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The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia

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ABSTRACT

The Constitutional Court of Indonesia as a state institution is a constitutional edict established in Article 24C of the 1945 Constitution of Indonesia. It is an act of commitment to good governance in all its dimensions. This research examines the role this court plays in promoting governance in Indonesia through its engagements with other state institutions. This research uses a doctrinal or normative legal research method to reflect on the function of this court. This court has a strong commitment towards checks and balances in order to guarantee constitutional order and supremacy, although the finality of this supremacy should not preclude constitutional dialogue. The political, democratic, and social life of Indonesia has become more vibrant as a result of the establishment of this court. This development in the history of the country's constitutional law is premised on the ground that, building a constitutional democratic state in a country requires improving its legal frameworks. One of the initiatives is to create a framework that questions the constitutionality or validity of laws when they have reservations about them. The Constitutional Court mechanism does that. It is a court with sui generis jurisdiction in determining constitutional matters including most controversial issues of election petitions and presidential impeachment. Therefore, it is sufficient to posit that this court forms the bedrock of good governance and democratisation in Indonesia where acts of institutions and individuals are subject to the scrutiny of the constitution thereby, validating the longstanding cliché of "government of laws and not of men".

Introduction

The concept of creating a constitutional court was one of the 20th century's greatest contributions to modern legal and political theory. A constitutional court is an independent government body established by a constitution with the primary function of upholding the normative intent of the high position of constitutional law

in a legal system. It is also referred to as a constitutional tribunal.[1] A constitutional court is a high court that hears cases pertaining to constitutional law. It has the power to decide if the laws under review are consistent with the constitution.[2] Every action taken by the government and the citizens in a state of law must be predicated on the laws. Since the law is what leads, it has the ultimate authority in the state.[3] This is expressed in Article 1(3) of the Constitution of Republic of Indonesia that Indonesia is a state of law. The tenet of Indonesian democracy and the rule of law depend on the Constitutional Court. The amendment of the 1945 Constitution of Indonesia by the People's Consultative Assembly provides this court with the jurisdiction to, inter alia, review laws to be in line with this constitution.[4] To reinforce the body of a state law that regards the constitution as supreme, the Indonesian Constitutional Court is established, namely by recognizing the judicial review authority as one of the judiciary's constitutional authorities.[5]

This Court complements Indonesia's legal and governance systems in terms of institutional framework and functions. Previously, the Supreme Court was the only institution with the authority to carry out judicial orders. The 1945 Constitution establishes a constitutional assurance of judicial independence following the collapse of the New Order. Article 24 (1) of this constitution conspicuously provides for judicial independence, which had never before been as evident as it was following amendments from 1999 to 2002.[6] The Constitutional Court becomes a supreme state institution through the constitutional structure included in this constitution. This court, which comprises only nine judges, has the authority to overturn decisions of the legislative branch of government which has more than 500 members, without raising any issues. This is because the court's rulings are definitive and enforceable.[7] This is important in ensuring that there is division of power to promote and sustain

[1] John Sampe, Rosa Ristawati, and Be Hakyou, "The Guardian of Constitution: A Comparative Perspective of Indonesia and Cambodia," *Hasanuddin Law Review* 9, no. 2 (September 11, 2023): 211, https://doi.org/10.20956/halrev.v9i2.4627.

[2] Muhammad Iqbal Samsudin, "A Comparison of Judicial Review in Indonesian Constitutional Court and French Constitutional Council," *Indonesian Comparative Law Review* 5, no. 1 (December 30, 2022): 31–42, https://doi.org/10.18196/iclr.v5i1.15127.

[3] Farah Syah Rezah and Andi Tenri Sapada, "The Independence and Accountability of the Constitutional Court in the Constitutional System in Indonesia," *SIGn Jurnal Hukum* 4, no. 2 (January 5, 2023): 247–60, https://doi.org/10.37276/sjh.v4i2.166.

[4] Rahayu Prasetianingsih, "Judicial Activism in Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 5, no. 2 (November 1, 2020): 160–77, https://doi.org/10.22373/petita.v5i2.106.

[5] Muwaffiq Jufri et al., "Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law," *Jurnal Konstitusi* 21, no. 3 (September 1, 2024): 366–91, https://doi.org/10.31078/jk2132.

[6] Ibnu Sina Chandranegara, "Defining Judicial Independence and Accountability Post Political Transition," *Constitutional Review* 5, no. 2 (November 18, 2019): 294, https://doi.org/10.31078/consrev525.

[7] Ahmad, Fence M. Wantu, and Dian Ekawaty Ismail, "Constitutional Dialogue in Judicial Review at the Indonesian Constitutional Court: The Future Prospects," *Journal of Legal, Ethical and Regulatory Issues* 25, no. Special 1 (n.d.): 1–8.

check and balances of power. In 2003, a year after the most current constitutional amendments were finished (1999-2002), the Constitutional Court was founded.

Since then, this court has dealt with a wide range of constitutional challenges, including judicial review, disagreements over the competence of state institutions, and general election conflicts.[8] This is provided by Law No. 24 of 2003 which took place following President Soeharto's resignation on May 21, 1998, after he had held office for over 32 years. The Constitutional Court of Indonesia was established as one of the judicial authorities to organise court proceedings to uphold the supremacy of the 1945 Constitution and to ensure that constitutional justice is upheld. Regaining the people's sovereignty has been one of Indonesia's many reform initiatives in the modern age. The four constitutional amendments, from the first to the fourth, occurred on October 19, 1999, August 18, 2000, November 9, 2001, and August 10, 2002 respectively.[9] The fourth amendment is of great significance to this research because it captures the essence of, inter alia, institutional creation and restructuring. The Republic of Indonesia's 1945 Constitution's Articles 24, 24A, 24B, and 24C regulate and expand the authority of the judiciary. These provisions require the establishment of the Constitutional Court and the Judicial Commission as two new institutions that fall under the purview of the authority in the field of justice.[10]

Democratisation started gaining traction since 1998 after the fall of the New Era regime. It was characterised by the liberation of the media, the openness of civic and political spheres. There was a surge of positive energy that demanded more transparency from the government. One of the main players in this democratic process is the civil society. Freedom of speech and association are the new dawn in the reformation era. The 1945 Indonesian Constitution's Article 28, and Article 28E paragraph 3 provide the right to freedom of association and assembly. Certain Articles that impede theses rights are revoked by the judges. A few articles discuss the government's requirement for Social Organisations to register and become more powerful. Following this ruling, Civil Society Organisation registration has become optional, and the government is no longer able to give Civil Society Organisations the authority to impose its will on them.[11] The most important thing that Indonesians see about this era is that knowledge is becoming more widely available, creating a

[8] Andy Omara, "Interpreting the Indonesian Constitutional Court Approach in Conducting Judicial Review on Cases Related to Economic and Social Rights," *Indonesia Law Review* 7, no. 2 (August 31, 2017), https://doi.org/10.15742/ilrev.v7n2.318.

[9] Luthfi Widagdo Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia," *Jurnal Konstitusi* 15, no. 1 (March 29, 2018): 1, https://doi.org/10.31078/jk1511.

[10] Krisnadi Nasution, "Indonesian Judicial Power Post Amendment," *Mimbar Keadilan* 13, no. 1 (January 24, 2020): 85–95, https://doi.org/10.30996/mk.v13i1.2997.

[11] Andy Omara and Kristina Viri, "How Far Does The Indonesian Constitutional Court Decision on Societal Organization Law Strengthen Democracy?:" (International Conference For Democracy and National Resilience (ICDNR 2021), Surakarta (GMT+7), Indonesia, 2021), https://doi.org/10.2991/assehr.k.211221.022.

more accurate and plentiful space for the expression of one's opinions. The sharing of information occurs quite swiftly in this day.[12] Every one acquires the right to freely express their views and opinions on modern media platforms, particularly social media. Since Indonesian law is state law, human rights are protected by regulations. This dimension of freedom was absolutely subverted and restricted during Soeharto's New Era dispensation.

Indonesia embraces the civil law system with unprecedented volumes of legislations to regulate various activities within the country. Due to this, there is always a tendency for legislations to conflict with each other and with the 1945 Constitution. While the Supreme Court has the jurisdiction to review legislations and regulations that conflict with each other, the Constitutional Court has the jurisdiction to review legislations to be in line with the 1945 Constitution. So, Hans Kelsen's philosophy of law is one of the foundational theories in the field of governance and administrative law. Hans Kelsen established the concept of the Constitutional Court in Europe, which has been supported by numerous arguments. He stated that only when an organ distinct from the legislative body is empowered to assess the legitimacy of a legislative product can the application of constitutional provisions respecting legislation be successfully assured.[13] Although the finality of this supremacy should not prevent constitutional discourse, the Indonesian Constitution makes a significant commitment to check and balances in order to ensure constitutional supremacy.[14] In addition to the manner in which the court makes rulings, its power is also influenced by the political environment in which it operates. Since its founding, this court has been able to garner support, develop into a powerful institution, and gain the respect of other constitutional institutions.

However, there is a problem of dual judicial review in Indonesia as both the Supreme Court and the Constitutional Court have the jurisdiction of judicial review although the two institutions have different litmus test. The power of a court to assess whether legislative and executive actions are constitutional is known as judicial review. It implies that laws or rulings that conflict with higher laws or regulations – especially the Constitution – may be declared unconstitutional by a court. Judicial review is a term that is sometimes used synonymously with constitutional review. However, judicial review is defined more broadly than constitutional review. In this situation, judicial review has the ability to assess the constitutionality of administrative acts and judgments in addition to laws and regulations, whereas constitutional review is more focused on reviewing the constitutionality of laws.[15] In

[12] Zico Junius Fernando et al., "The Freedom of Expression in Indonesia," *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2103944, https://doi.org/10.1080/23311886.2022.2103944.
[13] Muhammad Siddiq Armia, "Constitutional Courts and Judicial Review: Lesson Learned for Indonesia," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 8, no. 1 (n.d.): 107–30.
[14] Suwarno Abadi, "Finality of Indonesian Constitutional Court Decision in Regard to Judicial Review," *Mimbar Hukum* 28, no. 1 (February 15, 2016): 174, https://doi.org/10.22146/jmh.15862.
[15] Pan Mohamad Faiz, "Legal Problems of Dualism of Judicial Review System in Indonesia," *Jurnal Dinamika Hukum* 16, no. 2 (May 10, 2016), https://doi.org/10.20884/1.jdh.2016.16.2.535.

other words, it reviews if laws are in line with the constitution. That is the meaning of constitutionality.

The novelty of this research anchors on the linkage between the Constitutional Court of Indonesia and governance. In most research, governance is mostly connected with the roles of the executive. This research holds that to promote good governance and apply the doctrine of presidential impeachment, a constitutional mechanism in the form of a court is needed. This mechanism appreciates mostly the legal bases of impeachment and that, political bases alone are not sufficient enough to enforce impeachment. The question of what happens if the decision People's Representative Council (DPR) is confirmed by that of the Constitutional Court, but the People's Consultative Assembly (MPR) fails to uphold this? This issue remains unanswered and other researchers can build from this question.

Methods

This research is determined to make a discourse on the position the Constitutional Court of Indonesia plays in governance. To achieve this, a normative or doctrinal legal method is used. The doctrinal research method helps the researchers in critically analysing and examining the constitutional framework concerning the roles of the Constitutional Court in governance in Indonesia. Also, it will enable the researchers to review some literature such as textbooks, journal articles, internet articles, and other materials that are germane to this study. Therefore, it will enable the researchers to examine the concept and legal framework of constitutionality (which is different from constitutionalism), separation of power and presidential impeachment.

Normative or doctrinal legal research is a legal method that uses legal doctrines, principles and rules to solve legal problems. The ultimate aim of normative legal research is to create a new theory or concept that helps address the legal issues in questions. So, here, the authors use primary and secondary legal materials to support our arguments and submissions. Primary legal materials used are the 1945 Constitution of Indonesia, legislations and judicial cases. Secondary legal materials used are law reviewed articles, books and conference papers are used to support the theories and findings of this work.

Discussion

The History of Indonesian Constitutional Court

The history of the Constitutional Court of Indonesia can be traced back to the decision of the parliament as a bicameral institution when it passed the third amendment to the Indonesian Constitution on November 9, 2001, which led to the establishment of this court as a model of judicial reform in the country with a very strong and vibrant decisions at the beginning although the current state of

https://doi.org/10.71239/jicl.v2i1.45

corruption in the country has undermined it.[16] Early in the 1990s, significant changes were observed in the world's constitutional legislation and institutions. These developments are commonly and widely referred to as the "constitutionalism" phenomena, and Indonesia is one example of this movement. The 1945 Constitution was amended in 2001, and the Indonesian Constitutional Court was formally constituted and started operating in 2003. Since then, this court has actively participated in handling over 2000 cases and has rendered decisions in over 1000 of them.[17] The political, democratic, and national life of Indonesia has become more vibrant as a result of the establishment of this state institution.

This monumental development in the history of Indonesia's constitutional law is premised on the ground that, building a constitutional democratic state in Indonesia requires improving the legal and constitutional framework. One of the initiatives to accomplish that objective in a constitutional adjudication system is associated with the notion of creating a constitutional question mechanism. When judges disagree with the way laws are being applied in a case they are hearing, they can raise a "constitutional question" which is a method by which they dispute the legitimacy of the legislation in question before the Constitutional Court.[18] The Constitutional Court's existence is advantageous to all people, especially in terms of safeguarding their fundamental rights against any state action that they perceive to be in violation of the Constitution.[19] A presidential decree will determine the nomination of each of the nine justices on this court. Judges of this court may be re-elected for a maximum of five consecutive terms, as stipulated in Article 22 of Law No. 24 Year 2003 on Constitutional Court.

Prior to the third constitutional amendment, the highest state institution was the People's Consultative Assembly. The establishment of the Constitutional Court brings the state's institutions into line with those of other nations including the President and the House of Representatives. The Constitutional Court as a constitutional institution of the Republic of Indonesia is recognised as an additional judicial power alongside the Supreme Court under Article 24C paragraph (2) of the 1945 Constitution. According to this Article, this court has jurisdiction over the following: a) To try cases at the first and final level and review laws to be in line with the Constitution; b) To hear disputes over authorities of state institutions whose authorities are provided in the Constitution; c) To decide over dissolving of political

[16] Simon Butt and Tim Lindsey, *The Constitutional Court*, vol. 1 (Oxford University Press, 2018), 100, https://doi.org/10.1093/oso/9780199677740.003.0005.

[17] Rudy, Utia Meylina, and Rifandy Ritonga, "From State Sovereignty to People Sovereignty: A Case Study of Indonesia's Constitutional Court" 24, no. 7 (2021), https://www.abacademies.org/abstract/from-state-sovereignty-to-people-sovereignty-a-case-study-of-indonesias-constitutional-court-11849.html.

[18] Josua Satria Collins and Pan Mohamad Faiz, "Penambahan Kewenangan Constitutional Question Di Mahkamah Konstitusi Sebagai Upaya Untuk Melindungi Hak-Hak Konstitusional Warga Negara," *Jurnal Konstitusi* 15, no. 4 (January 15, 2019): 688, https://doi.org/10.31078/jk1541.

[19] Rozana Sukma Dewi, Avien Zakaria, and Aghnia Safana Ilmi, "Ethical Supervision of Judges to Improve the Integrity of the Constitutional Court," *Journal of Indonesian Constitutional Law* 1, no. 3 (December 19, 2024): 221–45, https://doi.org/10.71239/jicl.v1i3.29.

parties; d) To hear matters regarding outcomes of general elections; e) To issue a decision over an opinion of House of Representatives as regards alleged violation of the Constitution by the President and, or Vice President.

It can be argued that the history of this court can also be connected to the amendment process that changed the sovereignty from institution to the people. Prior to the constitutional amendments, the Constitution provided that "Sovereignty is in the hands of the people and is fully exercised by the People's Consultative Assembly". This is later amended to "Sovereignty is in the hands of the people and is exercised according to the Constitution" in Article 1(2). This makes it possible for the Constitutional Court to uphold citizens' rights without intervention from the parliament. In other words, it grants a paradigm change from parliamentary to constitutional supremacy.[20] The implications of parliamentary sovereignty are as follows: any law enacted by the parliament may be altered or modified; there is no separation between constitutional law and common law; and no higher authority has the authority to declare a law promulgated by the parliament to be unlawful or unconstitutional.

The concept of constitutional supremacy distinguishes between constitutional law and other state laws. The parliament is established and operates in line with the constitution, and a constitutional authority is required to oversee the constitutionality of the parliament's actions. This can be affirmed by the functions of the two superior courts of Indonesia. The former has the jurisdiction to make determination if a law conflicts with a provision of the Constitution of Indonesia 1945 while the latter has the jurisdiction to make determination on two state legislations that conflict. So, the amendment process that brought in "Sovereignty is in the hands of the people and is exercised according to the Constitution" helps in controlling the law-making power of the parliament not to be in violation of the Constitution. To achieve this, the state needed a constitutional court to protect this supremacy.[21]

Theories on State Institutions

1) Theory of Separation of Power

The Republic of Indonesia's 1945 Constitution has been amended in a manner that strengthens check and balances and logically supports the application of the idea of separation of powers. The authority relations between each state institution, which are interdependent, serve as an example of this. The purpose of this connection is to prevent arbitrariness by allowing each state administrative entity to

[20] Benediktus Handoyo, "Idealisme Constituendum Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar," *Arena Hukum* 14, no. 1 (April 30, 2021): 1–18, https://doi.org/10.21776/ub.arenahukum.2021.01401.1.

[21] Ismail Hasani, Halili Halili, and Vishalache Balakrishnan, "Undelivered Constitutional Justice? Study on How the Decisions of the Constitutional Court of the Republic of Indonesia Are Executed," *Jurnal Civics: Media Kajian Kewarganegaraan* 19, no. 1 (May 1, 2022): 45–52, https://doi.org/10.21831/jc.v19i1.48378.

counterbalance and regulate one another. It is impossible to separate the application of the division of power from the adherence to the doctrine of check and balances.[22] As per Montesquieu's popular idea of separation of powers, the state's authority is divided into three branches: the legislative, executive, and judicial. The thesis was, in theory, always cited in different countries all over the world. Nevertheless, separation theory is rarely used consistently in practice, considering a number of factors. The theory and practice of the separation system, or division of state power, must be applied consistently in order to prevent issues. The ultimate purpose of separation of power is to guarantee check and balances of power to avoid abuse of power.

Regarding the fundamentals, Lord Acton's adage, "Power tends to corrupt, and absolute power corrupts absolutely" is well acknowledged when we begin conversations on check and balances.[23] Regarding the division of powers in Indonesia, government and state institutions have distinct features. First, there are two divisions: vertically, they are examined according to their level in relation to the distribution of powers, and then they will be categorized based on where they fall within the territorial scope in relation to the central and local governments. By concentrating on governmental responsibilities that will subsequently be connected to legislative, executive, and judicial organs, consider how power can be distributed horizontally.[24] In Indonesia, where separation of power is upheld, check and balances are frequently implemented in order to prevent excessive monopolies in any one of the several governmental branches.[25] Every arm of government will have the chance to oversee other branches of authority in order to counterbalance one another.

Before its amendments, the 1945 Constitution essentially validated the Republic of Indonesia's adoption of the constitutional state idea (rechtsstaat) with regard to the application of the separation of powers. However, because the Constitution's provisions were actually crafted to meet Indonesia's local concerns, the country has not completely embraced the idea from the outset. The President's legislative power, in combination with his position as head of state and government, is evidence of this. The President has the most powers in Indonesian state administration history despite the fact that he needs the Parliament's consent to make laws. This is because of the constitutional norm that outlined the President's authority to make laws at the time. The lack of a judicial review mechanism to

[22] Mochammad Arief Agus and Andi Muhammad Irvan Alamsyah, "An Analytical Study on the Intervention of the Legislature to the Constitutional Court in Indonesia Compared to Developed Countries," *Indonesia Law Review* 12, no. 3 (2022).

[23] Ibnu Sina Chandranegara, "Architecture of Indonesia's Checks and Balances," *Constitutional Review* 2, no. 2 (February 6, 2017): 270, https://doi.org/10.31078/consrev226.

[24] Maghfira Nur Khaliza Fauzi, "Reflection of Political Law in the Development of State Constitution in Indonesia," *Constitutionale* 4, no. 1 (March 30, 2023): 71–84, https://doi.org/10.25041/constitutionale.v4i1.2949.

[25] Putu Eva Ditayani Antari, "Questioning the Existence of The Indonesian Commision State : An Idea of Reconstruction," *International Journal of Law Reconstruction* 5, no. 2 (September 18, 2021): 255, https://doi.org/10.26532/ijlr.v5i2.15774.

counterbalance and check the legislature's authority at the time made this concentration even more pronounced. The legal politics that led directly to the Constitutional Court and its scope of obligations have tremendously contributed to the realisation of justice. The Constitutional Court and Judicial Commission, which hold significant positions in the state and are charged with strict authority and task divisions, have contributed to the development of check and balances.[26]

2) Legal Protection Theory

Philosophically, Jhon Locke has described institutional protection through the principle of rights protection, which holds that state law has a duty to defend the rights of the people. The state holds the authority to govern the interactions between its citizens and between them and the various institutions that operate within.[27] A democratic government's ability to foster personalities of individual citizens and improve the welfare of all people makes the safeguarding of fundamental rights and freedom a crucial component of constitutional governance. The protection can be initiated by adding a list of human rights to a state's constitution.[28] Indonesia did this by incorporated human rights in Chapter XA of the 1945 Constitution to form a constitutional bill of rights.

However, to secure and protect these rights, a legal mechanism is needed. One of the areas of legal protection provided by the Constitutional Court is in protecting the rights of the people. For example, the Constitutional Court has rendered numerous rulings pertaining to women's and children's rights, including: "Decision of the Constitutional Court No.20 / PUU-XI / 2013 concerning Judicial Review No. 10 of 2008 concerning General Elections; (2) Constitutional Court Decision No. 46 / PUU-VIII / 2010 concerning Judicial Review No. 1 of 1974 concerning Marriage; (3) Constitutional Court Decision No. 22 / PUU-XV / 2017 concerning Judicial Review Number 1 of 1974 concerning Marriage; (4) Constitutional Court Decision No. 24 / PUU-XX / 2017 concerning Judicial Review Number 1 of 1974 concerning Marriage".[29] Legal protection for all is provided in Article 28D of the Constitution although the meaning disappears in the context of law enforcement.

Because there are not enough women participating in public and political life, Indonesia continues to struggle with the gender gap in these spheres. The gender gap that shows up in social sector indicators is a problem at both the local and

[26] Aladin Sirait, "Indonesian Justice Legal Politics Post Amendment of 1945 Constitution," *Al-Ihkam: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyyah Fakultas Syariah IAIN Mataram* 12, no. 1 (June 30, 2020): 37–56, https://doi.org/10.20414/alihkam.v12i1.2304.

[27] Safrin Salam, "Legal Protection of Indigenous Institutions in the Frame of the Rule of Law (Legal Protection Theory)," *Cepalo* 7, no. 1 (March 27, 2023): 61–70, https://doi.org/10.25041/cepalo.v7no1.2898.

[28] Pan Mohamad Faiz, "The Protection of Civil and Political Rights by the Constitutional Court of Indonesia," *Indonesia Law Review* 6, no. 2 (August 31, 2016): 158, https://doi.org/10.15742/ilrev.v6n2.230.

[29] Riris Ardhanariswari, Muhammad Fauzan, and Fathimah Azzahro, "Constitutional Court Decision to Protect the Rights of Women and Children in Improving Justice and Legal Certainty," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 2 (June 30, 2023), https://doi.org/10.31941/pj.v22i2.3054.

national levels, as Indonesian women continue to lag behind in both public life and politics. Fifteen years ago, the Constitutional Court in its ruling read out its decision on "Case Number 22/PUU-VI/2008 and Number 24/PUU-VI/2008 on Case for Judicial Review of Law Number 10 the Year 2008 on Election for Members of DPR, DPD, and DPRD". The Constitutional Court's (MK) ruling partially approved the request to revoke Article 214, which states that, "… Article 214 paragraphs (a), (b), (c), (d), and (e) of Law No. 10 Year 2008 on General Elections for Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (the Republic of Indonesia State Journal of 2008 Number 51, the Republic of Indonesia Supplementary State Journal Number 4836) contradict the 1945 Constitution of the Republic of Indonesia".

The court further averred that, "The provisions of Article 214 letters a, b, c, d, and e of Law 10 Year 2008 that state the elected candidates are those who get more than 30% (thirty percent) of the BPP, or occupy smaller serial number, in case no one gets 30% (thirty percent) from the BPP, or the one who occupies the smaller serial number if the person who gets 30% (thirty percent) from the BPP is more than the proportional number of seats obtained by a political party participating in General Election is unconstitutional. It is unconstitutional because it contradicts the substantive meaning of people's sovereignty with the principle of justice according to Article 28D paragraph (1) of the 1945 Constitution. This constitutes a violation of the people's sovereignty if this same will which reflects upon their choices is not considered in the determination of legislative members. This can be a form of clear violation to people's sovereignty and justice".[30]

The Nexus Between the Constitutional Court and other State Institutions

The relationship between the Constitutional Court and other state institutions is premised on Article 24C (1) of the 1945 Constitution. This court is frequently referred to as an institution that opposes majoritarianism. This is due to the fact that the new Court's authority somewhat conflicts with the intentions of the democratic institutions. The court, which is the result of such elections, has the power to declare legislation unconstitutional. The people elect the government and the parliament. The court, which is the result of such elections, has the power to declare legislation unconstitutional. The people elect the government and the parliament, which are the two bodies that form parts of the government. The court is in responsibility of upholding laws, the executive is in charge of implementing them, and the legislative is in charge of developing and elucidating them. On the other hand, the court is the principal player in judicial review. When determining whether a statute is in line with the Constitution, it provides the final verdict.

[30] Riris Ardhanariswari, Tenang Haryanto, and Supriyanto Supriyanto, "Gender Equality in Politics (Study on The Indonesian Constitutional Court's Decisions on Judicial Review Related to Women's Political Participation)," *Jurnal Dinamika Hukum* 21, no. 3 (March 28, 2022): 420, https://doi.org/10.20884/1.jdh.2021.21.3.2844.

One of the main institutions that is always in contention with constitutional courts in the world is that of the Presidency. Once in power, these populist politicians also frequently want to consolidate their position. They achieve this by doing away with term limitations and enhancing the power of the executive branch. They frequently target independent institutions like the media, courts, tax officials, and election commissions that serve as a check on their power. These institutions become dependent on party supporters under populist regimes, rendering them non-independent. The Constitutional Court is typically the primary target of these populist rulers because, particularly in states that have transitioned from authoritarianism to democracy, it is this institution that has the primary responsibility for preserving democracy by defending human rights, its independence and that of other state institutions.[31] That notwithstanding, the procedure for removing a president from office as head of state and government in Indonesia is one of the constitutional dynamics that clearly demonstrates the strong relationship between the legal and political processes.

There are two methods of impeaching a President or Vice president. The first is, a politically motivated removal (impeachment) and the second is, removal through a special court forum *previligiatum* (i.e., a privileged court of law). Both of the impeachment models are supported by Articles 7A and 7B. A model of impeachment is the dismissal by the People's Consultative Assembly, and a model of *previligiatum* is the Constitutional Court's assessment.[32] The Constitutional Court's engagement in dismissal process is an attempt to ensure that the president's removal is legally legitimate rather than just political. There are legal implications in the application of the doctrine of impeachment in Indonesia. The country uses the congressional model because the final decision is in the People's Consultative Assembly. However, the process still involves the Constitutional Court in terms of justifying the opinion of the DPR regarding alleged violations committed by the President and or Vice President. Processes with this model can potentially cause problems from a constitutional law point of view. Also, the Constitutional Court's decision is final and binding, while the impeachment process in Indonesia places the Constitutional Court in the middle of the process. So, what if the Constitutional Court's decision confirms the DPR's opinion but it turns out that the MPR did not impeach the President? If so, will the Constitutional Court's decision not be final and binding? This is an implication that the state needs to address to avoid facing it in the future.

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[31] Abdurrachman Satrio, "Constitutional Retrogression in Indonesia Under President Joko Widodo's Government: What Can the Constitutional Court Do?," *Constitutional Review* 4, no. 2 (December 31, 2018): 271, https://doi.org/10.31078/consrev425.

[32] Hezron Sabar Rotua Tinambunan, "Reconstruction the Authority of Constitutional Court on Impeachment Process of President and/or Vice President in Indonesian Constitutional System," *Jurnal Dinamika Hukum* 16, no. 1 (January 13, 2016), https://doi.org/10.20884/1.jdh.2016.16.1.519.

Reasons can be related to abuse of the office such as that, "the President and/or Vice-President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President". Paragraph (5) of Article 7B of the Constitution provides that, "If the Constitutional Court decides that the President and/or Vice-President is proved to have violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude; and/or the President and/or Vice-President is proved no longer to meet the qualifications to serve as President and, or Vice-President, the People's Representative Council (DPR) shall hold a plenary session to submit the proposal to the People's Consultative Assembly (MPR) to impeach the President and/or Vice-President".

However, the impeachment and dismissal of Abdurrahman Wahid in 2001 as the 4th President of Indonesia is based on political ground. In MPR Decree Number III / MPR / 1978, the removal of President Abdurrahman Wahid was not in line with the existing laws. This resulted in the system that has been formulated not being implemented as it should. It started with the DPR members not accepting the President's explanation in the memoranda regarding the cases of Buloggate and Bruneigate.[33] In the end, the President intervened politically by proclaiming the dissolving of parliament and calling for general elections through a Presidential Decree.[34] However, it is worth noting that this incident happened prior to the coming into being of the Constitutional Court and therefore, it was not within the purview and knowledge of this court. As a less litigated constitutional issue, impeachment is yet to attain a clearer image than it was when Abdurrahman Wahid experienced it. This is as a result of less constitutional jurisprudence on it. This less constitutional jurisprudence is caused by political interference. The Constitutional Court relies on the prosecution of the DPR and therefore, when the DPR is not bringing forth matters on the impeachment of President, there cannot be cases to be decided by the court. So, why is the DPR not presenting many cases of impeachment before the Court despite the rumours of President involved in acts criminal behaviour including corruption? The fact that the president commits acts that attract impeachment does not, ex cathedra, result in impeachment. The DPR must pick interest in the matter and prosecute it before the Constitutional Court. So, it is fitting to submit that less constitutional jurisprudence on impeachment from this court is a result of lack of seriousness and commitment by the DPR. This is evident in the political alignment (coalition) of some members of the parliament with the president.

[33] Firza Setiawan Putra et al., "Impeachment Mechanism for The President and/or Vice President of Indonesia and United States," *Journal of Indonesian Constitutional Law* 1, no. 2 (October 17, 2024): 96–111, https://doi.org/10.71239/jicl.v1i2.4.

[34] H Muhamad Rezky Pahlawan Mp, "The Constitutional Court Function of The Indonesian State Concerning System for the Implementation Impeachment of the President and/or Vice President," *Jurnal Hukum Volkgeist* 4, no. 2 (June 1, 2020): 118–27, https://doi.org/10.35326/volkgeist.v4i2.496.

Based on the provisions of Article 7B (1) of the Constitution of 1945, the process of impeaching a president and/or a vice president is as follows: (1) the DPR is of the opinion that the president and/or vice president has committed a violation of the law; (2) the DPR submits a request to the Constitutional Court to made a decision; (3) the Constitutional Court conveys its decision to the DPR; (4) the DPR submits a recommendation to impeach the president and/or vice president to the MPR; and (5) the MPR holds a plenary session to decide on the DPR's recommendation. So, the court cannot make a significant thrive in matters of impeachment unless the parliamentarian mean a serious business.

Aside from the institution of Presidency and Vice Presidency, tensions are also rising because the Constitutional Court frequently offers legislators constitutional directives for developing legislation. A type of mandamus, or "a constitutional mandate to legislate" is a constitutional order. It is known as the "instruction directions delivered by Constitutional Court to Legislator" or the "binding orders and directives to Legislator".[35] Using Decision No. 012-016-019/PUU-IV/2006, which was released on December 19, 2006, concerning the Corruption Court's creation in accordance with the Corruption Eradication Commission Law, serves as an example.[36] The Constitutional court declared, inter alia, that: "according to the Court, the legislator must immediately conduct the alignment of the Corruption Eradication Commission Act with the Constitution 1945 and form a law on the Corruption Court as a special court as the only system of corruption criminal justice, so the dualism of the corruption criminal justice system that has been Declared contrary to the 1945 Constitution as described above, may be omitted".

With regard to the People's Representative Council (DPR), the Constitutional Court Decision Number 27/PUU-XI/2013, dated January 9, 2014, established that the position of the DPR in selecting candidates for AGUS judges should be restricted to approving or disapproving the prospective Chief Justice submitted by the Judicial Commission. The Chief Justice nominated to the House of Representatives by the Judicial Commission is one candidate for Chief Justice for each vacancy, with a copy sent to the President. In another Constitutional Court Decision Number 92/PUU-X/2012, the court averred that, the Regional Representative Council's jurisdiction throughout the law-making process is emphasized and clarified in which was issued on March 27, 2013. On the other hand, the Regional Representative Council's input is crucial while considering the

[35] Fajar Laksono et al., "Relation between the Constitutional Court of the Republic of Indonesia and the Legislators According to the 1945 Constitution of the Republic of Indonesia," *Constitutional Review* 3, no. 2 (August 21, 2018): 141, https://doi.org/10.31078/consrev321.

[36] Dodik Pranata Wijaya, "The Dillem Of The Right To Privacy In Indonesia: Does Indonesia's Corruption Eradication Commission (KPK) in Spying People Violate International Human Rights Laws to Protect the Right to Privacy?," *Trunojoyo Law Review* 1, no. 1 (February 5, 2019): 13–29, https://doi.org/10.21107/tlr.v1i1.5254.

measure.[37] Additionally, the President, DPR, and the DPD need to be actively involved in the bill-discussion process.

The Constitutional Court also has a jurisdiction over political parties in Indonesia. Political parties in Indonesian context as captured in the normative intents of Article 22E paragraph (3) and Article 6A are participants in the elections which include the nomination of President, Vice President, and members of DPR and Regional People's Representative Council (DPRD). The Constitutional Court's Decision No. 12/PUU-VI/2008 is a substantive examination of the fundamentals for verification of political party made by the seven political parties that filed the application. The case concerned the constitutionality of Article 316 (d) of Law Number 10 Year 2008 regarding member elections for the People's Representative Council, the Regional Representative Council, and the People's Regional Representative Council, specifically the requirement that the applicant have a seat in the DPR by dint of the 2004 General Election.[38] As per Constitutional Court, all political parties that do not control three percent of the seats in the DPR will be appointed by the General Elections Commission (KPU) if the norm is not observed. Therefore, the court submitted in the final verdict that Article 316 (d) of Law No. 10 Year 2008 was unconstitutional.

This court helps in ensuring the Republic of Indonesia uphold the doctrine and applicability of constitutionalism ranging from protection of human rights to ensuring their respect. This also includes upholding the rule of law and limitation of state's power by not interfering with the private lives of citizens. Although Pancasila democracy is one of the pillars upon which Indonesian society is built, the idea of constitutionalism, which emerged at the turn of the eighteenth century, is in fact, inextricably linked to the constitution.[39] Since constitutionalism's central tenet is that the government's authority must be constrained to prevent arbitrariness in its use, it is believed that the primary safeguard to shield citizens from capricious demands is a constitution with a constitutional court that guards it. With the ideology premised on the rule of law, the Constitutional Court of Indonesia is seen as an effective institution for protecting its citizens, giving rise to the concept of the constitutional state. Therefore, the core of constitutional democracy as a mean of governance is the idea of the rule of law protected by the Indonesia's Constitutional Court.

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[37] Anna Triningsih et al., "The Role of the Constitutional Court in Reforming the Indonesian State System:," in *Proceedings of the 1st International Conference on Recent Innovations* (International Conference Recent Innovation, Jakarta, Indonesia: SCITEPRESS - Science and Technology Publications, 2018), 2670–79, https://doi.org/10.5220/0009950226702679.

[38] Muhammad Zhafran Shobirin et al., "A Comparison of Presidential Threshold Systems in Presidential and Vice-Presidential Elections in Indonesia and Brazil," *Journal of Indonesian Constitutional Law* 1, no. 1 (August 16, 2024): 1–14, https://doi.org/10.71239/jicl.v1i1.7.

[39] Muwaffiq Jufri et al., "State Power Limitations on Religion for The Fulfillment of The Constitutional Rights of Indigenous Religion Believers in Indonesia," *Journal of Indonesian Constitutional Law* 1, no. 3 (December 16, 2024): 194–220, https://doi.org/10.71239/jicl.v1i3.23.

The Politics Bewildering the Constitutional Court

It sounded like a joke when the Indonesian Constitutional Court was founded. The goal of legislators and lawmakers in the legislative branch was not to establish a court that could apply a strict model of judicial review. Their original goal was to oversee the impeachment of the president. But they understood that they needed to give the court more power than that. When the court first opened 20 years ago, the joke persisted. It lacked an office, financing, and support personnel. This scenario has altered thanks to Jimly Asshiddiqie's judicial leadership. He said that the Constitution, the Court, and the justices of the Court were the only three entities available to the court at the beginning.[40] Early on in Soeharto's New Order regime, there was a fierce conflict between the government and the Judges Association regarding judicial authority and constitutional review. However, the Judges Association lacked the necessary backing to enact such a reform on its own.

Ultimately, the judges and those who backed them lost. Rewind to the time following the overthrow of the New Order regime. Under the auspices of *Koalisi Ornop untuk Konstitusi Baru* (NGOs Coalition for a New Constitution), activists and non-governmental organizations suggested the creation of a Constitutional Commission, with the expectation that the Commission would embrace judicial review.[41] In Asia's changing political spheres, courts have emerged as significant actors. Since the 1990s, there has been an increase in the involvement and assertiveness of judges in political concerns as the countries in this region have democratized and liberalized in the last thirty years. This has supported the idea that politics in the area is getting more and more judicialized.[42]

Despite its heavy workload and apparent ability to uphold high standards, the court has come under increasing scrutiny. Some observers have noticed that there is less discussion among justices in high-profile cases, possibly because of heavy case load. They have even speculated that this results in shorter verdicts. Concerns among the public over the bench's independence from political and commercial interests – if not the "quality" of its justices – have grown as a result of cases involving corrupt practices by justices (such as those involving CJ Mochtar in 2013 and Patrialis Akbar in 2017) and Anwar Usman[43] in a controversial and polemic nature of the decision

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[40] Hendrianto Stefanus, *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes*, 1st ed. (Abingdon, Oxon [UK]; New York, NY: Routledge, 2018. | Series: Islamic law in context: Routledge, 2018), https://doi.org/10.4324/9781315100043.

[41] Stefanus Hendrianto, "The Rise and Fall of Historic Chief Justices: Constitutional Politics and Judicial Leadership in Indonesia," *Washington International Law Journal* 25, no. 3 (2016): 506, https://digitalcommons.law.uw.edu/wilj/vol25/iss3/5/.

[42] Nurus Zaman et al., "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 2 (September 2, 2024): 540–60, https://doi.org/10.22373/petita.v9i2.299.

[43] A. Resopijani and Yohanes Baptista Neonbeni, "Ethical Violation by the Chairman of the Constitutional Court Against Indonesian Law and Democracy," *Journal of Multidisciplinary Academic Business Studies* 1, no. 3 (May 17, 2024): 401–8, https://doi.org/10.35912/jomabs.v1i3.2147.

https://doi.org/10.71239/jicl.v2i1.45

of the case. Some writers have proposed that, in spite of new rules, the nomination process is becoming more politicized, leading to both a fall in court leadership and qualitative disparities between the "generations" of justices of this court.[44] The paradigm of the legal-politico is ever changing.[45] The Indonesian Constitutional Court's most practical model is a Principled Instrumentalist Court, in which justices exercise prudential self-limit while policy decisions direct the creation of legislation in accordance with constitutional values.[46]

Politics has influenced the formation of Indonesian laws and so does it to the operations of the Constitutional Court.[47] As a result of lessons from the impeachment of Abdurrahman Wahid, President Megawati Soekarnoputri and her political party (PDI-P) advocated that the Constitutional Court should closely examine the impeachment process. The true political justification for the Court's formation is this argument.[48] Politics always involves judicial power, which is fundamentally the same as ideas like persuasion, influence, manipulation, coercion, force, and authority. The Indonesian power structure paints a picture of a "tradition of political hegemony", with the Constitutional Court facing this tradition based on articles that outline the responsibilities and powers.[49] The question of whether a judicial institution might exist in isolation from two other institutions is the political tradition that is being discussed here.[50] This includes the appointment of three justices of this court by the President and three by the People's House of Representatives (DPR) which are the two political entities of the state. This shows how interested in this court the political class is.

Conclusion

In conclusion, the Constitutional Court of Indonesia as state institution does not and cannot suo moto, deliver effective and good governance without the

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[44] Björn Dressel and Tomoo Inoue, "Megapolitical Cases before the Constitutional Court of Indonesia since 2004: An Empirical Study," *Constitutional Review* 4, no. 2 (December 31, 2018): 157, https://doi.org/10.31078/consrev421.

[45] Herlambang P. Wiratraman, "Law and Politics of Constitutional Courts, Indonesia and the Search for Judicial Heroes, by Stefanus Hendrianto," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 176, no. 2–3 (June 11, 2020): 410–13, https://doi.org/10.1163/22134379-17601011.

[46] Novan Mahendra Pratama, "The Recovery of Constitutional Losses by The Constitutional Court," *Trunojoyo Law Review* 2, no. 2 (August 1, 2020): 126–39, https://doi.org/10.21107/tlr.v2i2.9501.

[47] Herlambang P. Wiratraman, "Constitutional Court and Democracy in Indonesia , by Simon Butt," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 1 (January 1, 2018): 84–87, https://doi.org/10.1163/22134379-17401005.

[48] Mirza Satria Buana, "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court," *Constitutional Review* 6, no. 1 (June 2, 2020): 36, https://doi.org/10.31078/consrev612.

[49] Ija Suntana and Tedi Priatna, "Four Obstacles to the Quality of Constitutional Law Learning in Indonesia," *Heliyon* 9, no. 1 (January 2023): e12824, https://doi.org/10.1016/j.heliyon.2023.e12824.

[50] Proborini Hastuti, "Shifting the Character of the Constitutional Court Decision Influenced by Political Constellation in Indonesia," *Constitutional Review* 5, no. 2 (November 18, 2019): 330, https://doi.org/10.31078/consrev526.

application of independence, and interdependency with other state institutions in the country. It is a court with *sui generis* jurisdiction in determining constitutional matters including the most controversial issues of election petitions, regulation of political parties and other issues in cogent ways that are germane to good governance and social cohesion. Therefore, it is sufficient to aver that this court forms the bedrock of good governance and democratization in Indonesia where acts of institutions and individuals are subject to the dictates of the constitution thereby, validating the longstanding cliché of "government of laws and not of men".

While it is true to point out that the Supreme Court of Indonesia (MA) has a jurisdiction to, inter alia, test or deal with issues regarding conflicts between legislations, the Constitutional Court upholds noninterference with other judicial institutions so long as their acts are not unconstitutional. This is an epitome of independence of court processes. It is also obvious that this court has a dashing role in determining election results and dissolving of political parties because this aspect of the state needs scrutiny, and this court is very interested in the protection of the rights of the people and to secure these rights, an effective government is instituted among the Indonesian people.

Finally, through its legal authority of judicial review, the Indonesia's Constitutional Court has performed significant duties and strides to safeguard and uphold human rights in the state's legal system, including economic and socio-cultural rights. It confirms that these rights are components of constitutional mandates and that they are legally justiciable rights. This means that the state must act in line with the legal thresholds determined by the Court when making decisions about judicial reviews. Adherence to the rulings will surely uncover indisputable evidence supporting the fulfilment of state policy. Nonetheless, it appears that there are still a lot of factors, points of attention, and justifications for lowering or ignoring the court rulings' application threshold. The intricacy of the actors, institutions, authority, level of enforcement, and concentration of a particular collection of state-funded policies, programmes, actions, and initiatives lower the thresholds.

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