



ISSN 2809-672X (Online)
IUS POSITUM: Journal of Law Theory and Law Enforcement

<https://journal.jfpublisher.com/index.php/jlte>

Vol. 5 Issue 3, July 2026

doi.org/10.56943/jlte.v5i3.1048

Judicial Review by the Constitutional Court: A Democratic Oversight Instrument in Indonesia

Ernawati Huroiroh^{1*}, Dossy Iskandar Prasetyo², Vera Rimbawani Sushanty³

¹ernawatihuroiroh@ubhara.ac.id, ²dossy@ubhara.ac.id, ³rimbawani@ubhara.ac.id

Universitas Bhayangkara Surabaya

*Corresponding Author: Ernawati Huroiroh

Email: ernawatihuroiroh@ubhara.ac.id

ABSTRACT

Judicial review is one of the constitutional authorities of the Constitutional Court that plays a central role in upholding constitutional supremacy, sustaining checks and balances, and strengthening constitutional democracy in Indonesia. This study examines the constitutional position and authority of judicial review exercised by the Constitutional Court within Indonesia's system of governance and assesses the implications of its judicial review decisions for the protection of citizens' constitutional rights within Indonesia's democratic system. The study employed normative legal research using statute, conceptual, and case approaches, drawing on primary, secondary, and tertiary legal materials analyzed qualitatively through a descriptive-analytical method. The findings show that the Constitutional Court holds a strategic position as guardian of the constitution, exercising authority to test statutes against the 1945 Constitution to ensure that legislative products remain consistent with the principles of the rule of law and constitutional democracy. This authority functions as an instrument of democratic oversight that restrains the misuse of legislative power and sustains institutional equilibrium. In addition, the Court's judicial review decisions carry significant implications for the protection of citizens' constitutional rights: through its authority to invalidate unconstitutional norms, the Court reinforces constitutional supremacy, increases the accountability of law-makers, and advances a constitutional democracy in which the constitution serves as the foundation of state power. Judicial review therefore functions not merely as a mechanism for testing legal norms but as a substantive instrument for strengthening democracy and protecting citizens' constitutional rights in Indonesia.

Keywords: *Checks and Balances, Constitutional Court, Constitutional Democracy, Constitutional Rights, Judicial Review*

INTRODUCTION

Indonesia is constitutionally established as a *rechtsstaat* under Article 1(3) of the 1945 Constitution, which requires that state power be exercised on the basis of law rather than official discretion.¹ This commitment operates alongside the principle of popular sovereignty in Article 1(2), under which power originates from the people but must be exercised according to constitutional procedure rather than unconstrained majority will.² Together, these two principles produce what comparative scholarship terms constitutional democracy: a system in which democratically obtained power remains bound by constitutional limits, and in which the protection of citizens' fundamental rights is treated as a condition of legitimate governance, not merely its byproduct.³

Sustaining this balance in practice requires institutions capable of supervising the exercise of public power. Indonesia sought to meet this requirement through the reconfigured state architecture introduced by the constitutional amendments, which abandoned the pre-reform hierarchy of a “highest state institution” in favor of coordinate branches bound to check and restrain one another.⁴

The Constitutional Court occupies a central place within this design. Its establishment reflects the doctrine of checks and balances, traceable to Montesquieu's separation of powers, under which state authority is divided so that no single organ may exercise it without restraint.⁵ Through its authority to review statutes against the Constitution, the Court is positioned to correct legislative deviations, whether substantive or procedural, committed by the House of Representatives and the President, so that law-making remains bound by constitutional limits rather than majoritarian politics alone.⁶

This oversight function addresses a specific risk: a democracy left unsupervised is liable to produce a tyranny of the majority, in which numerical dominance in the legislature erodes minority or individual rights.⁷ Comparative

¹ Suparman Marzuki, “Assessing the Conformity of Human Rights Paradigm in Indonesian Legislation and the Rulings of the Constitutional Court,” *Academic Journal of Interdisciplinary Studies* 12, no. 4 (July 5, 2023): 239, <https://doi.org/10.36941/ajis-2023-0110>.

² Madhav Khosla and Mark Tushnet, “Courts, Constitutionalism, and State Capacity: A Preliminary Inquiry,” *The American Journal of Comparative Law* 70, no. 1 (October 25, 2022): 95–138, <https://doi.org/10.1093/ajcl/avac009>.

³ Avita Paradita Wiratman, Reza Aril Ahri, and Nurmianti Muchlis, “Pengaruh Bauran Pemasaran Terhadap Kepuasan Pasien Di Unit Rawat Inap Rumah Sakit Umum Pusat Dr. Tadjuddin Chalid Kota Makassar,” *Window of Public Health Journal* 4, no. 2 (April 30, 2023): 314–23, <https://doi.org/10.33096/woph.v4i2.707>.

⁴ Tunggul Anshari Setia Negara, Syahriza Alkohir Anggoro, and Imam Koeswahyono, “Indonesian Job Creation Law: Neoliberal Legality, Authoritarianism and Executive Aggrandizement Under Joko Widodo,” *Law and Development Review* 17, no. 1 (February 26, 2024): 155–97, <https://doi.org/10.1515/ldr-2023-0022>.

⁵ Khosla and Tushnet, “Courts, Constitutionalism, and State Capacity: A Preliminary Inquiry.”

⁶ Labib Muttaqin et al., “Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia,” *Journal of Indonesian Legal Studies* 10, no. 1 (August 31, 2025): 91–134, <https://doi.org/10.15294/jils.v10i1.13494>.

⁷ Khosla and Tushnet, “Courts, Constitutionalism, and State Capacity: A Preliminary Inquiry.”

governance scholarship treats this safeguard, judicial oversight of legislative power, as a defining feature of institutional good governance rather than an incidental judicial function.⁸

The Constitutional Court's authority rests on Article 24C of the 1945 Constitution, which empowers it to review statutes against the Constitution, adjudicate disputes over the authority of state institutions, decide on the dissolution of political parties, resolve election-result disputes, and rule on accusations against the President or Vice President. Conceived as guardian of the constitution and protector of constitutional rights, the Court has, since commencing operations in 2003, become one of the principal institutions shaping Indonesia's constitutional order and jurisprudence.⁹

Judicial review itself is divided between two courts: the Constitutional Court, which tests statutes against the 1945 Constitution, and the Supreme Court, which tests subordinate regulations against statutes.¹⁰ This division follows from the principle of constitutional supremacy, under which any statute conflicting with the Constitution may be declared without binding legal force.¹¹ Beyond its function as a testing mechanism, judicial review reinforces the wider system of checks and balances by subjecting legislative power to judicial supervision, operating simultaneously as a legal and a democratic safeguard.¹²

This safeguard extends to constitutional rights, understood as rights guaranteed explicitly or implicitly under the 1945 Constitution, including equality before the law, freedom of expression, access to justice, and political participation, and it reaches even those rights that admit no derogation under emergency legislative measures.¹³ Where a statute is found to restrict such rights, judicial review provides citizens a legal avenue to challenge it, and the Court's resulting decisions, whether annulling a norm or issuing a constitutional interpretation,

⁸ Salwa Aulia et al., "FAIR PLAY PRINCIPLES IN GOOD GOVERNANCE: COMPARATIVE REGULATIONS AND IMPLEMENTATION IN INDONESIA AND MALAYSIA," *Journal of Law Theory and Law Enforcement* 5, no. 1 (January 15, 2026): 1–18, <https://doi.org/10.56943/jlte.v5i1.923>.

⁹ Stefanus Hendrianto, "The Indonesian Constitutional Court and Informal Constitutional Change," in *Constitutional Democracy in Indonesia* (Oxford University Press Oxford, 2022), 219–40, <https://doi.org/10.1093/oso/9780192870681.003.0011>.

¹⁰ Ahmad Siboy et al., "Judicial Review in Indonesia: A Simplification Model," *Lex Scientia Law Review* 6, no. 2 (December 20, 2022): 359–90, <https://doi.org/10.15294/lesrev.v6i2.54848>.

¹¹ Muhammad Siddiq Armia et al., "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?," *Journal of Indonesian Legal Studies* 7, no. 2 (December 21, 2022): 525–56, <https://doi.org/10.15294/jils.v7i2.56335>.

¹² Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia."

¹³ Susanto Susanto, Dr. Jonaedi Efendi, and Dr. Imam Suroso, "CONDITIONAL DEATH PENALTY SENTENCING IN THE NEW INDONESIAN CRIMINAL CODE: A NON-DEROGABLE RIGHTS PERSPECTIVE," *Journal of Law Theory and Law Enforcement*, September 26, 2025, 66–77, <https://doi.org/10.56943/jlte.v4i3.842>.

demonstrate that rights protection in Indonesia does not depend on the parliamentary process alone.¹⁴

Since 2003, statutory review has remained the Constitutional Court's most frequently exercised authority, a pattern reflecting both growing public confidence in the Court and continuing shortcomings in the law-making process, given that a substantial share of contested norms are ultimately found inconsistent with constitutional or human-rights standards.¹⁵

Existing scholarship has approached this dynamic along largely separate lines: the tension between the Court's role as negative legislator and instances approaching positive law-making,¹⁶ the post-amendment distribution of judicial review authority between the Constitutional Court and the Supreme Court,¹⁷ and the comparative protection of civil and political rights through constitutional adjudication.¹⁸ What remains underexamined is how these dimensions connect, that is, how the Court's institutional position as an oversight body translates into concrete outcomes for the protection of citizens' constitutional rights within Indonesia's democratic system. Responding to this gap, this study examines the constitutional position and authority of judicial review exercised by the Constitutional Court within Indonesia's system of governance, and assesses the implications of its judicial review decisions for the protection of citizens' constitutional rights within Indonesia's democratic system.

RESEARCH METHODOLOGY

This study adopts a normative legal research method, appropriate for research that treats law as a prescriptive discipline aimed at resolving a legal problem rather than verifying an empirical hypothesis.¹⁹ The research examines the constitutional position and authority of judicial review exercised by the Constitutional Court as an instrument of democratic oversight in Indonesia. Three approaches were employed. The statute approach involved an examination of the 1945 Constitution of the Republic of Indonesia and the Law on the Constitutional Court. The conceptual approach was used to analyze the concepts of judicial

¹⁴ Askari Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria," *Journal of Indonesian Legal Studies* 8, no. 2 (November 5, 2023), <https://doi.org/10.15294/jils.v8i2.70717>.

¹⁵ Oly Viana Agustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?," *The International Journal of Human Rights* 27, no. 4 (April 21, 2023): 772–88, <https://doi.org/10.1080/13642987.2023.2185608>.

¹⁶ Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia."

¹⁷ Armia et al., "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?"

¹⁸ Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria."

¹⁹ Peter Machmudz Marzuki, "The Essence of Legal Research Is to Resolve Legal Problems," *Yuridika* 37, no. 1 (March 1, 2022): 37–58, <https://doi.org/10.20473/ydk.v37i1.34597>.

review, constitutional democracy, and constitutional rights as developed in legal doctrine. The case approach involved the analysis of Constitutional Court decisions relevant to the protection of citizens' constitutional rights.²⁰

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials comprise the 1945 Constitution, the Law on the Constitutional Court, and Constitutional Court decisions. Secondary legal materials consist of books, journal articles, and other scholarly works relevant to the research topic. Tertiary legal materials consist of legal dictionaries and encyclopedias.²¹ All materials were analyzed qualitatively using a descriptive-analytical method to explain and examine the constitutional authority of judicial review as exercised by the Constitutional Court in overseeing democratic governance in Indonesia.

RESULT AND DISCUSSION

The Basic Concept of Judicial Review by the Constitutional Court

Judicial review is the process by which a judicial institution examines a legal norm against a higher norm to determine its conformity.²² Within a *rechtsstaat*, this mechanism guarantees that legal products issued by state institutions do not contravene the constitution or prevailing legal principles, and it developed as a form of oversight over the exercise of state power to keep that power within the bounds of constitutional supremacy and citizens' rights.²³

In Indonesian constitutional law, judicial review is understood as the authority of a judicial institution to test legislation against a higher norm. This authority is divided between the Constitutional Court, which reviews statutes against the 1945 Constitution, and the Supreme Court, which reviews subordinate regulations against statutes, a division that produces a layered system of normative oversight corresponding to the hierarchy of legislation.²⁴

Conceptually, judicial review is not confined to invalidating norms that conflict with higher law; it also functions as an instrument of constitutional supremacy and of protecting citizens' constitutional rights. On this understanding, judicial review is a defining feature of constitutional democracy, in which the constitution operates as the supreme law of the land.²⁵ Philosophically, it is rooted in the rule of law, under which every act of government and every piece of legislation must remain subordinate to the constitution as the highest legal

²⁰ Marzuki.

²¹ Siboy et al., "Judicial Review in Indonesia: A Simplification Model."

²² Heru Setiawan et al., "Digitalization of Legal Transformation on Judicial Review in the Constitutional Court," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (May 26, 2024): 263–98, <https://doi.org/10.53955/jhcls.v4i2.263>.

²³ Siboy et al., "Judicial Review in Indonesia: A Simplification Model."

²⁴ Armia et al., "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?"

²⁵ Marzuki, "The Essence of Legal Research Is to Resolve Legal Problems."

authority, so that judicial review functions to ensure that the exercise of state power is neither arbitrary nor detached from constitutional supremacy.²⁶

Judicial review also rests on the principle of separation of powers and the mechanism of checks and balances. Although the legislature holds the authority to enact statutes, that authority is not absolute; the judiciary is assigned an oversight function to ensure that legislative products remain consistent with the constitution, with substantive justice, and with respect for human rights, making judicial review an essential instrument for maintaining equilibrium among the branches of state power.²⁷

The juridical basis of judicial review in Indonesia is found in Articles 24A(1) and 24C(1) of the 1945 Constitution, which respectively empower the Supreme Court to review regulations below the level of statute and the Constitutional Court to review statutes against the Constitution. These provisions are elaborated further in the Law on the Constitutional Court, the Law on the Supreme Court, and the Law on Judicial Power. The principal purpose of judicial review is to secure the supremacy of the constitution in the conduct of state affairs: legislation found to conflict with the constitution or with higher regulations may be invalidated through judicial testing, positioning judicial review as a control mechanism against the misuse of authority by both the legislature and the executive.²⁸ Beyond preserving the coherence of the legal system, judicial review protects citizens' constitutional rights by providing a legal avenue through which individuals may challenge a norm considered prejudicial to those rights, making it an instrument of both preventive and remedial legal protection within a constitutional democracy.²⁹

The Constitutional Position and Authority of Judicial Review Exercised by the Constitutional Court within Indonesia's System of Governance

The Constitutional Court is one of the actors of judicial power established through the amendment of the 1945 Constitution. Its establishment marked a shift in Indonesia's constitutional system toward a democratic *rechtsstaat* in which the constitution functions as the supreme law, and together with the Supreme Court, it exercises independent judicial power to uphold law and justice.³⁰

The Court's constitutional position is set out in Article 24C of the 1945 Constitution, which grants it authority to review statutes against the Constitution, adjudicate disputes over the authority of state institutions, decide on the

²⁶ Marzuki, "Assessing the Conformity of Human Rights Paradigm in Indonesian Legislation and the Rulings of the Constitutional Court."

²⁷ Khosla and Tushnet, "Courts, Constitutionalism, and State Capacity: A Preliminary Inquiry."

²⁸ Siboy et al., "Judicial Review in Indonesia: A Simplification Model."

²⁹ Novendri M. Nggilu et al., "The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards," *Journal of Law and Legal Reform* 6, no. 2 (April 30, 2025): 659–92, <https://doi.org/10.15294/jllr.v6i2.20888>.

³⁰ Hendrianto, "The Indonesian Constitutional Court and Informal Constitutional Change."

dissolution of political parties, resolve disputes over general election results, and rule on accusations brought by the House of Representatives against the President or Vice President. This authority signals the Court's strategic position as guardian of the constitution. Within Indonesia's constitutional structure, the Court maintains a functional relationship with other state institutions, particularly the House of Representatives and the President as co-legislators; through its authority to review statutes, it oversees legislative products to ensure they do not conflict with the constitution, forming a central part of the checks-and-balances mechanism that maintains equilibrium among state institutions.³¹

One of the Court's principal authorities is to review statutes suspected of conflicting with the 1945 Constitution, an authority that gives citizens, community groups, and legal entities standing to petition for review where their constitutional rights are considered prejudiced by a statutory norm.³² This constitutes constitutional review in the strict sense, a form of oversight ensuring that statutory norms remain consistent with the constitution, positioning the Court as both protector of citizens' constitutional rights and guardian of constitutional democracy.³³ As noted above, this reviewing authority is divided between the Constitutional Court, which tests statutes against the Constitution, and the Supreme Court, which tests subordinate regulations against statutes, a division intended to produce a more effective and integrated system of legal oversight.³⁴

Within a constitutional democracy, judicial review functions as an oversight mechanism over legislative products; through this authority, the Court may invalidate norms found to conflict with the constitution, thereby maintaining the quality of legislation in accordance with the principles of the *rechtsstaat*.³⁵ It also serves to prevent the misuse of legislative power, since a statute may in practice be shaped by particular political interests at the expense of citizens' constitutional rights, and the Court operates as a corrective mechanism against such deviations.³⁶

The exercise of judicial review reinforces both constitutional supremacy and the checks-and-balances mechanism, requiring every state institution to act within the limits set by the constitution. In this respect, the Court's function

³¹ Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria."

³² Aulia et al., "FAIR PLAY PRINCIPLES IN GOOD GOVERNANCE: COMPARATIVE REGULATIONS AND IMPLEMENTATION IN INDONESIA AND MALAYSIA."

³³ Armia et al., "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?"

³⁴ Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia."

³⁵ Negara, Anggoro, and Koeswahyono, "Indonesian Job Creation Law: Neoliberal Legality, Authoritarianism and Executive Aggrandizement Under Joko Widodo."

³⁶ Herlambang P Wiratraman, "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics," *Federal Law Review* 50, no. 3 (September 1, 2022): 314–30, <https://doi.org/10.1177/0067205X221107404>.

extends beyond adjudication to encompass the maintenance of democratic stability and the protection of citizens' constitutional rights.³⁷ This exercise of authority is frequently discussed in connection with the concepts of judicial activism and judicial restraint: judicial activism arises where the Court adopts a progressive constitutional interpretation to respond to social needs and legal development, while judicial restraint reflects a more cautious posture that avoids encroaching upon policy domains properly belonging to the legislature.³⁸

In practice, a number of Constitutional Court decisions exhibit a tendency toward judicial activism, particularly where the Court does not merely annul a norm but also supplies a constitutional interpretation or formulates a new norm in its place. This tendency has generated ongoing debate over the boundaries of the Court's authority within a democratic system, and it points to a continuing need for constructive engagement between the constitutional judiciary and the legislature so that the objectives of upholding the constitution and strengthening democracy can be achieved without one branch encroaching unduly upon the domain of the other.³⁹

Implications of Constitutional Court Judicial Review Decisions for the Protection of Citizens' Constitutional Rights within Indonesia's Democratic System

Constitutional Court decisions carry final and binding legal force under Article 24C(1) of the 1945 Constitution and the Law on the Constitutional Court. Their finality means that a decision acquires permanent legal force from the moment it is pronounced in an open plenary session, with no further legal remedy available against it.⁴⁰ This character is intended to secure legal certainty and preserve the Court's effectiveness as guardian of the constitution. Beyond finality, Constitutional Court decisions possess *erga omnes* force, binding not only the parties to the case but all citizens, state institutions, and other relevant parties.⁴¹ This distinguishes them from civil judgments, which generally bind only the parties involved (*inter partes*): because the object under review is a legal norm applicable to society at large, a decision invalidating a statutory provision carries consequences of general application, and any norm declared inconsistent with the

³⁷ Agustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?"

³⁸ Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia."

³⁹ Zainal Arifin Mochtar, "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes," *Constitutional Review* 11, no. 1 (May 31, 2025): 36–62, <https://doi.org/10.31078/consrev1112>.

⁴⁰ Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria."

⁴¹ Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia."

1945 Constitution loses binding force from the moment the decision is pronounced or as otherwise specified in its operative provisions.⁴²

Within the national legal system, the legal force of Constitutional Court decisions has direct implications for both law-making and law application. Such decisions do more than annul particular norms; in a number of cases they have also set new directions in the development of national law through constitutional interpretation. This indicates that the Court does not function solely as a negative legislator but has, in certain decisions, played an active role in shaping legal norms through binding constitutional interpretation.⁴³

The authority of judicial review provides citizens a constitutional mechanism for obtaining protection of rights prejudiced by the enactment of a statute.⁴⁴ Through this mechanism, an individual may petition for review where a norm is considered to conflict with the constitutional rights guaranteed under the 1945 Constitution, positioning the Constitutional Court as a corrective instrument against possible deviations by the legislature. This protection is realized through the annulment or removal of norms found unconstitutional. In several of its decisions, the Court has invalidated provisions considered to diminish political rights, the right to legal certainty, or the right to equal treatment before the law, actions that, from the standpoint of constitutional democracy, constitute a form of oversight preventing the legislature from exceeding constitutional limits.⁴⁵ Judicial review further reinforces the principle of due process of law: every act of the state must be conducted according to fair legal procedure and must not infringe citizens' fundamental rights, and through statutory review the Court ensures that both the formation and the application of legal norms continue to respect justice, legal certainty, and the protection of human rights.

A number of landmark decisions illustrate these implications. Constitutional Court Decision Number 005/PUU-IV/2006, concerning review of the Law on the Judicial Commission, affirmed the limits of authority among state institutions by holding that constitutional judges do not fall within the Judicial Commission's scope of oversight, reflecting the Court's role in safeguarding judicial independence as an element of the *rechtsstaat*. The protection of citizens' constitutional rights is likewise evident in Constitutional Court Decision Number 102/PUU-VII/2009, which permitted the use of identity cards and passports as a

⁴² Shuaiqi Liu et al., "Low-Resource Court Judgment Summarization for Common Law Systems," *Information Processing & Management* 61, no. 5 (September 2024): 103796, <https://doi.org/10.1016/j.ipm.2024.103796>.

⁴³ Susanto, Efendi, and Suroso, "CONDITIONAL DEATH PENALTY SENTENCING IN THE NEW INDONESIAN CRIMINAL CODE: A NON-DEROGABLE RIGHTS PERSPECTIVE."

⁴⁴ Ignacio Giuffré, "Deliberative Judicial Review," *Federal Law Review* 53 (September 3, 2025): e2, <https://doi.org/10.1017/fed.2025.2>.

⁴⁵ Augustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?"

basis for exercising the right to vote in the 2009 presidential election on the ground that the right to vote is a constitutional right that cannot be forfeited merely on administrative grounds, thereby broadening citizens' access to political rights and reinforcing the substance of electoral democracy.

Constitutional Court Decision Number 46/PUU-VIII/2010, concerning the legal status of children born outside marriage, extended the protection of children's rights by recognizing a civil relationship with their biological father. Constitutional Court Decision Number 91/PUU-XVIII/2020, concerning the Job Creation Law, affirmed the importance of public participation and constitutionally valid procedure in the law-making process; the decision's subsequent implications, including its effect on investor confidence and legislative practice, illustrate how a finding of formal unconstitutionality can carry consequences extending well beyond the annulment of a single provision.⁴⁶ Together, these decisions show that the protection of constitutional rights is tied not only to the substance of a norm but also to the constitutionality of the process through which that norm was formed.

Judicial review decisions contribute to the protection of human rights as a central element of constitutional democracy. Through its reviewing authority, the Court may invalidate norms that risk disproportionately restricting citizens' fundamental rights, reflecting a conception of democracy as more than governance by majority vote; it is also a system that respects individual rights.⁴⁷ Constitutional Court decisions have likewise strengthened citizens' participation in democratic life. Decisions concerning voting rights, freedom of association, and openness in the legislative process demonstrate the Court's role in securing public involvement in political and governmental processes, a dimension of democratic quality that extends beyond the mere conduct of elections to the broader level of public participation in state decision-making.⁴⁸ From an institutional perspective, Constitutional Court decisions have also increased the accountability of law-makers, requiring the House of Representatives and the President to formulate regulations consistent with constitutional principles and responsive to public aspiration, while helping maintain the balance between majoritarian democracy and constitutionalism so that majority political power remains within constitutional limits.⁴⁹

Notwithstanding the final and binding character of its decisions, the Constitutional Court continues to face problems of non-compliance in practice.

⁴⁶ Yati Nurhayati et al., "Investment in Indonesia After Constitutional Court's Decision in the Review of Job Creation Law," *Lentera Hukum* 9, no. 3 (December 30, 2022): 435, <https://doi.org/10.19184/ejhl.v9i3.32368>.

⁴⁷ Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria."

⁴⁸ Aulia et al., "FAIR PLAY PRINCIPLES IN GOOD GOVERNANCE: COMPARATIVE REGULATIONS AND IMPLEMENTATION IN INDONESIA AND MALAYSIA."

⁴⁹ Khosla and Tushnet, "Courts, Constitutionalism, and State Capacity: A Preliminary Inquiry."

Some decisions require legislative or policy follow-up that is not always implemented promptly or effectively, a gap that can diminish the practical effectiveness of the constitutional rights protection the Court has granted. A further challenge concerns debate over constitutional interpretation: as interpreter of the constitution, the Court possesses considerable latitude in giving meaning to constitutional norms, yet an overly progressive interpretation risks criticism for encroaching upon law-making functions properly belonging to the legislature, while an overly restrictive interpretation risks constraining the development of rights protection.⁵⁰ Strengthening the future effectiveness of Constitutional Court decisions will accordingly require greater compliance among state institutions, improved mechanisms for implementing decisions, and the continued cultivation of constitutional awareness in national life, so that the Court can more fully perform its function as guardian of the constitution and protector of citizens' constitutional rights within Indonesia's framework of constitutional democracy.

The findings of this study support, and in several respects extend, the strand of scholarship examining the tension between the Constitutional Court's role as negative legislator and its occasional exercise of positive law-making authority.⁵¹ Where that scholarship frames the shift toward positive legislation primarily as a source of institutional friction with parliament and the government, the present analysis of decisions such as Number 46/PUU-VIII/2010 and Number 91/PUU-XVIII/2020 suggests that the same interpretive latitude also performs a protective function for citizens' rights, indicating that the risk of institutional conflict and the extension of constitutional protection are two faces of the same interpretive practice rather than separate phenomena.

The findings likewise confirm the post-amendment distribution of judicial review authority between the Constitutional Court and the Supreme Court described in earlier comparative work,⁵² while extending that account by tracing how this division functions in practice through specific landmark decisions rather than at the level of institutional design alone. In this respect, the present study moves the discussion from where authority is formally located toward how that authority is exercised to produce concrete rights outcomes, a link that prior institutional-design scholarship does not fully develop.

Finally, the study's findings are consistent with comparative research on the constitutional protection of civil and political rights through judicial review,⁵³ and extend that comparative framing by grounding it in the sequence of Indonesian

⁵⁰ Augustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?"

⁵¹ Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia."

⁵² Armia et al., "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?"

⁵³ Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria."

decisions examined here, from the recognition of voting rights on administrative grounds in Decision Number 102/PUU-VII/2009 to the procedural safeguards articulated in Decision Number 91/PUU-XVIII/2020. Rather than contradicting the existing literature, this study's findings corroborate it while adding a domestic, decision-based account of how judicial review operationalizes rights protection within Indonesia's constitutional democracy.

CONCLUSION

This study has shown that the Constitutional Court occupies a strategic constitutional position within Indonesia's system of governance, functioning both as an actor of judicial power and as guardian of the constitution. Through its authority to review statutes against the 1945 Constitution, the Court tests the constitutionality of legislation to ensure that every legal product remains consistent with the principles of the *rechtsstaat* and of constitutional democracy. This authority positions the Court as an instrument of democratic oversight, one that restrains the misuse of legislative power and sustains the checks-and-balances mechanism among branches of state authority, while its occasional exercise of interpretive authority approaching positive law-making illustrates that this oversight function operates as an evolving practice rather than a fixed procedural role.

The Court's judicial review decisions also carry significant implications for the protection of citizens' constitutional rights. Through its authority to invalidate statutory norms found to conflict with the constitution, the Court contributes to securing the respect, protection, and fulfillment of those rights, as illustrated by decisions extending political participation, safeguarding judicial independence, and requiring constitutionally valid legislative procedure. These decisions simultaneously reinforce the principle of constitutional supremacy, strengthen the accountability of law-makers, and advance a form of constitutional democracy in which the constitution serves as the primary foundation for the exercise of state power. The persistence of implementation gaps and unsettled questions of constitutional interpretation, however, indicates that the practical effectiveness of this protection remains a matter of ongoing institutional development rather than a settled achievement.

Taken together, these findings indicate that judicial review functions not merely as a mechanism for testing legal norms but as a substantive instrument for strengthening democracy and protecting citizens' constitutional rights in Indonesia. By tracing how the Court's institutional position translates into concrete rights outcomes across a sequence of landmark decisions, this study contributes a decision-based account that connects two strands of existing scholarship, institutional positioning and rights protection, that have largely been examined separately. Future research examining the enforcement of Constitutional Court

decisions and the mechanisms available to state institutions for ensuring compliance would meaningfully extend this line of inquiry.

REFERENCES

- Agustine, Oly Viana, Susi Dwi Harijanti, Indra Perwira, and Widati Wulandari. "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?" *The International Journal of Human Rights* 27, no. 4 (April 21, 2023): 772–88. <https://doi.org/10.1080/13642987.2023.2185608>.
- Armia, Muhammad Siddiq, Zahlul Pasha Karim, Huwaida Tengku-Armia, Chairul Fahmi, Muhammad Syauqi Bin-Armia, and Armidi Musa. "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?" *Journal of Indonesian Legal Studies* 7, no. 2 (December 21, 2022): 525–56. <https://doi.org/10.15294/jils.v7i2.56335>.
- Aulia, Salwa, Steven Immanuel Simanjutak, Alvian Ajay Chensyah Padang, Wulandari, and Mukhlis Mubin. "FAIR PLAY PRINCIPLES IN GOOD GOVERNANCE: COMPARATIVE REGULATIONS AND IMPLEMENTATION IN INDONESIA AND MALAYSIA." *Journal of Law Theory and Law Enforcement* 5, no. 1 (January 15, 2026): 1–18. <https://doi.org/10.56943/jlte.v5i1.923>.
- Giuffré, Ignacio. "Deliberative Judicial Review." *Federal Law Review* 53 (September 3, 2025): e2. <https://doi.org/10.1017/fed.2025.2>.
- Hendrianto, Stefanus. "The Indonesian Constitutional Court and Informal Constitutional Change." In *Constitutional Democracy in Indonesia*, 219–40. Oxford University PressOxford, 2022. <https://doi.org/10.1093/oso/9780192870681.003.0011>.
- Khosla, Madhav, and Mark Tushnet. "Courts, Constitutionalism, and State Capacity: A Preliminary Inquiry." *The American Journal of Comparative Law* 70, no. 1 (October 25, 2022): 95–138. <https://doi.org/10.1093/ajcl/avac009>.
- Liu, Shuaiqi, Jiannong Cao, Yicong Li, Ruosong Yang, and Zhiyuan Wen. "Low-Resource Court Judgment Summarization for Common Law Systems." *Information Processing & Management* 61, no. 5 (September 2024): 103796. <https://doi.org/10.1016/j.ipm.2024.103796>.
- Marzuki, Peter Machmudz. "The Essence of Legal Research Is to Resolve Legal Problems." *Yuridika* 37, no. 1 (March 1, 2022): 37–58. <https://doi.org/10.20473/ydk.v37i1.34597>.
- Marzuki, Suparman. "Assessing the Conformity of Human Rights Paradigm in Indonesian Legislation and the Rulings of the Constitutional Court." *Academic Journal of Interdisciplinary Studies* 12, no. 4 (July 5, 2023): 239. <https://doi.org/10.36941/ajis-2023-0110>.
- Mochtar, Zainal Arifin. "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes." *Constitutional Review* 11, no. 1 (May 31, 2025): 36–62. <https://doi.org/10.31078/consrev1112>.
- Muttaqin, Labib, Andy Omara, Sudjito Atmoredjo, and M Fikri AR. "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia." *Journal of Indonesian Legal Studies*

- 10, no. 1 (August 31, 2025): 91–134. <https://doi.org/10.15294/jils.v10i1.13494>.
- Negara, Tunggul Anshari Setia, Syahriza Alkohir Anggoro, and Imam Koeswahyono. “Indonesian Job Creation Law: Neoliberal Legality, Authoritarianism and Executive Aggrandizement Under Joko Widodo.” *Law and Development Review* 17, no. 1 (February 26, 2024): 155–97. <https://doi.org/10.1515/ldr-2023-0022>.
- Nggilu, Novendri M., Zulkifli Zulkifli, Yassine Chami, Indra Perwira, and Ali Abdurahman. “The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards.” *Journal of Law and Legal Reform* 6, no. 2 (April 30, 2025): 659–92. <https://doi.org/10.15294/jllr.v6i2.20888>.
- Nurhayati, Yati, Mohd Zamre Mohd Zahir, Ifrani Ifrani, and Parman Komarudin. “Investment in Indonesia After Constitutional Court’s Decision in the Review of Job Creation Law.” *Lentera Hukum* 9, no. 3 (December 30, 2022): 435. <https://doi.org/10.19184/ejil.v9i3.32368>.
- Razak, Askari, Mohamad Hidayat Muhtar, Suzanne Andrea Bloks, and Geofani Milthree Saragih. “Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria.” *Journal of Indonesian Legal Studies* 8, no. 2 (November 5, 2023). <https://doi.org/10.15294/jils.v8i2.70717>.
- Setiawan, Heru, I Gusti Ayu Ketut Rachmi Handayani, M. Guntur Hamzah, and Hilaire Tegnan. “Digitalization of Legal Transformation on Judicial Review in the Constitutional Court.” *Journal of Human Rights, Culture and Legal System* 4, no. 2 (May 26, 2024): 263–98. <https://doi.org/10.53955/jhcls.v4i2.263>.
- Siboy, Ahmad, Sholahuddin Al-Fatih, Asrul Ibrahim Nur, and Nur Putri Hidayah. “Judicial Review in Indonesia: A Simplification Model.” *Lex Scientia Law Review* 6, no. 2 (December 20, 2022): 359–90. <https://doi.org/10.15294/lesrev.v6i2.54848>.
- Susanto, Susanto, Dr. Jonaedi Efendi, and Dr. Imam Suroso. “CONDITIONAL DEATH PENALTY SENTENCING IN THE NEW INDONESIAN CRIMINAL CODE: A NON-DEROGABLE RIGHTS PERSPECTIVE.” *Journal of Law Theory and Law Enforcement*, September 26, 2025, 66–77. <https://doi.org/10.56943/jlte.v4i3.842>.
- Wiratman, Avita Paradita, Reza Aril Ahri, and Nurmiati Muchlis. “Pengaruh Bauran Pemasaran Terhadap Kepuasan Pasien Di Unit Rawat Inap Rumah Sakit Umum Pusat Dr. Tadjuddin Chalid Kota Makassar.” *Window of Public Health Journal* 4, no. 2 (April 30, 2023): 314–23. <https://doi.org/10.33096/woph.v4i2.707>.
- Wiratraman, Herlambang P. “Constitutional Struggles and the Court in Indonesia’s Turn to Authoritarian Politics.” *Federal Law Review* 50, no. 3 (September 1, 2022): 314–30. <https://doi.org/10.1177/0067205X221107404>.