

INDONESIA'S CONSTITUTIONAL COURT: BASTION OF LAW ENFORCEMENT AND PROTECTOR OF HUMAN RIGHTS IN THE REFORM ERA

Luh Putu Vera Astri Pujayanti¹, Zainun Zakya Nugrahyu², Erman I.
Rahim³, Mohamad Hidayat Muhtar⁴, Chami Yassine⁵

¹ Civil Service Policing Practice Study Program, Faculty of Community Protection, Institut Pemerintahan Dalam Negeri, Jl. Gajah Mada No.1, Leneng, Kec. Praya, Kabupaten Lombok Tengah, West Nusa Tenggara Campus, Indonesia, e-mail : vera.astri@ipdn.ac.id

² Faculty of Law, Mataram University, Jl. Majapahit No.62 Mataram, West Nusa Tenggara, Indonesia, e-mail : zainunzakya@gmail.com

³ Faculty of Law, Gorontalo State University, Dulalowo Tim., Kec. Kota Tengah, Kota Gorontalo, Gorontalo Province, Indonesia, e-mail : erman@ung.ac.id

⁴ Faculty of Law, Gorontalo State University, Dulalowo Tim., Kec. Kota Tengah, Kota Gorontalo, Gorontalo Province, Indonesia, e-mail : hidayatmuhtar21@ung.ac.id

⁵ College of Law, Dhofar University, Sultanate of Oman, Oman, Email: ychami@du.edu.om

DOI : <https://doi.org/10.21107/pamator.v17i1.24128>

Manuscript received 1st January 2024, Revised 26th February 2024, Published 4th April 2024

Abstract

This study aims to analyze the role of the Indonesian Constitutional Court in carrying out its function as a stronghold of law enforcement in Indonesia after the reform era, as well as evaluate the extent to which this institution has succeeded in protecting human rights through its decisions. Methods: This research is categorized as normative legal research with a philosophical and analytical approach. The focus is on rational, critical, and philosophical analysis of the legal issues raised. The analytical descriptive method is used to describe the applicable legislation, legal theory, and positive law enforcement practices related to the problem under study. Results: The results show that the Indonesian Constitutional Court plays an important role in upholding the Constitution and social justice with a careful and balanced approach. Key decisions such as No. 18/PUU-V/2007, No. 75/PUU-XIII/2015, and No. 102/PUU-XXI/2023 highlight the importance of legislative autonomy, legal clarity, and certainty, as well as the presumption of innocence and prudence in political intervention. The application of Aharon Barak's theory of "proportionality," Lon Fuller's "legal certainty," and Alexander Bickel's "judicial restraint" provides insight into ensuring a balance between human rights, legal certainty, and the integrity of due process.

Keywords: Indonesian Constitutional Court, Human Rights, Legal Certainty.

© Authors; This is an Open Access Research distributed under the term of the Creative Commons Attribution-ShareAlike 4.0 International License (CC BY-SA 4.0) (<https://creativecommons.org/licenses/by-sa/4.0/>) which allows re-distribution and re-use of a licensed work on the conditions that the creator is appropriately credited and that any derivative work is made available under "the same, similar or a compatible license".

INTRODUCTION

The basic value of a country must have a basic foundation as a way to organize the nation, namely the Constitution. The Constitution of the Republic of Indonesia in 1945 (UUD 1945) is the highest legal basis in Indonesia and a legal umbrella for all existing legislation in Indonesia.¹ This is also the birth of the Constitutional Court (MK), an insistence arising from the reform movements that occurred in Indonesia during the transition from the new order to the Reform Order. Judicial review is the main authority behind the establishment of the Constitutional Court in Indonesia. The Constitutional Court holds the main authority of judicial review in all countries in the world. Constitutionally, the judicial review authority of the Constitutional Court is affirmed in Article 24C, paragraph 1, of the 1945 Constitution. Based on the judicial review authority, the Constitutional Court is often referred to as the guardian of ideology and as the court of law.²

The basic values of a state, reflected in its constitution, form the legal and ideological foundation for the organization and development of the nation. In Indonesia, the 1945 Constitution (UUD 1945) serves as the Supreme legal basis, being the main reference for all regulations and laws in the country. Born from the reform movement that replaced the New Order with the Reform Order, the Indonesian Constitutional Court stands as an important institution in the Indonesian legal system.³

In the context of Indonesia, the country's basic values embedded in the 1945 Constitution (UUD 1945) not only serve as the highest legal foundation but also as ideological guidelines for nation-building and regulation. The reform process that replaced the New Order with the Reform Order brought important changes to the Indonesian legal system, one of which was the establishment of the Constitutional Court. As an institution that has the authority of judicial review, as stipulated in Article 24C paragraph (1) of the 1945 Constitution, the Constitutional Court plays a crucial role in maintaining the constitutionality of laws and regulations. More than that, the Constitutional Court is also at the forefront of human rights protection in Indonesia. Through its authority in testing laws against the 1945 Constitution, the Constitutional Court acts not only as a guardian of ideology and law but also as a guardian of human rights values that are the basis of a democratic state. The Constitutional Court ensures that every policy and law made by the government and legislature is not only in

¹ Mohamad Hidayat Muhtar and others, *TEORI & HUKUM KONSTITUSI: Dasar Pengetahuan dan Pemahaman serta Wawasan Pemberlakuan Hukum Konstitusi di Indonesia* (PT. Sonpedia Publishing Indonesia, 2023).

² Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, 'Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia', *Jurnal Konstitusi*, 20.2 (2023), 279–99 <<https://doi.org/10.31078/jk2026>>.

³ Askari Razak and others, 'Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria', *Journal of Indonesian Legal Studies*, 8.2 (2023) <<https://journal.unnes.ac.id/sju/index.php/jils/article/view/70717>> [accessed 6 November 2023].

accordance with the Constitution but also respects and protects the fundamental rights of citizens, which is one of the main pillars of a democratic state.

The guarantee of human rights protection in the Constitution as the highest law means that the state is prohibited from committing human rights violations, and even the main task of human rights protection is on the state. Therefore, the development of constitutionalism contains two main essences. First, the concept of a rule of law means that the law overcomes state and political power. Secondly, the concept of citizen rights states that the freedom of citizens is guaranteed by the Constitution.⁴

This construction shows that human rights are the main substance of the Constitution, both in terms of the process of forming the Constitution as a result of collective agreement and in terms of the idea of constitutionalism. The state is formed as a manifestation of the desire to protect humanity and human rights, which cannot be done by individuals themselves or by communities without the existence of state organizations. Therefore, the main task of the state that obtains monopoly power from the people as the holder of the highest power is to fulfill and protect human rights.

Three main values are the basis for justifying the existence and design of the Constitutional Court, especially the artistic type,⁵ includes the protection of democracy and human rights, judicial independence, and constitutional control. Academic and social discussions often highlight the performance of the Constitutional Court in espousing these values. Constitutional courts are considered effective and important insofar as they can realize these three values.⁶ The basic principles of democratic constitutionalism closely relate to these values. Courts that operate independently of external influences are crucial for achieving fair and impartial justice in the context of the rule of law. Constitutional control is closely related to the principle of democracy; by limiting itself to acts of Parliament, the Constitutional Court allows democratically elected actors to make important policy decisions.⁷ The protection of democracy and human rights is at the core of democratic constitutionalism, with an emphasis on the importance of political freedom. These values play a crucial role

⁴ Janedjri M. Gaffar, 'Peran Putusan Mahkamah Konstitusi Dalam Perlindungan Hak Asasi Manusia Terkait Penyelenggaraan Pemilu', *Jurnal Konstitusi*, 10.1 (2013), 1–32 <<https://doi.org/10.31078/jk1011>>.

⁵ This court is often called the 'Court of Celsenian' because it followed the model of the Austrian Constitution of 1920 whose formation involved the prominent jurist Hans Kelsen. As an alternative to the review model spread across the US, Kelsen's initial idea was to create a court that could guarantee uniformity of assessment of the constitutionality of laws through a monopoly on this activity. View, Hans Kelsen Hans Kelsen, 'Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution', *The Journal of Politics*, 4.2 (1942), 183–200 <<https://doi.org/10.2307/2125770>>.

⁶ Niclas Berggren and Jerg Gutmann, 'Securing Personal Freedom through Institutions: The Role of Electoral Democracy and Judicial Independence', *European Journal of Law and Economics*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s10657-020-09643-9>>.

⁷ Max Steuer, 'Democracy, Procedural and Social Rights, and Constitutional Courts in Hungary and Slovakia', *Constitutional Review*, 9.1 (2023), 28–76 <<https://doi.org/10.31078/consrev912>>.

in democratic constitutionalism. If the Constitutional Court fails to uphold these values, there will usually be a major deterioration in their reputation.

This shows that their main function is not only in enforcing the law but also in safeguarding the basic foundations of democracy and the freedoms guaranteed by the Constitution. Failure to perform this role can result in significant harm to the legitimacy and integrity of the constitutional judicial institution itself. The contemporary development of the Constitutional Court, which is said to be the vanguard of global human rights protection, has also received criticism. For example, Pablo Castillo-Ortizber argues that:⁸

“The Constitutional Court is often seen as a politicized institution that only follows the instructions it appoints. At other times, critics accuse constitutional judges of pursuing their policy goals under the guise of defending the Constitution. The courts authorized to carry out constitutional judicial review were even accused of being inefficient and incompatible with their purpose of defending human rights or democracy”

The problems arising from criticism of the Constitutional Court as the vanguard in the protection of human rights and democracy, as expressed by Pablo Castillo-Ortiz, raise profound questions about the role and integrity of the constitutional judiciary in the modern era. The criticism highlights concerns about the politicization and activism of judges that can blur the line between law enforcement and political policy. Tendencies like these, if not handled wisely, can erode the legitimacy of the Constitutional Court, which is ideally a pillar of objective and impartial justice. Therefore, finding a balance between judicial autonomy and democratic accountability is becoming increasingly important. The court must maintain its independence while ensuring that its actions remain aligned with constitutional and democratic values. Strengthening internal control and balance mechanisms can be an important step in maintaining the integrity of the Constitutional Court, as well as ensuring that this institution continues to function as a protector of human rights and democracy, which is at the heart of democratic constitutionalism.

Based on description above, formulation of the problem are : (1) What is the role of the Indonesian Constitutional Court in carrying out its function as a stronghold of law enforcement in the Indonesian state after the reform era? and (2) To what extent has the Indonesian Constitutional Court succeeded in protecting human rights in its decisions?

RESEARCH METHODS

This study is categorized as normative legal research because it is based on the issue or theme raised as a research topic. The research approach used is philosophical and analytical, which is research that focuses on a rational view, is critical, analytical, and

⁸ Pablo Castillo-Ortiz, ‘The Dilemmas of Constitutional Courts and the Case for a New Design of Kelsenian Institutions’, *Law and Philosophy*, 39.6 (2020), 617–55 <<https://doi.org/10.1007/s10982-020-09378-3>>.

philosophical, and ends with a conclusion that aims to produce new findings as an answer to the main problem that has been set.⁹ We will analyze it using descriptive analytical methods, specifically by describing the applicable legislation related to the theory of law and positive law enforcement practices associated with the problem.¹⁰

This study, which adopts a philosophical and analytical approach in the context of normative law, investigates the role of the Indonesian Constitutional Court in carrying out its function as a stronghold of law enforcement in the post-Reformation Indonesian state, as well as the extent to which this institution has succeeded in protecting human rights through its decisions.

RESULT AND DISCUSSION

The Role of the Indonesian Constitutional Court in Carrying Out Its Function As A Stronghold Of Law Enforcement In The Indonesian State After The Reform Era

Legitimacy is considered an important source of judicial power. Although most of the existing research on the legitimacy of courts focuses on whether citizens agree or disagree with court decisions and what the implications are for citizens' trust in the courts and decision-making, it is also important to consider the reverse direction of causation, that is, the impact of judicial decisions on public opinion.¹¹

One important aspect of the functioning of constitutional courts, such as the Constitutional Court, is their ability to provide legitimacy to public policy. This concept, first proposed by Dahl in 1957, emphasizes the role of the Constitutional Court as the 'legitimizing' of policies made by majority coalitions. According to Dahl, this power stems from the Constitutional Court's status as the sole interpreter and legitimate protector of the Constitution.¹² In this context, the decisions made by the Constitutional Court are seen as credible, valid, and legitimate.

This phenomenon is often referred to as the 'legitimacy-granting capacity' or support effect, as described by Zaller in 1992. In other words, courts can use the support they have, or the 'reservoir of goodwill', as Easton called it in 1965, to influence public acceptance of government policy through the decisions they make.¹³

⁹ Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, ALFABETA, Cv, 2017.

¹⁰ Peter Marzuki Mahmud, *Pengantar Ilmu Hukum Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2016).

¹¹ Sebastian Sternberg, Sylvain Brouard, and Christoph Hönnige, 'The Legitimacy-Confering Capacity of Constitutional Courts: Evidence from a Comparative Survey Experiment¹', *European Journal of Political Research*, 61.4 (2022), 973–96 <<https://doi.org/10.1111/1475-6765.12480>>.

¹² Mario J. Aguja and Hans Born, *The Role of Parliament in Police Governance: Lessons Learned from Asia and Europe* (Geneva Centre for the Democratic Control of Armed Forces, 2017).

¹³ Graham Smith, 'Oversight of the Police and Residual Complaints Dilemmas: Independence, Effectiveness and Accountability Deficits in the United Kingdom', *Police Practice and Research*, 14.2 (2013), 92–103 <<https://doi.org/10.1080/15614263.2013.767088>>.

This role makes the Constitutional Court not only the guardian of the Constitution but also an important entity in shaping public perception and the legitimacy of government policies. The function and role of the Constitutional Court (MK) in safeguarding the Constitution and upholding the principle of constitutionality of law significantly connect with the previously discussed concept of 'legitimacy-granting capacity'. The Constitutional Court, as an institution with authority over judicial review, ensures that no legal product comes out of the constitutional corridor, keeps the constitutional rights of citizens protected, and ensures that the Constitution remains the highest legal foundation.¹⁴

This reflects the shift from parliamentary supremacy to constitutional supremacy, not only in Indonesia but also in various other democracies.¹⁵ In this context, the Constitutional Court not only acts as a guardian of the Constitution through the testing of laws but also strengthens the legitimacy of public policies by ensuring their conformity with constitutional values.¹⁶

Furthermore, the function of the Constitutional Court in resolving disputes between state institutions, dissolving political parties, and deciding disputes over election results adds an important dimension to its role.¹⁷ These functions allow the Constitutional Court to act as a mediator in interagency conflicts and in the broader political context, asserting its role in supporting and maintaining the dynamics of a healthy democratic political system.¹⁸

These powers and obligations, provided for in the 1945 Constitution and the law on the Constitutional Court, make the Constitutional Court a key institution in maintaining the balance of power, maintaining constitutional rights, and ensuring that the actions of

¹⁴ Mahkamah Konstitusi, 'Peran Dan Fungsi Mahkamah Konstitusi | Mahkamah Konstitusi Republik Indonesia', 2015 <<https://www.mkri.id/index.php?page=web.Berita&id=10958>> [accessed 8 January 2024].

¹⁵ A Ahmad and N.M. Nggilu, 'UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution The Pulse of the Fifth Amendment', *Jurnal Konstitusi*, 16.4 (2019), 786 <https://www.researchgate.net/profile/Novendri-Nggilu-2/publication/338919602_Denyut_Nadi_Amandemen_Kelima_UUD_1945_melalui_Pelibatan_Mahkamah_Konstitusi_sebagai_Prinsip_the_Guardian_of_the_Constitution/links/5e9c651b4585150839e9a049/Denyut-Nadi-Amandemen-Kelima-UUD-1945-melalui-Pelibatan-Mahkamah-Konstitusi-sebagai-Prinsip-the-Guardian-of-the-Constitution.pdf> [accessed 8 January 2024].

¹⁶ Ahmad Ahmad, Fence M. Wantu, and Dian Ekawaty Ismail, 'Convergence of Constitutional Interpretation to the Test of Laws Through a Constitutional Dialogue Approach: Konvergensi Penafsiran Konstitusional Terhadap Pengujian Undang-Undang Melalui Pendekatan Constitutional Dialogue', *Jurnal Konstitusi*, 20.3 (2023), 514–35 <<https://doi.org/10.31078/jk2038>>.

¹⁷ 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 (2022), 1 <<https://heinonline.org/HOL/Page?handle=hein.journals/jnlolletl25&id=1388&div=&collection=>>.

¹⁸ Fence M. Wantu and others, 'Indonesian Constitutional Interpretation: Constitutional Court versus the People's Consultative Assembly', *Journal of Legal, Ethical and Regulatory Issues*, 24 (2021), 1 <<https://heinonline.org/HOL/Page?handle=hein.journals/jnlolletl24&id=1268&div=&collection=>>.

the government and other state institutions remain accountable to the Constitution and the people. Through this role, the Constitutional Court not only maintains the supremacy of the Constitution but also effectively increases the legitimacy of public policy by affirming that every government and legislative action is in line with established constitutional principles.

After the reform era, the Constitutional Court (MK) of Indonesia has opened a broader view on the important functions of this institution in maintaining the rule of law and the constitution. In the post-reform era, the Indonesian Constitutional Court has played a key role as a bastion of law enforcement, and the Constitution plays a very important role in ensuring justice and legal stability in a democratic country.¹⁹

The Constitutional Court is responsible for checking and ensuring that all laws and government policies do not conflict with the 1945 Constitution, the constitutional document that is the highest legal foundation in Indonesia. In addition, the Constitutional Court also has the responsibility of resolving legal conflicts between state institutions, which are often a challenge in democratic practice. In this context, the Constitutional Court not only serves as a judge but also as a mediator who is able to bridge differences and find common ground in line with the Constitution and the public interest. It is very important to maintain harmony and balance of power between state institutions in a democratic system.

However, this task is not easy. MK faces a number of challenges in carrying out its functions. One of the main challenges is maintaining its independence and integrity in the face of political pressure and the interests of certain groups. In Indonesia, where political dynamics can be very complex, the Constitutional Court is often at the center of a political vortex that affects the legal decision-making process. Overcoming the challenge of keeping decisions objective and unaffected by specific political interests requires wise action.

In addition, there are challenges in terms of capacity and resources. The court must be able to handle large volumes of cases with limited resources while maintaining the quality and speed of case handling. It requires efficient case management and adequate utilization of legal technology.²⁰ In such a situation, the Constitutional Court is under public scrutiny and political pressure. Its decisions must not only be based on the law and the Constitution but must also take into account the existing social and political dynamics. Many people consider the decisions of the Constitutional Court in such cases as a reflection of its independence and integrity. In addition, the Constitutional Court also faces challenges in terms of capacity and resources. The handling of disputes over election results provides a concrete example of this challenge. In these cases, the court will have to deal with a large number of lawsuits in a very limited time, given the

¹⁹ Simon Butt, 'The Indonesian Constitutional Court: Implying Rights from the "Rule of Law"', *The Invisible Constitution in Comparative Perspective (Comparative Constitutional Law and Policy)*, 2018, 298–319.

²⁰ M. Lutfi Chakim, 'Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices', *International Journal for Court Administration*, 12 (2021), 1
<<https://heinonline.org/HOL/Page?handle=hein.journals/ijca12&id=1&div=&collection=>>.

importance of speed of resolution in the context of elections.²¹ This challenge requires efficient case management and the use of legal technology to ensure that each case is thoroughly and fairly examined while still meeting tight deadlines. Overcoming these challenges requires not only in-depth legal expertise and a solid understanding of the Constitution but also management and diplomacy skills. The Constitutional Court must be able to navigate the existing political and social complexities while maintaining legal and constitutional principles.

Success in this case is not only important to maintain the legitimacy of the Constitutional Court as an institution but also to maintain public confidence in the constitutional justice system in Indonesia. In carrying out its function as a stronghold of law enforcement, the Indonesian Constitutional Court not only plays a role in maintaining the Constitution but also indirectly supports the realization of social justice for all Indonesian people. Through its decisions, the Constitutional Court contributes to establishing and strengthening a fair and equitable legal basis while maintaining the principles of democracy and the rule of law in Indonesia.

Protection of Human Rights by the Indonesian Constitutional Court: A Critical Analysis of its Rulings and Impact

In the current multilayered legal order, human rights are protected at two levels. National constitutions always contain a large number of provisions regarding fundamental rights. However, the protection of human rights both internationally and regionally is a relatively recent phenomenon.²² It began after 1945 but has expanded dramatically over the past few decades, both in general agreements and conventions at the UN and EU levels and in more specific agreements on torture, discrimination, children's rights, gender equality, national minorities, etc.²³

In a global context, the application of international and regional standards in national legal systems has become a common practice, especially in countries with constitutional courts. Most member states of the International Council have a constitutional court, while a small number do not.²⁴ In countries without a Constitutional Court, human rights treaties are often applied directly by courts and tribunals, which do not apply laws contrary to

²¹ Albert HY Chen and Andrew Harding, *Constitutional Courts in Asia: A Comparative Perspective* (Cambridge University Press, 2018).

²² Gerald L. Neuman, 'Human Rights and Constitutional Rights: Harmony and Dissonance', *Stanford Law Review*, 55 (2002), 1863 <<https://heinonline.org/HOL/Page?handle=hein.journals/stflr55&id=1877&div=&collection=>>>.

²³ Stephen Gardbaum, 'Human Rights as International Constitutional Rights', *European Journal of International Law*, 19.4 (2008), 749–68 <<https://doi.org/10.1093/ejil/chn042>>.

²⁴ Isoni Muhammad Miraj Mirza, Rudi Natamiharja, and Jalil Alejandro Magaldi Serna, 'Social Transformation of International Human Rights Law Through Indonesian Constitutional Court', *Uti Possidetis: Journal of International Law*, 4.3 (2023), 439–71 <<https://doi.org/10.22437/up.v4i3.25721>>.

those treaties.²⁵ In this case, the court controls not only the constitutionality but also the conventionality of the legislation.²⁶

In countries with constitutional courts, the scope of judicial review is broader, encompassing the review of conventionality, either directly or indirectly.²⁷ There are three types of constitutionalization: strong, moderate, and soft. Strong constitutionalization involves incorporating international or regional conventions into national constitutions, sometimes with the same status as the Constitution itself, and bringing them into the scope of Constitutional Court review. When countries undergo major changes in their political and social structure and adopt new constitutions, they often enshrine the rights guaranteed by international conventions in their Constitution by analogy, as part of moderate constitutionalization. This is especially true in countries that adopted new constitutions after major changes in their political and social structures.

These constitutions usually reflect international minimum standards in their catalogue of fundamental rights, often very similar to international human rights conventions, and also include restrictive clauses on rights involving requirements of legality, legitimacy, and necessity or proportionality. Some of these also include clauses on the abuse of fundamental rights and the reduction of rights in emergency or war situations. In Indonesia, the Constitutional Court of the Republic of Indonesia (MKRI) plays a vital role in upholding and maintaining constitutional rights and human rights (HAM) in Indonesia. This role was especially emphasized after the Second Amendment to the Constitution of the Republic of Indonesia of 1945, which included articles 28A to 28J, explicitly defining and guaranteeing human rights in the country's Constitution.²⁸

As the "guardian of the Constitution," MKRI has a special responsibility to ensure that all laws and government policies do not contradict the values and principles of human rights embedded in the 1945 Constitution. In practice, this means that MKRI conducts a review of the laws and policies in question in terms of their constitutionality, ensuring that none of them violates or diminishes the constitutional rights and human rights guaranteed by the Constitution. The role of MKRI is very important considering that human rights are a basic pillar of maintaining dignity and social justice for all citizens. By carrying out the function of constitutional guard, MKRI not only plays a role in legal and constitutional aspects but also contributes substantially to efforts to strengthen the

²⁵ Kimberly Ramos Gamez and L. E. van Waas, 'Examining the ASEAN Intergovernmental Commission on Human Rights (AICHR): The Case Study of the Rohingya Crisis', *Master of International and European Law Dissertation, Tilburg University*, 2017 <<https://arno.uvt.nl/show.cgi?fid=142893>> [accessed 8 January 2024].

²⁶ Mahkamah Konstitusi, 'Indonesian Constitution Protects Human Rights of Everyone Including Foreign Nationals', *En.Mkri.Id*, 2023 <https://en.mkri.id/news/details/2023-01-16/Indonesian_Constitution_Protects_Human_Rights_of_Everyone_Including_Foreign_Nationals> [accessed 8 January 2024].

²⁷ OF GEORGIA, 'European Commission for Democracy Through Law (Venice Commission)', 2013 <<https://www.osce.org/files/f/documents/5/d/18834.pdf>> [accessed 8 January 2024].

²⁸ Fantika Setya Putri and Gayatri Dyah Suprobowati, 'EKSISTENSI MAHKAMAH KONSTITUSI REPUBLIK INDONESIA TERHADAP PENGUKUHAN HAK KONSTITUSI WARGA NEGARA', *Sovereignty*, 1.4 (2022), 626–34 <<https://doi.org/10.13057/sovereignty.v1i4.92>>.

democratic order and maintain social stability in Indonesia. MKRI protects and respects fundamental rights such as the right to life, freedom of thought and expression, justice and equality before the law, and other fundamental rights. However, some constitutional court decisions have pros and cons, especially with regard to human rights, as described in the following table:

Table 1. Comparison Human Rights Constitutional Court Decisions

Verdict	18/PUU-V/2007	75/PUU-XIII/2015	102/PUU-XXI/2023
Date	February 21, 2008	August 23, 2016	October 23, 2023
Application Tree	Establishment of Ad Hoc human rights courts based on alleged human rights violations	Material test of the phrase "incomplete" in law 26/2000 on Human Rights Court	Prohibition for human rights violators to be presidential-vice president
Applicant	Eurico Guterres	Paian Siahaan and Ruyati Darwin	Wirik Ariyanto, Rahayu Fatika Sari, Rio Saputro, and 98 advocates
Court Consideration	DPR conducts alleged human rights violations before proposing the establishment of Ad Hoc human rights courts	The phrase "incomplete" generates multiple interpretations and hinders legal proceedings	There is no detailed description of the case of gross violation of human rights by the applicant
Verdict	Reject the application	Reject the application	Reject the application

Referring to the three decisions of the Constitutional Court of the Republic of Indonesia, it reveals several important aspects of the legal and constitutional approach in Indonesia. In Decision No. 18/PUU-V/2007 filed by Eurico Guterres, in relation to the establishment of an ad hoc human rights court, the Constitutional Court shows its prudence in dealing with sensitive issues related to human rights violations. This ruling reflects the balance between legislative autonomy and the need to maintain a fair and objective legal process. Despite concerns regarding human rights violations, the Constitutional Court chose not to intervene in the legislative process, respecting the limits of constitutional authority established for state institutions. Verdict No. 75/PUU-XIII/2015, proposed by Paian Siahaan and Ruyati Darwin, highlights the need for clarity in legislation.

The court acknowledged that the phrase "incomplete" in the law on the Human Rights Court resulted in multiple interpretations and obstacles in the legal process. However, in rejecting the application, the Constitutional Court seems to prioritize the principle of legal certainty and existing legislative mechanisms. This ruling exposes the Constitutional Court's role as an interpreter of the Constitution but also as a guard against excessive intervention in the legislative process. Finally, Decision No. 102/PUU-XXI/2023, submitted by Wiwit Ariyanto and Rekan, shows the prudence of the Constitutional Court in dealing with the issue of human rights violations in the context of electoral politics. Despite the noble motive of the petition, which is to prevent human rights violators from becoming vice presidential candidates, the Constitutional Court rejected it due to the lack of a detailed explanation of the proposed cases of gross human rights violations. In this context, the Constitutional Court emphasized the importance of the presumption of innocence and the need for legal certainty.

This decision shows that the Constitutional Court avoids making decisions that could be considered political intervention while maintaining the integrity of the legal process. In addressing the decisions of the Constitutional Court of the Republic of Indonesia, there are several things that need to be considered in order to improve the system. First, in such cases as No. 18/PUU-V / 2007, where there are sensitive issues regarding human rights violations and the establishment of ad hoc human rights courts, the application of the theory of "proportionality can be considered"²⁹ proposed by Aharon Barak,³⁰ This theory emphasizes the balance between human rights and public interest, which may provide a more balanced perspective in dealing with this kind of issue.

Second, with regard to Decision No. 75 / PUU-XIII / 2015, seen the importance of clarity and legal certainty. In this context, the theory "legal certainty"³¹ the one proposed by Lon Fuller, an American philosopher of law, can serve as a reference. Fuller emphasized the importance of laws that are clear, non-conflicting, and understandable to

²⁹Aharon Barak emphasizes that in important issues, his views are often in line with generally accepted perspectives. He shared views on the importance of distinguishing between "constitutional rights as fundamental principles" and "constitutional rights as specific rules". Barak defines fundamental principles as "conditions for optimization" and asserts that constitutional rights as fundamental principles are "bound by the doctrine of proportionality". It demonstrates his deep understanding of how constitutional rights operate in a broader context and how they should be applied in a balanced and fair manner. View Robert Alexy, 'Proportionality, Constitutional Law, and Sub-Constitutional Law: A Reply to Aharon Barak', *International Journal of Constitutional Law*, 16.3 (2018), 871–79 <<https://doi.org/10.1093/icon/moy084>>.

³⁰ Stephen Gardbaum, 'Limiting Constitutional Rights', *UCLA Law Review*, 54 (2006), 789 <<https://heinonline.org/HOL/Page?handle=hein.journals/uclalr54&id=800&div=&collection=>>>.

³¹The theory of "legal certainty" proposed by Lon Fuller, an American philosopher of law, emphasizes the importance of certainty in law. This concept is one of the main principles in Fuller's philosophy of law and aims to ensure that the law is comprehensible, foreseeable and consistently applied. Fuller argues that when the law meets these criteria, it not only provides legal certainty but also helps create a just society. Legal certainty is necessary to ensure that individuals have the freedom to act and make decisions within the limits of the law, without fear of arbitrary action from the government or unexpected changes in the law. View, Isabel Lifante-Vidal, 'Is Legal Certainty a Formal Value?', *Jurisprudence*, 11.3 (2020), 456–67 <<https://doi.org/10.1080/20403313.2020.1778289>>.

society. This could encourage legislators to draft clearer and less multi-interpretive laws, reducing legal ambiguity that could hamper the enforcement process.

Finally, related to Decision No. 102 / PUU-XXI/2023, concept "judicial restraint"³² The one proposed by Alexander Bickel, an American theorist of constitutional law, can serve as a reference. Bickel stressed the importance of the court being less interventionist in political matters, calling for a more careful and measured approach in deciding issues that have long-term political consequences.

By implementing these approaches, the Constitutional Court can be more effective in balancing human rights protection, legal certainty, and prudence in political intervention. This will strengthen constitutional integrity and fairness in the Indonesian legal system while maintaining the necessary balance between the various interests in society. Furthermore, this approach can strengthen the legitimacy of the Constitutional Court as a guardian institution of the Constitution, ensuring that all parties respect and follow its decisions.

CONCLUSION

The Constitutional Court plays an important role in upholding the Constitution and social justice with a careful and balanced approach. Decisions like No. 18/PUU-V/2007 show the prudence of the Constitutional Court in dealing with the issue of human rights violations and affirm the importance of legislative autonomy and an objective legal process. Verdict No. 75/PUU-XIII / 2015 highlights the need for clarity and legal certainty, showing the role of the Constitutional Court as an interpreter of the Constitution and guardian of legal certainty. While the ruling No. 102/PUU-XXI/2023 affirms the importance of the presumption of innocence and prudence in political intervention, Through the application of Aharon Barak's theory of "proportionality," Lon Fuller's "legal certainty," and Alexander Bickel's "judicial restraint," the Constitutional Court can be more effective in fulfilling its constitutional responsibilities while ensuring a balance between human rights, legal certainty, and the integrity of due process.

BIBLIOGRAPHY

- Aguja, Mario J., and Hans Born, *The Role of Parliament in Police Governance: Lessons Learned from Asia and Europe* (Geneva Centre for the Democratic Control of Armed Forces, 2017)
- Ahmad, A, and N.M. Nggilu, 'UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution The Pulse of the Fifth Amendment', *Jurnal Konstitusi*, 16.4 (2019), 786 <https://www.researchgate.net/profile/Novendri-Nggilu-2/publication/338919602_Denyut_Nadi_Amandemen_Kelima_UUD_1945_melalui_Pelibatan_Mahkamah_Konstitusi_sebagai_Prinsip_the_Guardian_of_the_Constitution/links/5e9c651b4585150839e9a049/Denyut-Nadi-Amandemen-Kelima-UUD-

³² Aileen Kavanagh, 'Judicial Restraint in the Pursuit of Justice', *University of Toronto Law Journal*, 60.1 (2010), 23–40 <<https://doi.org/10.3138/utlj.60.1.23>>.

1945-melalui-Pelibatan-Mahkamah-Konstitusi-sebagai-Prinsip-the-Guardian-of-the-Constitution.pdf> [accessed 8 January 2024]

- Ahmad, Ahmad, Fence M. Wantu, and Dian Ekawaty Ismail, 'Convergence of Constitutional Interpretation to the Test of Laws Through a Constitutional Dialogue Approach: Konvergensi Penafsiran Konstitusional Terhadap Pengujian Undang-Undang Melalui Pendekatan Constitutional Dialogue', *Jurnal Konstitusi*, 20.3 (2023), 514–35 <<https://doi.org/10.31078/jk2038>>
- 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 (2022), 1 <<https://heinonline.org/HOL/Page?handle=hein.journals/jnlollet125&id=1388&div=&collection=>>>
- Alexy, Robert, 'Proportionality, Constitutional Law, and Sub-Constitutional Law: A Reply to Aharon Barak', *International Journal of Constitutional Law*, 16.3 (2018), 871–79 <<https://doi.org/10.1093/icon/moy084>>
- Berggren, Niclas, and Jerg Gutmann, 'Securing Personal Freedom through Institutions: The Role of Electoral Democracy and Judicial Independence', *European Journal of Law and Economics*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s10657-020-09643-9>>
- Butt, Simon, 'The Indonesian Constitutional Court: Implying Rights from the "Rule of Law"', *The Invisible Constitution in Comparative Perspective (Comparative Constitutional Law and Policy)*, 2018, 298–319
- Castillo-Ortiz, Pablo, 'The Dilemmas of Constitutional Courts and the Case for a New Design of Kelsenian Institutions', *Law and Philosophy*, 39.6 (2020), 617–55 <<https://doi.org/10.1007/s10982-020-09378-3>>
- Chakim, M. Lutfi, 'Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices', *International Journal for Court Administration*, 12 (2021), 1 <<https://heinonline.org/HOL/Page?handle=hein.journals/ijca12&id=1&div=&collection=>>>
- Chen, Albert HY, and Andrew Harding, *Constitutional Courts in Asia: A Comparative Perspective* (Cambridge University Press, 2018)
- Gaffar, Janedjri M., 'Peran Putusan Mahkamah Konstitusi Dalam Perlindungan Hak Asasi Manusia Terkait Penyelenggaraan Pemilu', *Jurnal Konstitusi*, 10.1 (2013), 1–32 <<https://doi.org/10.31078/jk1011>>
- Gamez, Kimberly Ramos, and L. E. van Waas, 'Examining the ASEAN Intergovernmental Commission on Human Rights (AICHR): The Case Study of the Rohingya Crisis', *Master of International and European Law Dissertation, Tilburg University*, 2017 <<https://arno.uvt.nl/show.cgi?fid=142893>> [accessed 8 January 2024]

- Gardbaum, Stephen, 'Human Rights as International Constitutional Rights', *European Journal of International Law*, 19.4 (2008), 749–68 <<https://doi.org/10.1093/ejil/chn042>>
- , 'Limiting Constitutional Rights', *UCLA Law Review*, 54 (2006), 789 <<https://heinonline.org/HOL/Page?handle=hein.journals/uclalr54&id=800&div=&collection=>>>
- GEORGIA, OF, 'European Commission for Democracy Through Law (Venice Commission)', 2013 <<https://www.osce.org/files/f/documents/5/d/18834.pdf>> [accessed 8 January 2024]
- Indra, Mexsasai, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, 'Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia', *Jurnal Konstitusi*, 20.2 (2023), 279–99 <<https://doi.org/10.31078/jk2026>>
- Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, ALFABETA, Cv, 2017
- Kavanagh, Aileen, 'Judicial Restraint in the Pursuit of Justice', *University of Toronto Law Journal*, 60.1 (2010), 23–40 <<https://doi.org/10.3138/utlj.60.1.23>>
- Kelsen, Hans, 'Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution', *The Journal of Politics*, 4.2 (1942), 183–200 <<https://doi.org/10.2307/2125770>>
- Lifante-Vidal, Isabel, 'Is Legal Certainty a Formal Value?', *Jurisprudence*, 11.3 (2020), 456–67 <<https://doi.org/10.1080/20403313.2020.1778289>>
- Mahkamah Konstitusi, 'Indonesian Constitution Protects Human Rights of Everyone Including Foreign Nationals', *En.Mkri.Id*, 2023 <https://en.mkri.id/news/details/2023-01-16/Indonesian_Constitution_Protects_Human_Rights_of_Everyone_Including_Foreign_Nationals> [accessed 8 January 2024]
- , 'Peran Dan Fungsi Mahkamah Konstitusi | Mahkamah Konstitusi Republik Indonesia', 2015 <<https://www.mkri.id/index.php?page=web.Berita&id=10958>> [accessed 8 January 2024]
- Mahmud, Peter Marzuki, *Pengantar Ilmu Hukum Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2016)
- Mirza, Isoni Muhammad Miraj, Rudi Natamiharja, and Jalil Alejandro Magaldi Serna, 'Social Transformation of International Human Rights Law Through Indonesian Constitutional Court', *Uti Possidetis: Journal of International Law*, 4.3 (2023), 439–71 <<https://doi.org/10.22437/up.v4i3.25721>>

- Muhtar, Mohamad Hidayat, Abdul Kahar Maranjaya, Nur Arfiani, and Erman Rahim, *TEORI & HUKUM KONSTITUSI: Dasar Pengetahuan dan Pemahaman serta Wawasan Pemberlakuan Hukum Konstitusi di Indonesia* (PT. Sonpedia Publishing Indonesia, 2023)
- Neuman, Gerald L., 'Human Rights and Constitutional Rights: Harmony and Dissonance', *Stanford Law Review*, 55 (2002), 1863
<<https://heinonline.org/HOL/Page?handle=hein.journals/stflr55&id=1877&div=&collection=>>
- Putri, Fantika Setya, and Gayatri Dyah Suprobowati, 'EKSISTENSI MAHKAMAH KONSTITUSI REPUBLIK INDONESIA TERHADAP PENGUKUHAN HAK KONSTITUSI WARGA NEGARA', *Sovereignty*, 1.4 (2022), 626–34
<<https://doi.org/10.13057/sovereignty.v1i4.92>>
- Razak, Askari, Mohamad Hidayat Muhtar, Suzanne Andrea Bloks, and Geofani Milthree Saragih, 'Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria', *Journal of Indonesian Legal Studies*, 8.2 (2023)
<<https://journal.unnes.ac.id/sju/index.php/jils/article/view/70717>> [accessed 6 November 2023]
- Smith, Graham, 'Oversight of the Police and Residual Complaints Dilemmas: Independence, Effectiveness and Accountability Deficits in the United Kingdom', *Police Practice and Research*, 14.2 (2013), 92–103
<<https://doi.org/10.1080/15614263.2013.767088>>
- Sternberg, Sebastian, Sylvain Brouard, and Christoph Hönnige, 'The Legitimacy-Conferring Capacity of Constitutional Courts: Evidence from a Comparative Survey Experiment¹', *European Journal of Political Research*, 61.4 (2022), 973–96
<<https://doi.org/10.1111/1475-6765.12480>>
- Steuer, Max, 'Democracy, Procedural and Social Rights, and Constitutional Courts in Hungary and Slovakia', *Constitutional Review*, 9.1 (2023), 28–76
<<https://doi.org/10.31078/consrev912>>
- Wantu, Fence M., Novendri M. Nggilu, Mellisa Towadi, and Ahmad, 'Indonesian Constitutional Interpretation: Constitutional Court versus the People's Consultative Assembly', *Journal of Legal, Ethical and Regulatory Issues*, 24 (2021), 1
<<https://heinonline.org/HOL/Page?handle=hein.journals/jnlollet124&id=1268&div=&collection=>>