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The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards

Novendri M. Nggilu [a, b] ✉, **Zulkifli Zulkifli** [c], **Yassine Chami** [d], **Indra Perwira** [a], **Ali Abdurahman** [a]

[a] Faculty of Law, Universitas Padjadjaran, Indonesia
[b] Faculty of Law, Universitas Negeri Gorontalo, Indonesia
[c] Faculty of Law, Universitas Pasir Pengaraian, Indonesia
[d] College of Law, Abu Dhabi University, United Arab Emirates

✉ corresponding email: novendrilawfaculty@ung.ac.id

Abstract

The judicial review of constitutional amendments remains underexplored in Indonesia's legal framework despite its recognition in global constitutional discourse. Several jurisdictions, including India, Germany, and Colombia, Turkey have established judicial safeguards to prevent amendments from undermining fundamental constitutional principles. This study aims to propose a judicial review model for constitutional amendments in Indonesia to ensure the protection of constitutional identity and democratic principles. Using a comparative legal approach, this study examines international judicial practices alongside a normative analysis of Indonesia's constitutional framework. The findings highlight three key justifications for judicial review in Indonesia: historical, philosophical-juridical, and sociological. Historically, constitutional transitions have often violated procedural norms, as seen in the 1959 Presidential Decree, which reinstated the 1945 Constitution through executive action. Philosophically, Pancasila, as Indonesia's foundational

ideology, holds a supra-constitutional status and should serve as a benchmark for amendment review. Sociologically, the absence of review mechanisms exposes constitutional amendments to political manipulation, such as attempts to extend presidential term limits. This study advocates for an a posteriori judicial review model, granting the Constitutional Court the authority to assess amendments post-enactment. This model aligns with international practices and strengthens constitutional safeguards against politically motivated amendments. Implementing such a mechanism would uphold constitutional supremacy, democracy, and the rule of law in Indonesia.

Keywords
Basic Structure, Constitutional Amendment, Judicial Review.

Introduction

The question of whether constitutional amendments themselves can be subjected to judicial review remains an under-theorized and institutionally unaddressed domain within the Indonesian constitutional landscape.[1] Despite its profound theoretical and practical implications in global constitutionalism, this issue has yet to receive systematic treatment within Indonesia's legal framework. In contrast, scholarly and jurisprudential discourses in other jurisdictions—particularly within Southeast Asia—have increasingly interrogated the boundaries of

[1] In searching through scientific articles, discussion of this issue is still very limited compared to discussions of other constitutional issues. Several articles discuss issues directly or indirectly related, including: 1] Nurul Maulinawaty Nadya Dewi, "Perlindungan Terhadap Identitas Konstitusi Indonesia," *Jurnal Poros Hukum Padjadjaran* 2, no. 1 (November 30, 2020): 21–37, https://doi.org/10.23920/jphp.v2i1.265; Mohammad Ibrahim, "Pembatasan Kekuasaan Amendemen Konstitusi: Teori, Praktik Di Beberapa Negara Dan Relevansinya Di Indonesia," *Jurnal Konstitusi* 17, no. 3 (November 10, 2020): 558, https://doi.org/10.31078/jk1735; Dicky Eko Prasetio and Hananto Widodo, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (June 7, 2022): 1–12, https://doi.org/10.37680/almanhaj.v4i1.1478 Even though all of these articles touch on the issue of reviewing the constitutionality of constitutional amendments, they differ from the focus of this article's study, in that the reviewing referred to in this article also covers material aspects of constitutional amendments, not limited to formal aspects alone, and these articles do not discuss comprehensive reviewing design of the constitutionality of constitutional amendments.

constitutional amendability. Among the most influential comparative models is the Indian constitutional experience, particularly the seminal judgment in Kesavananda Bharati v. State of Kerala (1973). In this landmark decision, the Supreme Court of India invalidated a constitutional amendment for the first time and articulated the "basic structure doctrine," positing that certain foundational principles—such as the rule of law, democratic governance, equality, and the separation of powers—form an immutable core of the Constitution that cannot be abrogated, even through formal amendment procedures. This doctrine was further reinforced in Indira Nehru Gandhi v. Raj Narain (1975), emphasizing the philosophical distinction between constituent power and constituted authority, and suggesting that constitutional identity is not entirely at the mercy of political majorities.[2]

The diffusion of the basic structure doctrine across diverse constitutional systems reflects its increasing jurisprudential authority and normative appeal beyond its Indian origin. In Bangladesh, the Supreme Court invoked this doctrine in Anwar Hossain Chowdhury v. Bangladesh (1989),[3] wherein Justice Shahabuddin Ahmed delineated a constellation of constitutional essentials—popular sovereignty, democratic order, separation of powers, and judicial independence—as impervious to amendment. The doctrine's normative footprint has likewise permeated African constitutional adjudication. In Njoya v. Attorney General (2004) in Kenya,[4] the judiciary affirmed that

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[2] David E Landau, Rosalind Dixon, and Yaniv Roznai, "From an Unconstitutional Constitutional Amendment to an Unconstitutional Constitution? Lessons from Honduras," *Global Constitutionalism* 8, no. 1 (March 2019): 40–70, https://doi.org/10.1017/S2045381718000151.

[3] Kawser Ahmed, "Revisiting Judicial Review of Constitutional Amendments in Bangladesh: Article 7B, the *Asaduzzaman* Case, and the Fall of the Basic Structure Doctrine," *Israel Law Review* 56, no. 2 (July 2023): 263–87, https://doi.org/10.1017/S0021223721000297; Ridwanul Hoque, "The Evolution of the Basic Structure Doctrine in Bangladesh: Reflections on Dr. Kamal Hossain's Unique Contribution," *The Indian Journal of Constitutional Law* 10 (2021): 1–23; Novendri M Nggilu et al., "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions," *Estudios Constitucionales* 22, no. 2 (2024).

[4] Yaniv Rozna'i, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, First published in paperback, Oxford Constitutional Theory

constitutional amendments must not compromise the foundational identity and coherence of the constitutional order. This interpretive approach was echoed by Chief Justice Antony R. Gubbay of Zimbabwe, who underscored the sacrosanct nature of human rights provisions embedded within the constitutional architecture. Collectively, these judicial articulations illuminate a transnational constitutional consciousness that privileges the preservation of core democratic values over formalistic proceduralism in constitutional change.[5]

Within the European constitutional tradition, the judicial review of constitutional amendments has evolved into a firmly institutionalized practice, reflecting a mature commitment to the substantive integrity of constitutional norms. The Turkish Constitutional Court, in a notable instance, struck down a 2008 amendment that sought to lift the prohibition on headscarves in public universities, reasoning that such a change contravened the foundational secular character of the Turkish constitutional order.[6] Likewise, the German Federal Constitutional Court has exercised its authority to review constitutional amendments against the backdrop of inviolable constitutional principles. A salient example is found in the aftermath of the 39th amendment in 1993, which curtailed asylum rights under Article 16a. The Court evaluated the amendment in the context of Article 1 of the Grundgesetz—the constitutional guarantee of human dignity, deemed absolute and beyond the reach of amendment.[7] Although the amendment was ultimately upheld, the case exemplifies Germany's entrenched judicial ethos

(Oxford, United Kingdom New York, United States of America: Oxford University Press, 2019).

5 Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, First published in paperback, Oxford Constitutional Theory (Oxford, United Kingdom New York, United States of America: Oxford University Press, 2019).

6 Michael Hein, "Do Constitutional Entrenchment Clauses Matter? Constitutional Review of Constitutional Amendments in Europe," *International Journal of Constitutional Law* 18, no. 1 (May 21, 2020): 78–110, https://doi.org/10.1093/icon/moaa002.

7 Hryhorii Berchenko, Tetiana Slinko, and Oleh Horai, "Unamendable Provisions of the Constitution and the Territorial Integrity of Ukraine," *Access to Justice in Eastern Europe* 5, no. 4–2 (December 13, 2022): 113–27, https://doi.org/10.33327/AJEE-18-5.4-n000447.

wherein constitutional change is subjected not merely to procedural scrutiny, but to a deeper normative evaluation grounded in the foundational identity of the constitutional order.

Latin American jurisdictions also exhibit similar practices. In Colombia, the Constitutional Court annulled a constitutional amendment proposed by President Álvaro Uribe's administration to extend the presidential term limit from two to three terms,[8] reasoning that it undermined the constitutional order by threatening democratic stability. Likewise, in Belize, the Supreme Court invalidated the Sixth Amendment in Bowen v. Attorney General (2008), which sought to exclude petroleum and mineral resources from constitutional property rights protections. The court held that such an amendment contravened fundamental civil rights principles.[9]

In the Southeast Asian context, Malaysia stands out as a jurisdiction where the concept of entrenched or immutable constitutional principles has gradually gained judicial and scholarly recognition. Legal theorists such as H.P. Lee and Yvonne Tew have extensively examined the Malaysian judiciary's evolving engagement with the basic structure doctrine, noting its gradual institutional maturation despite intermittent judicial hesitation.[10] This doctrinal evolution is traceable through a series of landmark decisions, from Kelantan State Government v. Government of Malaya (1963) to the more recent Gandhi Mutho v. Director of the Islamic Religious Department of Perak (2018). In the latter, the Federal Court reaffirmed the authority of civil courts to adjudicate constitutional questions, notwithstanding the insertion of Article 121(1A), which ostensibly curtailed such jurisdiction in favor of the Sharia court system. By invoking the basic structure

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[8] Vicente F. Benítez-R., "Beyond Invalidation: Unorthodox Forms of Judicial Review of Constitutional Amendments and Constitution-Amending Case Law in Colombia," *Revista de Investigações Constitucionais* 9, no. 2 (November 8, 2022): 269, https://doi.org/10.5380/rinc.v9i2.86742.

[9] Richard Albert Tarik Olcay and Malkhaz Nakashidze, "The Formalist Resistance to Unconstitutional Constitutional Amendments," *Hasting Law Journal* 70, no. 3 (2019): 639–70.

[10] Nicola Tommasini, "Judicial Self-Empowerment and Unconstitutional Constitutional Amendments," *International Journal of Constitutional Law* 22, no. 1 (April 16, 2024): 161–90, https://doi.org/10.1093/icon/moae009.

doctrine, the Court signaled a constitutional commitment to the rule of law, judicial independence, and the integrity of constitutional adjudication. This jurisprudential shift suggests a growing receptivity within Malaysia to the principle that constitutional amendments must conform not merely to formal procedural requirements but also to substantive constitutional values that define the normative core of the constitutional order.[11]

The judicial review of constitutional amendments operates as a vital safeguard for the preservation of constitutional identity and the protection of foundational principles against encroachments by transient political majorities. Far from being a merely procedural mechanism, this practice embodies a substantive constitutional logic that guards against arbitrary or opportunistic revisions which threaten to destabilize the normative coherence of the constitutional order. By subjecting amendments to judicial scrutiny, constitutional and supreme courts act as counter-majoritarian institutions that uphold the principles of separation of powers, checks and balances, and the rule of law. In doing so, they ensure that constitutional change remains anchored within the fundamental ethos of the legal system, thereby reinforcing the durability, legitimacy, and moral authority of the constitution itself.[12]

In the Indonesian constitutional context, the imperative for instituting a mechanism to review constitutional amendments is underscored by both historical precedent and normative considerations. A salient example lies in the issuance of the Presidential Decree on July 5, 1959, which unilaterally abrogated the 1950 Provisional Constitution and reinstated the 1945 Constitution. This act, while cloaked in formal legitimacy, constituted a substantive rupture in constitutional continuity and has been widely regarded as an unconstitutional assertion of

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[11] Ibid.

[12] Pan Mohamad Faiz, "Menguji Konstitusionalitas Amandemen Konstitusi," *Majalah Konstitusi*, 2020, https://panmohamadfaiz.com/2020/11/04/menguji-konstitusionalitas-amendemen-konstitusi/; Novendri M. Nggilu, Indra Perwira, and Ali Abdurahman, "Constitutionality Review of Indonesia Constitutional Amendment: History and Future," *Russian Law Journal* 11, no. 2 (n.d.): 117–25.

executive authority.[13] Notably, Vice President Mohammad Hatta described the decree as a coup d'état executed by a lawful institution—an acknowledgment of the act's profound departure from constitutional norms. His critique drew attention to the explicit stipulation in Article 134 of the 1950 Provisional Constitution, which vested the power of constitutional amendment solely in the Constituent Assembly. The 1959 episode thus illustrates the dangers inherent in the absence of institutional checks on constitutional change, reinforcing the need for a formalized review mechanism to uphold the integrity of constitutional transitions and prevent the instrumentalization of foundational legal texts for political ends.[14]

A second foundational rationale for instituting constitutional amendment review in Indonesia lies in the philosophical and juridical significance of the Preamble to the 1945 Constitution, which enshrines Pancasila as the ontological and axiological core of the Indonesian state. As the ideological nucleus of the constitutional order, Pancasila functions not merely as a declarative statement but as a normative compass that informs and constrains all exercises of state power, including constitutional reform. The immutable character of Pancasila resonates with the core logic of the basic structure doctrine, which posits that certain foundational principles—whether explicitly codified or implicitly embedded—must remain beyond the reach of formal amendment procedures. In this light, Pancasila may be construed as embodying Indonesia's own substantive constitutional identity, serving as a principled benchmark for assessing the legitimacy of any proposed constitutional transformation. Establishing a mechanism for constitutional amendment review would thus be consistent with both

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[13] Novendri Nggilu, Indra Perwira, and Ali Abdurahman, "Constitutionality Review of Indonesian Constitutional Amendments: History and Future," *Russian Law Journal* 11, no. 2 (2023), https://doi.org/10.52783/rlj.v11i2.517.

[14] "Law Number 7 of 1950 Concerning Amendments to the Temporary Constitution of the Republic of Indonesia to Become the Provisional Constitution of the Republic of Indonesia" (1950), http://peraturan.bpk.go.id/Details/38102/uu-no-7-tahun-1950; Fakhris Lutfianto Hapsoro and Ismail Ismail, "Interpretasi Konstitusi Dalam Pengujian Konstitusionalitas Untuk Mewujudkan The Living Constitution," *Jambura Law Review* 2, no. 2 (June 19, 2020): 139–60, https://doi.org/10.33756/jlr.v2i2.5644.

Indonesia's constitutional philosophy and comparative constitutional norms.[15]

A third justification, viewed through a sociological lens, highlights the persistent vulnerability of constitutional amendment processes to political instrumentalization. Empirical patterns in Indonesia reveal recurring elite-driven initiatives to alter the constitutional framework in ways that would facilitate executive entrenchment. Notably, discussions surrounding the extension of presidential term limits resurfaced during the concluding phases of both President Susilo Bambang Yudhoyono's and President Joko Widodo's administrations.[16] These episodes exemplify the latent risks inherent in an unguarded amendment process, wherein constitutional reform may be leveraged not as a vehicle for democratic consolidation, but as a means of perpetuating political dominance. Such tendencies reflect the broader sociopolitical reality in which constitutional texts can be subordinated to contingent power interests, thereby undermining the normative foundations of constitutionalism. The establishment of a constitutional amendment review mechanism thus emerges as a necessary institutional safeguard to prevent the erosion of democratic principles and to ensure that constitutional change remains anchored in the public interest rather than partisan ambition.

Although the scholarly discourse on constitutional limitations and the notion of unconstitutional constitutional amendments has gained increasing attention, there remains a significant lacuna in addressing the specific absence of judicial review over constitutional amendments within the Indonesian legal framework.[17] For instance, Mohammad Ibrahim provides a valuable comparative analysis of constitutional

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[15] Jan Petrov, "How to Detect Abusive Constitutional Practices," *European Constitutional Law Review*, May 15, 2024, 1–31, https://doi.org/10.1017/S1574019624000142; Novendri Nggilu et al., "Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia," *Lex Scientia Law Review* 8, no. 1 (September 22, 2024), https://doi.org/10.15294/lslr.v8i1.1901.

[16] Novendri M. Nggilu et al., "Rethinking Indonesian Constitutional Amendments: The Prospects and Perils of Judicial Review," *Journal of Indonesian Legal Studies* 9, no. 2 (December 21, 2024): 1027–66, https://doi.org/10.15294/jils.v9i2.19158.

[17] Ibrahim, "Pembatasan Kekuasaan Amendemen Konstitusi."

constraints across jurisdictions, yet stops short of articulating a concrete institutional design for implementing amendment review in Indonesia. Similarly, the work of Novendri et al. offers important insights into Indonesia's constitutional identity vis-à-vis Islamic legal traditions, but it does not directly confront the structural vulnerabilities posed by unregulated amendment processes, nor does it explore the remedial potential of judicial oversight.[18] Nadya Dewia's contribution underscores the normative imperative of safeguarding constitutional identity; however, her analysis does not extend to a systematic proposal for an institutional and procedural mechanism capable of operationalizing constitutional amendment review. These scholarly gaps point to the need for a more integrated and context-sensitive framework that not only affirms the theoretical legitimacy of such review but also provides a viable blueprint for its institutionalization within Indonesia's constitutional architecture.[19]

A more detailed examination by Novendri et al. offers a comparative overview of judicial review practices concerning constitutional amendments in jurisdictions such as India, Germany, and Colombia.[20] However, the study stops short of situating these comparative insights within the specific socio-legal and political context of Indonesia, thereby overlooking the immediate relevance and normative urgency of institutionalizing such a mechanism domestically. Likewise, an article published in the Journal of Indonesian Legal Studies acknowledges the political risks associated with constitutional amendments—particularly the recurring threat of presidential term extensions—but falls short of articulating a concrete institutional remedy. Against this backdrop, the present study offers a distinctive scholarly contribution by moving beyond abstract theorization toward the formulation of a coherent and operational judicial review model for constitutional amendments within Indonesia's constitutional

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[18] Novendri M Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 480–500.

[19] Maulinawaty Nadya Dewi, "Perlindungan Terhadap Identitas Konstitusi Indonesia."

[20] Nggilu et al., "Judicial Review of Constitutional Amendments."

framework.[21] This research not only underscores the critical necessity of judicial oversight to safeguard democratic integrity and constitutionalism but also advances a comprehensive institutional design that empowers the Constitutional Court to serve as a bulwark against amendments that contravene foundational state principles. By addressing a significant lacuna in the existing literature, the study contributes substantively to the discourse on constitutional resilience and institutional reform in transitional democracies.

Given these considerations, this study aims to conceptualize a design for the judicial review of constitutional amendments in Indonesia. Specifically, it seeks to design a systematic model and institutional structure that would enable the judiciary to exercise constitutional review over amendments, ensuring the protection of Indonesia's constitutional identity and democratic principles. By drawing on comparative legal perspectives, this research contributes to the discourse on constitutionalism and the evolving role of judicial oversight in safeguarding constitutional integrity. This research adopts a comparative legal approach,[22] which is fundamental in assessing the judicial review of constitutional amendments across various jurisdictions. Given that numerous countries have developed institutional mechanisms to review the constitutionality of amendments, comparative analysis allows for the identification of best practices that can be adapted to Indonesia's unique constitutional framework. By examining case studies from jurisdictions such as India, Germany, Colombia, and Turkey, this study seeks to develop a systematic model for constitutional amendment review that aligns with Indonesia's legal traditions and constitutional identity. Furthermore, a statutory approach is employed to analyze the legal benchmarks that guide constitutional review, with particular emphasis on the Preamble and Unamendable Clauses of the 1945 Constitution, which serve as foundational principles ensuring the integrity of Indonesia's constitutional order.

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[21] Nggilu et al., "Rethinking Indonesian Constitutional Amendments."

[22] Dian Ekawaty Ismail, Novendri M. Nggilu, and Irlan Puluhulawa, *Metode Penelitian Hukum: Teori, Aplikasi, Dan Inovasi Dalam Penelitian Hukum*, ed. Tiara Oktaviana Namira Daud (Kalimantan Selatan: Ruang Karya, 2025).

The study relies on primary and secondary legal sources to construct a normative[23] argument for judicial review of constitutional amendments. Primary legal materials include Indonesia's constitutional provisions, and statutory regulations, while secondary sources encompass scholarly works, legal commentaries, and comparative studies on constitutional amendment review. The research employs a prescriptive analysis technique, which is essential in legal scholarship for formulating normative recommendations. Through prescriptive analysis, this study not only examines the feasibility of judicial review mechanisms in Indonesia but also proposes a legally and institutionally coherent framework that ensures constitutional amendments remain within the limits of constitutional democracy and the fundamental principles of the state. By integrating comparative, statutory, and prescriptive methodologies, this research advances the theoretical discourse on constitutional review while offering a practical legal reform model suited to Indonesia's constitutional framework.

The Urgency and Design of Judicial Review Mechanisms for Constitutional Amendments in Indonesia

A. The Urgency of Reviewing the Constitutionality of Amendments to the Indonesian Constitution

The importance of establishing mechanisms to review the constitutionality of constitutional amendments in Indonesia stems from three key foundations: historical, philosophical-juridical, and sociological. These foundations underscore the urgent need for Indonesia to develop a system that ensures constitutional amendments align with the nation's constitutional identity, values, and principles.

The historical trajectory of constitutional transitions in Indonesia reveals several pivotal moments in which constitutional provisions were circumvented, resulting in governance practices that eroded

[23] Novendri Mohamad Nggilu, Lisnawaty Wadju Badu, and Suwitno Yutye Imran, "Legal Protection Bonda And Bulango Languange : In Reality And Prospect," *Jambura Law Review* 3, no. 1 (2020): 19–36, https://doi.org/10.33756/jlr.v3i1.6947.

constitutional integrity. A notable example is the 1959 Presidential Decree, which unilaterally reinstated the 1945 Constitution, thus bypassing the 1950 Provisional Constitution. This act, executed by the President, flagrantly violated Article 134 of the 1950 Constitution, which explicitly vested the power to amend the constitution in the Constituent Assembly. Such breaches of constitutional procedure are not isolated, as evidenced by the 1963 Decree of the Provisional People's Consultative Assembly (TAP MPRS) No. III/MPRS/1963, which controversially appointed President Sukarno as President for Life. While driven by revolutionary ideals, this decree undermined the constitutional principle of limiting executive power, a fundamental tenet of the Indonesian constitutional order. Further deviation occurred with TAP MPR No. IV/MPR/1983, alongside Law No. 5 of 1985 on Referendums, which effectively entrenched the 1945 Constitution's sacralization. By setting excessively high thresholds for constitutional amendments and imposing referendum provisions that contradicted Article 37, these measures sought to render constitutional change nearly impossible, thereby consolidating the political status quo and stifling democratic reforms. These historical instances underscore the critical need for institutional mechanisms that ensure constitutional amendments remain within the boundaries of constitutional legitimacy and do not serve to perpetuate entrenched political interests.[24]

The constitutional amendments of 1999–2002 further illustrate procedural and substantive deficiencies. Procedurally, the absence of agenda-setting and academic guidelines in drafting amendments resulted in an unstructured and inconsistent constitutional reform process.[25] Limited public participation compounded these issues, as feedback from seminars and public hearings was restricted to urban areas, excluding significant portions of the population.[26] In contrast, South Africa's

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[24] Nggilu et al., "Judicial Review of Constitutional Amendments."

[25] Ahmad and Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2019).

[26] Muchtar Hadi Saputra, *Konstitusi Rakyat: Partisipasi Masyaralat Dalam Perubahan Undang-Undang Dasar* (Jakarta: Raja Grafindo Persada, 2019); Ahmad Ahmad, Fence M. Wantu, and Novendri Nggilu, *Hukum Konstitusi: Menyongsong*

constitutional reform process actively engaged citizens through extensive public consultations, underscoring the participatory deficit in Indonesia.[27] Substantively, the amendments exhibited significant drafting inconsistencies. For example, the placement of legislative institutions across disparate chapters—People's Consultative Assembly (Chapter III), House of Representatives (Chapter VII), and Regional Representative Council (Chapter VIIA)—contradicted the conceptual unity of legislative power. Moreover, the technical drafting flaws in provisions such as Article 24(2) blurred the separation of powers, creating interpretive ambiguities regarding the judiciary's structure.[28]

The philosophical and juridical justification for instituting a constitutional amendment review mechanism is rooted in the understanding that every constitution embodies the ideological and normative foundation of the nation it governs, serving as the formal expression of its constitutional identity.[29] In the Indonesian context, Pancasila stands as the foundational state ideology, encapsulating core principles such as divinity, humanity, unity, democracy, and social justice.[30] These principles not only inform the moral fabric of the nation but also shape the legal architecture that underpins the constitution. The 1999–2002 constitutional amendments, undertaken by the People's Consultative Assembly (MPR), explicitly safeguarded the Preamble, acknowledging its irreplaceable role in defining the nation's

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Fajar Perubahan Konstitusi Indonesia Melalui Pelibatan Mahkamah Konstitusi (Yogyakarta: UII Press, 2020).

27 Nggilu, Perwira, and Abdurahman, "Constitutionality Review of Indonesian Constitutional Amendments"; Novendri Nggilu, "Politik Hukum Pengujian Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Secara Formal" (Bandung-Indonesia, Universitas Padjadjaran, 2024).

28 Ahmad and Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution"; Ahmad, Wantu, and Nggilu, *Hukum Konstitusi: Menyongsong Fajar Perubahan Konstitusi Indonesia Melalui Pelibatan Mahkamah Konstitusi*.

29 Laurianne Allezard, "Constitutional Identity, Identities and Constitutionalism in Europe," *Hungarian Journal of Legal Studies* 63, no. 1 (December 21, 2022): 58–77, https://doi.org/10.1556/2052.2022.00391.

30 Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism"; Maulinawaty Nadya Dewi, "Perlindungan Terhadap Identitas Konstitusi Indonesia."

constitutional identity.[31] Moreover, Article 37(5) of the Constitution enshrines specific provisions as unamendable, including the fundamental status of the Unitary State of Indonesia. This provision underscores the notion of a basic constitutional structure—an immutable framework that reflects the core political and social values of the state, which must remain protected from alterations that could undermine the integrity of the constitutional order.

The Constitutional Court of Indonesia has frequently invoked Pancasila in its judicial review decisions, treating it as the touchstone for evaluating laws. This practice highlights the Court's role as the guardian of both the constitution and the nation's ideological foundations.[32] However, this doctrinal approach has yet to extend to the review of constitutional amendments, despite Pancasila's established position as the cornerstone of Indonesia's legal and constitutional order. Recognizing Pancasila as a benchmark for constitutional amendment review would align Indonesia's constitutional jurisprudence with international practices, where courts safeguard fundamental constitutional principles against politically motivated amendments.[33]

The sociological basis emphasizes the practical risks associated with unregulated constitutional amendments. A recurring issue in Indonesia's political landscape is the proposal to extend presidential term limits, as seen during the administrations of Susilo Bambang Yudhoyono and Joko Widodo.[34] Such proposals often emerge during the final term of office, reflecting attempts to consolidate power through constitutional manipulation. These actions echo similar trends observed internationally. For instance, in Colombia, President Álvaro Uribe succeeded in amending the constitution to secure a second term but was

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[31] Luthfi Widagdo Eddyono, "Quo Vadis Pancasila Sebagai Norma Konstitusi Yang Tidak Dapat Diubah," *Jurnal Konstitusi* 16, no. 3 (October 8, 2019): 585, https://doi.org/10.31078/jk1637.

[32] Jimly Asshiddiqie, Anna Triningsih, and Achmad Edi Subiyanto, *Pancasila Dalam Putusan Mahkamah Konstitusi* (Jakarta: Raja Grafindo Persada, 2022); Hapsoro and Ismail, "Interpretasi Konstitusi Dalam Pengujian Konstitusionalitas Untuk Mewujudkan The Living Constitution."

[33] Nggilu et al., "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions."

[34] Nggilu et al., "Rethinking Indonesian Constitutional Amendments."

blocked by the Constitutional Court when attempting to extend his presidency to a third term.[35] The Court's decision underscored the role of judicial review in protecting constitutional identity and preventing democratic backsliding.

Indonesia's current constitutional framework is marked by a significant gap: there are no institutional mechanisms for evaluating the constitutionality of constitutional amendments.[36] This omission leaves the amendment process vulnerable to potential manipulation. While the judicial system is tasked with two forms of constitutional review—the Supreme Court overseeing the conformity of laws and regulations with statutory provisions, and the Constitutional Court examining laws in light of the Constitution—neither institution possesses jurisdiction over constitutional amendments. This legal lacuna creates an environment where constitutional changes can evade judicial oversight, thus undermining the checks and balances essential to a functioning democracy.[37] Such an absence of oversight is especially troubling in light of David Landau's work on democratic erosion, which highlights how constitutional amendments, when left unchecked, can be exploited to entrench authoritarian practices, undermine the structural integrity of democratic institutions, and diminish the foundational constitutional identity of the state.[38]

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[35] Richard Albert, "The Three Varieties of Unamendability," in *Constitutional Amendments*, by Richard Albert, 1st ed. (Oxford University PressNew York, 2019), 139–72, https://doi.org/10.1093/oso/9780190640484.003.0005; Luis Alejandro Silva and Fernando Contreras, "La Doctrina De La Sustitución De La Constitución En Colombia," *Estudios Constitucionales* 18, no. 1 (2020): 395–434, https://doi.org/10.4067/S0718-52002020000100395.

[36] Nggilu et al., "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions."

[37] Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism."

[38] Nggilu et al., "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions"; Novendri M. Nggilu et al., "Constitutional Crisis: Intensifying Disobedience to the Decisions of the Indonesian Constitutional Court," *Revista Chilena de Derecho* 50, no. 2 (October 23, 2023): 115–32, https://doi.org/10.7764/R.502.5; Usman Rasyid et al., "Reformulation of the Authority of Judicial Commission: Safeguarding the Future of Indonesian Judicial Power," *Jambura Law Review* 5, no. 2 (July 31, 2023): 386–413, https://doi.org/10.33756/jlr.v5i2.24239.

Drawing upon comparative legal experiences, the role of judicial review in constitutional amendments emerges as a crucial safeguard for maintaining constitutional integrity. The Colombian Constitutional Court's annulment of amendments that sought to extend presidential terms, South Africa's participatory approach to constitutional reform, and Germany's safeguarding of non-amendable principles, such as human dignity, each exemplify the critical function of judicial oversight in preserving the core values of the constitution. These practices ensure that any proposed amendments remain aligned with the fundamental principles enshrined in the constitution, thereby preventing alterations that could undermine the foundational structure of the state and erode the democratic and human rights protections upon which the constitutional order rests.

For Indonesia, the establishment of a constitutional amendment review mechanism is imperative to address historical deficiencies, protect philosophical-juridical foundations, and mitigate sociological risks. Such a mechanism would ensure that amendments align with the core values of Pancasila and the constitutional identity of Indonesia.[39] Moreover, it would provide a legal avenue for addressing procedural and substantive criticisms of past amendments, fostering public trust in the constitutional order. By adopting a judicial review system for constitutional amendments, Indonesia could strengthen its constitutional framework, ensuring that its amendments uphold the principles of democracy, separation of powers, and the rule of law.

The absence of a mechanism to review constitutional amendments in Indonesia presents significant risks to constitutional integrity. Establishing such a mechanism, grounded in historical experience, philosophical commitment, and sociological necessity, would not only align Indonesia with global constitutional practices but also safeguard its democratic institutions and constitutional identity. This step is critical to ensure that constitutional amendments reinforce rather than undermine the foundational principles of the Indonesian state.

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[39] Nggilu et al., "Judicial Review of Constitutional Amendments"; Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism."

B. Design for Reviewing the Constitutionality of Amendments to the Indonesian Constitution

1. Institutions and their Touchstones

In the practice of constitutional amendment review across various jurisdictions, the institutional responsibility for assessing the constitutionality of amendments varies depending on the legal framework of each country. In states that lack a specialized constitutional court, this function is typically performed by the Supreme Court, as seen in India,[40] Belize,[41] Brazil,[42] Peru,[43] and Sri Lanka.[44] Conversely, in countries with dedicated constitutional courts—such as Germany,[45] Turkey,[46] Colombia,[47] and Austria,[48]—these institutions are entrusted with reviewing amendments, reinforcing their role as the ultimate guardians of constitutional supremacy. In Indonesia, the Constitutional Court, which functions as the primary institution safeguarding the

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[40] Joel Colón-Ríos Yaniv Roznai, "A Constitutional Theor A Constitutional Theory of Territoriality: The Case of Puer Oriality: The Case of Puerto Rico," *Cleveland State Law Review* 70, no. 2 (2022): 279–333.

[41] Emmet MacFarlane, "The Unconstitutionality of Unconstitutional Constitutional Amendments," *Manitoba Law Journal* 45, no. 1 (April 25, 2023): 21, https://doi.org/10.29173/mlj1320.

[42] Valentina Rita Scotti, "Constitutional Amendments and Constitutional Core Values: The Brazilian Case in a Comparative Perspective," *Revista de Investigações Constitucionais* 5, no. 3 (September 5, 2018): 59, https://doi.org/10.5380/rinc.v5i3.60979.

[43] Nggilu et al., "Judicial Review of Constitutional Amendments."

[44] Dian A H Shah, "The Malaysian Election Commission: Navigating Electoral Authoritarianism and Political Change," *Asian Journal of Comparative Law* 16, no. S1 (December 2021): S105–20, https://doi.org/10.1017/asjcl.2021.31.

[45] Berchenko, Slinko, and Horai, "Unamendable Provisions of the Constitution and the Territorial Integrity of Ukraine."

[46] Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism."

[47] Nggilu et al., "Judicial Review of Constitutional Amendments."

[48] Nggilu, "Politik Hukum Pengujian Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Secara Formal."

Constitution,[49] is the most appropriate body to oversee constitutional amendment review. Given its mandate to maintain constitutional coherence and protect fundamental democratic principles, empowering the Constitutional Court with the authority to assess amendments is both a logical and necessary extension of its jurisdiction.[50]

However, the constitutional basis for judicial involvement in amendment review varies across jurisdictions, leading to diverse judicial responses. In some countries, constitutional courts or supreme courts undertake this function based on explicit constitutional provisions that expressly authorize judicial scrutiny of amendments.[51] In such cases, courts often adopt a broad interpretive approach, extending their review beyond procedural compliance to include substantive assessments of whether an amendment aligns with fundamental constitutional principles.[52] In contrast, some jurisdictions empower courts to review amendments even in the absence of explicit constitutional provisions, operating on the premise that the Constitution is an organic and cohesive entity in which all provisions are interconnected. In these cases, judicial intervention is justified on the grounds that unamendable provisions, as foundational elements of the constitutional order, require active judicial protection to prevent their erosion.[53] Meanwhile, in other jurisdictions,

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[49] Novendri M. Nggilu, "Menggagas Sanksi Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 1 (April 1, 2019): 43, https://doi.org/10.31078/jk1613.

[50] Nggilu et al., "Judicial Review of Constitutional Amendments."

[51] The German Constitution does not give the authority to review constitutional amendments to the German Constitutional Court, but the German Constitutional Court carries out review activities in order to protect unamendable provisions. Ibid.

[52] The Turkish Constitutional Court expands the interpretation of the authority for formal review of constitutional amendments. It has the view that "constitutional amendments affecting the immutability of the form of a republican state are not just a matter of form or procedural, but rather a matter of substance, because without looking at the text of the constitutional amendment, it is impossible to determine whether it violates immutability. See Amal Sethi, "When Should Courts Invalidate Constitutional Amendments?," *ICL Journal* 18, no. 1 (March 25, 2024): 25–57, https://doi.org/10.1515/icl-2023-0026.

[53] The German Constitution is one of the constitutions that contain unamendable provisions, and there is no regulation of enforcement mechanisms including judicial actors who will carry out these enforcement mechanisms, but the Federal Constitutional Court in many cases carries out reviews of constitutional

courts exercise judicial restraint, refraining from reviewing constitutional amendments unless expressly authorized, thereby limiting their role strictly to interpreting and enforcing existing constitutional norms without engaging in substantive constitutional oversight.[54]

The criteria for assessing the constitutionality of amendments are equally significant in defining the scope and legitimacy of judicial intervention. Comparative legal scholarship, particularly the work of Yaniv Roznai, has identified a global pattern in which unamendable provisions serve as fundamental constraints on constitutional change. Among the 734 constitutions examined worldwide, unamendable provisions typically fall into five principal categories. First, the form of the state and system of government is constitutionally entrenched in countries such as Indonesia,[55] Thailand,[56] and Germany,[57] ensuring that these core aspects cannot be altered through amendments. Second, the political structure—including the separation of powers, bicameralism, regional autonomy, and judicial independence—is safeguarded in countries such as Bahrain,[58] Kazakhstan,[59] and Portugal[60] to preserve

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amendments in an effort to enforce these unamendable provisions, including the cases of Land Reform I and II, and the Klass case. See Nggilu et al., "Judicial Review of Constitutional Amendments."

54 The French Constitutional Council is an example where this institution limits itself not to carry out examination of constitutional amendments. The French Constitutional Council focuses only on the powers expressly granted by the French Constitution to test the constitutionality of laws. See Nggilu, "Politik Hukum Pengujian Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Secara Formal."

55 Eddyono, "The Unamendable Articles of the 1945 Constitution."

56 Yaniv Roznai, "Constitutional Amendability and Unamendability in South-East Asia," *Journal of Comparative Law* 14, no. 1 (2019): 188–204.

57 Monika Polzin, "The Basic-Structure Doctrine and Its German and French Origins: A Tale of Migration, Integration, Invention and Forgetting," *Indian Law Review* 5, no. 1 (January 2, 2021): 45–61, https://doi.org/10.1080/24730580.2020.1866882.

58 Albert, "The Three Varieties of Unamendability," 139–72.

59 Silvia Suteu, *Eternity Clauses in Democratic Constitutionalism*, 1st ed. (Oxford University PressOxford, 2021), https://doi.org/10.1093/oso/9780198858867.001.0001.

60 Lech Garlicki and Yaniv Roznai, "Introduction: Constitutional Unamendability in Europe," *European Journal of Law Reform* 21, no. 3 (May 2019): 217–25, https://doi.org/10.5553/EJLR/138723702019021003001.

essential institutional arrangements. Third, constitutional identity and state ideology are often deemed immutable, as exemplified by Ecuador's protection of Catholicism[61] as the state religion and Turkey's prohibition on amendments that would alter its secular foundation.[62] In the Indonesian context, Pancasila—as both the state ideology and the constitutional identity—falls into this category, necessitating protection from amendments that may undermine its foundational principles.[63] Fourth, civil rights, such as human dignity, equality, freedom of the press, and labor rights, are unamendable in jurisdictions such as Germany, Mexico, and Portugal, ensuring that fundamental rights remain insulated from political contingencies.[64] Finally, state integrity, encompassing territorial sovereignty, national unity, and independence, is protected in countries such as Azerbaijan, Cameroon, and Ivory Coast, demonstrating a constitutional commitment to preserving the nation's core attributes.[65]

Within Indonesia's constitutional framework, unamendable provisions exist alongside Pancasila as the state ideology, reinforcing the constitutional identity of the nation. Article 37(5) of the 1945 Constitution explicitly declares that Indonesia's unitary state structure is unalterable, establishing a formal constitutional boundary that amendments cannot override.[66] Beyond these explicit restrictions, several

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[61] Yaniv Roznai, "Unconstitutional Constitutional Amendments—The Migration and Success of a Constitutional Idea," *The American Journal of Comparative Law* 61, no. 03 (2013): 657-720,.

[62] Y. Roznai and S. Yolcu, "An Unconstitutional Constitutional Amendment--the Turkish Perspective: A Comment on the Turkish Constitutional Court's Headscarf Decision," *International Journal of Constitutional Law* 10, no. 1 (January 1, 2012): 175–207, https://doi.org/10.1093/icon/mos007.

[63] Novendri M. Nggilu, Indra Perwira, and Ali Abdurahman, "Constitutionality Review of Indonesia Constitutional Amendment: History and Future."

[64] Thomas Wischmeyer, "Unconstitutional Constitutional Amendments," *International Journal of Constitutional Law* 15, no. 4 (November 3, 2019): 1242–47, https://doi.org/10.1093/icon/mox094.

[65] Thomas Wischmeyer, "Unconstitutional Constitutional Amendments," *International Journal of Constitutional Law* 15, no. 4 (November 3, 2017): 1242–47, https://doi.org/10.1093/icon/mox094.

[66] Eddyono, "The Unamendable Articles of the 1945 Constitution"; Ibrahim, "Pembatasan Kekuasaan Amendemen Konstitusi"; Maulinawaty Nadya Dewi, "Perlindungan Terhadap Identitas Konstitusi Indonesia."

fundamental principles embedded within the Constitution serve as implicit benchmarks for reviewing constitutional amendments. These principles include the separation of powers, the protection of fundamental rights,[67] judicial independence, and democratic governance. Their normative articulation is evident across various constitutional provisions. The separation of powers is enshrined in Articles 5, 10, 11, 12, 14, 15, and 22(1), which delineate executive powers, while legislative authority is articulated in Articles 3, 20, 20A, 21, 22, and 22D. Judicial authority is outlined in Articles 24, 24A, and 24C, affirming the judiciary's independence and oversight role. Fundamental rights are extensively protected under Articles 27, 28, 28A–28J, 29, and 31, ensuring the constitutional protection of individual freedoms. Similarly, judicial independence is reinforced in Article 24(1), which affirms the autonomous function of the judiciary. Lastly, democratic principles are explicitly articulated in Articles 1(2), 6A, 18(3) and (4), 19(1), 22C(1), and 22E, collectively defining Indonesia's constitutional commitment to democratic governance.[68]

Taken together, these provisions constitute the core structural framework of the Indonesian Constitution, forming an essential foundation for any prospective constitutional amendment review mechanism. The need for judicial scrutiny of amendments is not only a normative imperative but also a practical necessity to ensure that constitutional modifications do not erode the integrity of the legal and democratic framework. By drawing on established global practices and reinforcing its own constitutional principles, Indonesia can develop a robust constitutional amendment review system that aligns with both international best practices and its unique constitutional identity.

2. Reviewing Model

In constitutional review theory, a fundamental distinction exists between formal review and material review, as articulated by Sri

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[67] Ana Fauzia and Fitria Esfandiari, "Political Party Deliberation: Mechanism for Safeguarding Constituent Rights against Vacancies in House of Representatives Affected by Political Party Dissolution," *Jambura Law Review* 6, no. 2 (July 28, 2024): 452–281, https://doi.org/10.33756/jlr.v6i2.24110.

[68] This basic principle is also used by the Supreme Courts of India, Bangladesh, Belize, Colombia in testing the constitutionality of constitutional amendments.

Soemantri. Formal review pertains to the authority to assess legislative products based on procedural compliance with established constitutional and statutory requirements, ensuring that the enactment process adheres to prescribed legal mechanisms. In contrast, material review scrutinizes the substantive content of a legal provision to determine its consistency with higher legal norms, thereby preventing constitutional contradictions and preserving legal coherence. This distinction is particularly relevant to the review of constitutional amendments, as different jurisdictions adopt varying approaches to balancing procedural legitimacy and substantive constitutional integrity.[69]

Comparative constitutional analysis reveals that some jurisdictions emphasize formal review in assessing constitutional amendments. For instance, Austria strictly limits its constitutional review to procedural oversight, as stipulated in Article 44(3) of the Austrian Constitution, which differentiates between partial amendments, subject to parliamentary approval, and total amendments, which require a referendum. In this context, the Austrian Constitutional Court exercises formal review authority to verify whether amendments comply with referendum requirements.[70] However, even in jurisdictions that formally restrict constitutional courts to procedural review, courts have occasionally expanded their role to include material review when confronted with constitutional conflicts. A notable example is Turkey, where the Constitutional Court, despite its formalist mandate, has engaged in substantive assessments when adjudicating cases concerning constitutional amendments.[71]

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[69] Rasyid et al., "Reformulation of the Authority of Judicial Commission."

[70] Michael Holoubek and Ulrich Wagrandl, "A Model for the World: The Austrian Constitutional Court Turns 100," *ICL Journal* 17, no. 3 (September 26, 2023): 251–76, https://doi.org/10.1515/icl-2023-0029; Tanto Lailam and Nita Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia," *BESTUUR* 11, no. 1 (August) (April 13, 2023): 75, https://doi.org/10.20961/bestuur.v11i1.70052.

[71] Tarik Olcay, "The Unamendability of Amendable Clauses: The Case of the Turkish Constitution," in *An Unamendable Constitution?*, ed. Richard Albert and Bertil Emrah Oder, vol. 68, Ius Gentium: Comparative Perspectives on Law and Justice (Cham: Springer International Publishing, 2019), 313–43, https://doi.org/10.1007/978-3-319-95141-6_12.

In contrast, some jurisdictions explicitly recognize material review as an essential safeguard for fundamental constitutional principles. The German Constitutional Court exemplifies this approach, as it not only evaluates whether amendments directly target unamendable provisions but also examines whether other constitutional provisions, even if formally amendable, conflict with fundamental constitutional norms. This judicial approach affirms the doctrine that constitutional amendments must not erode the essential structure of the constitution, reinforcing the principle of constitutional supremacy. The German model underscores the necessity of substantive judicial scrutiny to prevent amendments that compromise core constitutional values.[72]

In the Indonesian context, both formal and material review mechanisms must be considered in the development of a constitutional amendment review framework. A formal review should extend beyond the procedural criteria outlined in Article 37(1)–(4) of the 1945 Constitution to assess whether the amendment process adheres to the principle of meaningful public participation.[73] The legitimacy of constitutional amendments is not solely determined by procedural compliance but also by the extent to which the public is engaged in shaping constitutional changes. A constitution derives its legitimacy from the people, and an exclusionary amendment process risks undermining the principles of constitutional democracy. Thus, an Indonesian model of formal review should include an evaluation of whether constitutional amendments have been deliberated transparently and inclusively.

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[72] Berchenko, Slinko, and Horai, "Unamendable Provisions of the Constitution and the Territorial Integrity of Ukraine"; David E Landau, Rosalind Dixon, and Yaniv Roznai, "From an Unconstitutional Constitutional Amendment to an Unconstitutional Constitution? Lessons from Honduras," *Global Constitutionalism* 8, no. 1 (March 2019): 40–70, https://doi.org/10.1017/S2045381718000151; Olcay, "The Unamendability of Amendable Clauses"; Allezard, "Constitutional Identity, Identities and Constitutionalism in Europe."

[73] Novendri M, Nggilu, Ramdhan Kasim, and Lisnawaty Badu, "Indonesian Constitutional Amendment 4.0 Era: Main Challenges and Future Prospect," *Journal of Legal, Ethical and Regulatory Issues* 23, no. Special Issue (2020).

At the same time, a material review mechanism is imperative to safeguard unamendable provisions, as enshrined in Article 37(5),[74] and to uphold Pancasila, which is embedded in the Preamble of the Constitution and holds a supra-constitutional status.[75] Given that Pancasila serves as the ideological foundation of the Indonesian legal system, any amendment that contradicts its principles would jeopardize the constitutional and philosophical coherence of the state. Consequently, judicial review must extend beyond procedural oversight to assess whether constitutional amendments contravene Pancasila and other fundamental constitutional norms. If an amendment is found to be inconsistent with these foundational principles, it should be subject to judicial invalidation. This approach aligns with global constitutional practices, where judicial oversight ensures that constitutional identity remains protected against amendments that seek to alter its fundamental character.[76]

Beyond the scope of formal and material review, the timing of constitutional review is a crucial consideration in constitutional theory. A priori review refers to the evaluation of a draft constitutional amendment before its formal enactment, ensuring that it conforms to fundamental constitutional principles.[77] This approach is exemplified by

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[74] Nggilu, Perwira, and Abdurahman, "Constitutionality Review of Indonesian Constitutional Amendments."

[75] Eddyono, "Quo Vadis Pancasila Sebagai Norma Konstitusi Yang Tidak Dapat Diubah"; Jimly Asshiddiqie, *Pancasila: Identitas Konstitusi Berbangsa Dan Bernegara* (Jakarta: Rajawali Pers, 2020); Nggilu, Perwira, and Abdurahman, "Constitutionality Review of Indonesian Constitutional Amendments."

[76] Nggilu et al., "Judicial Review of Constitutional Amendments"; Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism."

[77] Southest African Constitution (1993) Schedule 4, Constitutional Principles, which includes: 1] the principles of a sovereign, democratic state and racial and gender equality; 2] principles of civil rights and civil liberties; 3] the principle of non-discrimination; 4] the principle of constitutional supremacy; 5] the principle of equality before the law; 6] the principle of separation of powers (executive, legislative and judicial], supervision and accountability; 7] independence and impartiality of the judiciary; 8] democratic general elections; 9] transparency of public information; 10] establishment of procedural regulations; 11] recognition and protection of language and culture; 12) participatory constitutional amendments; 13] principle of national unity and regional autonomy. See Felix

the South African Constitutional Court, which must certify that any draft constitution aligns with the foundational principles of the existing constitutional framework before it can be ratified.[78] If a draft amendment is found to be inconsistent with these principles, the court withholds certification, effectively preventing its enactment.[79] By contrast, a posteriori review occurs after an amendment has been enacted, allowing judicial intervention if the amendment is later deemed unconstitutional. This form of review is widely adopted in jurisdictions such as Turkey, Germany, Colombia, and India, where constitutional courts exercise retrospective scrutiny over amendments to ensure they do not undermine constitutional integrity.[80]

For Indonesia, an a posteriori review mechanism is the most appropriate model for the judicial review of constitutional amendments. This approach aligns with Indonesia's existing judicial review system, which primarily conducts legal scrutiny after laws have been enacted. An a posteriori review would not only enable post-enactment constitutional scrutiny but also serve as a safeguard against politically motivated amendments that contravene constitutional identity. Moreover, this model allows for continued public oversight, granting citizens and institutions the opportunity to challenge constitutional amendments that may later be found inconsistent with fundamental constitutional principles. Compared to a priori review, which restricts judicial intervention to the pre-enactment phase, an a posteriori review provides a broader window of constitutional assessment, ensuring that the long-term implications of an amendment can be judicially examined. By institutionalizing an a posteriori constitutional review, Indonesia would establish a more robust safeguard against amendments that threaten the fundamental values of democracy, constitutional supremacy, and the rule of law.

Dube, "The South African Constitution as an Instrument of Doing What Is Just, Right and Fair," *In Die Skriflig / In Luce Verbi* 54, no. 1 (December 21, 2020), https://doi.org/10.4102/ids.v54i1.2601.

78 Ahmad, Wantu, and Nggilu, *Hukum Konstitusi: Menyongsong Fajar Perubahan Konstitusi Indonesia Melalui Pelibatan Mahkamah Konstitusi*.

79 Muchtar Hadi Saputra, *Konstitusi Rakyat: Partisipasi Masyaralat Dalam Perubahan Undang-Undang Dasar*.

80 Nggilu et al., "Judicial Review of Constitutional Amendments."

Thus, integrating formal, material, and a posteriori review mechanisms into Indonesia's constitutional framework would enhance constitutional resilience and prevent the erosion of its foundational principles.[81] The necessity of such a mechanism is not merely theoretical but emerges from empirical lessons drawn from global constitutional practices. By ensuring that amendments adhere to procedural integrity, substantive constitutional principles, and retrospective scrutiny, Indonesia can develop a cohesive and adaptive constitutional order, one that upholds Pancasila and the democratic values enshrined in its Constitution.

Conclusion

The findings of this study underscore the critical necessity of establishing a judicial review mechanism for constitutional amendments in Indonesia. Historical precedents of constitutional transitions marred by procedural irregularities, coupled with substantive deficiencies in past amendments, reveal systemic vulnerabilities that threaten the constitutional identity and foundational principles of the nation. The absence of a dedicated review mechanism leaves constitutional amendments susceptible to political manipulation, as exemplified by recurrent attempts to extend presidential term limits. Drawing on comparative legal frameworks from jurisdictions such as Germany, Colombia, and South Africa, this study demonstrates the pivotal role of judicial oversight in safeguarding constitutional integrity and preventing amendments that undermine core democratic values.

This research contributes to the discourse by proposing a structured judicial review model tailored to Indonesia's constitutional framework. It advocates for the Constitutional Court as the most suitable institution to oversee both formal and substantive reviews of amendments, with evaluation criteria anchored in Pancasila, unamendable provisions, and fundamental constitutional principles. Moreover, the study recommends an a posteriori review model, aligning with Indonesia's existing legal system and ensuring sustained constitutional scrutiny even after amendments are enacted. By

[81] Nggilu, "Politik Hukum Pengujian Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Secara Formal."

addressing gaps in Indonesia's constitutional architecture, this study offers a framework for fortifying constitutional democracy and preserving the nation's foundational principles against politically motivated or structurally disruptive amendments.

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