

Judicial Review and Constitutional Courts in ASEAN: Lessons from Indonesia for Vietnam

Giao Vũ Công¹, Ngân Nguyễn Duy Hà²

¹Hanoi Law University, Vietnam

²University of Law, Vietnam National University, Vietnam

Corresponding Author: nguyenduyhangan@gmail.com

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ABSTRACT

This article examines the institutional design and practical operation of judicial review in ASEAN through a comparative analysis of Indonesia and Vietnam. It analyzes how constitutional supremacy is operationalized within distinct constitutional frameworks and assesses the structural implications of judicialized and political models of constitutional protection. Using a qualitative legal-comparative and contextual methodology, the study examines constitutional provisions, statutory arrangements, and selected jurisprudence of Indonesia's Constitutional Court (Mahkamah Konstitusi), while situating Vietnam's framework within broader debates on political constitutionalism and socialist constitutional systems. The findings indicate that Indonesia represents a relatively strong form of judicialized constitutionalism, characterized by concentrated constitutional jurisdiction, the development of remedial techniques, and active engagement in politically sensitive disputes, particularly electoral and institutional conflicts. In contrast, Vietnam maintains a dispersed, predominantly political model of constitutional supervision in which constitutional supremacy is normatively affirmed but not judicialized. The comparison suggests that the principal distinction between the two systems lies not in the formal recognition of constitutional supremacy, but in the institutional mechanisms available to enforce it. This article contributes to comparative constitutional scholarship by developing an ASEAN-centered comparative framework and identifying context-sensitive institutional lessons from Indonesia for constitutional reform in Vietnam. The article concludes that selective, incremental reforms enhance judicial protection of constitutional rights in Vietnam while remaining attentive to domestic political and structural conditions.

Introduction

Over the past two decades, judicial review and constitutional adjudication have become increasingly prominent features of constitutionalism in the ASEAN region. Closely associated with processes of political reform, democratization, and the construction of rule-of-law states, many countries in the region have established or strengthened constitutional review mechanisms to ensure the supremacy of the constitution, control the exercise of state power, and protect constitutional rights.

This development reflects not only the influence of constitutional models from outside the region but also the endogenous efforts of ASEAN states to design institutional arrangements suited to their particular political and legal contexts.

Within this broader landscape, Indonesia stands out as a particularly illustrative case. Following the constitutional amendments of 1999–2002, Indonesia established the Constitutional Court (Mahkamah Konstitusi, MK) with broad jurisdiction and a central position within the state's power structure. In addition to reviewing the constitutionality of legislation, the Constitutional Court plays a significant role in adjudicating electoral disputes, overseeing political parties' activities, and shaping constitutional standards on democracy and human rights. Its rich and at times assertive jurisprudence has made Indonesia one of the most notable examples of judicialized constitutionalism in ASEAN.

By contrast, Vietnam represents a markedly different constitutional model. The 2013 Constitution strongly affirms the principle of constitutional supremacy and devotes a separate chapter to human rights and fundamental rights and duties of citizens. However, Vietnam has not established an independent mechanism of constitutional adjudication in the strict sense. The review of the constitutionality of legal documents is conducted primarily through legislative and political institutions, while courts play only a limited role in constitutional control. This institutional divergence raises important scholarly questions regarding the diversity of judicial review models in ASEAN and the possibilities and limits of drawing lessons from countries with more developed systems of constitutional adjudication.

Existing scholarship has generated substantial insights into constitutional review and constitutional courts in Asia. Ginsburg has argued that constitutional courts in new democracies frequently emerge as institutional mechanisms that facilitate democratic consolidation by providing political actors with constitutional insurance against future uncertainty.¹ Comparative studies edited by Chen and Harding further demonstrate that constitutional courts in East and Southeast Asia have developed along diverse trajectories shaped by differing constitutional traditions, political transitions, and institutional settings.² More broadly, Dressel's work on judicial review in Asia highlights the expansion of constitutional adjudication throughout the region and emphasizes the political dynamics that influence both the establishment and operation of constitutional review mechanisms.³

In the Indonesian context, Lindsey and Butt have shown how constitutional

¹ Sumit Bisarya and Tom Ginsburg, “Enforceable Transitional Provisions in National Constitutions,” *Public Choice* 207, no. 1–2 (April 6, 2026): 43–65, <https://doi.org/10.1007/s11127-025-01355-5>.

² Ngoc Son Bui, “Global Studies in Asian Laws,” *International Journal of Legal Information* 52, no. 3 (December 1, 2024): 228–65, <https://doi.org/10.1017/jli.2025.10>.

³ Maulana Anwar and Afif Noor, “Political Jurisprudence in Action: How Political Power Shapes Legal Outcomes in Southeast Asia,” *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 1 (September 7, 2025): 1–12, <https://doi.org/10.65310/a8t22t48>.

reform following the fall of the New Order transformed Indonesia's constitutional structure and elevated constitutional adjudication as an important component of democratic governance.⁴ Building on this foundation, Butt's comprehensive study of the Indonesian Constitutional Court demonstrates its significant role in constitutional review, electoral governance, and rights protection.⁵ While these studies have considerably advanced understanding of constitutional adjudication in Asia and Indonesia, they have tended to focus either on regional overviews or on the development of individual constitutional courts. Comparatively less attention has been paid to the question of what institutional and doctrinal lessons Indonesia's experience may offer Vietnam when examined within a broader ASEAN constitutional framework. This article seeks to address that gap by combining regional comparison with a focused analysis of Indonesia's Constitutional Court and its relevance for contemporary debates on constitutional protection in Vietnam.

Against this background, this article addresses three main research questions. First, how are judicial review and constitutional adjudication in Indonesia designed and operated within the country's constitutional and political-legal framework? Second, what characteristics of ASEAN constitutionalism are reflected in this model, particularly in the relationship between constitutions, courts, and politics? Third, what institutional and doctrinal lessons can Vietnam draw from the Indonesian experience, and what contextual factors limit the direct transferability of such lessons?

Methodologically, the article adopts a legal-comparative and contextual approach, combining analysis of constitutional texts, case law, and relevant scholarly literature. Rather than assessing one model as inherently "better" or "worse" than another, the article emphasizes a functional and context-sensitive perspective, treating judicial review as an institution shaped by specific political, legal, and cultural conditions. Accordingly, the process of drawing lessons is understood as one of selective adaptation rather than institutional transplantation.

The article is structured as follows. The next section provides an overview of models of judicial review and constitutional courts in ASEAN, situating Indonesia and Vietnam within a broader comparative framework. The subsequent section examines the constitutional foundations, jurisdiction, and jurisprudence of the Indonesian Constitutional Court. The following section analyzes Vietnam's current constitutional protection framework and its structural limitations. On this comparative basis, the article then identifies potential lessons and the limits of applying the Indonesian experience to Vietnam, before concluding with reflections

⁴ Bagus Hermanto, "Constitutional Court Decisions and the Pursuit of Legislative Quality in Indonesia: Judicial Review as a Catalyst for Parliamentary Reform," *The Theory and Practice of Legislation*, August 10, 2026, 1–33, <https://doi.org/10.1080/20508840.2026.2715315>.

⁵ Ousu Mendy and Ebrima Sarr, "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia," *Journal of Indonesian Constitutional Law* 2, no. 1 (March 2, 2025): 1–22, <https://doi.org/10.71239/jicl.v2i1.45>.

on the broader implications for the study of constitutionalism in ASEAN.

Methods

This article employs a qualitative legal research design based on a legal-comparative and contextual approach. The study combines doctrinal analysis with comparative constitutional analysis to examine both the formal institutional design and the practical operation of judicial review across different political and legal settings. First, the research employs doctrinal legal analysis to examine the constitutional foundations, statutory provisions, and institutional frameworks governing judicial review in Indonesia, as well as the mechanisms of constitutional protection in Vietnam. The article analyzes relevant constitutional texts, organic laws, and selected decisions of the Indonesian Constitutional Court to identify the scope of jurisdiction, procedural mechanisms, and patterns of constitutional reasoning.

Second, the article applies a comparative method to evaluate similarities and differences between Indonesia and Vietnam in institutional design, the allocation of constitutional review powers, and the relationship between courts and political institutions. The comparison is functional rather than purely formal, focusing on how constitutional review mechanisms operate in practice and on the roles they play within their respective constitutional systems.

Third, the study adopts a contextual approach, recognizing that broader political, historical, and institutional conditions shape judicial review. Rather than treating constitutional courts as universally transferable institutional models, the analysis considers the specific trajectories of constitutional development, state structure, and legal culture in each country. This approach allows the article to assess not only potential lessons but also the limits of institutional borrowing.

Primary sources include constitutional texts, statutory instruments, and selected judicial decisions. Secondary sources include academic literature, policy reports, and comparative studies on constitutionalism and judicial review in ASEAN. Together, these methods provide a comprehensive basis for evaluating both Indonesia's institutional practice of judicial review and the prospects for developing constitutional adjudication in Vietnam.

Discussion

Judicial Review and Constitutional Courts in ASEAN: A Brief Overview

1) *The Diversity of Judicial Review Models in ASEAN*

Within ASEAN, judicial review, the constitutional or legality review of normative acts, has not developed according to a single institutional template. Instead, it displays considerable diversity in constitutional design, jurisdictional scope, and the degree of judicialization of politics. At present, ASEAN encompasses: (i) jurisdictions that have established constitutional courts with relatively specialized authority; (ii) jurisdictions that vest constitutional review primarily in supreme courts

or ordinary courts (supreme court–based or decentralized review); and (iii) jurisdictions where constitutional control mechanisms are more limited, and constitutional litigation does not function as a primary avenue for enforcing constitutional rights.^{6v}

From a comparative perspective, another notable feature of ASEAN is that even where the institutional label “constitutional court” is used, the actual functions and powers of such bodies may differ significantly. Some models prioritize constitutional review of legislation, whether in abstract or concrete form. In contrast, others place greater emphasis on resolving electoral disputes, regulating political parties, or adjudicating conflicts concerning the structure of state power. These latter domains are often politically sensitive and tend to generate a high degree of judicialization of politics.⁷

In other words, within ASEAN, judicial review is not confined to the narrow function of “guarding the Constitution.” It frequently operates as a mechanism for managing political conflict and reallocating authority among branches of government.⁸

Beyond formal constitutional design, a decisive variable shaping these outcomes is the broader institutional environment and legal culture across ASEAN states. This diversity manifests in varying levels of judicial independence, degrees of professionalization among judges, sophistication in constitutional reasoning, compliance by legislative and executive actors with judicial decisions, and the role of academic communities and civil society in fostering constitutional dialogue.

Comparative scholarship on constitutional courts in Asia indicates that these contextual factors vary substantially across jurisdictions and often explain why constitutional review institutions that appear similar in form may differ considerably in substantive effectiveness.⁹

2) *Prominent Functions of Constitutional Courts in ASEAN*

From a functional perspective, constitutional adjudicatory institutions in ASEAN, whether constitutional courts or supreme courts exercising constitutional jurisdiction, tend to operate around four principal tasks: (i) safeguarding the supremacy of the Constitution; (ii) protecting constitutional rights; (iii) constraining and reviewing state power; and (iv) managing political conflict, particularly electoral

⁶ Ivo Gruev, “Responsive Judicial Review in Kelsenian Constitutional Courts: The Impeding Effects of Limited Standing and Formalism,” *Review of Central and East European Law* 48, no. 3–4 (December 21, 2023): 426–44, <https://doi.org/10.1163/15730352-bja10085>.

⁷ David Kosař and Katarína Šipulová, “Politics of Judicial Governance,” in *Research Handbook on the Politics of Constitutional Law* (Edward Elgar Publishing, 2023), 262–85, <https://doi.org/10.4337/9781839101649.00024>.

⁸ Yvonne Tew, “Strategic Judicial Empowerment,” *The American Journal of Comparative Law* 72, no. 1 (September 9, 2024): 170–234, <https://doi.org/10.1093/ajcl/avad040>.

⁹ Jaclyn Neo and Raeesa Vakil, “A Legality and Legitimacy Framework for Analysing (Unconstitutional) Constitutional Amendments,” *Asian Journal of Comparative Law* 19, no. 3 (December 4, 2024): 401–16, <https://doi.org/10.1017/asjcl.2025.11>.

disputes and disputes concerning the organization and distribution of state authority.

This functional typology aligns with regional scholarship on constitutional review in Asia, which emphasizes that in many transitional political systems, judicial review is expected to serve not only as a "guardian of the Constitution" but also as a "safety valve" in times of political crisis. In such contexts, constitutional courts often play a dual role: enforcing constitutional norms while simultaneously stabilizing political competition within a legal framework.¹⁰

Another notable development in the ASEAN region is the increasing institutionalization of cooperation among courts exercising constitutional jurisdiction through regional networks and forums. At the Asian level, the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) represents a prominent example. The AACC seeks to promote professional dialogue, share institutional and adjudicative experiences, and disseminate constitutional and human rights standards across member jurisdictions.¹¹

Academic assessments of the AACC suggest that such cooperation may help raise technical capacity and professional standards among constitutional courts. At the same time, it raises questions about the degree of convergence, or "harmonization", in constitutional discourse across jurisdictions whose political and legal contexts remain markedly different.¹²

Within the ASEAN framework, the institutional design choices regarding judicial review in Indonesia and Vietnam are shaped by standard regional variables, including whether to adopt a specialized constitutional court or a decentralized model of review; the scope of standing in constitutional litigation; and mechanisms to ensure compliance with constitutional decisions.

Compared with other ASEAN countries, Indonesia represents a relatively "strong" case of constitutional judicialization and therefore serves as an instructive institutional reference point for Vietnam. Indonesia is frequently regarded as a prominent example because it combines three conditions: (i) a constitutional design that grants substantial authority to the Constitutional Court; (ii) a rapidly developing body of jurisprudence that has generated a relatively rich corpus of constitutional reasoning; and (iii) tangible impact of judicial decisions on legislative processes, electoral governance, and the protection of constitutional rights.¹³

¹⁰ Khaled Abed Rabbo Aldrou et al., "The Role of Constitutional Law in Shaping Government Structures and Stability in the Middle East," *Central European Journal of Public Policy* 19, no. 2 (December 1, 2025): 16–34, <https://doi.org/10.2478/cejpp-2025-0005>.

¹¹ Lauren Bartlett, "Human Rights in the U.S.: Handbook for Public Interest Attorneys (2026 Version)," 2026, <https://doi.org/10.2139/ssrn.6617063>.

¹² Dmitriy Galushko and Yun Zhao, "Constitutionalization on a Spectrum: Balancing Sovereignty and Integration in Eurasia (EU, EAEU, and ASEAN Compared)," *Journal of Eurasian Studies* 17, no. 2 (August 1, 2026): 421–37, <https://doi.org/10.1177/18793665261447303>.

¹³ Seema Gul, Riaz Ahmad, and Dr. Sami Ur Rahman, "The Myth of Neutrality: Judicial Review, Ideology, and Constitutional Interpretation in Pakistan and the United Kingdom," *The Critical Review of Social Sciences Studies* 3, no. 2 (May 29, 2025): 1742–54, <https://doi.org/10.59075/mm3m9d48>.

However, because of its expansive role, Indonesia also raises important scholarly questions about the boundary between constitutional guardianship and political intervention, as well as the mechanisms by which the constitutional court itself is held accountable within the broader constitutional order.¹⁴

Judicial Review and the Constitutional Court of Indonesia

1) *The Constitutional Foundations of Judicial Review in Indonesia*

Indonesia's judicial review mechanism emerged directly from the post-*Reformasi* constitutional restructuring that followed the 1998 political transition. The constitutional amendments adopted between 1999 and 2002 established the MK as a new institutional center for constitutional control and the protection of constitutional supremacy.

In the academic literature, leading studies of the MK emphasize that Indonesia moved from a model in which the Constitution functioned primarily as a political compact to one of "judicialized constitutionalism," in which the Constitution operates as a legally enforceable norm. Under this framework, the court does not merely apply statutory law but actively constructs constitutional meaning through interpretation and adjudication.¹⁵

Placed within the ASEAN context, the establishment of the MK was not an isolated development but part of a broader regional, and indeed Asian, trend toward institutionalizing constitutional review in various forms. For example, Thailand's 2017 Constitution empowers its Constitutional Court to review and adjudicate the constitutionality of statutes and draft legislation, alongside a range of other constitutional powers, thereby reinforcing its role as a "guardian" within the state's power structure.¹⁶

In Cambodia, the Constitution and the Constitutional Council's institutional design permit the review of legislation for constitutionality upon request by constitutionally designated actors. Notably, citizens may indirectly initiate review through authorized representatives, reflecting a form of mediated or indirect access to constitutional adjudication.¹⁷

By contrast, the Philippines maintains a tradition of judicial review through the ordinary court system, grounded in Article VIII of the 1987 Constitution, which

¹⁴ Moh. Thohir and Didik Sukriono, "Implementation Authority Of The Constitutional Court In The Indonesian Constitutional Law System," *Awang Long Law Review* 6, no. 2 (May 9, 2024), <https://doi.org/10.56301/awl.v6i2.1112>.

¹⁵ Assefa Fiseha, "Constitutional Adjudication and Constitutional Governance," 2024, 321–95, https://doi.org/10.1007/978-3-031-50426-6_6.

¹⁶ Maartje De Visser and Andrew Harding, "Monarchical Constitutional Guardianship and Legal Métissage in Asia," *Asian Journal of Law and Society* 9, no. 3 (October 24, 2022): 345–62, <https://doi.org/10.1017/als.2022.29>.

¹⁷ Jihan Y. Latif and Suci Khairunnisa Latedu, "Ensuring Constitutional Identity: Amendments, Judicial Review, and Public Participation in Constitutional Dynamics," *International Journal of Constitutional and Administrative Law*, September 30, 2025, 101–15, <https://doi.org/10.66502/8z96kh40>.

vests judicial power in the Supreme Court and lower courts.¹⁸ Malaysia similarly conducts constitutional review through the ordinary judiciary, particularly the Federal Court, under Article 4(1) of the Federal Constitution, which affirms constitutional supremacy.¹⁹

The crucial institutional distinction, therefore, is that Indonesia adopted a specialized constitutional court model with clearly defined constitutional status and significant jurisdiction, especially in reviewing the constitutionality of statutes. In contrast, the Philippines and Malaysia rely on a decentralized or supreme court–centered model.

From an institutional design perspective, this choice produces two important consequences. First, the MK model concentrates constitutional interpretive authority, enabling relatively rapid development of constitutional doctrine. Second, the high degree of institutional specialization renders the MK a focal point for political–constitutional disputes, thereby intensifying the judicialization of politics, a phenomenon widely observed in scholarship on judicial institutions in Southeast Asia.²⁰

2) *Jurisdiction and the Constitutional Control “Ecosystem” of Indonesia’s Constitutional Court*

Across ASEAN, at least three principal “variants” of constitutional review can be identified with respect to jurisdiction and the scope of review.

a) Specialized Constitutional Courts with Broad Jurisdiction Closely Linked to Electoral and Political Matters

Indonesia and Thailand are leading examples of this model. Thailand's 2017 Constitution explicitly empowers its Constitutional Court to review the constitutionality of statutes and draft legislation, while also assigning it additional constitutional powers closely integrated with the country's broader constitutional–political architecture.²¹ In such systems, the constitutional court often functions as a pivotal institutional actor in constitutional politics, particularly during periods of political crisis.

b) Constitutional Council–Type Institutions Characterized by Indirect Access

Cambodia provides a representative example. Its Constitutional Council is empowered to interpret the Constitution and to review the constitutionality of

¹⁸ Nestor Lim, “A Legal Framework for the Allowance of Artificial Intelligence Systems to Practice Law in the Philippines,” 2025, <https://doi.org/10.2139/ssrn.5780362>.

¹⁹ Andriansyah Rahman and Muthi’ah Maizaroh, “Strengthening Independence: Constitutional Interests As A Paradigm For Judicial Review In Indonesia,” *Jurnal Hukum Dan Peradilan* 13, no. 1 (March 31, 2024): 33, <https://doi.org/10.25216/jhp.13.1.2024.33-62>.

²⁰ Tianhao Chen et al., “Conceptualizing and Measuring the Rule of Law in Public Administration—Regulations, Organization, and Decision-Making,” *The American Review of Public Administration*, July 9, 2026, <https://doi.org/10.1177/02750740261464913>.

²¹ Zim Nwokora, “Constitutional Design for Dynamic Democracies: A Framework for Analysis,” *International Journal of Constitutional Law* 20, no. 2 (November 9, 2022): 580–610, <https://doi.org/10.1093/icon/moac030>.

legislation upon request by constitutionally designated actors. Notably, citizens may trigger review indirectly through authorized representatives, reflecting a form of mediated access to constitutional adjudication. This design enables participation while preserving some political filtering in constitutional review.

c) Decentralized or Supreme Court–Centered Review Through the Ordinary Judiciary.

The Philippines exemplifies this model. Under the 1987 Constitution, judicial power, including authority to resolve constitutional disputes, is vested in the Supreme Court and lower courts²². Malaysia similarly conducts constitutional review primarily through the ordinary judiciary, especially the Federal Court, with Article 4(1) of the Federal Constitution serving as the doctrinal foundation for reviewing the constitutionality of legislative and executive acts.²³

Indonesia belongs to the first category. Under its constitutional design and procedural law, the MK exercises a distinctive cluster of powers: (i) review of the constitutionality of statutes; (ii) resolution of disputes concerning authority among constitutionally established state institutions; (iii) adjudication of electoral disputes; (iv) dissolution of political parties; and (v) participation in impeachment proceedings against the President and Vice President.²⁴ These competencies demonstrate that the MK functions not only as a "court of rights" but also as a "court of constitutional structure," where political conflicts are translated into constitutional disputes.²⁵

At the same time, Indonesia's model has a distinctive feature compared to other ASEAN jurisdictions: a "split jurisdiction" or dual-track normative control system. The MK reviews statutes, while the Supreme Court retains authority to review subordinate legislation. This arrangement offers certain advantages, including a more comprehensive framework for norm control. However, it also creates potential constitutional gaps. The division of jurisdiction may generate fragmentation, particularly where disputes lie at the boundary between constitutionality and legality, or where subordinate legislation effectively carries constitutional content.

Indonesia's split-jurisdiction mechanism, therefore, provides a valuable comparative lesson for ASEAN. Many jurisdictions in the region face a similar institutional dilemma: how to design a system of constitutional review that avoids both jurisdictional overlap and regulatory blind spots in increasingly complex

²² Björn Dressel, Tomoo Inoue, and Cristina Regina Bonoan, "Justices and Political Loyalties: An Empirical Investigation of the Supreme Court of the Philippines, 1987–2020," *Law & Social Inquiry* 49, no. 2 (May 18, 2024): 955–79, <https://doi.org/10.1017/lsi.2022.103>.

²³ T.R.S. Allan, "Constitutionalism At Common Law: The Rule Of Law And Judicial Review," *The Cambridge Law Journal* 82, no. 2 (July 22, 2023): 236–64, <https://doi.org/10.1017/S000819732300017X>.

²⁴ Omwansa Kemosi, "Impeachment Across Africa and the World: The Global Collision Between Constitutionalism, Political Power and Democratic Stability," 2026, <https://doi.org/10.2139/ssrn.6768658>.

²⁵ Christopher Bickerton et al., "Conflicts of Sovereignty in Contemporary Europe: A Framework of Analysis," *Comparative European Politics* 20, no. 3 (June 28, 2022): 257–74, <https://doi.org/10.1057/s41295-022-00269-6>.

hierarchies of normative acts.

3) *Constitutional Reasoning, Remedial Techniques, and the Adjudicative Culture of Indonesia's Constitutional Court*

One of the most significant contributions of Indonesia's Constitutional Court (MK) lies in the rapid development of its constitutional reasoning techniques and flexible remedial approaches. Scholarly analyses of the Court's jurisprudence demonstrate that the MK employs a combination of interpretive methods- textual, purposive, structural, and value-oriented- rather than confining itself to strictly semantic interpretation.²⁶

At the same time, the MK frequently adopts conditional decisions (conditionally constitutional or conditionally unconstitutional rulings), which allow a statute to remain formally valid within the legal order while imposing specific interpretive conditions or granting the legislature a deadline to amend the law. These techniques enhance the Court's regulatory capacity in politically sensitive areas by avoiding abrupt institutional confrontation while still shaping constitutional meaning.

A frequently discussed example concerns decisions interpreting Article 33 of the Indonesian Constitution on economic governance, where the MK has directly influenced debates on economic reform and public policy. Through such rulings, the Court has demonstrated its ability not only to invalidate norms but also to recalibrate the constitutional parameters of economic governance.²⁷

Compared with other ASEAN jurisdictions, the MK's adjudicative culture and decision-making techniques show notable distinctions, particularly vis-à-vis systems that rely on ordinary courts for constitutional review. In Indonesia, dissenting opinions are regarded as an instrument of transparency and a catalyst for scholarly and public dialogue. As Simon Butt argues, dissenting opinions "open up" constitutional reasoning to public scrutiny, facilitate doctrinal evolution, and allow for a multidimensional assessment of judicial argumentation.²⁸

In Thailand, by contrast, institutional materials and constitutional discourse emphasize the Constitutional Court's role within the framework of the 2017 Constitution, situating rights protection within Thailand's specific political-institutional context.²⁹ In the Philippines, the tradition of judicial review under the

²⁶ Angjelin A. Hila, "Communicative Action in the Age of Artificial Intelligence: Theorizing LLMs as Communicative and Strategic Agents," *Philosophy & Technology* 39, no. 3 (September 21, 2026): 159, <https://doi.org/10.1007/s13347-026-01168-4>.

²⁷ Sayuti Sayuti, Miftahul Choiri, and Mesut Idriz, "Reassessing Judicial Standards of Proof for Structured, Systematic, and Massive Electoral Violations in Indonesian Regional Head Election Disputes," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2026, 287–308, <https://doi.org/10.24090/volksgeist.v9i1.15437>.

²⁸ Phil Orchard and Antje Wiener, "Norm Research in Theory and Practice," 2023, <https://doi.org/10.2139/ssrn.4499020>.

²⁹ Wichuda Satidporn and Stithorn Thananithichot, "Who Speaks, Who Belongs, and What Justice Requires: Constitutional Struggles in Thailand and Beyond," *Humanities and Social Sciences Communications*, July 8, 2026, <https://doi.org/10.1057/s41599-026-08275-9>.

ordinary court model emphasizes the “case and controversy” doctrine, procedural safeguards, and judicial power under Article VIII of the 1987 Constitution. Constitutional reasoning often develops along precedential lines characteristic of common law adjudication.³⁰

In Malaysia, academic debates surrounding judicial review tend to focus on the interpretation and application of Article 4 of the Federal Constitution, as well as on procedural and institutional constraints in politically sensitive cases, reflecting varying degrees of judicial restraint across different periods.³¹

These differences suggest an important methodological insight: in ASEAN, the effectiveness of constitutional review depends not merely on the presence or absence of a constitutional court, but significantly on (i) remedial techniques; (ii) transparency and quality of reasoning; (iii) the development of precedent; and (iv) the broader culture of compliance within the political–legal system. In this respect, Indonesia stands out not only for its constitutional powers but also for the MK’s capacity to generate constitutional doctrine and shape normative standards through adjudicative practice.

4) *Impact on Democracy and Human Rights*

In overall assessments, Indonesia’s Constitutional Court is widely regarded as having made a substantial contribution to the consolidation of constitutional democracy and the protection of human rights, particularly through the judicialization of constitutional rights and the transformation of political disputes into legally reasoned judgments.

Scholarly research emphasizes the Court’s influence in areas central to representative democracy, including electoral governance, political party regulation, and political freedoms. Through constitutional adjudication, the MK has helped structure political competition within constitutional boundaries.³²

However, comparative experience within ASEAN indicates that the impact of constitutional courts may be ambivalent, and Indonesia is no exception. In systems where constitutional courts possess broad jurisdiction and regularly adjudicate politically sensitive issues, as in Indonesia and Thailand, the judicialization of politics may strengthen checks on power but also generate debate over democratic

³⁰ Breno Baía Magalhães, “The Common Law Methodology in Barren Soil: Prospective Judicial Precedents and Abstract Judicial Review,” 2024, 257–73, https://doi.org/10.1007/978-3-031-61879-6_15.

³¹ Scott Dodson, “The Modes and Forms of Judicial Restraint,” 2025, <https://doi.org/10.2139/ssrn.5550939>.

³² Winda Wahyuni, Multi Sri Asnani, and Dirawati, “Judicial Law-Making and the Limits of Constitutional Adjudication: Reassessing Judicial Power in Indonesia after Decision No. 92/PUU-XXII/2024,” *Al-Adalah: Jurnal Hukum Dan Politik Islam*, January 31, 2026, 216–28, <https://doi.org/10.30863/ajmpi.v11i1.11331>.

legitimacy and the boundary between adjudication and policymaking.³³

In Supreme Court–centered systems such as those in the Philippines and Malaysia, judicial review is closely linked to the “case and controversy” doctrine, procedural discipline, and traditional judicial principles. While this model may encourage greater caution and restraint, it may also slow institutional responses to structural constitutional violations.³⁴

In the constitutional council model exemplified by Cambodia, reliance on constitutionally authorized actors to trigger review may regulate case flow, but raises questions concerning individual access and the role of society in activating constitutional protection.³⁵

From this comparative perspective, Indonesia emerges as a “strong case” in ASEAN not simply because it has established a constitutional court, but because the MK combines (i) significant constitutional authority; (ii) developed adjudicative techniques and doctrinal production; and (iii) tangible political and legal impact. However, this institutional strength simultaneously underscores the need to manage structural risks. Ensuring judicial integrity, accountability, and doctrinal consistency is essential for a constitutional court to maintain legitimacy and long-term effectiveness in a dynamic political environment.³⁶

Vietnam’s Constitutional Review Mechanism: Current Framework and Structural Debate

1) Constitutional Supremacy and the Existing Model of Constitutional Protection in Vietnam

The 2013 Constitution of Vietnam clearly affirms that the Constitution is the fundamental law of the State, has the highest legal force, and serves as the foundation for the entire legal system and the organization of state power.³⁷ Article 119 stipulates that all legal documents must conform to the Constitution and that any violations of the Constitution must be addressed. At the textual level, this formulation places Vietnam within the trajectory of modern constitutional systems that recognize constitutional supremacy as a supreme legal norm.

However, unlike systems operating under a model of judicialized constitutionalism, Vietnam's mechanism for ensuring constitutional supremacy is

³³ Lei Shi, Ora-Orn Poocharoen, and Xun Wu, “Asymmetric Policy Capacity in Hybrid Regimes: From Structural Asymmetry to Capacity Divergence in Thailand’s Political Crises,” *Journal of Asian Public Policy*, August 14, 2026, 1–16, <https://doi.org/10.1080/17516234.2026.2718417>.

³⁴ Dr. Faiz Bakhsh et al., “Judicial Activism vs. Judicial Restraint in Developing Democracies: A Comparative Study,” *Social Science Review Archives* 3, no. 3 (September 29, 2025): 2319–29, <https://doi.org/10.70670/sra.v3i2.1079>.

³⁵ Rhona Smith, “Rule of Law, Judicial Independence and International Development: Cambodia,” 2025, 167–97, https://doi.org/10.1007/978-3-032-01180-0_7.

³⁶ Tanto Lailam, “Kelsen vs Schmitt on Guardians of the Constitution Debates and the Impact on the Indonesian Legal System,” *Jurnal Konstitusi* 23, no. 1 (March 31, 2026): 001–024, <https://doi.org/10.31078/jk2311>.

³⁷ Yasar Alhunieti, Abeer Alamayreh, and Kastro Salim Akram, “The Relationship Between Public International Law and Domestic Law,” 2025, 1157–68, https://doi.org/10.1007/978-3-031-76011-2_85.

not designed around an independent constitutional adjudicatory institution. Instead, the National Assembly and its Standing Committee are primarily entrusted with supervising and addressing constitutional violations within a framework of political–legislative oversight.³⁸ The People's Courts are not empowered to invalidate statutes on constitutional grounds, nor are they authorized to refuse to apply legislation because of its inconsistency with the Constitution. Scholarly analyses have noted that this institutional design means that, despite its formally supreme status, the Constitution has not fully evolved into a norm directly enforceable through judicial proceedings.³⁹

From a comparative theoretical perspective, this model may be categorized as political constitutionalism, in which authority to supervise, interpret, and remedy constitutional violations is primarily vested in the highest state authority rather than in an independent constitutional court.⁴⁰ In such systems, power is predominantly controlled through democratic–parliamentary mechanisms and political accountability rather than through judicial constitutional review.⁴¹ Vietnam, therefore, is not an isolated case but forms part of a broader group of constitutional systems that prioritize the unity of state power over judicial separation of powers.

This logic also informs constitutional protection mechanisms in several other socialist states, including China and Laos. In China, although the Constitution is formally recognized as supreme, the power to interpret and supervise constitutional compliance rests with the Standing Committee of the National People's Congress rather than a constitutional court.⁴² A similar institutional structure is maintained in Laos.⁴³ Comparative studies of Asian constitutional systems observe that these jurisdictions acknowledge constitutional supremacy in principle but do not judicialize it by granting courts the authority to invalidate legislation enacted by the legislature.⁴⁴

Accordingly, the fundamental distinction between Vietnam and Indonesia, as

³⁸ Bradley Slade, “The Constitutional Court’s Evolving Jurisprudence in Shaping the National Assembly’s Internal Rules and Procedures for Executive Accountability and Removal,” *Constitutional Court Review* 15, no. 1 (December 1, 2025): 455–77, <https://doi.org/10.2989/CCR.2025.0016>.

³⁹ Mauro Arturo Rivera León, “Voting Protocols As Informal Judicial Institutions: The Politics Of Enforceability And Strategic Breaching,” *International and Comparative Law Quarterly* 73, no. 3 (July 18, 2024): 747–66, <https://doi.org/10.1017/S0020589324000150>.

⁴⁰ Maya Gazit, “Judicial Review of Abusive Constitutional Replacement,” 2025, <https://doi.org/10.2139/ssrn.5380699>.

⁴¹ Ahamed Saajith A.M, “A Comparative Study of Presidential and Parliamentary Systems of Government,” 2026, <https://doi.org/10.2139/ssrn.6879598>.

⁴² Hingchau Lam and Jing Qin, “An Analysis of China’s Constitutional Review System: Striving towards ‘the Rule of Law’?,” *Social Transformations in Chinese Societies*, April 14, 2025, <https://doi.org/10.1108/STICS-02-2025-0001>.

⁴³ Sup Amornpinyo et al., “Structure Over Agency? Institutional Legal Measures, Competitive Strategy, and Foreign Business Performance: Evidence from Lao PDR,” 2026, <https://doi.org/10.2139/ssrn.7036182>.

⁴⁴ Alexei Trochev and Alisher Juzgenbayev, “Instrumentalization of Constitutional Law in Central Asia,” in *Research Handbook on Law and Political Systems* (Edward Elgar Publishing, 2023), 139–68, <https://doi.org/10.4337/9781800378346.00014>.

well as many post-Soviet Eastern European states, does not lie in whether constitutional supremacy is formally recognized, but in the mechanism by which it is implemented in practice. Following the constitutional amendments of 1999–2002, Indonesia established the *Mahkamah Konstitusi* with authority to annul unconstitutional statutes, thereby shifting from a politically centered model of constitutional protection to one grounded in constitutional adjudication.⁴⁵ Similarly, post-Soviet states in the early 1990s created constitutional courts as institutional "anchors of the rule of law" to constrain state power and protect fundamental rights.⁴⁶

As comparative scholarship suggests, in new democracies, judicial review is not merely a device for safeguarding constitutional norms, but an institutional mechanism that restructures power relations among branches of government.⁴⁷ It is precisely at this point that the divergence between Vietnam and judicialized constitutional systems becomes clear: the issue is not symbolic recognition of constitutional supremacy, but the degree to which institutionalized adjudication exists to give that supremacy practical effect.

2) *Subjects and Modes of Constitutional Protection in Vietnam in Comparative Socialist Perspective*

Under the 2013 Constitution and current statutory framework, the principal actors involved in constitutional protection in Vietnam include the National Assembly, its Standing Committee, the Government and administrative bodies, and, within a minimal scope, the People's Courts.⁴⁸ This allocation of authority produces a dispersed and predominantly non-judicial model of constitutional protection. The National Assembly and its Standing Committee occupy a central position in supervising constitutional compliance, interpreting the Constitution, and addressing normative inconsistencies.⁴⁹ Courts, by contrast, are not empowered to invalidate statutes on constitutional grounds, nor is there an independent constitutional adjudicatory mechanism. Furthermore, individuals do not have direct access to a constitutional court or an equivalent judicial forum to protect constitutional rights.

This institutional configuration reflects what comparative scholarship describes as a model of political constitutionalism, in which constitutional supervision is

⁴⁵ Moh. Thohir and Didik Sukriono, "Implementation Authority Of The Constitutional Court In The Indonesian Constitutional Law System."

⁴⁶ Katalin Sulyok, "Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations," *Transnational Environmental Law* 13, no. 3 (November 24, 2024): 475–501, <https://doi.org/10.1017/S2047102524000116>.

⁴⁷ Tom Gerald Daly, "'Good' Court-Packing? The Paradoxes of Constitutional Repair in Contexts of Democratic Decay," *German Law Journal* 23, no. 8 (October 28, 2022): 1071–1103, <https://doi.org/10.1017/glj.2022.75>.

⁴⁸ Hai Yen Nguyen, "Diffusing Equality of Arms in the Socialist Criminal Justice System," *Asian Journal of Comparative Law* 20, no. 2 (August 1, 2025): 241–64, <https://doi.org/10.1017/asjcl.2026.10018>.

⁴⁹ James WC Lee, "Anti-Corruption in a Party-State: Constitutional Implications of China's Supervisory Reform," *Asian Journal of Comparative Law* 18, no. 3 (December 8, 2023): 389–406, <https://doi.org/10.1017/asjcl.2023.25>.

embedded within legislative oversight rather than judicial review.⁵⁰ In such systems, constitutional supremacy is affirmed normatively but not operationalized through judicial annulment of legislation. The Vietnamese model thus aligns structurally with constitutional arrangements in other socialist states, particularly China and Laos.

In China, although the Constitution is formally recognized as the supreme law, the authority to interpret and supervise constitutional compliance rests with the Standing Committee of the National People's Congress rather than the judiciary.⁵¹ Chinese courts lack the power to invalidate legislation for unconstitutionality, and constitutional review operates primarily through internal legislative mechanisms and administrative supervision.⁵² Laos maintains a comparable structure in which the National Assembly and its Standing Committee perform constitutional oversight functions, while the judiciary does not exercise strong-form judicial review.⁵³

This comparison clarifies that Vietnam's constitutional review framework is not the product of institutional deficiency or accidental omission. Instead, it reflects a deliberate constitutional choice grounded in the principle of unified state power. Article 2 of the 2013 Constitution affirms that state power is unified, with coordination among state organs rather than separation in the classical liberal sense.⁵⁴ The absence of a constitutional court must therefore be understood within this broader structural logic.

However, when Vietnam is compared with Cuba following its 2019 Constitution, a more nuanced picture emerges. Cuba, while retaining its socialist constitutional foundation and not adopting a Kelsenian model of a constitutional court, has nonetheless expanded judicial mechanisms for protecting constitutional rights.⁵⁵ The 2019 Constitution of Cuba strengthened the recognition of fundamental rights, and subsequent legislation, most notably the 2022 Law on the Protection of Constitutional Rights, introduced procedural mechanisms enabling individuals to challenge state actions that violate constitutional rights.⁵⁶

In particular, Cuba has institutionalized an amparo-type procedure allowing

⁵⁰ Northon Salomão De Oliveira, "Global Constitutionalism and the Decline of State Sovereignty: Institutional Fragmentation, Normative Pluralism, and the Governance Architecture of International Legal Order," 2026, <https://doi.org/10.2139/ssrn.6973678>.

⁵¹ Chen Zheng, "On the Constitutional Supervision System of Chinese-Style Democracy," *Social Sciences in China* 45, no. 4 (October 4, 2024): 135–53, <https://doi.org/10.1080/02529203.2024.2441572>.

⁵² Rosalind Dixon and Po Jen Yap, "Responsive Judicial Remedies," *Global Constitutionalism* 14, no. 2 (July 17, 2025): 323–48, <https://doi.org/10.1017/S2045381724000200>.

⁵³ Andrea Haefner, "The State and Civil Society in Laos: Asymmetry and Symbiosis," *Asian Studies Review* 49, no. 4 (October 2, 2025): 742–61, <https://doi.org/10.1080/10357823.2025.2482693>.

⁵⁴ Katharine Young, "The Separation of Powers and Social Rights," 2026, <https://doi.org/10.2139/ssrn.6456719>.

⁵⁵ Ivan Ermakoff, "Revolutions and Law," *Annual Review of Law and Social Science* 20, no. 1 (October 17, 2024): 71–95, <https://doi.org/10.1146/annurev-lawsocsci-041922-032324>.

⁵⁶ 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>.

individuals to seek judicial remedies against state authorities for violations of constitutional rights. Additionally, habeas corpus mechanisms and other rights-protection procedures have been reinforced within ordinary judicial proceedings.⁵⁷ Although Cuban courts lack the authority to annul statutes on constitutional grounds, these procedural innovations significantly enhance the justiciability of constitutional rights within a socialist constitutional framework.⁵⁸

The Cuban experience demonstrates that within the broader “family” of socialist constitutional models, reform trajectories are not uniform. The absence of a specialized constitutional court does not necessarily preclude the strengthening of judicial mechanisms for constitutional protection. Instead, different institutional pathways may be pursued to incrementally judicialize aspects of constitutional enforcement while preserving foundational constitutional principles.

From a comparative standpoint, this insight is particularly relevant for Vietnam. Constitutional reform need not be framed as a binary choice between establishing a constitutional court and maintaining the status quo. Instead, it is possible to envision intermediate reforms, such as expanding procedural avenues for rights protection, enhancing judicial authority to apply constitutional provisions directly, or introducing referral mechanisms for constitutional questions, that gradually increase the practical enforceability of constitutional norms.

Accordingly, Vietnam’s current model of constitutional protection should be analyzed not merely as a static institutional arrangement, but as part of an evolving constitutional landscape in which selective and context-sensitive reforms remain conceivable. The comparative experiences of China, Laos, and Cuba illustrate that socialist constitutional systems themselves contain multiple trajectories of institutional development. The central question, therefore, is not whether judicial review must mirror liberal constitutional court models, but how constitutional supremacy can be rendered more effective within Vietnam’s own constitutional framework.

3) *Structural Limitations of Vietnam’s Constitutional Review Mechanism in Regional Comparison*

The absence of an independent constitutional adjudicatory mechanism generates at least three structural limitations within Vietnam’s current model of constitutional protection.

a) Constitutional Supremacy is Difficult to Operationalize Within Judicial Practice

When courts lack authority to review and invalidate unconstitutional statutes,

⁵⁷ Carlos Alberto Alza, “The Ombuds’ Role in Holding States Accountable for Human Rights Violations: Persuasion and Legal Mechanisms,” in *Research Handbook on Accountability for Human Rights Violations* (Edward Elgar Publishing, 2025), 297–318, <https://doi.org/10.4337/9781035306930.00028>.

⁵⁸ Benjamin Garcia Holgado and Raúl Sánchez Urribarri, “Court-Packing and Democratic Decay: A Necessary Relationship?,” *Global Constitutionalism* 12, no. 2 (July 27, 2023): 350–77, <https://doi.org/10.1017/S2045381723000011>.

the Constitution tends to function primarily as a political–programmatic norm rather than as a directly enforceable legal standard. Although Article 119 of the 2013 Constitution affirms its supreme legal force, Vietnamese courts are not empowered to disapply legislation on constitutional grounds.⁵⁹ This institutional design contrasts sharply with that of jurisdictions such as Indonesia and the Philippines, where constitutional adjudication is a central component of judicial authority. In Indonesia, the *MK* possesses explicit authority to annul statutes inconsistent with the Constitution, thereby embedding constitutional supremacy within adjudicative practice.⁶⁰ Similarly, under Article VIII of the 1987 Philippine Constitution, the Supreme Court exercises judicial review to resolve constitutional controversies, thereby rendering constitutional norms directly justiciable in ordinary litigation.⁶¹

Comparative scholarship suggests that the judicialization of constitutional rights fundamentally alters the status of constitutional norms, transforming them from symbolic commitments into enforceable standards. In this respect, Vietnam’s model reveals a structural constraint: constitutional supremacy remains formally affirmed but institutionally under-judicialized.

b) The Absence of Individual Access Mechanisms Weakens the Constitution’s Role as a Rights-Protection Instrument

In many post-Soviet Eastern European systems, the introduction of constitutional complaint procedures (*Verfassungsbeschwerde*-type mechanisms) was specifically designed to address this gap. These mechanisms allow individuals to directly challenge constitutional violations before a constitutional court, thereby democratizing access to constitutional justice.⁶² As Mark F. Brzezinski observed in early analyses of Eastern European transitions, constitutional courts quickly became arenas in which individual rights claims reshaped state–society relations.⁶³

Vietnam lacks a comparable procedural channel. Individuals cannot directly trigger constitutional review of statutes or state actions. Constitutional enforcement thus depends largely on the initiative and priorities of political institutions rather than on rights-holders themselves. From a structural standpoint, this design limits

⁵⁹ Filip Vukov, “Half the Pyramid - Structuring the Training Data for the Widest and Heaviest Layer of the Inverted Pyramid Software Design Architecture: Ius Cogens, Constitutional Norms and International Treaties in Force -for Future AI Systems for Legal Problem Solving&,” 2026, <https://doi.org/10.2139/ssrn.7255498>.

⁶⁰ Siti Nurhayati and Fenolia Intan Saputri, “Conditional Finality and Constitutional Rehearing: Recalibrating Judicial Integrity in Indonesia’s Constitutional Court,” *Jurnal Konstitusi* 23, no. 2 (June 25, 2026): 205–36, <https://doi.org/10.31078/jk2321>.

⁶¹ Benjamin Joshua Ong, “How Can Malaysian Courts Consistently Perform Meaningful Constitutional Rights Review? Lessons from Past Cases and the Way Forward,” *Asian Journal of Comparative Law* 19, no. 2 (August 24, 2024): 255–93, <https://doi.org/10.1017/asjcl.2024.9>.

⁶² Max Steuer, Sascha Kneip, and Cornell W. Clayton, “Courting Constitutional Crises: Crisis Mitigation by Constitutional Courts as Democratic Institutions,” *European Journal of Futures Research* 13, no. 1 (May 14, 2025): 7, <https://doi.org/10.1186/s40309-025-00251-x>.

⁶³ Tomasz Tadeusz Koncewicz, “When Legal Fundamentalism Meets Political Justice: The Case of Poland,” *Israel Law Review* 55, no. 3 (November 20, 2022): 302–59, <https://doi.org/10.1017/S0021223722000036>.

the transformative potential of constitutional rights by restricting access to adjudicative enforcement.

c) **The Current Mechanism Emphasizes Preventive Supervision and Internal Control Rather than Adjudicating Constitutional Disputes Once They Arise**

Vietnam's constitutional review structure centers on legislative oversight and internal state monitoring. While such mechanisms may serve preventive functions, they are less suited to resolving concrete constitutional conflicts involving competing rights, separation-of-powers disputes, or electoral controversies.

Comparative experience in Eastern Europe illustrates that, despite facing contemporary political pressures and risks of institutional capture, constitutional courts in transitional periods played decisive roles in arbitrating constitutional conflicts that political oversight mechanisms were ill-equipped to manage.⁶⁴ Tom Ginsburg has argued that constitutional courts in new democracies often serve as stabilizing institutions precisely because they provide a structured forum for resolving high-stakes constitutional disputes.⁶⁵

These observations do not imply that constitutional adjudication constitutes the only viable model of constitutional protection. Rather, they underscore that the limitations of Vietnam's current framework are structural rather than merely technical. The issue is not simply one of incomplete legislation or procedural refinement. Still, in terms of institutional design, the absence of a judicial mechanism capable of authoritatively resolving constitutional disputes constrains the practical effectiveness of constitutional supremacy.

In this sense, regional comparison does not aim to prescribe institutional transplantation. Instead, it clarifies that the boundaries of Vietnam's constitutional protection regime derive from foundational constitutional choices about where interpretive authority lies and the judiciary's role within the state structure. Any meaningful reform discussion must therefore engage with these structural dimensions rather than treating constitutional review as a purely technical adjustment.

Refining Constitutional Review: Lessons from Indonesia for Vietnam

1) Institutional Design Lessons

Indonesia's experience shows that establishing a specialized Constitutional Court marked a decisive institutional turning point, shifting from a dispersed supervisory model to a judicialized model of constitutional protection. The MK was vested with clearly defined authority to review the constitutionality of statutes, resolve major constitutional disputes, and oversee crucial political processes such as elections and impeachment.

⁶⁴ Abiatha Adu Wiafe, "Force Majeure and Contract Frustration Post- COVID-19: Rethinking Commercial Risk Allocation," 2026, <https://doi.org/10.2139/ssrn.6134388>.

⁶⁵ Sergio Verdugo, "Why Bother with Judges?," 2025, <https://doi.org/10.2139/ssrn.5235995>.

For Vietnam, however, the core lesson does not lie in mechanically replicating the MK model. Instead, it concerns a fundamental design principle: constitutional supremacy can be effectively guaranteed only when an institution has final decision-making authority and relative independence in adjudicating constitutional disputes.

Post-Soviet Eastern European experience reinforces this insight. During periods of democratic transition, constitutional courts often functioned as anchors of the rule of law. However, more recent developments also warn that institutional design must be accompanied by safeguards concerning judicial independence, appointment procedures, tenure security, and a broader culture of constitutional compliance to prevent political capture.⁶⁶

Accordingly, for Vietnam, Indonesia's institutional experience suggests a phased reform trajectory rather than a single institutional leap. Three possible pathways may be envisaged: (i) moving toward the establishment of a specialized constitutional body with clearly defined jurisdiction; (ii) adopting, as an intermediate step, a hybrid model (for example, a constitutional council with limited adjudicative authority); and (iii) simultaneously preparing institutional conditions that gradually expand the judicialization of constitutional review.

2) *Access and Methods of Constitutional Rights Protection*

One of the most significant features of Indonesia's MK is the relatively broad standing granted to various actors to initiate constitutional review, particularly in cases involving human rights and electoral disputes. Scholarship indicates that the MK has become a central forum for the judicialization of constitutional rights, thereby contributing to democratic consolidation and accountability.⁶⁷

In contrast, individuals in Vietnam lack direct access to a constitutional review mechanism. The comparative lesson from Indonesia, supplemented by Cuba's post-2019 reforms, suggests that expanding constitutional rights protection does not necessarily require immediate authorization for courts to invalidate statutes. Even without a constitutional court, procedural mechanisms such as *amparo* in Cuba have significantly strengthened the justiciability of constitutional rights.⁶⁸

For Vietnam, a pragmatic reform strategy may therefore prioritize expanding individual access. This could include permitting courts to invoke constitutional provisions directly to protect rights in concrete cases, designing mechanisms for judicial referral or recommendation regarding unconstitutional legislation, and allowing courts to decline to apply clearly unconstitutional subordinate norms.

⁶⁶ Tholaine Mafuku Matadi, "The Challenges of Democratic Governance in South Africa," 2024, 25–46, <https://doi.org/10.4018/979-8-3693-4346-3.ch002>.

⁶⁷ Andreína Victoria Hernández-Ross, "Why the European Parliament Litigates: Explaining the Politics of Accountability in the EU Rule of Law Enforcement Case," *Journal of European Public Policy*, May 6, 2026, 1–34, <https://doi.org/10.1080/13501763.2026.2662319>.

⁶⁸ José Grabiél Luis Cordova, "Theoretical-Legal Elements for the Recognition of the Right to Energy in Cuba," 2026, 263–87, https://doi.org/10.1007/978-3-032-33252-3_10.

Such incremental reform would align with ongoing judicial reform efforts while simultaneously laying the socio-legal foundation for future institutional transformation.

3) *Lessons on Remedial Techniques and Constitutional Reasoning*

Indonesia's MK jurisprudence underscores the importance of remedial techniques and constitutional reasoning. Conditional rulings (conditionally constitutional or conditionally unconstitutional decisions) and the publication of dissenting opinions enable the Court to safeguard constitutional norms while maintaining institutional dialogue with the legislature and executive. These tools mitigate abrupt institutional confrontation in politically sensitive domains.⁶⁹

For Vietnam, the relevant lesson extends beyond jurisdictional design to the quality of constitutional reasoning itself. Eastern European experience demonstrates that even where constitutional courts formally exist, the absence of coherent doctrine and sound adjudicative technique can quickly erode legitimacy.⁷⁰

Therefore, any reform toward judicialized constitutional review in Vietnam must be accompanied by sustained development of constitutional reasoning culture, judicial training, and doctrinal frameworks grounded in human rights and rule-of-law principles. Institutional design alone is insufficient without epistemic and professional capacity-building.

4) *Political–Constitutional Sustainability*

Indonesia also offers an important lesson on placing constitutional courts within specific political contexts. While the MK played a decisive role in the post-Reformasi period, it has also faced integrity challenges and political pressures in subsequent years. Comparative analysis with post-Soviet Eastern Europe demonstrates that constitutional courts do not automatically guarantee rule-of-law consolidation; their effectiveness depends on the surrounding political environment, civil society engagement, and respect for constitutional norms by political actors.⁷¹

For Vietnam, the lesson of sustainability is clear: reform of constitutional review mechanisms must be embedded within a long-term strategy that integrates legislative reform, judicial reform, and broader constitutional awareness within society. The choice of institutional model should not be viewed as an isolated technical decision, but as part of a comprehensive process of consolidating the rule-of-law state in a manner consistent with the country's political and social context.

⁶⁹ Jeonghwan Choi, “Toxic Transitions: Workplace Health Risks and Expatriate Maladjustment in Global Higher Education,” *International Journal of Workplace Health Management* 19, no. 1 (January 15, 2026): 89–109, <https://doi.org/10.1108/IJWHM-04-2025-0077>.

⁷⁰ Nicolin Decker, “The Doctrine of Constitutional Self-Correction: &Nbsp;The Republic as Signal: Congress, Voters, and the Architecture of Constitutional Self-Correction,” 2026, <https://doi.org/10.2139/ssrn.6016434>.

⁷¹ Astrid Lorenz et al., “Beyond Theory. Understanding Rule of Law Narratives from Their Empirical Context,” 2024, 53–104, https://doi.org/10.1007/978-3-031-66332-1_3.

Taken together, Indonesia's experience suggests that its most significant relevance for Vietnam lies not in institutional imitation, but in the gradual judicialization of the Constitution as a means of constraining power and protecting rights. A comparative analysis of socialist constitutional systems and post-Soviet Eastern Europe demonstrates that each constitutional review model entails both opportunities and risks.

The central lesson for Vietnam is therefore the need for selective, incremental, and conditional reform. Such an approach would combine the gradual expansion of judicial roles in rights protection, the strengthening of constitutional reasoning and adjudicative culture, and the progressive refinement of institutional design in accordance with Vietnam's specific political–constitutional context.

Conclusion

This article has demonstrated that the principal distinction between Indonesia and Vietnam does not lie in the formal recognition of constitutional supremacy, but in the institutional mechanisms available to enforce it. Through a comparative analysis of judicial review and constitutional adjudication in ASEAN, the study finds that Indonesia represents a relatively strong form of judicialized constitutionalism, in which the Constitutional Court plays an important role in safeguarding constitutional supremacy, protecting constitutional rights, resolving political disputes, and contributing to democratic governance. By contrast, Vietnam continues to rely primarily on a model of political constitutionalism in which constitutional supervision is exercised through legislative and political institutions rather than judicial adjudication. The comparison suggests several lessons for both countries.

For Vietnam, Indonesia's experience illustrates the potential value of institutionalized constitutional adjudication, broader access to constitutional justice, and the development of constitutional reasoning as mechanisms for enhancing the practical effectiveness of constitutional supremacy and rights protection. For Indonesia, the comparison highlights the continuing importance of judicial accountability, institutional integrity, doctrinal consistency, and maintaining an appropriate balance between constitutional guardianship and democratic governance. More broadly, the study demonstrates that no single model of constitutional review is universally applicable across ASEAN and that constitutional reform should be understood as a process of selective adaptation rather than institutional transplantation. Accordingly, the article argues that any future development of constitutional review in Vietnam should proceed incrementally and contextually, drawing lessons from Indonesia while remaining attentive to Vietnam's own constitutional structure, political conditions, and legal traditions. This study is limited by its focus on constitutional design and selected constitutional jurisprudence rather than empirical assessment of institutional performance. Future research may expand the comparative framework to include additional ASEAN jurisdictions and

examine the practical operation of constitutional review through empirical and socio-legal methodologies.

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