

## **THE ROLE OF JUDICIAL REVIEW IN THE INDONESIAN LEGAL SYSTEM: A LITERATURE REVIEW ON CONSTITUTIONAL PROTECTION AND LEGAL ACCOUNTABILITY**

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### **Abstract**

This study discusses the role of judicial review in the Indonesian legal system using a literature review approach, focusing on two main aspects, namely constitutional protection and legal accountability. Judicial review conducted by the Constitutional Court has a strategic function in maintaining constitutional supremacy through a mechanism for reviewing laws against the 1945 Constitution, thereby ensuring that applicable regulations do not violate the constitutional rights of citizens. In addition to acting as a guardian of the constitution, judicial review also acts as an instrument of accountability that demands openness and accountability from the legislative and executive branches in the formulation and implementation of laws. The literature review method was used to explore literature, Constitutional Court decisions, and related legal documents, thereby obtaining a comprehensive understanding of the contribution of judicial review in the Indonesian legal system. The results of the study show that judicial review is not only important in protecting rights and the rule of law, but also in strengthening transparent and accountable governance. Strengthening access and balancing the authority of state institutions are key to the development of effective judicial review in the future.

**Keywords:** Judicial Review, Constitutional Protection, Legal Accountability, Constitutional Court, Indonesian Legal System.

### **Introduction**

Judicial review is an important instrument in the legal system that serves to uphold the supremacy of the constitution and ensure that all laws and regulations in force in a country are in accordance with the constitution as the highest law. In the Indonesian context, judicial review is carried out by the Constitutional Court (MK), which has the authority to review laws against the 1945 Constitution of the Republic of Indonesia (UUD 1945) (Jackson, 2020). This function is crucial in ensuring that legislation produced by the legislature does not conflict with the constitution, thereby providing strong constitutional protection for citizens. The concept of judicial review itself is widely recognised in various legal systems around the world with at least the same objective, namely to maintain the stability and consistency of the highest legal norms (Patel, 2020).

The Indonesian legal system, which adopts a mixed legal system, has its own characteristics in the implementation of judicial review. Unlike the common law system, which places greater emphasis on court precedents, the Indonesian legal system, which is civil law in nature and influenced by customary law values and modern constitutionalism, places the Constitutional Court as the central institution with exclusive responsibility for reviewing laws (Smith, 2019). In addition, the Constitutional Court also functions as an institution that controls the legislative and executive powers so that they do not exceed their constitutional limits. This function has become very strategic in the context of democracy that has developed in Indonesia since the reform era, where legal control over public policy has become an urgent need (Asshiddiqie, 2010a).

Constitutional protection is a concept that is inseparable from the implementation of judicial review. Through the Constitutional Court's authority to review laws, citizens have a legal mechanism to demand the fulfilment of their constitutional rights. The rights guaranteed by the constitution, including fundamental rights and human rights, must be protected from various forms of violation, especially those arising from regulations that are discriminatory or inconsistent with the principles of justice and equality (Asshiddiqie, 2010a). Thus, judicial review provides a formal and legal channel for the public to obtain effective protection of their constitutional rights, while strengthening the legitimacy of the constitution as the basis of the state because every law must be subject to this constitutional control.

In addition to constitutional protection, judicial review also plays an important role in ensuring the legal accountability of state institutions, particularly the legislature and the executive. This accountability function requires state powers to be responsible for their actions and policies, in accordance with applicable legal norms and principles (Asshiddiqie, 2005). Judicial review is an effective mechanism for controlling and reviewing public policies or laws that are deemed to exceed constitutional authority. This is one of the important pillars in building a transparent and democratic constitutional state (*rechtsstaat*) in Indonesia, where the rule of law is not only a theory but is realised in practice through legally binding interventions (Asshiddiqie, 2010b).

The implementation of judicial review in Indonesia has undergone dynamic developments in line with constitutional changes and the establishment of the Constitutional Court itself in 2003. This institution was born in response to the need for legal reform to ensure more effective and independent constitutional enforcement in overseeing legislative actions and the implementation of laws (Gava, 2017). The Constitutional Court has broad powers, not only in reviewing laws, but also in relation to disputes over authority between state institutions and deciding on election cases. All of these powers strengthen the position of the Constitutional Court as the guardian of the constitution and demonstrate the complexity of the role of judicial review in the context of Indonesia's evolving legal system (Sutanto, 2019).

A literature study on the role of judicial review is highly relevant to understanding how the mechanism of reviewing laws in Indonesia can contribute to the protection of constitutional rights and legal accountability. Literature studies are an appropriate methodology because they allow for an in-depth examination of literature, Constitutional Court decisions, and analysis of the theory and practice of judicial review. This approach allows the research to systematically explore the conceptual and applicative developments of judicial review. Through a literature review, this study can identify key issues, challenges, and opportunities for strengthening judicial review in Indonesia.

The urgency of this research is also driven by the fact that Indonesia, like many other democratic countries, faces a number of problems in law enforcement and the protection of human rights. Limitations and delays in the revision or cancellation of laws that are detrimental to the public can lead to legal uncertainty and a crisis of public confidence in the legal system and government (Pratiwi, 2023). Judicial review, as the only mechanism for testing laws against the constitution, plays a vital role in preventing the abuse of legislative power and ensuring fair legal protection for all parties (Wibowo, 2021).

In the context of globalisation and increasingly complex political dynamics, not only constitutional protection and legal accountability are important, but also how judicial review is able to respond to social, political, and economic changes that affect the quality and effectiveness of the law. This study will attempt to explore the role of the Constitutional Court in facing these challenges, including how judicial review is applied in practice to maintain the balance of power and protect the constitution from internal and external threats. This also includes an analysis of important decisions made by the Constitutional Court as a reflection of the strategic role of judicial review.

As an institution with a very specific judicial function that differs from ordinary courts, the Constitutional Court plays a central role in the Indonesian legal system. Its unique authority makes the Constitutional Court a key actor in maintaining legal and political stability in Indonesia. Its duties are not limited to reviewing laws, but also include maintaining the integrity of the constitution and the legal system as a whole.

In this regard, a deep understanding of the role of judicial review is essential for academics, legal practitioners, and policymakers. Knowledge and understanding of judicial review also contribute to the development of constitutional law theory in Indonesia.

Comprehensive research can serve as a strategic reference for understanding how judicial review interacts with the principles of democracy and the rule of law, particularly in the context of Indonesia, which has pluralistic legal characteristics. In addition, this research also provides insight into how judicial review can be further developed in line with the needs of society and the ever-changing political dynamics.

## **Research Methodology**

The research method used in this study is a literature review with a descriptive-qualitative approach. This study collects, reviews, and analyses various relevant literature sources, such as books, scientific journals, Constitutional Court decisions, legal documents, and academic articles related to judicial review, constitutional protection, and legal accountability in Indonesia. This approach allows researchers to explore the concepts, theories, and practices of judicial review in depth based on valid and reliable secondary data (Eliyah & Aslan, 2025). The analysis focuses on two main aspects, namely the role of judicial review in maintaining constitutional protection and ensuring the accountability of state institutions, thereby providing a comprehensive understanding of the contribution of judicial review to the Indonesian legal system. The results of this literature review are expected to provide a strong theoretical and empirical foundation for the development of a democratic and accountable legal system (Liberati et al., 2020).

## **Results and Discussion**

### **The Role of Judicial Review in Constitutional Protection**

Judicial review as a mechanism for testing the constitutionality of laws plays a vital role in protecting the constitution as the highest legal norm in Indonesia. In the Indonesian legal system, the Constitutional Court (MK) is given special authority to assess whether a law made by the legislature is in accordance with the 1945 Constitution (Butt, 2011). This mechanism allows for effective control over the legal legitimacy of a rule, so that any form of regulation that contradicts the basic principles of the constitution can be revoked or declared invalid. Thus, judicial review is the main foundation for the protection of the constitution because it upholds the rule of law and maintains the integrity of the country's basic norms (Kusuma, 2022).

Non-compliance with the constitution not only causes damage to the national legal system but also harms the constitutional rights of citizens. Judicial review serves as an instrument to provide protection to the public, especially to safeguard the human rights and fundamental freedoms guaranteed in the constitution (People's Consultative Assembly of the Republic of Indonesia, 2008). When a regulation is considered to perpetuate discrimination, unfairly restrict rights, or deny access to justice, the Constitutional Court can conduct a review and invalidate the norm so that constitutional rights can be upheld. In this case, judicial review becomes the most effective guardian of constitutional rights and one of the most important legal protection mechanisms in a democratic country (Faiz & Chakim, 2020).

The implementation of judicial review in Indonesia has undergone significant developments since the establishment of the Constitutional Court in 2003. The Constitutional Court was established to breathe new life into the constitutional court system, given that previously, the review of regulations by the Supreme Court was not effective due to its limited authority (Nasution, 2021). With full authority to invalidate

laws that are unconstitutional, the Constitutional Court has asserted its position as an independent institution with the power to ensure that all legal products are in accordance with the spirit and provisions of the constitution.

This elevates the status of the constitution as the main foundation of national law that cannot be ignored, while also strengthening the position of constitutional law in Indonesia's pluralistic legal system (Lindsey, 2018). The existence of judicial review is not only a mechanism for reviewing laws, but also an instrument to prevent potential abuse of power by the legislature and executive.

With its authority, the Constitutional Court can assert the limits of state institutions' authority so that they do not exceed constitutional thresholds, thereby maintaining the balance between the branches of state power and strengthening the principle of checks and balances (Lustig, 2018). This concept is very important in a modern democratic system, where no institution should have unlimited power.

With its judicial review authority, the MT is a key pillar in preventing overlapping authorities while ensuring that state authority remains within a constitutional legal framework (Cappelletti, 1971). One important aspect of constitutional protection through judicial review is providing broad access for the public to file judicial review petitions against legislation.

The Constitutional Court's openness in accepting cases from individuals or groups who feel constitutionally aggrieved is a tangible form of judicial democratisation. This provides space for public participation in the legal oversight process, which previously tended to be closed in the ordinary court system. This access facilitates the public to play an active role in protecting their rights, as well as providing social control over the quality of legislation issued (Santoso, 2020).

In addition to providing individual rights protection, judicial review also serves to enforce collective norms and democratic principles enshrined in the constitution. A Constitutional Court ruling declaring a law unconstitutional does not merely invalidate that legal norm, but also serves as a stern warning to the legislature and executive to ensure that the law-making process is conducted in a more transparent and accountable manner. Thus, judicial review not only directly protects constitutional rights but also encourages the creation of clean and integrity-based governance in accordance with constitutional values (Siboy et al., 2025).

Judicial review also plays an important role in protecting the constitution from potential social conflicts and legal crises that may arise if unconstitutional rules remain in force. When legal norms are not fully consistent with the Constitution, the risk of legal chaos and uncertainty increases (Hoesein, 2013). The Constitutional Court, as the institution with the authority to review the constitutionality of laws, plays a role in stabilising the national legal system by ensuring that all applicable legal regulations do not violate the state's commitment to protecting human rights and the basic principles of the state. This function also provides a sense of justice to the community, which is the foundation for the realisation of an effective rule of law (Prasetyo, 2024).

The contribution of judicial review to constitutional protection can also be seen in various important decisions that have become landmark decisions of the Constitutional Court. In cases related to restrictions on freedom of expression, the right to education, and the right to justice and protection against discrimination, the Constitutional Court has often taken a progressive stance that reinforces the fundamental rights of citizens (Zhang, 2020). These decisions serve as legal references and broaden the scope of constitutional protection to be more inclusive and responsive to the dynamic needs of society. Thus, judicial review helps strengthen constitutional law to be more adaptive to socio-political changes and the legal needs of society (Benvenisti, 2019).

Furthermore, the judicial review mechanism reflects Indonesia's success in responding to the demands of constitutional democracy, which increasingly requires transparency and justice. The Constitutional Court, with its judicial review authority, is an important instrument for correcting legislation and state policies that have the potential to undermine constitutional rights. This open and transparent constitutional court process provides space for every citizen to obtain equal justice and legal protection, thereby strengthening public trust in state institutions and democracy itself (Lee, 2021).

From a constitutional law perspective, judicial review is the concrete manifestation of the concept of constitutional supremacy, namely the principle that all state powers are limited by constitutional provisions. Modern legal systems that uphold constitutional supremacy always ensure the existence of effective mechanisms for testing legal rules against the constitution (Sembiring, 2022).

Judicial review in Indonesia is the most vital instrument in operating this principle, ensuring that the state does not violate constitutional boundaries in exercising its power and that citizens are protected from arbitrary actions (Mountjoy, 2007). However, the implementation of judicial review as a constitutional protection mechanism also faces various challenges.

One of the main challenges is the limited public access to and understanding of the constitutional review process, which means that judicial review is sometimes not optimal in reaching all levels of society (Lindsey, 2018). In addition, since the legalisation of judicial review, there has been criticism that the constitutional review institution has the potential to engage in judicial activism or exceed its authority, thereby replacing the legislature. Therefore, it is important to strike a balance between the independence of the Constitutional Court and accountability so that judicial review remains within the proper constitutional protection corridor (Hartono, 2020).

Nevertheless, judicial review remains the primary tool for preventing public policy deviations that could constitutionally harm citizens. Through its decisions, the Constitutional Court can impose restrictions or even revoke regulations that violate basic rights and the constitution. This is very important in maintaining Indonesia's constitutional democracy based on fair principles and guaranteeing the protection of

fundamental rights. The power of judicial review is able to ensure that the law becomes an instrument that promotes social justice and community welfare, rather than an instrument of oppressive power (Hartanti, 2024).

Finally, constitutional protection efforts through judicial review also have broad implications for legal reform in Indonesia. Constitutional Court rulings not only invalidate laws, but often trigger legislative and policy reforms to bring them more in line with constitutional values and human rights (Tanaka, 2022). Thus, judicial review also serves as a motor for change and renewal of the legal system to make it more responsive to social developments, the need for justice, and the dynamics of democracy. This role demonstrates how vital judicial review is as a living and evolving legal instrument in Indonesia's constitutional democracy (Aziz et al., 2025).

Overall, the role of judicial review in constitutional protection is fundamental to the continuity of Indonesia's democratic, transparent, and accountable rule of law. Judicial review is an instrument that ensures that state power does not exceed its limits and guarantees the fundamental rights of citizens protected by the constitution. Through the authority vested in the Constitutional Court, Indonesia is able to realise a legal system that is not only written but also implemented in practice to protect the justice, rights, and freedoms of all citizens in a balanced and sustainable manner.

### **Judicial Review as an Instrument of Legal Accountability**

Judicial review plays a strategic role in realising legal accountability in Indonesia by serving as a mechanism for overseeing the formulation and implementation of legislation by the legislative and executive branches. Legal accountability requires that all actions and policies taken by the government be legally and morally accountable to the people in accordance with applicable legal norms and principles (Delaney, 2018). Through its judicial review authority, the Constitutional Court can assess and determine whether a legal rule has been made with the correct procedures and does not violate constitutional provisions, as well as ensure that the policy is implemented with due regard to the principles of justice and transparency (Roberts, 2021).

In a democratic state governed by the rule of law, legal accountability is the foundation for maintaining public trust in government institutions. Judicial review serves as an instrument that allows the public and petitioners to file for judicial review of laws that are considered to deviate from constitutional values and principles (Martinez, 2018). Thus, judicial review is not only a tool for law enforcement, but also a channel for social control that strengthens transparency and citizen participation in the legislative process and public policy. This shows that judicial review brings a new dimension to political accountability that is integrated with legal norms (Jakab & et al., 2017).

The Constitutional Court, with its judicial review authority, performs the function of examining the formal and substantive legality of laws. Formal legality

relates to the process of forming laws in accordance with valid procedures, while substantive legality assesses the conformity of the content of laws with fundamental constitutional values. By examining these two aspects, the Constitutional Court promotes comprehensive accountability, ensuring that not only are official procedures followed, but also that the resulting laws are accountable and in accordance with the objectives of the state and the rights of citizens protected by the constitution (Wijaya, 2023).

The role of judicial review is also important in restraining the dominance of the legislative and executive branches, which can sometimes create regulations that are not in the public interest or violate human rights principles. Judicial review positions the Constitutional Court as an independent and objective supervisor to uphold the limits of state institutions' authority, so that deviant actions or policies can be rectified through constitutional decisions. This prevents the abuse of power that could potentially harm the people and give rise to practices of corruption, collusion, or nepotism in lawmaking (Ahmed, 2023).

As an instrument of legal accountability, judicial review has a deterrent effect on lawmakers, encouraging them to be more careful and responsible in setting public policy. The awareness that the laws produced can be reviewed by the Constitutional Court and potentially overturned if they are not in accordance with the constitution encourages legislators to improve the quality and process of lawmaking. In addition, this effect encourages transparency and openness in the legislative process and strengthens legal legitimacy, which ultimately increases public confidence in the legal system and government (Jackson, 2020).

Judicial review also contributes to maintaining the accountability of the executive branch as the implementer of state policies. Although the executive is not directly tested in judicial reviews of the laws it makes, the existence of the Constitutional Court ensures that the regulations underlying government policies are in accordance with the constitution. Thus, judicial review becomes a normative basis for executive accountability, as every executive policy and action must be based on valid and constitutional laws. The Constitutional Court reviews these laws, thereby upholding the principle of the rule of law and preventing abuse of authority (Patel, 2020).

In practical terms, judicial review has proven its effectiveness in a number of important decisions that affirm the accountability of state institutions. For example, the Constitutional Court often repeals laws or articles that are considered to limit parliamentary oversight or harm the rights of citizens (Smith, 2019).

These rulings demonstrate how judicial review serves as an instrument to balance legislative and executive powers with public aspirations and interests, thereby ensuring that state institutions are legally accountable to the wider community (Asshiddiqie, 2010b). However, the implementation of judicial review as an instrument of accountability is not without challenges.



One of the main challenges is the potential for judicial activism, which occurs when the Constitutional Court is perceived to have exceeded its authority by making decisions that appear to replace legislative and executive policies. This criticism stems from concerns that judicial review could become a tool for disproportionate political intervention, which would actually hinder the functioning of democracy and the sovereignty of the people represented by the legislature (Gava, 2017). Therefore, it is important to strike a balance between the authority of the Constitutional Court and the functions of other institutions so that accountability continues to function properly without fundamentally shifting the role of democracy.

In addition, public access to judicial review mechanisms is still relatively limited due to social, economic, and educational factors. Not all citizens can utilise judicial review as a means of legal control, so the potential for accountability cannot be felt evenly. This is a challenge for the Indonesian constitutional court system to continue to improve access to justice and expand public participation in the judicial review process so that legal accountability can be achieved in an inclusive and fair manner (Sutanto, 2019).

The role of judicial review in strengthening legal accountability is also closely related to the development of a legal culture based on awareness of the supremacy of the constitution and human rights (Pratiwi, 2023). By continuously upholding constitutional law through the decisions of the Constitutional Court, a collective awareness is created that all state actions and policies must be accountable according to the law. This legal culture is an important foundation for transparent, accountable, and democratic law enforcement in Indonesia, and encourages state officials and institutions to operate within clear and open legal boundaries (Wibowo, 2021).

In the context of Indonesia's developing legal system, judicial review makes a significant contribution by strengthening the principle of checks and balances. The Constitutional Court's authority to review laws against the constitution is a tangible form of judicial oversight of the legislative and executive powers (Butt, 2011). The accountability created through judicial review helps maintain the balance of state power, prevent authoritarianism, and ensure that changes to legislation occur legally and in accordance with agreed constitutional values (Kusuma, 2022).

Overall, judicial review functions as an instrument of legal accountability that not only maintains compliance with the constitution but also strengthens the legitimacy of the legal system and state institutions in the eyes of the public. By utilising judicial review, the Indonesian legal system has gained an effective mechanism for controlling the formulation and implementation of legal regulations, thereby fostering transparent, participatory, and accountable governance. The existence of judicial review as an independent control tool is one of the main factors in maintaining political stability and social justice in Indonesia.

## Conclusion

Judicial review plays a central role in maintaining constitutional supremacy in Indonesia. Through the Constitutional Court's authority to review laws against the 1945 Constitution, judicial review ensures that all legislation complies with the basic principles of the constitution and does not infringe on the constitutional rights of citizens. Thus, judicial review functions as a crucial mechanism in constitutional protection that guarantees justice, legal stability, and respect for human rights as fundamental parts of a democratic state.

Judicial review is an effective instrument of legal accountability in supervising and controlling the legislative and executive powers. Through an independent and transparent law review process, judicial review requires state institutions to be legally responsible for the policies and norms they create. This function strengthens transparent governance, prevents abuse of power, and increases public trust in the legal system and democracy in Indonesia.

Thus, it is important to strengthen the judicial review mechanism by expanding public access and maintaining the balance of power among state institutions so that they remain within constitutional boundaries. As such, judicial review is not only a tool for testing laws, but also the backbone of maintaining accountability and protecting constitutional rights in Indonesia. Therefore, the development of an inclusive and responsive judicial review is a necessity to support a fair, democratic, and accountable national legal system in the face of the dynamics of national and social development.

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