

Judicial Review and Legislative Quality in a Democratic Rule of Law

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ABSTRACT

Judicial review is a constitutional mechanism that functions to uphold constitutional supremacy while ensuring that legislative products conform to the principles of a democratic rule of law. This study aims to analyze the effectiveness of judicial review in safeguarding constitutional supremacy and legislative quality, as well as to examine the urgency of strengthening this mechanism within contemporary legal development. The research employs a normative legal method with a comparative approach by examining the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020, and Law Number 12 of 2011 concerning Law-Making as amended by Law Number 13 of 2022. The analysis is supported by scholarly literature published over the last five years concerning judicial review, constitutional supremacy, and legislative quality. The findings indicate that judicial review effectively maintains the consistency of legal norms with constitutional principles, protects constitutional rights, strengthens checks and balances, and promotes higher legislative quality. Furthermore, strengthening judicial review has become increasingly necessary to address the growing complexity of law-making processes, enhance legal certainty, and support constitutional democratic governance. Therefore, judicial review should continue to be reinforced as a primary instrument for ensuring constitutional compliance and improving legislative quality.

Keywords: *Constitutional Rights Protection, Constitutional Supremacy, Judicial Review, Legislative Quality, Rule of Law.*

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1. | INTRODUCTION

A modern state based on the rule of law places the constitution as the highest norm that serves as the basis for the formation, implementation, and supervision of all state administration actions. Within this framework, every legislative product must be formed based on the principle of constitutional supremacy to avoid conflicting norms or violations of citizens' constitutional rights. This concept is in line with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that Indonesia is a state based on the rule of law. Consequently, all laws and regulations must be drafted in accordance with the values, principles, and norms of the constitution as the highest source of legitimacy in the national legal system (Marikar, 2023).

The development of the constitutional system demonstrates that the existence of regulations does not always guarantee conformity between legislative products and the constitution. In practice, various laws often give rise to debate regarding the conformity of their substance and drafting procedures to constitutional principles. This situation emphasizes the importance of a constitutional oversight mechanism capable of ensuring that the legislative process remains within the framework of a democratic rule of law (Sweet, 2021). In this context, judicial review serves as an instrument with a strategic function in maintaining consistency between legal norms established by lawmakers and applicable constitutional provisions (Simamora & Manik, 2024).

Normatively, the authority of judicial review is given to the Constitutional Court as regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia and is further implemented through Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020. This authority is a concrete form of the application of the principle of checks and balances in the modern state system which aims to prevent abuse of power by law-making institutions. Rahman and Maizaroh (2024) explain that judicial review not only functions as a mechanism for testing norms, but also as a means to defend constitutional interests in the law-making process.

On the other hand, the quality of legislation is a crucial factor in determining the effectiveness of the legal system as a whole. Law Number 12 of 2011, as amended by Law Number 13 of 2022, emphasizes that the formation of laws and regulations must be based on the principles of clarity of purpose, appropriateness between type and content, and transparency. This provision demonstrates that legislative quality is measured not only by formal aspects but also by a regulation's ability to achieve legal certainty, justice, and public benefit. However, various studies indicate that challenges remain in ensuring the quality of legislative products, ensuring that judicial review mechanisms remain a relevant instrument in contemporary legal systems (Ali & Fatmawati, 2024; Afkar & Mochtar, 2024).

From a broader perspective, judicial review also contributes to strengthening constitutional democracy by protecting citizens' fundamental rights. Setiawan et al. (2024) emphasized that the development of modern legal governance requires an

oversight mechanism that adapts to social dynamics and regulatory developments. Similarly, Siboy et al. (2022) assessed that simplifying and strengthening the judicial review mechanism could increase the effectiveness of constitutional protection and strengthen the integration of the national legal system. Furthermore, a study by Faiz and Augustine (2023) demonstrated that constitutional review plays a crucial role in maintaining a balance between lawmaking and constitutionally based democratic principles.

Nevertheless, the discourse on the effectiveness of judicial review in ensuring constitutional supremacy and improving the quality of legislation continues to evolve. Several studies highlight the importance of strengthening institutional design and constitutional oversight mechanisms to address the increasingly complex challenges of lawmaking (Muttaqin et al., 2024; Said et al., 2024). Therefore, studies on the relationship between judicial review, constitutional supremacy, and legislative quality remain both academic and practical relevance in modern legal development. Based on this description, this study poses two research questions. First, how effective is the judicial review mechanism under the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Law, and the Law on the Establishment of Legislation in ensuring constitutional supremacy and the quality of national legislation? Second, why is strengthening the judicial review mechanism an urgent need to support legal development and protect constitutional rights in a democratic state governed by the rule of law?

2. | RESEARCH METHOD

This study uses a normative legal research method with a comparative legal approach. It aims to analyze the effectiveness of the judicial review mechanism in ensuring constitutional supremacy and the quality of legislation, and to identify the urgency of strengthening this mechanism in a democratic rule of law system. The normative approach was chosen because the research object focuses on legal norms contained in legislation, constitutional principles, and legal doctrines developed in academic literature. Meanwhile, the comparative approach is used to compare the concepts, mechanisms, and practices of constitutional oversight that have developed in various legal systems in order to gain a more comprehensive understanding of the position and effectiveness of judicial review in maintaining harmony between legislative products and the constitution.

The primary legal materials used in this study include the 1945 Constitution of the Republic of Indonesia, specifically Article 1 paragraph (3) concerning the rule of law and Article 24C paragraph (1) concerning the authority of the Constitutional Court, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020, and Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022. These three regulations are used as the main basis for assessing the relationship between constitutional supervision, protection of

constitutional rights, and the quality of regulation formation in the national legal system.

In addition to primary legal materials, this study utilizes secondary legal materials consisting of scientific articles, legal journals, and research findings published in the last five years. This literature was selected based on its relevance to the themes of judicial review, constitutional supremacy, constitutional democracy, protection of constitutional rights, and legislative quality. Studies by Simamora and Manik (2024) on judicial preview, Rahman and Maizaroh (2024) on constitutional interests in judicial review, and Siboy et al. (2022) on a simplified model of judicial review serve as important references in developing the research's analytical framework. Furthermore, this study utilizes various studies on constitutional review, constitutional governance, and legislative quality to strengthen its theoretical and conceptual arguments.

Data analysis was conducted qualitatively through the stages of legal material inventory, classification based on research themes, comparison of legal norms and concepts, and interpretation of the results of the comparisons obtained. A comparative approach was used to compare the regulation of judicial review with various models of constitutional oversight that have developed in modern legal systems to identify their advantages, limitations, and opportunities for development. The results of the analysis were then used to answer research questions regarding the effectiveness of judicial review in ensuring constitutional supremacy and the quality of legislation, as well as the urgency of strengthening this mechanism in legal development oriented towards the protection of constitutional rights and strengthening a democratic rule of law.

3. | RESULTS AND DISCUSSION

The Effectiveness of Judicial Review in Ensuring Constitutional Supremacy and the Quality of National Legislation

The effectiveness of a constitutional oversight mechanism can essentially be measured by its ability to ensure that all applicable legislation remains aligned with the fundamental norms that underpin a country's legal system. In a modern constitutional state, the constitution serves not only as a political document but also as the highest legal norm binding all state institutions in exercising their authority. Therefore, the existence of a judicial review mechanism is a crucial instrument for maintaining constitutional supremacy while ensuring that the process of formulating and enacting laws and regulations does not deviate from applicable constitutional principles. This provision is constitutionally legitimized through Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which grants the Constitutional Court the authority to review laws against the Constitution.

From an institutional perspective, the effectiveness of judicial review can be seen in its ability to create a mechanism of checks and balances between the branches of state power (Dixon & Landau, 2021). The presence of the Constitutional Court, as the institution authorized to review laws, ensures that the legislative process does not

proceed without constitutional oversight. Simamora and Manik (2024) explain that the design of constitutional review is an instrument that functions to maintain the consistency of legal norms and prevent the formation of regulations that conflict with constitutional principles. Thus, judicial review not only acts as a corrective mechanism for problematic norms, but also as a means of controlling power in the formation of law.

This effectiveness is increasingly evident when judicial review is positioned as an instrument for protecting citizens' constitutional rights. Articles 28A to 28J of the 1945 Constitution of the Republic of Indonesia provide constitutional guarantees for various basic rights that must be respected and protected by the state. In this context, judicial review allows for the testing of statutory provisions that have the potential to disproportionately limit or diminish these rights (Stone Sweet, 2021). Rahman and Maizaroh (2024) emphasize that the primary focus of judicial review lies not only in testing the legality of norms but also in protecting constitutional interests that underlie the existence of a democratic state based on the rule of law. Therefore, the success of judicial review can be measured by its ability to provide effective protection for constitutional rights guaranteed by the constitution (Beqiraj & Moxham, 2022).

In addition to upholding constitutional supremacy, judicial review also plays a significant role in improving the quality of national legislation. Law No. 12 of 2011, as amended by Law No. 13 of 2022, emphasizes that the formation of legislation must meet the principles of clarity of purpose, transparency, appropriateness of content, and effective implementation. When a law is reviewed based on these constitutional standards, legislators are indirectly encouraged to produce higher-quality regulations that align with the principles of the rule of law. Ali and Fatmawati (2024) explain that constitutional review has an indirect preventive function because its existence encourages legislators to pay greater attention to procedural and substantive aspects of the legislative process.

Furthermore, the effectiveness of judicial review is also reflected in its ability to strengthen constitutional culture in lawmaking. Afkar and Mochtar (2024) stated that constitutional review of laws has evolved into an evaluation mechanism that not only assesses the conformity of norms with the constitution but also encourages the creation of more accountable legislative governance. This view is reinforced by Setiawan et al. (2024), who argue that the development of the modern legal system demands an oversight instrument capable of maintaining a balance between regulatory needs and the protection of constitutional values. Thus, judicial review has an educational function that encourages all stakeholders to place the constitution as the primary reference in lawmaking.

From the perspective of legal system effectiveness, judicial review also contributes to increasing the legitimacy of applicable regulations. Regulations that have passed the constitutional review process have a higher level of acceptance because they are deemed to meet the legal standards and principles of justice established by the

constitution. Siboy et al. (2022) explain that strengthening the judicial review mechanism can improve the integration of the legal system while strengthening legal certainty in society. This opinion aligns with the study by Shakti et al. (2023) which shows that the integration of constitutional testing mechanisms plays an important role in maintaining harmony between legal norms and constitutional democratic values.

Furthermore, various recent studies demonstrate that judicial review has evolved from a mere normative dispute resolution instrument to a vital part of the modern legal development process. Faiz and Agustine (2023) assert that constitutional oversight makes a significant contribution to strengthening institutional quality and the democratic legislative process. Meanwhile, Muttaqin et al. (2024) and Said et al. (2024) assess that judicial review has become a strategic instrument in ensuring that legal formation remains within constitutional boundaries despite constantly evolving social, political, and legal dynamics.

Based on this description, it is clear that judicial review, as stipulated in the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Law, and the Law on the Formation of Legislation, has demonstrated significant effectiveness in maintaining constitutional supremacy and improving the quality of national legislation. This effectiveness is reflected in its constitutional oversight function, protection of citizens' constitutional rights, strengthening the principle of checks and balances, improving the quality of regulatory formation, and developing a legal culture oriented toward constitutional supremacy and constitutional democracy.

The Urgency of Strengthening Judicial Review in Supporting Legal Development and the Protection of Constitutional Rights

Strengthening judicial review mechanisms has become an increasingly important issue in the development of a modern rule of law state because the complexity of regulatory formation continues to increase in line with evolving societal needs and the dynamics of governance. In a legal system that places the constitution as the supreme norm, every regulation created must always be within the constitutional framework so that the goals of a rule of law can be consistently realized. Although Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia grants the Constitutional Court the authority to review laws against the Constitution, contemporary legal developments demonstrate that this authority needs to be continuously strengthened to address the increasingly complex challenges in national lawmaking.

The urgency of strengthening judicial review is primarily related to the need to maintain the sustainability of the principle of constitutional supremacy. In a democratic rule of law state, the constitution serves not only as a source of legitimacy for power but also as an instrument for limiting state power. Without an effective oversight mechanism, there is the potential for regulations to emerge that conflict with constitutional principles, both procedurally and substantively. Simamora and Manik (2024) explain that the development of the concept of constitutional oversight

demonstrates the need to refine the design of judicial review so that it functions not only as a corrective instrument but also as a means of strengthening the quality of lawmaking from the outset. Therefore, strengthening judicial review is an integral part of efforts to maintain constitutional supremacy in the modern legal system.

In addition to its relevance to constitutional supremacy, the urgency of judicial review is also closely related to the protection of citizens' constitutional rights. The fundamental rights guaranteed in the 1945 Constitution of the Republic of Indonesia require a protection mechanism capable of providing effective guarantees against the possibility of restrictions inconsistent with constitutional principles. Rahman and Maizaroh (2024) emphasize that citizens' constitutional interests must be the primary paradigm in the implementation of judicial review because the primary purpose of constitutional review is to maintain a balance between state authority and the protection of individual rights. In this context, strengthening judicial review is an urgent need to ensure that the protection of constitutional rights is not merely normative but can also be realized concretely through effective legal mechanisms.

The next urgent issue relates to improving the quality of national legislation. Law Number 12 of 2011, as amended by Law Number 13 of 2022, emphasizes the importance of establishing regulations that adhere to the principles of sound legislative regulation. However, various studies have shown that legislative quality cannot always be guaranteed solely through the lawmaking mechanism. Ali and Fatmawati (2024) stated that there is still a need to strengthen oversight of both formal and material aspects of regulatory formation to ensure that the resulting legal products truly align with constitutional principles. A similar view is expressed by Afkar and Mochtar (2024), who believe that constitutional review plays a crucial role in correcting potential procedural and substantive weaknesses that may arise in the legislative process.

From a legal development perspective, strengthening judicial review is also necessary to encourage the creation of a legal system that is more adaptive and responsive to social change. Setiawan et al. (2024) explain that legal transformation in the modern era demands an oversight mechanism that can adapt to evolving societal needs without neglecting constitutional principles. In such situations, judicial review serves as an instrument that maintains a balance between the need for legal change and the protection of fundamental values enshrined in the constitution. Therefore, a strong judicial review system will support sustainable legal development oriented toward the public interest.

The urgency of strengthening judicial review is also reflected in the need to increase legal certainty and harmonize regulations. Siboy et al. (2022) explain that an effective constitutional review mechanism can reduce the potential for normative conflict while strengthening the integration of the national legal system. In a similar context, Shakti et al. (2023) emphasize that harmonization between the constitution and regulations is a primary prerequisite for good legal governance. If the judicial review mechanism does

not evolve in line with the dynamics of legal formation, the risk of normative inconsistencies and legal uncertainty will increase.

Furthermore, strengthening judicial review has strategic urgency in supporting constitutional democracy. Faiz and Agustine (2023) demonstrate that constitutional oversight plays a crucial role in maintaining a balanced relationship between state institutions and preventing excessive power dominance in the legislative process. From a broader perspective, Muttaqin et al. (2024) assess that judicial review has evolved into an instrument that not only tests the constitutionality of norms but also contributes to strengthening the quality of democracy and government accountability. Meanwhile, Said et al. (2024) assert that the evolution of judicial review demonstrates a global trend toward strengthening the role of constitutional oversight institutions as part of legal development oriented toward protecting the rights and principles of the rule of law.

Based on this description, the urgency of strengthening judicial review lies not only in its function of testing laws against the constitution, but also in its role in maintaining constitutional supremacy, protecting citizens' constitutional rights, improving the quality of legislation, strengthening legal certainty, and supporting legal development and constitutional democracy. Therefore, strengthening the judicial review mechanism is a relevant and strategic necessity to ensure that legal development remains in line with the constitutional values that underpin the modern rule of law.

4. | CONCLUSION

Judicial review is a constitutional instrument that plays a strategic role in upholding the supremacy of the constitution and ensuring the quality of legislation in a democratic state governed by the rule of law. Based on an analysis of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, as amended by Law Number 7 of 2020, and Law Number 12 of 2011 concerning the Formation of Legislation, as amended by Law Number 13 of 2022, it is clear that the judicial review mechanism has demonstrated significant effectiveness in overseeing regulatory compliance with the constitution. This effectiveness is reflected in its ability to maintain the consistency of legal norms, protect citizens' constitutional rights, strengthen the principle of checks and balances, and encourage the formation of higher-quality and more accountable regulations.

Furthermore, this research demonstrates that strengthening judicial review is an increasingly pressing need in modern legal development. The complexity of regulatory formation, evolving societal needs, and demands for the protection of constitutional rights require a robust and adaptive constitutional oversight mechanism. Strengthening judicial review is not only crucial to prevent the creation of regulations that conflict with the constitution, but also to increase legal certainty, strengthen the harmonization of laws and regulations, and support the realization of democratic and law-based governance. Therefore, judicial review cannot be viewed solely as a mechanism for testing legal norms, but rather as a fundamental instrument in legal development oriented toward constitutional supremacy, the protection of constitutional rights, and

improving the quality of legislation. Therefore, strengthening the function and effectiveness of judicial review is necessary to ensure the legal system is able to respond to various emerging challenges without neglecting the constitutional principles that are the primary foundation of a democratic state based on the rule of law.

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The data that support the findings of this study are available from the corresponding author upon reasonable request.

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