

Constitutional Judicial System: A Comparison between Indonesia and France

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Abstract

This study aims to compare the Constitutional Court of Indonesia (Mahkamah Konstitusi Republik Indonesia or MKRI) and the French Constitutional Council (Conseil Constitutionnel) in terms of their historical foundations, legal authority, structural composition, and judicial review mechanisms. The objective is to assess their effectiveness in upholding constitutional governance and propose adaptive models for better protection of fundamental rights. The research method employs a normative juridical approach, incorporating statutory, conceptual, and analytical perspectives. It analyzes primary and secondary legal materials, including constitutions, statutory laws, court decisions, and doctrinal writings. The study focuses on positive legal norms and compares the implementation of judicial review practices in both legal systems using a qualitative analysis framework. The study reveals key differences in the scope and timing of constitutional review: Indonesia employs a posteriori review, which permits legal correction after enactment, while France utilises a priori review to prevent unconstitutional laws before promulgation, later supplemented by the Question Prioritaire de Constitutionnalité (QPC) for limited a posteriori review. Structurally, the Indonesian Court is a judicial organ, while the French Council functions more as a political-legal oversight body. The novelty lies in proposing a hybrid model that incorporates both a priori and a posteriori mechanisms to strengthen constitutional protection, particularly for Indonesia, by recommending the integration of preventive review authority within its existing system.

Keywords: Rule of Law, Constitutional Review, Comparative Constitutional Court, Constitutional Council

Introduction

The concept of the rule of law has evolved in response to historical developments.¹ Its definition and understanding continue to transform in line with

¹ Stanley Greenstein, "Preserving the Rule of Law in the Era of Artificial Intelligence (AI)," *Artificial Intelligence and Law* 30, no. 3 (September 17, 2022): 291–323, doi:10.1007/s10506-021-09294-4.

the evolution of state and society.² As Cicero once stated, “Ibi societas ibi ius”—“Where there is society, there is law.” The concept of the rule of law first emerged during the periods of Ancient Rome and Greece, grounded in the fundamental idea that sovereignty resides in the people. In contrast, Ancient Egypt adhered to a monarchical system.³ Although various notions of the rule of law have emerged across different civilizations, they ultimately converged into two dominant models: the continental European Rechtsstaat and the Anglo-Saxon Rule of Law, both of which gained prominence in the 19th century.⁴

Law must meet the needs of society in their daily lives. Every legal regulation is founded upon legal principles that guide its formulation.⁵ Satjipto Rahardjo describes legal principles as the “heart” of the legal system, suggesting that understanding a legal rule requires grasping the principles underlying it.⁶ Karl Larenz, in his book *Methodenlehre der Rechtswissenschaft*, asserts that legal principles serve as ethical benchmarks that direct the formation of laws. Because they contain ethical imperatives, legal principles act as a bridge between legal norms and the societal ideals and moral outlooks they aim to embody.⁷

² 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, doi:10.22373/petita.v9i2.299.

³ Muwaffiq Jufri et al., “Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and the State in Madura,” *Justicia Islamica* 21, no. 2 (November 6, 2024): 221–46, doi:10.21154/justicia.v21i2.9283.

⁴ Eudea Adeli Arsy, Hanif Nur Widhiyanti, and Patricia Audrey Ruslijanto, “Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris,” *Jurnal Bina Mulia Hukum* 6, no. 1 (September 30, 2021): 130–40, doi:10.23920/jbmh.v6i1.324.

⁵ Afifulloh Afifulloh, Sudarsono Sudarsono, and Shinta Hadiyantina, “Comparison Of The Triassic Legal System Of Indonesia With The French State,” *Trunojoyo Law Review* 4, no. 1 (March 2, 2022): 69–83, doi:10.21107/tlr.v4i1.18130.

⁶ Andriansyah Rahman and Muthi’ah Maizaroh, “Strengthening Independence: Constitutional Interests As A Paradigm For Judicial Review In Indonesia,” *Jurnal Hukum Dan Peradilan* 13, no. 1 (March 31, 2024): 33, doi:10.25216/jhp.13.1.2024.33-62.

⁷ M. Lutfi Chakim, “Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices,” *International Journal for Court Administration* 12, no. 1 (March 11, 2021), doi:10.36745/ijca.308.

Fundamentally, a rule-of-law state is one in which all state activities are based on legal norms to ensure and realize justice for its citizens. The ideas of Plato and Aristotle regarding the rule of law were later implemented by Immanuel Kant in Continental Europe, rooted in a liberal spirit emphasizing two primary indicators: the protection of human rights and the separation of powers.

Terminologically, the concept of the rule of law is expressed through various terms. The notion of the Rechtsstaat embedded in state constitutions reflects the idea of fundamental law serving as the supreme legal authority. The state does not merely regulate the behavior of its citizens but, as the highest power structure, must also be bound by a set of rules enshrined in a constitution. This is to ensure that those in power do not violate citizens' rights.⁸

The MKRI serves as a central pillar in modern democratic constitutional systems.⁹ Its primary function is to safeguard the purity and supremacy of the constitution and to ensure that all laws and actions of public officials remain within constitutional bounds.¹⁰ This is accomplished through judicial review the authority to examine legislation and executive policies for their conformity with the constitution. Such institutions do not merely enforce the law but uphold the fundamental values enshrined in the constitution, such as justice, human rights, and democratic principles.¹¹

Historically, the concept of constitutional review was first effectively applied in the United States, marked by the landmark 1803 Supreme Court decision in *Marbury v. Madison*. This case affirmed the Court's authority to assess whether a law contravenes the U.S. Constitution. Although the Constitution itself does not

⁸ Alek Karci Kurniawan, "Judicial Preview Sebagai Mekanisme Verifikasi Konstitusionalitas Suatu Rancangan Undang-Undang," *Jurnal Konstitusi* 11, no. 4 (May 20, 2016): 632, doi:10.31078/jk1142.

⁹ Nurus Zaman, "Constitution In Legal Political Perspective," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68, doi:10.21107/tlr.v4i1.16487.

¹⁰ Adi Saputro et al., "Role of Administrative Court to Resolve Administrative Disputes in Indonesia: A Systematic Review," *Journal of Progressive Law and Legal Studies* 3, no. 02 (June 20, 2025): 255–86, doi:10.59653/jpls.v3i02.1748.

¹¹ Z Malaka, "Perspektif Sosiologi Hukum Terhadap Poligami. Tarunalaw: Journal of Law and Syariah, 1 (02), 175–183," 2023.

explicitly mention judicial review, this ruling established a constitutional precedent that has since become a cornerstone of the U.S. legal system and has been adopted by many other countries albeit with variations based on their legal traditions and governance systems.

In Europe, several countries also established constitutional courts as part of legal and constitutional reforms. Germany, with its civil law tradition, created the Bundesverfassungsgericht in 1951, an independent constitutional court with powers to review federal and state laws and to protect fundamental rights under the Grundgesetz (Basic Law). Germany developed a centralized model of constitutional review, where only one institution has the exclusive authority to review constitutionality an approach that has influenced many civil law countries.¹²

France, through the 1958 Constitution of the Fifth Republic, established the Constitutional Council, whose primary role is to ensure that laws passed by parliament comply with the constitution. Unlike Germany, France initially adopted a purely a priori system of review—conducted before a law takes effect. However, the 2008 constitutional reform introduced the Question Prioritaire de Constitutionnalité (QPC), allowing a posteriori review after a law has been implemented. This reform involved the participation of ordinary courts, the Council of State (Conseil d'État), and the Court of Cassation (Cour de Cassation) as preliminary filters.

Other countries, such as Italy, also established constitutional courts, with the Corte Costituzionale founded in 1948 to oversee the constitutionality of laws.¹³ India, following the common law tradition inherited from Britain, granted judicial review powers to its Supreme Court under the 1950 constitutional amendments, enabling it to nullify laws that infringe on fundamental rights.

¹² Andy Omara, "Preventing Abusive Constitutionalism in Indonesia," *Constitutional Review* 11, no. 1 (May 31, 2025): 92–117, doi:10.31078/consrev1114.

¹³ José Rolando Cardenas Gonzales, "The Legislative Function of The Constitutional Court in Relation to the Omission of the Constituent," *Constitutional Review* 11, no. 1 (May 31, 2025): 63–91, doi:10.31078/consrev1113.

In Africa, the establishment of the Constitutional Court of South Africa in 1994 marked a pivotal moment in the transition from apartheid to a constitutional democracy. This court was designed to implement and uphold the new constitution, which is widely regarded as one of the most progressive in the world, emphasizing equality, justice, and human rights. The court plays a vital role in sustaining legal and social reform in the country.

Indonesia is relatively new to the establishment of a constitutional court. The Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi Republik Indonesia, MKRI) was mandated by the third amendment of the 1945 Constitution, passed in 2001, and formally established in 2003. It emerged in the post-New Order reform era, addressing the need for a more democratic, accountable constitutional system rooted in the *Rechtsstaat* principle. The MKRI is empowered to review laws against the constitution, resolve disputes among state institutions, rule on the dissolution of political parties, settle electoral disputes, and issue decisions on the impeachment of the President or Vice President based on the Parliament's proposal.

The presence of constitutional courts across different countries reflects a global recognition of the importance of independent constitutional oversight. Nonetheless, each country implements this function differently, depending on its constitutional structure, legal system, and political dynamics. The Indonesian Constitutional Court and the French Conseil Constitutionnel are two models of constitutional review that differ in terms of authority, institutional structure, operational mechanisms, and their placement within the broader constitutional system.¹⁴

A comparative analysis of these two institutions is crucial to gaining a deeper understanding of how different nations uphold constitutional supremacy through judicial institutions. Fundamental questions arise: Is the a priori review model

¹⁴ Irman Putra and Arief Fahmi Lubis, "Judicial Review and Constitutional Interpretation: The Development of the Role of the Indonesian Constitutional Court," *West Science Law and Human Rights* 1, no. 04 (October 30, 2023): 318–28, doi:10.58812/wslhr.v1i04.1167.

practiced in France more effective than Indonesia's a posteriori approach? How is the independence and accountability of each institution safeguarded within its respective legal system? Could a combination of ex-ante and ex-post review mechanisms enhance the protection of citizens' constitutional rights?

This comparative study aims to contribute not only to the academic discourse on constitutional law and governance but also to inform policymakers in designing constitutional review systems that are adaptive and responsive to the needs of modern democratic societies.

Although constitutional courts have been extensively studied in comparative constitutional law, most scholarship has focused on well-established models such as the U.S. Supreme Court, Germany's *Bundesverfassungsgericht*, and South Africa's Constitutional Court. Meanwhile, fewer in-depth comparative studies have been conducted between Indonesia's relatively young Constitutional Court and France's *Conseil Constitutionnel*. Existing literature tends to treat Indonesia within the broader Southeast Asian context or France within European constitutional studies, but rarely juxtaposes these two institutions directly. Furthermore, comparative discussions often emphasize doctrinal authority or judicial philosophy, while less attention is given to the *practical operational differences* between a priori and a posteriori review, their effectiveness in protecting citizens' rights, and the institutional mechanisms ensuring independence and accountability.

This study offers a novel contribution by directly comparing the Indonesian Constitutional Court and the French *Conseil Constitutionnel* through the lenses of history, institutional design, authority, and mechanisms of constitutional review. The research highlights how Indonesia, as a post-authoritarian state, adopted an ex-post (a posteriori) review model emphasizing corrective oversight, while France—originally committed to ex-ante (a priori) review—later reformed its system with the *Question Prioritaire de Constitutionnalité (QPC)* to allow citizen-initiated constitutional review. By systematically contrasting these two models, the study not only identifies their respective strengths and weaknesses but also explores the

possibility of hybrid mechanisms that combine preventive and corrective functions. This comparative perspective enriches academic discourse and provides policymakers with insights into how constitutional courts can be designed to be both effective and responsive in safeguarding democracy and fundamental rights.

Methods

The research method includes the type of research, research approach, sources of legal materials and data, techniques of collecting legal materials, data collection methods, as well as methods of analyzing legal materials and data. This study employs a normative legal research method, which is based on the existence of a normative problem, such as legal obscurity (unclear norms), conflicting norms, or legal vacuums. The research employs several approaches, including the statutory approach, the conceptual approach, and the analytical approach. The technique of tracing legal materials is carried out through documentary study, while the analysis is conducted using a qualitative analytical method.¹⁵

This study employs a normative legal approach as the primary method in the process of data collection and analysis. The normative legal research method is a type of approach that relies on the examination of written legal products such as statutes, legal doctrines, court decisions, and relevant academic literature. The central focus of this approach is on positive legal norms, namely the law currently in force (*ius constitutum*), which is analyzed logically and systematically with the aim of understanding the structure, function, and fundamental principles of the legal system.

In the context of this research, a normative legal approach is employed to compare two constitutional judicial bodies: the Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi) and the Conseil Constitutionnel in France. This study outlines how both institutions were established based on their respective constitutions, their positions within the state structure, and their authority to

¹⁵ Marcel Waline, "The Constitutional Council of the French Republic," *Am. J. Comp. L.* 12 (1963): 483.

review the constitutionality of legal norms or statutes. The analysis draws upon primary legal sources, including the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, along with its amendments, and the 1958 Constitution of the French Fifth Republic, along with its implementing provisions.¹⁶

The study also examines various other legal documents directly related to the roles and functions of the Constitutional Court and the Conseil Constitutionnel, including landmark decisions issued by both institutions and legal doctrines from scholars specializing in constitutional adjudication in both countries. Through this method, the researcher compares key aspects, including the historical background of establishment, the composition of judges, the appointment mechanisms, institutional independence, and the scope of powers conferred by the respective constitutions and organic laws.

This normative approach not only provides an understanding of the applicable legal texts but also enables analysis of the fundamental values of constitutional law, such as the principle of constitutional supremacy, constitutional justice, the protection of human rights, and oversight of the legislative and executive branches. In this regard, the Indonesian Constitutional Court adopts an a posteriori review system, in which constitutional review is conducted after a law has come into effect. In contrast, the Conseil Constitutionnel initially only adopted an a priori review system, reviewing laws before they come into force. However, since the 2008 constitutional reform in France, the *Question Prioritaire de Constitutionnalité* (QPC) mechanism was introduced, allowing a posteriori constitutional review by the Conseil Constitutionnel, bringing it closer to the model adopted in other countries such as Indonesia.

Using the normative method also enables a comparative analysis of the legal norms in force in both countries and facilitates an evaluation of the effectiveness of

¹⁶ "Undang-Undang Dasar Negara Republik Indonesia 1945," BPK RI § (1945).

constitutional adjudication in practice. Such analysis is crucial for understanding how constitutional norms are implemented in reality and whether constitutional courts in each country effectively uphold the supremacy of the constitution and the constitutional rights of citizens.

Therefore, the normative approach in this research provides a solid framework for understanding both the differences and similarities between the Constitutional Court of Indonesia and the Conseil Constitutionnel of France, in terms of legal foundations, institutional structures, and their functions and effectiveness within their respective constitutional systems.

Discussion

The Continental European legal system, also known as the civil law system, is primarily based on statutory legislation, and judges are bound by the laws when rendering decisions. In contrast, the Anglo-Saxon legal system, or common law, is rooted in judicial precedents, where previous court decisions serve as binding precedents for future rulings involving similar cases.¹⁷

Most countries around the world adhere to either the civil law or the common law system.¹⁸ However, in addition to these two major legal traditions, other systems are also practiced globally, such as Muslim law in many Middle Eastern countries, customary law in countries like China and India, and mixed law systems found in countries like Indonesia.¹⁹ A comparative legal study would be less compelling without incorporating the intrinsic elements and characteristics of each legal family. Each legal system implemented by different countries around the world

¹⁷ Ousu Mendy and Ebrima Sarr, "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia," *Journal of Indonesian Constitutional Law* 2, no. 1 (March 2, 2025): 1–22, doi:10.71239/jicl.v2i1.45.

¹⁸ Ousu Mendy, Gregorius Sri Nurhartanto, and Musa Sarjo, "Knitting Human Rights Values and the Rule of Law in Creating a Human Rights State," *Decova Law Journal* 1, no. 2 (2025): 65–82.

¹⁹ Nurul Aisahrani et al., "The Constitutional Protection of Freedom of Artistic Expression: A Comparison between Indonesia, Iran and the United States," *Journal of Indonesian Constitutional Law* 2, no. 2 (2025): 227–48.

reflects distinctive features, often adapted to the social customs and cultural practices of their respective societies.

A particularly notable distinction lies between the civil law system and the mixed law system. The civil law system places legislation at the core of the legal framework, and judges are strictly bound to apply the statutory provisions in their decisions. Judicial discretion is limited, and interpretation is closely tied to the letter of the law.

On the other hand, in a mixed law system, the sources of law are not limited solely to statutory regulations. Instead, multiple legal traditions coexist and interact, including customary law, criminal law, and civil law. Consequently, judges in mixed legal systems do not base their rulings solely on written legislation. They also take into account other legal considerations, such as unwritten norms, societal values, and traditional customs. This plurality allows for more flexibility in judicial decision-making, accommodating the diverse legal needs and cultural contexts within the country.²⁰

The History of the Establishment, Position, and Authority of the Constitutional Court of Indonesia and the Conseil Constitutionnel of the French Republic

1) Constitutional Court of the Republic of Indonesia

The concept of constitutional review or *judicial review* first emerged in Indonesian legal discourse during the country's preparation for independence, particularly during the sessions of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI). The idea of granting the Supreme Court (Mahkamah Agung) the authority to review laws against the Constitution was first proposed by Prof. Muhammad Yamin. At that time, Prof. Yamin suggested that the Supreme Court be given the authority to assess the compatibility of laws with the national constitution. However, this idea was rejected by other prominent

²⁰ Rini Jarwati Indah N. C et al., "Freedom of Expression in the Spread of Hoax News on Social Media Between Indonesia and South Korea," *Journal of Indonesian Constitutional Law* 1, no. 3 (December 28, 2024): 246–62, doi:10.71239/jicl.v1i3.12.

figures, particularly Prof. Soepomo, who argued that the constitution being drafted did not adhere to a strict trias politica principle and that the Indonesian judicial system at the time lacked the capacity to conduct constitutional review. This viewpoint, supported by the limited knowledge and experience of Indonesian legal scholars regarding *judicial review*, led to the rejection of the proposal.²¹

A significant change occurred in 2001 with the amendment of the 1945 Constitution initiated by the People's Consultative Assembly (MPR). The MPR decided to adopt the concept of a Constitutional Court as an institution authorized to conduct a constitutional review of laws. The third amendment to the 1945 Constitution, ratified on November 9, 2001, introduced new provisions regarding the establishment of the Constitutional Court, as stipulated in Article 24 paragraph (2), Article 24C, and Article 7B. These articles provided a strong legal foundation for the existence and authority of the Constitutional Court in Indonesia.²²

Following this amendment, to fill the institutional void before the Constitutional Court was fully established, the Supreme Court was temporarily mandated to perform the Court's functions, as stipulated in Article III of the Transitional Provisions of the 1945 Constitution. On August 15, 2003, through Presidential Decree No. 147/M of 2003, the President appointed the first nine constitutional judges, who officially began their duties on October 15, 2003. This date marked the operational launch of the Constitutional Court of the Republic of Indonesia (MKRI) as an independent institution within the Indonesian judicial system.²³

The establishment of the Constitutional Court was a crucial step in strengthening the principle of checks and balances within Indonesia's constitutional

²¹ Farihan Aulia and Sholahuddin Al-Fatih, "Perbandingan Sistem Hukum Common Law, Civil Law Dan Islamic Law Dalam Perspektif Sejarah Dan Karakteristik Berpikir," *Legality: Jurnal Ilmiah Hukum*, 25, no. 1 (July 14, 2018): 98, doi:10.22219/jihl.v25i1.5993.

²² Habsy Ahmad and Chairul Amri, "Analisis Perbedaan Komponen Pidana Sistem Hukum Civil Law dan Common Law," *Jurnal Ilmiah Multidisiplin Amsir* 1, no. 2 (2023): 231–40.

²³ Ahmad Muhamad Mustain Nasoha, "The Role of the Constitutional Court in Maintaining the Balance Between Positive Law and Islamic Law Principles in Indonesia," *Indonesian Journal of Sharia and Law* 2, no. 1 (2025): 52–66.

system. The Court serves to ensure that no state institution exceeds its authority. It also ensures that all state policies, including legislation, are aligned with the constitutional principles embedded in the 1945 Constitution.²⁴

The MKRI functions as a state institution operating within the realm of an independent judicial power. The Court plays a strategic role in safeguarding the supremacy of the law and the Constitution in Indonesia. As an institution whose independence is guaranteed by the Constitution, the Court has the authority to review laws against the 1945 Constitution, adjudicate disputes over authority among state institutions, rule on the dissolution of political parties, resolve electoral disputes, and handle impeachment processes against the President.

The composition of the Court's judges is regulated under Article 18 of Law No. 24 of 2003 concerning the Constitutional Court, which provides for nine judges selected from three sources: three nominated by the President, three by the House of Representatives (DPR), and three by the Supreme Court. Each judge serves a five-year term and may be reappointed for one additional term. The Court also plays an essential role in inter-institutional relations. In the case of judicial review, if a case is brought before the Constitutional Court, the Supreme Court must suspend its review of related regulations until the Constitutional Court delivers its ruling. The DPR, as the legislative body, also participates in the selection of judges and can be involved in constitutional matters concerning other state institutions, including impeachment proceedings against the President.²⁵

Moreover, the Constitutional Court also acts to safeguard the integrity and authority of other state institutions such as the DPR and the President. In matters of party dissolution, the Court has the authority to determine whether a political party has violated the constitutional principles outlined in the 1945 Constitution. Thus,

²⁴ Bambang Sutiyoso, "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman di Indonesia," *Jurnal Konstitusi* 7, no. 6 (2010): 25–50.

²⁵ Odang Suparman, "Konsep Lembaga Negara Indonesia dalam Perspektif Teori Trias Politica Berdasarkan Prinsip Checks and Balances System," *AHKAM* 2, no. 1 (March 1, 2023): 59–75, doi:10.58578/ahkam.v2i1.898.

the Constitutional Court holds a vital position in maintaining balance and order within Indonesia's system of governance

2) **Conseil Constitutionnel of the French Republic**

In contrast to Indonesia, the history of the *Conseil Constitutionnel* in France did not begin with the concept of *judicial review* as practiced in common law countries, such as the United States. As part of the establishment of the Fifth Republic in 1958, the *Conseil Constitutionnel* was created to supervise the constitutionality of laws and ensure that the legislature does not enact legislation that contradicts the French Constitution. The establishment of the Council is outlined in Articles 56 to 63 of the Constitution of the Fifth Republic.

Before the formation of the Fifth Republic, many legal scholars in France proposed adopting a system of *judicial review* similar to that in the United States as a means of controlling the legislature. However, this idea was opposed due to the prevailing conservative thought among prominent French legal thinkers. One such critique came from Edouard Lambert, who in his 1921 book *Le Gouvernement des Juges* warned that introducing judicial review in France could hinder progressive social legislation. Responding to these concerns, the drafters of the Fifth Republic Constitution decided not to make the *Conseil Constitutionnel* a judicial body that reviews laws post-enactment. Instead, they chose a system of *judicial preview*, where constitutional review is conducted at the early stage, while the bill is still in the legislative process.

As a result of this approach, the *Conseil Constitutionnel* does not conduct *a posteriori* reviews (after laws are enacted), unlike the Indonesian Constitutional Court. Instead, it conducts *a priori* reviews, ensuring that proposed laws do not conflict with constitutional principles before they are passed and enacted.²⁶

However, in 2008, a significant change was introduced through a constitutional amendment that established the *Question Prioritaire de*

²⁶ Bambang Sutiyoso, "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia," *Jurnal Konstitusi* 7, no. 6 (May 20, 2016): 025, doi:10.31078/jk762.

Constitutionnalité (QPC). The QPC mechanism allows citizens or litigants to challenge the constitutionality of an enacted law. This reform enabled the *Conseil Constitutionnel* to perform *a posteriori* constitutional reviews, albeit only in specific cases.

Structurally, the *Conseil Constitutionnel* holds a prominent position within the French government system, even though it is not on par with judicial institutions such as the *Cour de Cassation* or the *Conseil d'État*. In the French judicial hierarchy, the *Conseil Constitutionnel* is the supreme authority for constitutional oversight, determining the constitutionality of legislation. Its existence and authority ensure that the constitutionality of laws is monitored from the early stages of legislation, providing proactive control against legislative overreach.²⁷

The *Conseil Constitutionnel* (CC) of the French Republic is an institution that holds considerable authority and constitutional mandate within the framework of the French state system. Although it is not explicitly classified as a judicial body in the conventional sense such as the Constitutional Court in Indonesia the CC still plays a vital role in safeguarding the supremacy of the Constitution.²⁸ One of its primary functions is the review of the constitutionality of draft laws that have been approved by the parliament but have not yet been officially promulgated. This mechanism is known as *contrôle a priori*, or preventive constitutional review, which contrasts with the *a posteriori* review system applied by the Constitutional Court of Indonesia.²⁹

Through the *contrôle a priori* mechanism, the CC is granted the authority to assess whether a bill passed by the parliament complies with the provisions of the Constitution of the French Republic. If any inconsistency is found, the CC can declare

²⁷ Cristian Altavilla, "The Role of Constitutional Courts in Intergovernmental Conflict Resolution: The Argentine Case," *Constitutional Review* 11, no. 1 (May 31, 2025): 1–35, doi:10.31078/consrev1111.

²⁸ Iman Jalaludin Rifa'i et al., *Metodologi Penelitian Hukum* (Sada Kurnia Pustaka, 2023).

²⁹ Lorraine Anggi Taruli Hutagalung and R. Rahaditya, "The Notary's Responsibility for Defective Legal Sale and Purchase Deeds (A Review of the Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN WNG)," *Eduvest - Journal of Universal Studies* 3, no. 10 (October 25, 2023): 1892–1900, doi:10.59188/eduvest.v3i10.940.

the bill unconstitutional and thus prevent it from becoming positive law. However, once the law is officially promulgated and published in the official gazette, the CC no longer has the power to conduct a constitutional review of that law—unless activated through a specific mechanism introduced in the 2008 constitutional amendment: the *question prioritaire de constitutionnalité* (QPC), which allows for a limited form of *a posteriori* review through ordinary courts.³⁰

In addition to its constitutional review function, the *Conseil Constitutionnel* also has supplementary roles that are not held by the Constitutional Court of Indonesia. These include overseeing presidential and legislative elections, as well as ensuring the validity of the process and outcomes of national referenda. These roles are clearly stipulated in the French Constitution, particularly in Articles 58, 59, and 60. In this capacity, the CC not only supervises the conduct of elections but also possesses the authority to validate or annul election results if serious violations of democratic principles or electoral law are found.

Regarding institutional structure, the CC consists of nine members appointed by three main state institutions: the President of the Republic, the President of the National Assembly (equivalent to the House of Representatives), and the President of the Senate. Each of these institutions appoints three members. The term of office for CC members is nine years, but it is divided into three staggered terms for each group of members: three members serve for three years, three for six years, and the remaining three for nine years. This staggered appointment system is designed to ensure continuity in the institution's work and to prevent domination by any single political faction. Additionally, former Presidents of the French Republic automatically become lifetime members of the CC, although in practice, not all former presidents exercise this right.

The appointment of CC members does not require a formal fit-and-proper test as is practiced in Indonesia. However, since the 2008 reform, any proposed

³⁰ Arthur Dyevre, "France: Patterns of Argumentation in Constitutional Council Opinions," 2017.

candidate for CC membership may be rejected by the National Assembly or the Senate if certain criteria are not met, through a consultation process. This reform was intended to enhance accountability and professionalism in the appointment of members to the institution.

In conclusion, the *Conseil Constitutionnel* of France plays a pivotal role in the governance system of the French Republic, with specific authority that includes preventive constitutional review, electoral oversight, and validation of referendums. Its membership structure and working methods reflect a deliberate effort to balance political interests and maintain legal stability within the framework of a modern rule of law state.³¹

Table 1. Comparison between the Constitutional Court of Indonesia and the French *Conseil Constitutionnel*

Aspect	Constitutional Court of Indonesia	French <i>Conseil Constitutionnel</i>
Legal Basis	The 1945 Constitution (Third Amendment) and the Constitutional Court Law	Constitution of the Fifth French Republic (1958)
Authority	Reviews laws against the 1945 Constitution, resolves disputes between state institutions, decides on the dissolution of political parties, and rules on electoral result disputes	Reviews the constitutionality of laws passed by parliament, supervises elections and referenda
Review Mechanism	Judicial review (<i>a posteriori</i> , after a law is promulgated)	Judicial preview (<i>a priori</i> , before a law is promulgated)
Timing of Review	A review can only be conducted after a law has been enacted	Review is conducted at the draft law stage (before promulgation)
Institutional Structure	Judicial body with nine constitutional justices appointed by the President, the House of Representatives	Council with nine members appointed by the President of the Republic, the President of the National Assembly, and the President of the Senate

³¹ Sri Wahyuni, "Islamic Law in Indonesia (History and Prospects)," *Batulis Civil Law Review* 4, no. 1 (May 2, 2023): 6, doi:10.47268/ballrev.v4i1.1146.

Aspect	Constitutional Court of Indonesia	French <i>Conseil Constitutionnel</i>
	(DPR), and the People's Consultative Assembly (MPR)	
Term of Office	5 years, renewable once	Three staggered term groups: 3 years, 6 years, 9 years; former presidents serve as lifetime members
Case Submission Procedure	May be submitted by individuals, state institutions, or the House of Representatives (DPR)	May be submitted only by the President of the Republic, the President of the Senate, or the President of the National Assembly; also via the <i>Question Prioritaire de Constitutionnalité</i> (QPC) mechanism
Function	Upholds and enforces the constitution; monitors the validity of laws	Safeguards the constitution, including monitoring elections and referenda
Dispute Resolution among State Institutions	Has the authority to adjudicate disputes between state institutions	No authority to resolve inter-institutional disputes
Political Function	Limited to the dissolution of political parties and the resolution of electoral disputes	Plays a broader political role, including oversight of referenda and elections

Source: Compiled by the author based on several references

A Comparison between the Constitutional Court of Indonesia and the *Conseil Constitutionnel* of France

In comparing the MKRI with France's *Conseil Constitutionnel*, one of the most fundamental differences lies in their methods of exercising constitutional review. In Indonesia, the Constitutional Court performs its review function through a *judicial review* approach meaning a repressive mechanism of constitutional supervision conducted after a law has been formally enacted and come into force. This mechanism enables individuals or entities who feel constitutionally harmed to submit a petition for review against laws deemed to contradict the 1945 Constitution of the Republic of Indonesia. In contrast, the *Conseil Constitutionnel* of

France applies a *judicial preview* or *a priori review* system a preventive form of review in which scrutiny takes place before a law is formally enacted, that is, when the law is still in draft form, having passed the parliament but not yet promulgated by the President of the French Republic.³²

This fundamental distinction has significant implications for the effectiveness of constitutional rights protection. In the Indonesian context, the *judicial review* system enables constitutional correction once the law has had a real legal impact on society. However, it is limited in its ability to prevent early onset. Conversely, the *judicial preview* system used in France allows a law to be struck down before producing widespread legal consequences. Nonetheless, it poses a challenge when substantive flaws in the law emerge after enactment, as the *Conseil Constitutionnel* lacks the authority to re-examine laws that have already been promulgated.³³

Beyond the differences in review mechanisms, the institutional structures of both bodies also exhibit significant distinctions. Indonesia's Constitutional Court is explicitly referred to as a constitutional judiciary and forms part of the judicial power under Article 24(2) and Article 24C of the 1945 Constitution. On the other hand, the *Conseil Constitutionnel* of France is not positioned as a judicial body in the classic sense but rather as a council with quasi-judicial and quasi-political characteristics. Its membership and working procedures reflect political affiliation and a consultative nature more than those of a purely judicial body. Thus, its review function aligns more closely with political oversight than with full judicial adjudication as practised by the Constitutional Court of Indonesia.³⁴

³² Zainal Arifin Mochtar, "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes," *Constitutional Review* 11, no. 1 (May 31, 2025): 36–62, doi:10.31078/consrev1112.

³³ Oly Viana Agustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?," *The International Journal of Human Rights* 27, no. 4 (April 21, 2023): 772–88, doi:10.1080/13642987.2023.2185608.

³⁴ Tanto Lailam and M Lutfi Chakim, "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 148–71.

Regarding the scope of authority, Indonesia's Constitutional Court is limited to reviewing laws in relation to the 1945 Constitution, while the authority to review subordinate legislation lies with the Supreme Court. In contrast, the *Conseil Constitutionnel* has broader authority, as it can review all legislative products before promulgation, without being limited solely to laws (*lois*).³⁵

Another striking difference lies in the membership system and term duration of both institutions. According to Law No. 24 of 2003 concerning the Constitutional Court (as amended), Indonesia's Constitutional Court consists of nine justices appointed by the President, the House of Representatives (DPR), and the Supreme Court (MA), respectively. Each serves a five-year term and may be reappointed once. In contrast, membership of the *Conseil Constitutionnel*, as stipulated by Ordinance No. 58-1067 of November 7, 1958 on the Institutional Act on the Constitutional Council, follows a unique rotation system: three members serve three-year terms, another three serve six-year terms, and the final three serve nine-year terms. Additionally, former Presidents of the French Republic are automatically made lifetime members of the CC, as stipulated in Article 56 of the French Constitution.

These differences reflect the fundamental characteristics of the two constitutional adjudication models: Indonesia adopts a constitutional court model with a purely judicial character, whereas France has developed a constitutional body with a mixed nature, combining judicial oversight with political considerations. This contrast is inseparable from the legal traditions of each country. Indonesia lies within a mixed legal system, heavily influenced by the Continental European tradition. In contrast, France, as the originator of the civil law system, has undergone a unique and distinctive constitutional development since the French Revolution.

Conclusion

³⁵ Herlambang P Wiratraman, "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics," *Federal Law Review* 50, no. 3 (September 1, 2022): 314-30, doi:10.1177/0067205X221107404.

The most essential difference between the MKRI and the Conseil Constitutionnel of France lies in the model of constitutional review each institution adopts. The MKRI implements a judicial review mechanism, which involves examining laws that have already been enacted. In contrast, the CC applies a judicial preview system, which reviews draft laws before they are officially promulgated. Despite these different approaches, both mechanisms aim to safeguard the constitutional rights of citizens from legislation that may be constitutionally flawed.

Each mechanism presents its own advantages and challenges. Judicial review, as practiced in Indonesia, allows for the correction of legal norms post-enactment. However, it carries the risk of legal harm if the review is delayed or never undertaken. In contrast, judicial preview, as implemented in France, offers the advantage of preemptively preventing the enactment of unconstitutional provisions. Nevertheless, it also bears significant risk if the review process is conducted carelessly or neglected, potentially resulting in the enforcement of problematic laws with no opportunity for future correction.

Another notable distinction lies in institutional status. The MKRI is clearly established as a judicial body within Indonesia's constitutional framework. In contrast, the French CC—although it performs a similar constitutional oversight function—exhibits more characteristics of a political council. This is evident from its nomenclature, the structure of its membership, and the procedures it employs in carrying out its duties.

Given these dynamics, it is worth considering that the MKRI should not be limited solely to post-enactment judicial review but also be granted limited authority to conduct judicial preview. In this model, the Constitutional Court would be able to carry out a preventive review of draft legislation (bills) before promulgation, serving as an initial filter for constitutional compliance. This mechanism could be integrated into the standard legislative process or activated through a formal request from the House of Representatives (DPR) to assess the

compatibility of a draft law with the Constitution, thus serving as a proactive safeguard against potential constitutional violations

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References

- Afifulloh, Afifulloh, Sudarsono Sudarsono, and Shinta Hadiyantina. "Comparison of The Triassic Legal System Of Indonesia With The French State." *Trunojoyo Law Review* 4, no. 1 (March 2, 2022): 69–83. doi:10.21107/tlr.v4i1.18130.
- Agustine, Oly Viana, Susi Dwi Harijanti, Indra Perwira, and Widati Wulandari. "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?" *The International Journal of Human Rights* 27, no. 4 (April 21, 2023): 772–88. doi:10.1080/13642987.2023.2185608.
- Ahmad, Habsy, and Chairul Amri. "Analisis Perbedaan Komponen Pidana Sistem Hukum Civil Law Dan Common Law." *Jurnal Ilmiah Multidisiplin Amsir* 1, no. 2 (2023): 231–40.
- Aisahrani, Nurul, Salwa Raudhatul Nurjannah, Intan Nadia Putri, and Amit Kumar Kashyap. "The Constitutional Protection of Freedom of Artistic Expression: A Comparison between Indonesia, Iran and the United States." *Journal of Indonesian Constitutional Law* 2, no. 2 (2025): 227–48.
- Altavilla, Cristian. "The Role of Constitutional Courts in Intergovernmental Conflict Resolution: The Argentine Case." *Constitutional Review* 11, no. 1 (May 31, 2025): 1–35. doi:10.31078/consrev1111.
- Arsy, Eudea Adeli, Hanif Nur Widhiyanti, and Patricia Audrey Ruslijanto. "Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris." *Jurnal Bina Mulia Hukum* 6, no. 1 (September 30, 2021): 130–40. doi:10.23920/jbmh.v6i1.324.
- Aulia, Farihan, and Sholahuddin Al-Fatih. "Perbandingan Sistem Hukum Common Law, Civil Law Dan Islamic Law Dalam Perspektif Sejarah Dan Karakteristik Berpikir." *Legality: Jurnal Ilmiah Hukum* 25, no. 1 (July 14, 2018): 98. doi:10.22219/jihl.v25i1.5993.
- Chakim, M. Lutfi. "Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices." *International Journal for Court Administration* 12, no. 1 (March 11, 2021). doi:10.36745/ijca.308.
- Dyevre, Arthur. "France: Patterns of Argumentation in Constitutional Council Opinions," 2017.
- Gonzales, José Rolando Cardenas. "The Legislative Function of The Constitutional Court in Relation to the Omission of the Constituent." *Constitutional Review* 11, no. 1 (May 31, 2025): 63–91. doi:10.31078/consrev1113.

- Greenstein, Stanley. "Preserving the Rule of Law in the Era of Artificial Intelligence (AI)." *Artificial Intelligence and Law* 30, no. 3 (September 17, 2022): 291–323. doi:10.1007/s10506-021-09294-4.
- Hutagalung, Lorraine Anggi Taruli, and R. Rahaditya. "The Notary's Responsibility for Defective Legal Sale and Purchase Deeds (A Review of the Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN WNG)." *Eduvest - Journal of Universal Studies* 3, no. 10 (October 25, 2023): 1892–1900. doi:10.59188/eduvest.v3i10.940.
- Jufri, Muwaffiq, Safi Safi, Paul Atagamen Aidonogie, Zaini Zaini, and Yusuf Ibrahim Arowosaiye. "Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and the State in Madura." *Justicia Islamica* 21, no. 2 (November 6, 2024): 221–46. doi:10.21154/justicia.v21i2.9283.
- Kurniawan, Alek Karci. "Judicial Preview Sebagai Mekanisme Verifikasi Konstitusionalitas Suatu Rancangan Undang-Undang." *Jurnal Konstitusi* 11, no. 4 (May 20, 2016): 632. doi:10.31078/jk1142.
- Lailam, Tanto, and M Lutfi Chakim. "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 148–71.
- Malaka, Z. "Perspektif Sosiologi Hukum Terhadap Poligami. Tarunalaw: Journal of Law and Syariah, 1 (02), 175–183," 2023.
- Mendy, Ousu, Gregorius Sri Nurhartanto, and Musa Sarjo. "Knitting Human Rights Values and the Rule of Law in Creating a Human Rights State." *Decova Law Journal* 1, no. 2 (2025): 65–82.
- Mendy, Ousu, and Ebrima Sarr. "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia." *Journal of Indonesian Constitutional Law* 2, no. 1 (March 2, 2025): 1–22. doi:10.71239/jicl.v2i1.45.
- Mochtar, Zainal Arifin. "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes." *Constitutional Review* 11, no. 1 (May 31, 2025): 36–62. doi:10.31078/consrev1112.
- Nasoha, Ahmad Muhamad Mustain. "The Role of the Constitutional Court In Maintaining the Balance Between Positive Law and Islamic Law Principles in Indonesia." *Indonesian Journal of Sharia and Law* 2, no. 1 (2025): 52–66.
- Omara, Andy. "Preventing Abusive Constitutionalism in Indonesia." *Constitutional Review* 11, no. 1 (May 31, 2025): 92–117. doi:10.31078/consrev1114.
- Putra, Irman, and Arief Fahmi Lubis. "Judicial Review and Constitutional Interpretation: The Development of the Role of the Indonesian Constitutional Court." *West Science Law and Human Rights* 1, no. 04 (October 30, 2023): 318–28. doi:10.58812/wslhr.v1i04.1167.
- Rahman, Andriansyah, and Muthi'ah Maizaroh. "Strengthening Independence: Constitutional Interests As A Paradigm For Judicial Review In Indonesia." *Jurnal Hukum Dan Peradilan* 13, no. 1 (March 31, 2024): 33. doi:10.25216/jhp.13.1.2024.33-62.

- Rifa'i, Iman Jalaludin, Ady Purwoto, Marina Ramadhani, Muhammad Taufik Rusydi, Nasruddin Khalil Harahap, Ibnu Mardiyanto, Erifendi Churniawan, Mahfudz Junaedi, Asri Agustiwi, and Geofani Milthree Saragih. *Metodologi Penelitian Hukum*. Sada Kurnia Pustaka, 2023.
- Rini Jarwati Indah N. C, Dhea Zeftyaningrum, Richo Febria Putra, and Dio Ashar Wicaksana. "Freedom of Expression in the Spread of Hoax News on Social Media Between Indonesia and South Korea." *Journal of Indonesian Constitutional Law* 1, no. 3 (December 28, 2024): 246–62. doi:10.71239/jicl.v1i3.12.
- Saputro, Adi, Ricky Kurniawan Suriana, Erwin Hutasoit, Sherly Tay, and Budi Setiawan. "Role of Administrative Court to Resolve Administrative Disputes in Indonesia: A Systematic Review." *Journal of Progressive Law and Legal Studies* 3, no. 02 (June 20, 2025): 255–86. doi:10.59653/jpills.v3i02.1748.
- Suparman, Odang. "Konsep Lembaga Negara Indonesia Dalam Perspektif Teori Trias Politica Berdasarkan Prinsip Checks and Balances System." *AHKAM* 2, no. 1 (March 1, 2023): 59–75. doi:10.58578/ahkam.v2i1.898.
- Sutiyoso, Bambang. "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia." *Jurnal Konstitusi* 7, no. 6 (2010): 25–50.
- . "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia." *Jurnal Konstitusi* 7, no. 6 (May 20, 2016): 025. doi:10.31078/jk762.
- Undang-Undang Dasar Negara Republik Indonesia 1945, BPK RI § (1945).
- Wahyuni, Sri. "Islamic Law in Indonesia (History and Prospects)." *Batulis Civil Law Review* 4, no. 1 (May 2, 2023): 6. doi:10.47268/ballrev.v4i1.1146.
- Waline, Marcel. "The Constitutional Council of the French Republic." *Am. J. Comp. L.* 12 (1963): 483.
- Wiratraman, Herlambang P. "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics." *Federal Law Review* 50, no. 3 (September 1, 2022): 314–30. doi:10.1177/0067205X221107404.
- Zaman, Nuris. "Constitution In Legal Political Perspective." *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68. doi:10.21107/tlr.v4i1.16487.
- Zaman, Nuris, Paul Atagamen Aidonojie, Muwaffiq Jufri, and Raphael Daoud Jackson-Ortiz. "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. doi:10.22373/petita.v9i2.299.

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