

MECHANISM OF CONSTITUTIONAL REVIEW IN THE CONSTITUTIONAL COURT: A COMPARATIVE STUDY BETWEEN INDONESIA AND ROMANIA

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Abstract

Constitutionality review is an important instrument in modern constitutional states to ensure the supremacy of the constitution. This article discusses the comparison of constitutional review mechanisms for laws in the Constitutional Court between Indonesia and Romania. Both countries share similarities in the civil law legal system, the unitary state form, and the republican form of government, and both place the authority for constitutional review in the Constitutional Court. This research employs normative legal research methods with a comparative approach, based on the rule of law theory and comparative law theory. The results show that Indonesia applies an a posteriori mechanism (after the law is enacted) with broad petitioner access, including individual citizens. In contrast, Romania applies a dual mechanism: constitutional preview (a priori) for draft laws and ratification of international treaties, and constitutional review (a posteriori) for laws through judicial channels and Parliamentary Regulations. Romania imposes stricter limitations on petitioners. Another difference lies in the legal consequences of decisions, where the decisions of the Indonesian Constitutional Court are final and binding from the moment they are pronounced, whereas in Romania, provisions declared unconstitutional lose legal force after 45 days if not remedied by the legislature. This comparison shows that despite similarities in legal systems, political dynamics and institutional design greatly influence the constitutional review mechanisms in each country.



KEYWORDS :

Comparative, Constitutional Court, Constitutional Preview, Constitutional Review, Mechanism

Introduction

Every country has the jurisdiction to choose and regulate its own constitutional concepts. This has implications for the diversity of constitutional governance concepts applied in each country. One such area is the mechanism for reviewing legislative products against the constitution, known as constitutional review. Constitutional review is necessary to ensure that all regulations remain consistent with constitutional principles and do not contradict one another.¹ This constitutional review is also carried out as a logical consequence of the supremacy of the constitution that is, the constitution as the state fundamental norm or the highest legal foundation.² The principle of constitutional supremacy has at least three characteristics: the distinction between constitutional legal norms and other legal norms, the binding of the authorities to the constitution, and the existence of an institution with the authority to review the constitutionality of laws and government legal actions.³

The existence of constitutional review institutions is not merely an abstract concept; it has been realized in the constitutional practices of various countries. The earliest historical traces can be found in the common law legal tradition. The forerunner of the judicial review system as known today in the U.S. constitutional tradition originated from the courage of Chief Justice John Marshall when he examined and decided the case of

¹ Shalsafira Natasyah Puteri, Eva Ardiana, Ericha Adelia Za'roo, Aisya Fathika Awindra, Amelia Indriani Mendonza, and Muhammad Muhandis Akbar, "Recognizing the Review System of Legislation and Its Problems in Indonesia," *Veteran Society Journal*, (2025), p. 37 <https://doi.org/10.33005/vsj.v6i1.202>

² Miriam Budiardjo, "Fundamentals of Political Science", PT. Gramedia Pustaka Utama, Jakarta, 1998, p. 105

³ Dian Utami Mas Bakar, "Constitutional Review of Laws Ratifying International Treaties," *Yuridika Journal* Vol 29, no. 3 (2014): p. 275, <https://doi.org/10.20473/ydk.v29i3.372>.

Marbury v. Madison in 1803.⁴ The United States Supreme Court, in this regard, has a decentralized approach to judicial review, which was pioneered in the judicial world.⁵

Although the idea of constitutional review was first explicitly practiced by the United States Supreme Court in the early 19th century, the model later underwent diffusion and adaptation across various parts of the world. Constitutional review in different countries shows variations in the design of authority and institutions. Some countries entrust this authority to an existing institution, such as the Supreme Court. Meanwhile, Continental European countries later developed another model by establishing a new judicial body known as the Constitutional Court. There are also countries that do not adopt this review model at all.⁶ However, despite these differences, the mechanism of constitutional review is accepted as a means for modern constitutional states to control and provide checks and balances against tendencies toward arbitrary power.⁷

Regarding the review of laws in the context of a modern constitutional state, it is necessary to explain that there are two terms often considered identical but actually have differences, especially the terms 'constitutional review' and 'judicial review'.⁸ Although both involve the review of a norm against a higher norm, they should not be understood as having exactly the same meaning. Constitutional review is used generally for the process of constitutionality testing of legislative products that are

⁴ Benny K. Harman, in Benediktus Hestu Cipto Handoyo, "The Idealism of the Constitutional Court's Constituendum in Reviewing Laws against the Constitution, *Arena Hukum Journal* Vol 14, No. 1 (April 2021): p. 8, <https://doi.org/10.21776/ub.arenahukum.2021.01401.1>.

⁵ Tanto Lailam, "Constitutional Review of Laws in the Indonesian Constitutional System," *Jurnal Konstitusi*, Vol. 12, No. 1 (2015), p. 5, <https://doi.org/10.31078/jk1211>

⁶ Jimly Asshiddiqie, *Models of Constitutional Review in Various Countries*, Sinar Grafika, Jakarta, 2010, p. 1.

⁷ Janedjri M. Gaffar in Jimly Asshiddiqie and Ahmad Syahrizal, *Constitutional Judiciary in Ten Countries*, Secretariat General and Registry of the Constitutional Court of the Republic of Indonesia, Jakarta, 2006, p. V

⁸ Geofani Milthree Saragih, Mirza Nasution, and Eka NAM Sihombing, "Judicial Review by the Constitutional Court: Judicial Activism vs. Judicial Restraint in the Perspective of Judicial Freedom," *Jurnal Konstitusi* 22, no. 1 (March 2025). DOI: <https://doi.org/10.31078/jk2213>

below the constitution.⁹ This review can be carried out by the legislature, by the judiciary, or by a special institution tasked with performing that function, depending on where such authority is granted by law. Meanwhile, the term judicial review is limited to the process of reviewing legislation carried out by the judiciary.¹⁰ Another opinion suggests that constitutional review refers to the review of laws against the constitution, while judicial review refers to the review of regulations below the law against the law. Despite such simplification, constitutional review must be understood as part of judicial review.

This article discusses the comparison of constitutional review mechanisms in the Constitutional Court between Indonesia and Romania. Although Romania is relatively rarely discussed in legal literature compared to popular countries such as France, Austria, Germany, and others, in 2024 this country became an object of study through a comparative study visit involving the Indonesian Constitutional Court. During this activity, information exchange and best practices between Indonesia and Romania were conducted regarding constitutional systems and their implementation in state life.¹¹ Furthermore, Romania was chosen as a comparative object based on several considerations. First, both countries share a similar legal system, namely the civil law or Continental European system, which facilitates the tracing and collection of legal materials. Second, both Indonesia and Romania place the authority for constitutional review in the Constitutional Court. Third, both are unitary states. Fourth, there is a similarity in the form of government, namely both are republics. With these similarities, this comparison is expected to provide a more comprehensive

⁹ Constitutional Court of the Republic of Indonesia and the Center for Constitutional Studies (PUSaKO), Faculty of Law, Universitas Andalas, The Development of Legislative Review in the Constitutional Court (From Textual Legal Thinking to Progressive Law), Center for Constitutional Studies, Faculty of Law, Universitas Andalas, 2010, p. 5.

¹⁰ *Ibid*

¹¹ MPR RI Delegation Conducts Reference Study to Bucharest, Romania," Metrotvnews.com, August 4, 2024, available at: <https://www.metrotvnews.com/read/bzGCzAje-delegasi-mpr-ri-lakukan-studi-referensi-ke-bucharest-rumania> accessed on May 7, 2026.**

picture of the variations in constitutional review mechanisms between the two countries.

Although comparative studies on constitutional review have been conducted extensively, most of the existing literature tends to focus on major countries such as Germany, France, or the United States. Various previous studies that capture the dynamics of constitutional review mechanisms in different contexts are relevant as a foundation for the comparative study between Indonesia and Romania, including: First, research conducted by Widodo and Rohmah (2025) compares the models of constitutional review of laws between Indonesia and France, concluding that Indonesia applies an a posteriori system through the Constitutional Court, while France uses an a priori system through the Conseil Constitutionnel. The Indonesian system is considered more inclusive but has the potential to create legal uncertainty due to the annulment of laws that have already taken effect, while the French system is more efficient in preventing constitutional harm but involves less public participation. Second, a study by Sihombing and Hadita (2022) conducts a comparative analysis of the authority to review laws by the Indonesian Constitutional Court with several countries, namely Hungary, Chile, Austria, and Thailand. The study found that Indonesia does not yet have the authority to conduct ex ante review (before the law is promulgated) as practiced in Hungary, Chile, Austria, and Thailand.

Meanwhile, Romania, as a country that also adheres to the civil law system and has undergone a democratic transformation after the 1989 Revolution, is rarely the object of comparison in Indonesian legal literature. In fact, Romania has unique characteristics in the design of its constitutional review mechanism, particularly with the existence of two simultaneous review channels (a priori and a posteriori), which are not entirely identical to either the pure Kelsenian model or the French model.¹²

¹² Vlad Constantinesco dan Stéphane Pierre-Caps, *Droit constitutionnel roumain*, L'Harmattan, Paris, 2018, p. 87-89

Therefore, this study offers novelty by systematically comparing the constitutional review mechanisms between Indonesia and Romania, two countries that share a similar legal system but differ significantly in several aspects of constitutional review mechanisms.

Methods

To answer the problems outlined in the background above, this article employs normative legal research and is examined using a comparative approach. Normative legal research is a type of research conducted solely by examining library materials or secondary data.¹³ This research employs a literature study method to identify and collect relevant legal materials, including primary, secondary, and tertiary legal sources as part of the research data. Data collection is conducted through structured and systematic literature tracing.

This research uses primary legal materials consisting of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020, Constitutional Court Regulation Number 2 of 2021 concerning Procedural Law in Constitutional Review Cases, and Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022. This research also analyzes important decisions of the Constitutional Court of the Republic of Indonesia, namely Decision Number 27/PUU-VII/2009 concerning the touchstone in formal review and Decision Number 91/PUU-XVIII/2020 concerning a conditional unconstitutional decision due to formal procedural defects. As for Romania, the primary legal materials used are the Romanian Constitution of 1991 (revised 2003) and LEGE nr. 47 din 18 mai 1992 (republished) Privind Organizarea și Funcționarea Curții Constituționale (Law on the Organization and Functioning of the Romanian Constitutional Court). The comparative approach is carried out by

¹³ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview*, Grafindo Persada, Jakarta, 2010, p. 13–14.

comparing the laws of one country with the laws of one or more other countries on the same subject matter.¹⁴ Data is obtained through online academic database searches using relevant keywords, then manually selected based on literature in both Indonesian and foreign languages to broaden the perspective.

All data will be analyzed using qualitative methods. The collected data will be presented in the form of a comparison concerning the constitutional review mechanisms of laws between Indonesia and Romania. Therefore, to examine this issue, this research uses two main theoretical foundations. First, the rule of law theory from Philipus M. Hadjon. Philipus M. Hadjon states that the rule of law essentially aims to provide legal protection for the people against government actions. This legal protection for the people is based on two principles: the principle of human rights and the principle of the rule of law. Recognition and protection of human rights occupy a primary place and can be said to be the goal of the rule of law.¹⁵ A rule of law state in principle requires that all actions or deeds of the authorities must have a clear legal basis or legality, whether based on written law or unwritten law.¹⁶ Second, comparative law theory: Romli Atmasasmita defines it as a science that can be said to systematically study the laws of two or more legal systems using the comparative method.¹⁷ Sri Soemantri further divides comparative law theory into two types: descriptive comparative law and applied comparative law. This research only uses descriptive comparative law, namely the researcher makes comparisons to obtain an explanation or information about a particular matter, without intending to find a solution to a specific problem, whether abstract or

¹⁴ Peter Mahmud Marzuki, *Legal Research*, 11th edition Kencana, Jakarta, 2011, p. 95.

¹⁵ Nurul Qamar, *Human Rights in a Democratic Rule of Law State*, Sinar Grafika, Jakarta, 2013, pp. 22-24.

¹⁶ Bambang Sutyoso and Sri Hastuti Puspitasari, *Aspects of the Development of Judicial Power in Indonesia*, UII Press, Yogyakarta, 2005, p. 1.

¹⁷ Romli Atmasasmita, *Comparative Criminal Law*, Mandar Maju, Bandung, 2000, p. 12.

practical.¹⁸

To ensure this research has a clear focus and does not expand too broadly, it is necessary to establish study limitations. Therefore, this research limits the comparative object only to constitutional review mechanisms in the Constitutional Court, covering aspects such as the subject matter of the petition, the parties authorized as petitioners, the case resolution process, and the implications of the decision. Although this research has presented a structured normative analysis, there are several limitations that need to be noted. First, this research has not included empirical data on the practical application of the norms in the field. Second, the use of a normative approach has the potential to create subjectivity in interpreting legal provisions. Therefore, further research based on socio-legal or empirical approaches is needed to strengthen the findings of this study.

Result and Discussion

1. Constitutional Review Mechanism in Indonesia

In the development of Indonesia's constitutional system, the idea of establishing an institution that acts as the guardian of the constitution and the final interpreter of the constitution was finally realized through the amendment of the 1945 Constitution in four stages. Through the third amendment of the 1945 Constitution in 2001, a constitutional court was established under the name of the Constitutional Court of the Republic of Indonesia. Article 24C of the 1945 Constitution formulates that the Constitutional Court is a new institution within the judicial branch of power. The model chosen by Indonesia is the centralized Continental European (Kelsenian) model, different from the decentralized American model. This characteristic is marked by placing the Constitutional Court as a negative-

¹⁸ Martosoewignyo in Geofani Milthree Saragih, "Comparative Constitutional Law of Indonesia and England from Various Aspects," *Jurnal Ilmu Hukum Reusam* 10, no. 2 (November 2022): p.200–201, DOI <https://doi.org/10.29103/reusam.v10i2.10440>.

legislative institution authorized to annul unconstitutional laws, without interfering with the tasks of the legislature.¹⁹

The provisions of Article 24C of the 1945 Constitution were subsequently followed up with the formation and enactment of Law Number 24 of 2003 concerning the Constitutional Court. The presence of the Constitutional Court aims to bring about a change from an authoritarian state to a more democratic state.²⁰ Since its establishment in 2003, the Constitutional Court of the Republic of Indonesia has been designed as the sole court holding constitutional jurisdiction. Article 10 Paragraph (1) of Law Number 24 of 2003 stipulates that:

"The Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final, to:

- a. review laws against the 1945 Constitution of the Republic of Indonesia;
- b. decide on disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia;
- c. decide on the dissolution of political parties; and
- d. decide on disputes concerning election results."

The jurisdiction of the Indonesian Constitutional Court that is the subject of this research is the court's authority to review laws against the 1945 Constitution of the Republic of Indonesia. Constitutional review at the Indonesian Constitutional Court, known as Judicial Review of Laws (Pengujian Undang-Undang/PUU), can only be sought against two objects: Laws and Government Regulations in Lieu of Laws (Perpu). A Law is defined as a legislative regulation formed by the People's Representative Council with the joint approval of the President.²¹ Meanwhile, a

¹⁹ Claudistya Fioretty Tokan, Azizah Zaskiyah, and Maria Magdalena Ina Reko, "The Role of the Constitutional Court in Maintaining the Constitutionality of Laws in Indonesia," *Jurnal Multilingual* Vol. 5, No. 1 (2025): p. 404, <https://doi.org/10.5281/zenodo.14255834>.

²⁰ Muhammad Fauzy Ramadhan, "Proposing the Implementation of Constitutional Complaint in the Constitutional Court," *Padjadjaran Law Review*, Vol. 6, (December 2018), p. 30, <https://doi.org/10.56895/plr>

²¹ Article 1 Number 3 of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation

Government Regulation in Lieu of Law is defined as a legislation stipulated by the President in cases of compelling emergency.²²

Petitioners in constitutional review at the Indonesian Constitutional Court are not limited by a narrow constitutional control or only specific petitioners who have legal standing, as applied in political party dissolution cases. Through this mechanism, civil society, academics, and non-governmental organizations have access to file judicial review petitions against regulations deemed to harm their constitutional rights²³. Article 4 Paragraph (1) of the Constitutional Court Regulation (PMK) states that petitioners in constitutional review cases are:

"... parties who consider that their constitutional rights and/or authorities are harmed by the enforcement of a law or Government Regulation in Lieu of Law (Perppu), namely:

- a. individual Indonesian citizens or groups of people with common interests;
- b. customary law community units as long as they still exist and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia as regulated by law;
- c. public legal entities or private legal entities; or
- d. state institutions."

In addition to broad petitioner access through loose legal standing, the Indonesian Constitutional Court also opens space for public participation in the form of *amicus curiae*. *Amicus curiae* aims to provide additional perspectives and information to judges in deciding cases, although their opinions are not considered valid evidence. Constitutional Court Regulation Number 2 of 2021 indeed provides a legal basis for the Constitutional Court to request information from related parties, whether individuals, groups, legal entities, or state institutions that have a direct or indirect interest in the subject matter of the petition.

²² Article 1 Number 4 of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation

²³ Mawardi, Novia Mungawanah, Muchamad Taufiq, Arief Fahmi Lubis, and Karman Jaya, "Legal Analysis of the Role of the Constitutional Court in Judicial Review of Legislation," *Jurnal Kolaboratif Sains*, Vol. 8, No. 2, (February 2024), p. 1258, <https://doi.org/10.56338/jks.v8i2.7141>

In constitutional review cases, the Indonesian Constitutional Court has the authority to assess whether a law or Government Regulation in Lieu of Law (Perppu) contradicts the constitution (unconstitutional) or not. Theoretically, there are two types of review: formal review (*formale toetsingsrecht*) and material review (*materiele toetsingsrecht*).²⁴ In this case, the Indonesian Constitutional Court is indeed granted the authority to carry out both types of review, namely both material review and formal review.²⁵

Material review is essentially the process of examining the norms contained in the articles or paragraphs of a law. This review focuses on assessing the substance or content of a law to determine its conformity with the norms stipulated in the constitution or whether it instead contradicts the constitution. This process is carried out by interpreting and clarifying the meaning of the legal norms contained in the constitution, which indeed are often still general and abstract, thus requiring interpretation.

Meanwhile, if the review is conducted on the formation procedure, it is called formal review. In carrying out constitutional review, the Indonesian Constitutional Court is not limited to material review alone but also to the procedural formation of legislation. However, there is a limitation or deadline for filing a formal review petition of a law or Government Regulation in Lieu of Law (Perppu), namely that the petition must be filed within a maximum period of 45 (forty-five) days after the law or Perppu is promulgated.²⁶

Based on Constitutional Court Decision Number 27/PUU-VII/2009, the Constitutional Court stated that formal review cannot be based solely on the 1945 Constitution because its nature is general and does not regulate

²⁴ Rangga Wijaya, "The Function of the Constitutional Court in Reviewing Laws against the 1945 Constitution," *IJOLARES: Indonesian Journal of Law Research* Vol 1, No. 1 (2023): p.26, <https://doi.org/10.60153/ijolares.v1i1.5>.

²⁵ Article 2 Paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedural Law in Constitutional Review Cases

²⁶ Article 9 Paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedural Law in Constitutional Review Cases

procedural matters in detail. Therefore, to maintain constitutional legal order, formal review remains possible by using legislation and other procedural provisions that are derivatives of the constitution as the touchstone. For example, in a review of the procedure of a law, the touchstone includes Law No. 12 of 2011 concerning the Formation of Legislation (PPP), as last amended by Law No. 13 of 2022. This law regulates the stages of planning, drafting, discussion, enactment, and promulgation of legislation. One of the provisions affirmed in this law is that in the procedure for forming legislation, meaningful public participation must be implemented.

One important precedent in formal review of laws at the Indonesian Constitutional Court is the precedent originating from Constitutional Court Decision No. 91/PUU-XVIII/2020. In this case, the court assessed that the formation process of the Job Creation Law was procedurally flawed and declared the Law conditionally unconstitutional. This decision is an important precedent because it was the first time the Constitutional Court annulled a law based on formal aspects.

The case resolution process at the Indonesian Constitutional Court tends to be similar to other cases within the court's jurisdiction. In constitutional review cases, after the petition by the petitioner is registered in the Constitutional Case Registration Book (BRPK), the Court sets the date for the first hearing within a maximum period of 14 days.²⁷

The Constitutional Court will then deliver a copy of the petition to the People's Representative Council and the President, as well as to the Supreme Court. The hearings for constitutional review cases include preliminary examinations, trial examinations, and the reading of the decision. In this regard, the Constitutional Court may request statements from the People's Consultative Assembly, the People's Representative

²⁷ Article 35 Paragraph (1) of Constitutional Court Regulation Number 2 of 2021 concerning Procedural Law in Constitutional Review Cases

Council, the Regional Representative Council, the President, and/or the Vice President.

During the constitutional review process, the Supreme Court is obligated to suspend the review process of regulations below the law if the law that serves as the basis for that review is currently being examined by the Constitutional Court. Nevertheless, the law or Government Regulation in Lieu of Law being reviewed by the Court remains in effect until a decision is issued declaring that the law or Perppu contradicts the 1945 Constitution.²⁸

If a petition is deemed legally justified, the Court will grant it. Conversely, if the petition does not meet the specified requirements, the ruling of the Constitutional Court will state that the petition is inadmissible (*niet ontvankelijk verklaard*), or if the Court finds that the challenged law is not proven to contradict the constitution, the petition will be rejected.

For a petition that is accepted, the Constitutional Court will declare that the material content in the form of articles, paragraphs, and/or parts of the law or Government Regulation in Lieu of Law (Perppu) that contradicts the 1945 Constitution has no binding legal force (material review). Such a decision takes effect immediately from the moment it is pronounced (final and binding). Similarly, for a law whose formation does not comply with the provisions for the formation of legislation according to the 1945 Constitution, that law or Perppu is declared to have no binding legal force (formal review). This decision also has general application (*erga omnes*).

2. Constitutional Review Mechanism in Romania

After the 1989 Revolution, Romania experienced a genuine renewal in institutionalizing the principles of democracy, respect for human rights, governance based on the rule of law, and constitutional supremacy. This can be seen from the provisions in the Romanian Constitution which stipulate that respect for the constitution, constitutional supremacy, and the law is

²⁸ Article 76 of Constitutional Court Regulation Number 2 of 2021 concerning Procedural Law in Constitutional Review Cases

mandatory. Therefore, to ensure that state governance is in accordance with the constitution, a Constitutional Court was established with the task of guaranteeing the supremacy of the constitution.²⁹ The Constitutional Court in this regard holds the position as the sole authority competent in constitutional matters in Romania.³⁰

Romania applies constitutional review through a dual mechanism, namely the constitutional preview mechanism and the constitutional review mechanism. Both mechanisms are implemented with the aim that the Constitutional Court truly ensures supervision over the constitutionality of laws, international treaties, parliamentary regulations, and other regulations.³¹ For clarity and comprehensiveness, each mechanism will be discussed in separate subsections.

a. Constitutional Preview Mechanism in The Constitutional Court of Romania

The term "constitutional preview" is also often referred to as preventive review or a priori constitutional review. In this model, the court can review legislation before it is enacted as a binding legal norm, i.e., while it is still in draft form. In Romania, constitutional review under the constitutional preview mechanism is not limited to draft laws alone but also extends to draft ratifications of international treaties.

1) Constitutionality Preview of Draft Laws

Article 11 paragraph (1) letter A, point a of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court states that the Constitutional Court may issue decisions, in the following cases:

"Deciding on the constitutionality of laws, before their promulgation, upon referral by the President of Romania, one of the Presidents of the two Chambers, the Government, the High Court of Cassation and

²⁹ Article 51 of the 1991 Romanian Constitution

³⁰ Article 1 paragraphs (1) and (2) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

³¹ Article 2 paragraph 1 of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

Justice, the Ombudsman, at least 50 deputies or at least 25 senators, as well as, ex officio, on the initiative to revise the Constitution;"

Thus, based on the wording of the article above, the phrase "before their promulgation" explicitly explains that constitutional review of draft laws in the Constitutional Court of Romania is a priori in nature. Furthermore, Article 11 paragraph (1) letter A, point a above also indicates a form of application of the constitutional control mechanism regarding the limitation of petitioners who may file a petition. The constitutional control mechanism is based on the submission of a petition by a petitioner who has legal standing.³² Reflecting on the constitutional preview mechanism applied in France, the limitation of parties who can be petitioners aims to maintain the stability of the ongoing legislative process in parliament.

Therefore, it can be elaborated that only eight parties are granted legal standing to submit a petition to the court, namely:

- 1) The President of Romania as Head of State
- 2) The President of the Chamber of Deputies
- 3) The President of the Senate
- 4) The Prime Minister as Head of Government
- 5) The High Court of Cassation and Justice
- 6) The Ombudsman (holder of the right to raise the unconstitutionality of laws before the Constitutional Court prior to their application, based on the 2003 constitutional revision)
- 7) At least 50 deputies, or
- 8) At least 25 senators

The Court in this case also requires that in order to exercise the right to submit a petition to the Constitutional Court, the law to be reviewed must first be communicated at least five days before submission to the Government, the High Court of Cassation and Justice, and the

³² Maruarar Siahaan, *Procedural Law of the Constitutional Court of the Republic of Indonesia*, Sinar Grafika, Jakarta, 2011, p. 60.

Ombudsman, and also submitted to the Secretary General of the Chamber of Deputies and the Secretary General of the Senate.³³

The examination of the case is conducted in a plenary session of the Constitutional Court based on the documents, referrals, and opinions received, both concerning the provisions challenged and other closely related and inseparable provisions. During the hearing of the case, the parties are given the opportunity to present their views. The Presidents of both Chambers of Parliament, namely the Chamber of Deputies and the Senate, the Government, and the Ombudsman may submit their opinions in writing. Meanwhile, statements from the Government may only be submitted with the signature of the Prime Minister.³⁴ The proceedings before the Constitutional Court are generally open to the public, unless the Court decides otherwise. In addition, the parties are also granted the right to access documents contained in the case file.³⁵

In exercising their authority to review the constitutionality of draft laws, the Constitutional Court issues decisions based on the majority vote of the judges of the Court in the judges' deliberation meeting. If the decision obtained from the judges' deliberation meeting concludes that the law contradicts the constitution, that decision must be communicated to the Presidents of each Chamber of Parliament and to the Prime Minister. For a law declared unconstitutional before its promulgation, Parliament is obliged to review the relevant provisions in order to bring them into line with the decision of the Constitutional Court. This aims to prevent the enactment of a law that has been declared contrary to the constitution or unconstitutional.

2) Constitutionality Preview of International Treaties or Agreements

³³ Article 15 paragraph (2) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

³⁴ Article 17 paragraph (1) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

³⁵ Article 12 paragraphs (1) and (2) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

Under the Vienna Convention, ratification is defined as one of the means by which a state binds itself to a treaty³⁶. In principle, there is no obligation or coercive force imposed on any state to ratify an international treaty into national law. States retain full sovereignty over the decision to ratify or not to ratify an international treaty. However, if ratification is carried out, national interest remains the primary consideration.³⁷ Thus, in this regard, Romania has a mechanism to test whether an international treaty or agreement is in accordance with the constitution or not before it is established as a binding norm within its territory.

Article 11 paragraph (1) letter A, point b stipulates:

"This institution decides on the constitutionality of treaties or other international agreements, before their ratification by Parliament, upon referral by one of the Presidents of the two Chambers, by at least 50 deputies or at least 25 senators;"

The phrase "before their ratification" explains that the process of constitutional review of treaties or international agreements is a priori in nature. Thus, the Constitutional Court of Romania has the authority to carry out early prevention (preventive) against possible constitutional violations arising from a treaty or international agreement that will bind the state.

If the court decides that a treaty or international agreement is in accordance with the constitution in force in Romania, then that treaty or international agreement may be ratified. Treaties that have been ratified by Parliament become part of national law. However, if the Court issues a decision declaring that a treaty or international agreement is unconstitutional, then that treaty or international

³⁶ Aktieva Tri Tjitrawati, Jani Purnawanty, Textbook: International Treaty Law, Airlangga University Press (AUP), Surabaya, 2012, p. 112

³⁷ Sumaryo Suryokusumo, "Ratification of International Conventions in the Perspective of the National Legislative System," in Report of the National Dialogue Forum on Legal and Non-Legal Fields, BPHN Ministry of Justice and Human Rights, Jakarta, 7–9 September 2004, p. 138.

agreement cannot be ratified.³⁸ This shows that Romania has full jurisdiction over its domestic affairs. As with the review of draft laws, in the plenary sessions of the Constitutional Court, the President of Romania, the presidents of both Chambers of Parliament, and the Government may each submit their views in writing.

b. Constitutional Review Mechanism in The Constitutional Court of Romania

1) Constitutionality Review of Laws

Besides reviewing the constitutionality of draft laws, Romania also applies review to laws and regulations that have already been enacted and are binding. This mechanism is known as an unconstitutionality objection. According to Article 144 letter c of the Romanian Constitution, the Constitutional Court has the responsibility to:

"Decide on objections raised before courts regarding the unconstitutionality of laws and regulations."

Unlike the provisions for reviewing draft laws, in this mechanism the object of constitutional review is required to be a legislative regulation that has already been enacted. Thus, this mechanism is a posteriori in nature, meaning the review is conducted after the law has come into effect. Article 11 letter A, point a of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court states that the Constitutional Court will issue decisions in cases of:

"Deciding on objections of unconstitutionality concerning laws and regulations, raised before courts or commercial arbitration, as well as those raised directly by the Ombudsman;"

In this mechanism, there is a specific requirement for a law or regulation to be reviewed by the Constitutional Court of Romania. That specific requirement is that the norm to be reviewed must be in use or

³⁸ Article 26 paragraph (3) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

relevant to the resolution of a case at the litigation stage. Litigation means the resolution of a case through the court system³⁹ which in this context means concerning any case before a court under the High Court of Cassation and Justice (Supreme Court) or a commercial arbitration court. This provision means that not all laws can be challenged. Therefore, it can be concluded that the petition for an unconstitutionality objection regarding laws and regulations before the Constitutional Court of Romania is a limited constitutional review.

Article 29 paragraph (1) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court:

"The Constitutional Court shall decide on objections raised before courts or commercial arbitration courts concerning the unconstitutionality of a law or regulation or a provision of a law or regulation in force, which relates to the resolution of a case at any stage of litigation and regardless of the subject matter of the case."

Thus, in more detail, the object of the petition that may be reviewed in a petition for an unconstitutionality objection must meet the following requirements:⁴⁰

1. A law or a local regulation or a provision in a law or local regulation.
2. The law, regulation, or provision being challenged must still be in force.
3. The law, regulation, or provision being challenged must relate to the resolution of the case at any stage of litigation and regardless of the subject matter of the case. Unless the Ombudsman raises the objection on grounds of unconstitutionality;

³⁹ Dewa Bagus Oka Prayudha, "Effectiveness of Business Dispute Resolution Alternatives in Indonesia: Between Litigation and Non-Litigation," *Jurnal Media Akademik (JMA)*, Vol. 4, No. 4, (April 2026), p. 2, <https://jurnal.mediaakademik.com/index.php/jma/article/download/4655/3408/12706>

⁴⁰ Curtea Constituțională a României. (n.d.). Soluționarea excepției de neconstituționalitate. Retrieved from <https://www.ccr.ro/soluționarea-excepției-de-neconstituționalitate/> on May 7, 2026.

4. The challenged law, regulation, or provision must not have been previously declared unconstitutional by a Constitutional Court decision.

If the petition does not meet the requirements mentioned above, the court where the case is being examined must refuse to refer the request to the Constitutional Court. The resolution of the case will be returned to the appeal mechanism within the appellate court under the High Court of Cassation and Justice.

Furthermore, the parties that may raise an unconstitutionality objection or constitutional review are not granted to everyone, but are limited to the parties in that case. Thus, in this regard, Romania restricts the petition to be filed only at the request of one of the parties in the case or by the court or commercial arbitration. Additionally, in some cases, the petition may also be filed by the public prosecutor before the court, in cases where he or she participates.⁴¹

Citizens cannot directly file a petition with the Constitutional Court if they feel that a law is incompatible with the constitution or harms their interests, unless they are a party to a case currently being heard by a court. However, citizens can urge the Avocatul Poporului (Ombudsman) to file a petition. In this regard, the Ombudsman has the authority to receive, examine, and decide, in accordance with the law, on petitions submitted by any person, regardless of citizenship, age, gender, political affiliation, or religious belief.⁴²

The Ombudsman does not need to be a party to a case, so the Ombudsman can directly file a petition for an unconstitutionality objection. The Constitutional Court is obliged to resolve

⁴¹ Article 29 Paragraph (2) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

⁴² Instituția Avocatul Poporului, Originile Instituției Ombudsman retrieved from <https://avp.ro/index.php/prezentare/avocatul-poporului-institutie-de-tip-ombudsman/> accessed on May 9, 2026.

unconstitutionality objections filed by the Ombudsman⁴³. Thus, the Ombudsman functions as a constitutional channel for citizens whose rights are harmed by a law but who do not have direct access to the Constitutional Court because they are not involved in a specific court case. This mechanism provides indirect constitutional protection to the public, although it remains limited as it depends on the Ombudsman's assessment of whether to forward the petition or not.

Therefore, the parties who may raise a constitutionality objection against a law are:

1. the parties to a dispute;
2. ex officio, by the court or commercial arbitration;
3. by the public prosecutor before the court, in cases where he or she participates;
4. by the Ombudsman, directly.

During constitutional review, proceedings in the underlying case are suspended. ⁴⁴This aims to create legal certainty. The Constitutional Court will notify the Presidents of both Chambers of Parliament, the Government, and the Ombudsman, specifying the deadline for submitting their opinions.

If the Court decides to accept the constitutionality petition, meaning that the challenged norm is proven to contradict the constitution, then the provisions of the law or regulation in force are declared unconstitutional and will lose their legal force 45 days after the publication of the Constitutional Court's decision. ⁴⁵Parliament and the Government are responsible for adjusting those unconstitutional provisions to bring them into conformity with the constitution.

⁴³ Article 32 of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

⁴⁴ Article 29 Paragraph (5) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

⁴⁵ Article 31 Paragraph (3) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

2) Constitutionality Review of Parliamentary Regulations

Parliamentary regulations are legal rules that govern the internal organization, working procedures, and structural activities of the two chambers of parliament.⁴⁶ There are three main types of parliamentary regulations: the Senate Regulation, the Chamber of Deputies Regulation, and the Joint Session Regulation. Parliamentary regulations differ from ordinary laws; the legal scope of these provisions focuses only on the internal procedural aspects of parliament. Their regulation includes rules of procedure, legislative procedures, committee formation, and the rights and obligations of parliament members. Nevertheless, parliamentary regulations must still comply with constitutional provisions.

The supervision of the constitutionality of parliamentary regulations is governed by Article 146 letter c) of the 1991 Romanian Constitution and by Articles 27–28 of Law No. 47/1992. Article 27 paragraph (1) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court stipulates:

"The Constitutional Court shall decide on the constitutionality of Parliament's regulations, upon referral by one of the Presidents of the two Chambers, by a parliamentary group, or by at least 50 deputies or at least 25 senators."

Thus, in this regard, the parties that may file a constitutional review of parliamentary regulations consist of four parties:

1. one of the Presidents of the two Chambers of Parliament;
2. a parliamentary group;
3. at least 50 deputies;
4. or at least 25 senators.

⁴⁶ Constitutional Court of Romania, Control of the constitutionality of Parliament's regulations, retrieved from <https://www.ccr.ro/controlul-constitutionalitatii-regulamentelor-parlamentului/> accessed on May 4, 2026.

The Court in this case sets a date for the plenary debate, which must be communicated within 24 hours after registration to the Presidents of both Chambers, specifying the date on which the debate will take place.⁴⁷ The constitutional review proceedings take place in a plenary session of the Constitutional Court. If a decision declares a provision of a regulation unconstitutional, the relevant parliamentary chamber is obliged to reconsider that provision within 45 days to bring it into conformity with the Constitution. During this process, the provision declared unconstitutional is suspended, and if no adjustment is made within that time limit, the provision loses its legal force.⁴⁸

To provide a more systematic overview of the fundamental differences between the constitutional review mechanisms in Indonesia and Romania, below is a comparative table of constitutional review in the Constitutional Court between Indonesia and Romania.

⁴⁷ Article 27 Paragraph (2) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

⁴⁸ Article 28 Paragraph (3) of Law no. 47 of 18 May 1992 (republished) regarding the Organization and Functioning of the Constitutional Court

TABLE 1. Comparison of constitutional review mechanisms in the Constitutional Court between Indonesia and Romania

Aspect	Indonesia	Rumania
Institution	Constitutional Court of the Republic of Indonesia (MKRI)	Constitutional Court of Romania (Curtea Constituțională a României)
Review Mechanism	A posteriori (after law is enacted)	Dual mechanism: A priori (constitutional preview) for draft laws & international treaties, and A posteriori (constitutional review) for laws in force, parliamentary regulations
Dasar Hukum	Pasal 24C UUD 1945 jo. UU No. 24/2003	Konstitusi 1991 (Pasal 142-147) jo. Lege Nr. 47/1992
Jenis Pengujian	<i>A posteriori</i> (setelah undang-undang berlaku)	Ganda: <i>A priori</i> (preventif) + <i>A posteriori</i> (represif)
Objects of Review	Laws; Government Regulation in Lieu of Law (Perppu)	1. Draft laws (before promulgation) 2. Draft ratification of international treaties (before ratification) 3. Laws in force (via unconstitutionality objection) 4. Parliamentary regulations
Petitioners (Legal Standing)	Broad: individual citizens, groups with same interest, customary law communities, public/private legal entities, state institutions	A priori: Limited (8 parties): President, Presidents of Chamber of Deputies/Senate, Prime Minister, High Court of Cassation and Justice, Ombudsman, min. 50 deputies/25 senators. A posteriori

TABLE 1. Comparison of constitutional review mechanisms in the Constitutional Court between Indonesia and Romania

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Review Mechanism	A posteriori (after law is enacted)	Dual mechanism: A priori (constitutional preview) for draft laws & international treaties, and A posteriori (constitutional review) for laws in force, parliamentary regulations
		Laws: Parties to a dispute, courts ex officio, public prosecutor, Ombudsman (direct). Parliamentary regulations: Presidents of Chambers, parliamentary group, min. 50 deputies/25 senators.
Type of Review	Material and formal review	Material review
Legal Effect of Decision (Unconstitutional)	Immediate loss of binding legal force upon pronouncement (final and binding, erga omnes)	A priori: Law cannot be promulgated/treaty cannot be ratified. A posteriori (laws/regulations): Loss of legal force 45 days after decision if not remedied by Parliament/Government. Suspension during the 45-day period.

Sources: Authors, 2026

Conclusion

The constitutional review mechanisms of laws in Indonesia and Romania both stem from the principle of constitutional supremacy and aim to maintain the balance of power within the rule of law framework. However, they have fundamental differences in institutional design and implementation mechanisms. Indonesia adopts a centralized constitutional review model through the Constitutional Court, with the main authority to conduct a *posteriori* constitutional review, i.e., after the law has come into effect. The main advantage of this system is broad petitioner access (including individuals, groups, legal entities, and state institutions) and decisions that are final and binding from the moment they are pronounced, thus providing immediate legal certainty and direct protection of constitutional rights. However, a significant weakness of the Indonesian system is the absence of a preventive mechanism (constitutional preview).

As a result, any newly enacted law can be directly challenged in the Constitutional Court without any prior filtering process. This phenomenon causes the Constitutional Court to often become a "workshop" for laws that are still fresh, creating legal uncertainty because laws that are already in effect can be annulled at any time. Furthermore, this practice does not fully reflect the principles of good legislation formation (as regulated in Law No. 12 of 2011 jo. Law No. 13 of 2022), especially the principles of clear purpose and implementability, because laws that have the potential to be unconstitutional from the outset are still forced into effect before a Constitutional Court decision is issued.

On the other hand, Romania, which applies a dual mechanism (*a priori* and *a posteriori*), has an advantage in the preventive aspect. However, the recommendation for Indonesia is not to adopt the entire Romanian system, but rather to selectively adopt a limited constitutional preview mechanism for certain categories of strategic draft laws that have a broad impact on the constitutional structure, state finances, and citizens' constitutional rights, such as the State Budget Bill, Election Bill, and bills

related to human rights. With this limited preview, potential unconstitutionality can be filtered out before the law comes into effect, reducing the Court's caseload and strengthening compliance with the principles of legislation formation. In addition, Indonesia would maintain broad access in a posteriori review to guarantee the protection of citizens' constitutional rights.

A concrete recommendation that can be implemented is to revise Law No. 24 of 2003 concerning the Constitutional Court and Law No. 12 of 2011 concerning the Formation of Legislation to insert the Constitutional Court's authority to conduct preventive review at the request of the People's Representative Council, the President, or an organized group of citizens, with certain material limitations. With this step, Indonesia's constitutional review system will be more balanced between preventive and repressive aspects, while also realizing higher quality and more just governance of legislation.

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