability of the democratic system.

The role of the Constitutional Court in preventing abuse of power is clear, one of which is in the testing of the Corruption Eradication Commission Law. In a number of decisions, the Court emphasized the importance of maintaining the independence of the KPK as an anti-corruption institution. The weakening of the authority of the KPK is considered to have the potential to disrupt the principles of the rule of law and undermine clean governance, which can ultimately increase the chances of corruption.⁵⁴

Through the authority of judicial review, the Constitutional Court is not only reactive to the applications submitted, but also plays an active role in maintaining the balance of state power. This strengthens the foundations of constitutional democracy and prevents the emergence of authoritarian practices that allow power to run unchecked.⁵⁵ Thus, the Constitutional Court can be seen as the guardian of the constitution that ensures that all branches of power act according to the rules, so that the constitutional system remains stable and the rights of citizens are protected.

4. *The Role of the Constitutional Court in Maintaining the Quality of Electoral Democracy*

The Constitutional Court has a very crucial role in maintaining the quality of electoral democracy through its authority to test laws governing the electoral system.⁵⁶ In a democratic country like Indonesia, elections are the main means for the people to exercise their sovereignty. Therefore, election regulations must be able to ensure the participation of all citizens in a fair, open manner, and provide equal opportunities for political participation without discrimination.

The role of the Constitutional Court in reforming the electoral system is clearly visible, one of which is through Decision Number

⁵⁴ Dominikus Jawa, Parningotan Malau, dan Ciptono Ciptono, "Tantangan Dalam Penegakan Hukum Tindak Pidana Korupsi Di Indonesia," *JURNAL USM LAW REVIEW* 7, no. 2 (Juli 2024): 1006–17, <https://doi.org/10.26623/julr.v7i2.9507>.

⁵⁵ . Surohmat dan Bambang Sudiarto, "Power Reduction in Constitutional Democracy," *KnE Social Sciences*, advance online publication, 5 Januari 2024, <https://doi.org/10.18502/kss.v8i21.14716>.

⁵⁶ Adita Haafizhoh, Az Zahra Fariza, dan Hanny Luthfiywh Afidi, "Analisis Kewenangan Mahkamah Konstitusi Memutus Pencalonan Dewan Perwakilan Daerah Pada Sengketa Hasil Pemilihan Umum 2024," *Qaumiyyah: Jurnal Hukum Tata Negara* 5, no. 2 (Desember 2024): 151–66, <https://doi.org/10.24239/qaumiyyah.v5i2.161>.

90/PUU-XXI/2023 which discusses the age requirements for presidential and vice presidential candidates.⁵⁷ In the ruling, the Court gave a new interpretation of the criteria for national leaders that open up wider opportunities for the younger generation to participate in politics. However, this ruling also sparked debate among academics regarding the limits of constitutional interpretation, as some considered the move to go too far, while others considered it an innovative breakthrough.⁵⁸

In addition, the Constitutional Court also plays an active role in maintaining the integrity of elections through the resolution of disputes over the results of general elections and regional head elections. One important example is the Sabu Raijua Regional Election case related to regional head candidates who have dual citizenship.⁵⁹ In that case, the Court carefully considered the protection of citizens' political rights while maintaining the integrity of the electoral democratic system so as not to be disturbed by procedural errors. This kind of verdict serves to prevent fraud that can damage the fairness of election results.

Overall, the Constitutional Court's decision in the electoral field has a major impact on the legitimacy of democracy. Public trust in the election process has increased due to the existence of an independent dispute resolution mechanism based on the constitution.⁶⁰ Thus, the Constitutional Court not only functions as a constitutional court, but also as a guardian of the quality of electoral democracy that ensures that elections are truly a means of realizing people's sovereignty, not just a place to struggle for power. Without this role, the risk of election injustice and declining public trust in democracy will be even greater.

E. Challenges and Problems in the Implementation of the Constitutional Court Judicial Review

Although it has a very important role, the implementation of judicial review by the Constitutional Court (MK) is inseparable from various challenges and issues, both from legal, political, and institutional

⁵⁷ Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023.

⁵⁸ Kurniawan dkk., "Controversy of Constitutional Court's Role as Positive Legislator in Decision 90/PUU-XXI/2023."

⁵⁹ Sunan Ach. Affandi dan Yudi Widagdo Harimurti, "Analisis Putusan MK Nomor 135/PHP.BUP-XIX/2021 (Studi Kasus Kewarganegaraan Ganda Bupati Terpilih Sabu Raijua)," *INICIO LEGIS* 4, no. 2 (November 2023): 158–66, <https://doi.org/10.21107/il.v4i2.15925>.

⁶⁰ Purwadi dkk., "Putusan Konstitusional Demokratis Terhadap Sengketa Pemilu Serentak Menurut Fiqih Siyasah."

aspects. Relations between state institutions that are sometimes not harmonious, the level of compliance of other institutions with the Constitutional Court's decisions that are not always optimal, and criticism of the risks of judicial activism that can make the Constitutional Court appear to be too intrusive, are all often the subject of debate. In addition, the complexity of the increasingly complicated case and the high public expectations of the performance of the Constitutional Court, make the effectiveness of its authority often hampered.⁶¹ Therefore, it is very important to analyze these challenges in depth so that we understand the obstacles faced by the Constitutional Court in reviewing laws, as well as how we can formulate solutions to improve the effectiveness of judicial review in the Indonesian constitutional system. If this issue is not addressed, the Constitutional Court could become less effective, which in turn could have a negative impact on our democracy and the protection of citizens' rights. This is a challenge that must be faced by all parties to strengthen and maintain the independence of the Constitutional Court, so that the decisions taken really have a positive impact on the country.

1. *The Issue of Judicial Activism*

One of the major challenges that the Constitutional Court often faces when carrying out judicial review tasks is the intense debate on the practice of judicial activism. Judicial activism itself refers to the tendency of judges to interpret the constitution in a very progressive way, even to the point of going beyond the meaning of the constitutional text in the 1945 Constitution.⁶² This is done so that real justice can be achieved and so that the law can adapt to the changes in today's society. This approach is often seen as a consequence of the view that the constitution is a living constitution, which means that it must be flexible and able to adapt to rapid social, political, and economic developments.⁶³

However, on the other hand, the practice of judicial activism is often criticized because it can violate the principle of separation of

⁶¹ Siregar dan Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi."

⁶² Kurniawan dkk., "Controversy of Constitutional Court's Role as Positive Legislator in Decision 90/PUU-XXI/2023."

⁶³ Dicky Eko Prasetyo, "Inventarisasi Putusan Peradilan Adat Sendi sebagai Upaya Memperkuat Constitutional Culture dalam Negara Hukum Pancasila," *Jurnal Hukum Lex Generalis* 2, no. 3 (Maret 2021): 249–73, <https://doi.org/10.56370/jhlg.v2i3.34>.

powers. Within the framework of the constitution, the task of the Constitutional Court is to assess laws, not create new legal norms. When the Constitutional Court gives too broad an interpretation of the constitution and produces new norms, many are worried that the Constitutional Court has violated the limits of the legislator's authority which should be the responsibility of the House of Representatives and the President. This has the potential to lead to unhealthy dominance of the judiciary.⁶⁴

The controversy related to this issue is clearly seen in the Constitutional Court Decision Number 90/PUU-XXI/2023, which discusses the age requirements for presidential and vice presidential candidates.⁶⁵ In the decision, the Constitutional Court added alternative eligibility requirements with experience in certain positions. This decision sparked a polemic because it was considered to create new norms that do not explicitly exist in the law or constitution, as if the Constitutional Court was acting creatively without a strong foundation.

The practice of judicial activism is also seen in the testing of the Job Creation Law, where the Constitutional Court not only declared the law conditionally unconstitutional, but also provided a formulation of new norms and deadlines for lawmakers to make improvements.⁶⁶ This action shows that the Constitutional Court plays the role of a positive legislator, who not only cancels the rules, but also provides direction on how to create new and better norms.

While judicial activism can strengthen the protection of constitutional rights and fill existing legal loopholes, in the absence of oversight, it risks over-dominating judicial power. Therefore, the Constitutional Court needs to maintain a balance between progressive interpretation and the application of the limits mandated by the constitution, so that public legitimacy of its decisions is maintained. Otherwise, the public may doubt whether the Constitutional Court has exceeded the limits of authority, resulting in a decrease in public trust. This is a challenge for the Constitutional Court to act wisely and not too ambitious, in order to maintain the health of democracy for all.

2. Consistency of Constitutional Court Decisions

⁶⁴ Siregar dan Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi."

⁶⁵ Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023.

⁶⁶ Akmal dan Arlianti, "Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi."

One of the challenges that the Constitutional Court (MK) often faces when conducting judicial review is maintaining consistency in every decision taken. Sometimes, we see a change in the way the constitution is interpreted. These changes can be caused by a variety of factors, such as differences in the composition of judges, the emergence of new legal doctrines, and the turbulent political and social situation that affects their perspective.⁶⁷

One of the issues that is often discussed is the change in the Constitutional Court's approach to the parliamentary threshold. In its initial decision, the Constitutional Court tended to adopt a progressive approach that emphasized the principle of fair political representation for all parties. However, in subsequent decisions, they shifted to more emphasis on the stability of the political party system and the effectiveness of the government.⁶⁸ The uncertainty in this attitude raises the question of whether their interpretation of the constitution is really consistent.

Inconsistencies in the Constitutional Court's decisions can have serious consequences for legal certainty. Because the decision of the Constitutional Court is final and binding on all parties (*erga omnes*), changes in the way of interpretation can confuse lawmakers, business people, and the general public.⁶⁹ As a result, regulations become less stable, and public trust in the national legal system can decline drastically, ultimately creating doubts among the public.

To deal with this problem, the Constitutional Court has tried to develop the concept of constitutional jurisprudence as a guideline in making decisions. In recent years, they have increasingly emphasized the importance of consistency through the application of the doctrine

⁶⁷ Sholahuddin Al-Fatih dan Asrul Ibrahim Nur, "Does the Constitutional Court on Local Election Responsive Decisions ?," *Journal of Human Rights, Culture and Legal System* 3, no. 3 (November 2023): 569–96, <https://doi.org/10.53955/jhcls.v3i3.74>.

⁶⁸ Daud Yaferson Dollu dan Rahman N. Fatima, "Problem from MK powerful Number 90/PUU- XII/2023 related to article 169 letter Q Number 7 Year 2017 about general election (Election Law)," *Dynamics of Politics and Democracy* 4, no. 2 (Agustus 2025): 53–61, <https://doi.org/10.35912/dpd.v4i2.3347>.

⁶⁹ Bakti Siahaan, Saleh Sjafai, dan Arfan Tarigan, "Adjudicating Certainty: Paradigms of Finality and Fallibility in the Decisions of Indonesia's Constitutional Court," *International Journal of Research and Innovation in Social Science* IX, no. VI (2025): 1–6, <https://doi.org/10.47772/IJRISS.2025.90600001>.

of precedent, which is to make previous decisions a reference.⁷⁰ However, the application of this concept still faces challenges because the Indonesian legal system has not fully followed the common law tradition as applied in Western countries. Therefore, there needs to be a strengthening of the jurisprudence mechanism so that the interpretation of the constitution is more stable, predictable, and not confusing. With this step, the Constitutional Court is expected to help maintain legal justice so that it does not fluctuate like a roller coaster.

3. *Political Pressure on the Constitutional Court*

The Constitutional Court as a constitutional court institution cannot avoid the risk of political pressure, especially when handling cases related to big interests such as elections, corruption eradication, or state power arrangements. Political pressure can come either directly or indirectly, and this has the potential to undermine the independence of constitutional judges.

In this case, Article 24C of the 1945 Constitution guarantees the independence of the Constitutional Court through a permanent term of office of judges and decisions that are final and cannot be contested.⁷¹ However, the process of electing constitutional judges involving the House of Representatives (DPR), the President, and the Supreme Court often raises concerns about the politicization of the judge's position. If the selection mechanism is not transparent enough, the public's image regarding the independence of the Constitutional Court can become negative.

Controversial cases involving constitutional judges in recent years have shown the importance of strengthening internal oversight through the Constitutional Court's Honorary Assembly. Strengthening the ethical mechanism and making the judicial selection process more open is an important step to maintain the credibility of the Constitutional Court as the guardian of the constitution and the protector of our democracy.⁷²

Finally, the independence of the Constitutional Court is an absolute requirement for judicial review to run effectively. If its independence is weak, the Constitutional Court can be used as a tool

⁷⁰ Yusuf Mulya Kharismawan, Yulia Neta, dan Muhtadi Muhtadi, "The Decision of The Constitutional Court on Verification of Political Parties," *Constitutionale* 4, no. 1 (Maret 2023): 29–48, <https://doi.org/10.25041/constitutionale.v4i1.2789>.

⁷¹ Pasal 24C Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

⁷² Siregar dan Prabandari, "Dinamika Hubungan Antara Mahkamah Agung Dan Mahkamah Konstitusi."

for certain political interests, which in turn can weaken the stability and strength of our constitutional democracy. Therefore, more efforts are needed to prevent this situation, so that the Constitutional Court remains trusted as a fair institution and cannot be influenced by anyone. Without these steps, our legal system has the potential to face chaos, and the rights of citizens can be threatened.

4. Implementation of Constitutional Court Decisions

The last challenge that the Constitutional Court often faces in carrying out judicial review is how these decisions can be implemented properly in the field. In government practice in Indonesia, there are often problems because lawmakers are slow to adjust regulations that have been declared unconstitutional by the Constitutional Court.⁷³

One example that quite stands out is the delay in revising the Law on the Corruption Eradication Commission after the Constitutional Court issued a ruling requesting that the rules be adjusted. This inactivity causes a legal vacuum that is detrimental to the general public, as well as making efforts to eradicate corruption less effective and weak.⁷⁴

In addition, the compliance of state institutions with the Constitutional Court's decision is not always optimal. Although legally the Constitutional Court's decision is final and cannot be contested, there are no strict sanctions for institutions that do not comply.⁷⁵ This leads to a situation where the Constitutional Court's decision is just a rule on paper with no real impact on daily life.

To overcome this problem, it is necessary to strengthen the supervision of the implementation of the Constitutional Court's decision. This includes improving the functions of institutions that link between the Constitutional Court's decisions and related parties, as well as establishing better coordination with the Supreme Court in terms of law enforcement. Reform in the implementation of the Constitutional

⁷³ Muhammad Siddiq Armia dkk., "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?," *Journal of Indonesian Legal Studies* 7, no. 2 (Desember 2022): 525–56, <https://doi.org/10.15294/jils.v7i2.56335>.

⁷⁴ Muhammad Rizky Setiadi dkk., "Youth and Creativity of the Anti-Corruption Movement," *Journal of Creativity Student* 7, no. 2 (Desember 2022): 179–210, <https://doi.org/10.15294/jcs.v7i2.38199>.

⁷⁵ Sekar Anggun Gading Pinilih, Retno Saraswati, dan Ahmad Muzaki, "Disobedience of The Constitutional Court's Decision by The Supreme Court," *Pandecta Research Law Journal* 17, no. 2 (Desember 2022): 178–88, <https://doi.org/10.15294/pandecta.v17i2.36196>.

Court's decision is an important step so that judicial review is not only trapped in theory, but also really effective in strengthening constitutional democracy in our country.⁷⁶ Otherwise, the Constitutional Court's decision could be in vain, and the public will feel the negative impact.

F. Conclusion

This article concludes that the judicial review authority in the Constitutional Court serves as an important tool to protect constitutional supremacy and strengthen constitutional democracy in Indonesia. This is because judicial review is able to correct laws that are not in accordance with the 1945 Constitution and protect the constitutional rights of citizens.⁷⁷ This authority is in line with the purpose of research which shows that judicial review plays a role in balancing power between state institutions and maintaining the principle of justice in the law. However, its effectiveness depends heavily on the independence of the Constitutional Court, the consistency of the decisions taken, and the attitude of lawmakers towards the Constitutional Court's decisions.⁷⁸ Therefore, these findings can be implemented by strengthening the mechanism for implementing the Constitutional Court's decisions, improving the quality of legislative processes in accordance with the constitution, and building a constitutional culture among state officials. The goal is that judicial review not only functions as a tool for improvement in the future, but also as a prevention to keep democracy healthy and not easily disturbed. If all these steps are taken seriously, the Constitutional Court can truly become a fortress that protects law and democracy from narrow political influence, so that our system remains strong and the public does not become a victim.

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⁷⁶ Dona Budi Kharisma, "Kepatuhan Dan Kesadaran Hukum Kritis: Kajian Putusan Mahkamah Konstitusi Nomor 50/PUU-VI/2008," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 2022): 37, <https://doi.org/10.33331/rechtsvinding.v1i1.832>.

⁷⁷ Rezah dan Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia."

⁷⁸ Andiraharja, "Judicial Review oleh Mahkamah Konstitusi sebagai Fungsi Ajudikasi Konstitusional di Indonesia."

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