
Observing the Existence of the Constitutional Court Addresses the Evolving Dynamics and Challenges of the Legal System in Indonesia

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Received : October 6, 2023

Accepted : November 27, 2023

Published : November 30, 2023

Citation: Nining. (2023). Observing the Existence of the Constitutional Court Addresses the Evolving Dynamics and Challenges of the Legal System in Indonesia. *Sinergi International Journal of Law*, 1(3), 227-234.

ABSTRACT: The evolution of the legal paradigm in Indonesia after the reform era reflects efforts to move towards a more democratic legal system that respects human rights. The presence of the Constitutional Court (MK) as a constitutional judicial institution has had a significant impact on the consistency of legislation and the role of the Constitutional Court in addressing the extent of the development, dynamics, and challenges of the Indonesian legal system at present. This article will discuss and examine, first, the extent to which the Constitutional Court actively contributes to improving the quality of Indonesian law, and second, whether Constitutional Court decisions can create legal precedents that can be used as references in establishing new laws. The lack of access to justice in various layers of society requires improvements in the context of creating a more inclusive and efficient legal system. The decisions of the Constitutional Court are final and binding, and the mechanism of checks and balances needs legal reconstruction regarding the regulation of the nature of Constitutional Court decisions by explicitly emphasizing the word "binding" both in the 1945 Constitution and in several related laws.

Keywords : Constitutional Court, Challenges, Legal Dynamics.



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INTRODUCTION

Indonesia's historical background and cultural diversity have been fundamental to the development of its legal system. Throughout its lengthy historical process, Indonesia has experienced various periods influenced by diverse cultures, ranging from Malay, Hindu-Buddhist, to Islamic cultures (Muhsinin, 2019). The legacies of kingdoms that operated their own legal systems laid the initial foundation for Indonesia's legal system. The colonial era marked a new chapter in Indonesia's legal development, as Dutch colonialism introduced European law manifested in civil law, commercial law, and civil law. The pre-existing customary legal system underwent adjustments to align with Western legal concepts. This shift created dynamics within Indonesia's legal framework, blending elements of customary and Western law.

The proclamation of Indonesia's independence in 1945 marked a new chapter in the nation's legal history. The establishment of a new state and government necessitated a clear legal foundation.

Legal reforms became a primary focus, and the 1945 Constitution was adopted as the basis for the country's legal framework. The legal system in Indonesia became more structured with the establishment of judicial institutions and more detailed legal regulations. However, the ethnic, religious, and cultural diversity in Indonesia posed unique challenges in forming an inclusive legal system. Various policies and regulations were crafted to accommodate this diversity, including recognition of customary law and the religions practiced by the community. As a result, the legal system in Indonesia became more complex, reflecting harmony within diversity (Isra, 2018).

In reality, after gaining independence, the Reform era emerged, bringing a new atmosphere to Indonesia's constitutional system. The adopted system represented something entirely new for Indonesia, signifying the birth of a functional horizontal division of power, replacing the previous vertical hierarchical structure. The People's Consultative Assembly became the highest state institution at the pinnacle of power. "The changes made aimed, among other things, to perfect the fundamental rules of state administration in a democratic and modern manner, including a more precise division of power, a stricter and more transparent system of checks and balances, and the establishment of new state institutions to accommodate the evolving needs of the nation and the challenges of the times (RI, 2003).

Marwan Siahaan states:

"With these changes, a shift occurs from a parliamentary supremacy system, where the People's Consultative Assembly (MPR) is the highest state institution, to a system with constitutional supremacy. In this system, the Constitution is positioned as the highest law, serving as the source of legitimacy for the enacted and applicable legislation. The assertion that sovereignty lies in the hands of the people, implemented based on the Constitution, and the statement that Indonesia is a legal state, firmly establish the principle of organizing the state democratically based on the constitution (constitutional democracy) and a democratic rule of law (*demokratische rechtsstaat*). There are three main characteristics that mark the principle of constitutional supremacy, namely (i) the distinction between constitutional legal norms and other legal norms, (ii) the binding of lawmakers by the constitution, and (iii) the existence of an institution with the authority to review the constitutionality of government actions or legislation formation. (Limbach, 2001)"

In the legal aspect, the existence of the Constitutional Court creates a paradox within the political and governmental system (Khosla & Tushnet, 2022). On one hand, the political and administrative system is based on democracy, "however, judges, who are not democratically elected—at least some of them—have the authority to annul legislative products created by directly elected representatives of the people. Judges, as public officials not directly chosen by the people, evaluate and scrutinize the outputs of representatives of the people. In other words, they assess the outputs of the democratic policy formulation process. In terms of their duties, they ensure that the highest law is faithfully adhered to by lawmakers, whether their actions are constitutional or not (Ball, 1980).

Additionally, one of the mechanisms of checks and balances in the administration of state power in Indonesia is the existence of the power of material review (judicial review) vested in the Constitutional Court (MK) to examine laws (UU) enacted by the legislative body, the People's Consultative Assembly (DPR), and the President against the 1945 Constitution of the Republic of Indonesia (referred to as UUD 1945) (Webb Williams & Hanson, 2022). Article 24C paragraph (1) of the Third Amendment to UUD 1945 states: "The Constitutional Court has the authority to adjudicate at the first and final level, with its decisions being final, to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by

the Constitution, decide the dissolution of political parties, and settle disputes over the results of general elections (Kovalčík, 2022).

Based on the provisions of Article 24C paragraph (1) of the Third Amendment to UUD 1945 mentioned above, there is a mechanism of checks and balances between the Constitutional Court (MK) on one side and the legislative body, consisting of the People's Consultative Assembly (DPR) and the President on the other side. The power to enact laws by the DPR with the approval of the President, as regulated in Article 20 of UUD 1945, is overseen and balanced by the Constitutional Court through its constitutional authority (constitutional review) mandated by Article 24C paragraph (1) of the Third Amendment to UUD 1945. The DPR and the President, as the positive legislature, are subject to oversight and balancing by the MK, acting as the negative legislature.

To ensure the effective role and function of the Constitutional Court (MK) as a reinforcement of the legal system in Indonesia, it is necessary to examine the extent of the Constitutional Court's role in responding to the current dynamics and challenges of the legal system in Indonesia. This article will discuss and evaluate two main aspects: firstly, the extent to which the Constitutional Court actively contributes to improving the quality of Indonesian law, and secondly, the ability of Constitutional Court decisions to establish legal precedents that can be used as references in the formulation of new laws.

In this article, two main aspects will be discussed and examined. Firstly, the extent to which the Constitutional Court (MK) actively plays a role in improving the quality of Indonesian law. Secondly, the ability of MK decisions to establish legal precedents that can influence the formulation of new laws.

Role of MK in Improving the Quality of Indonesian Law: Critical thinking and evaluation of MK decisions will help assess the extent to which MK has contributed to enhancing the quality of law in Indonesia. Can MK provide accurate interpretations of the constitution, rectify policies that do not align with democratic principles and human rights, and offer perspectives that reinforce constitutional supremacy (Blanc, 2023)?

Ability of MK Decisions as Legal Precedents: Evaluation of how far MK decisions can create legal precedents that can serve as references in the formulation of new laws will aid in assessing the long-term impact of MK decisions. Does MK's decision-making provide clear direction and guidance for lawmakers to avoid legal uncertainty and conflicts of interpretation in the future?

By analyzing these two aspects, a comprehensive understanding can be gained of the extent to which MK plays a role in addressing the dynamics and challenges within the current legal system in Indonesia and its overall contribution to the improvement and development of the legal system.

METHOD

This study is a normative research employing literature review or secondary data research. The research materials consist of primary legal materials, namely Law No. 48 of 2009 regarding Judicial Power, Law No. 24 of 2003 concerning the Constitutional Court as amended by Law No. 8 of 2011 concerning Amendments to Law No. 24 of 2003 concerning the Constitutional Court, and Law No. 12 of 2011 concerning the Formation of Legislation as amended by Law No. 15 of 2019 (Sullivan, 2022; Van Staden, 2022). Secondary legal materials involve books or legal literature, while

tertiary legal materials include legal dictionaries and encyclopedias. This research is descriptive, gathering information about the status of a variable or theme, phenomena, or conditions existing at the time of the study. As a descriptive study, it comprehensively portrays the characteristics of a situation, personal and group behaviors, and determines the frequency of a phenomenon (Soekanto, 2013).

RESULT AND DISCUSSION

1. The evolution and paradigm shift in law have given rise to the Constitutional Court

Since 1998, Indonesia has undergone significant changes in its legal system, fundamentally reflecting a shift in legal paradigms. The reform era that began at that time opened a new chapter in the legal history of Indonesia. During this period, Indonesian society demanded significant changes in governance, including legal aspects. This development encompassed legal reforms aimed at enhancing justice, transparency, and accountability.

In pursuit of realizing the ideals of a constitutional and democratic state for the dignified national life and statehood, as desired by the people at that time who aspired for a democratic nation, the factual outcome is the consequence of establishing a democratic rule-of-law state. The reality indicates that decisions reached through democratic means do not always align with the provisions of the constitution, which serves as the highest law. Therefore, there is a need for an institution empowered to review the constitutionality of laws (Jiang, 2023; Yolcu, 2022).

Secondly, following the Second and Third Amendments, the 1945 Constitution has altered the power relations by adopting a system of separation of powers based on the principles of checks and balances. The number of state institutions and their respective regulations create significant potential for disputes between state institutions (De Visser, 2022). Meanwhile, the shift from the paradigm of the supremacy of the People's Consultative Assembly (MPR) to the supremacy of the constitution eliminates the existence of a highest state institution authorized to resolve disputes between state institutions. Hence, a separate institution is necessary to address such disputes (Gaffa, 2019).

The existence of this institution marks the development of Indonesia's legal system, strengthens the protection of citizens' constitutional rights, and monitors compliance with legislation based on the 1945 Constitution. Therefore, changing the legal paradigm also involves enhancing human rights protection and reinforcing constitutional supremacy. Legal development in Indonesia also encompasses legal reform initiatives. Several laws have been amended, taking into account socio-economic development considerations.

However, challenges in the application and enforcement of the law remain a significant issue. This paradigm shift reflects efforts to achieve legal sovereignty, where the law serves as the primary foundation for governing and ensuring justice. Despite progress, the most significant challenge is the disparity in access to justice. Legal reforms have not reached all segments of society, and gaps in legal protection persist for certain groups. Therefore, the paradigm shift in law needs to be reinforced with more comprehensive measures to ensure that the rule of law is genuinely experienced by the entire Indonesian population.

Jimly Asshiddiqie stated: (Safaat, 2006) "that the establishment of the Constitutional Court (MK) in Indonesia "seems to parallel the ideas of the Austrian legal thinker Hans Kelsen, who from the

outset believed that the effective guarantee of the implementation of constitutional rules can only be ensured if an organ other than the legislative body is tasked with testing whether a law is constitutional or not, and not implementing it if, according to the opinion of this organ, it is unconstitutional. A special organ can be established for this purpose, such as a special court called the Constitutional Court, especially in countries that have recently freed themselves from the grip of authoritarianism and are moving towards democracy."

According to the Chairman of the Constitutional Court, Moh. Mahfud MD, during his presentation titled "The Role of The Constitutional Court in The Development of Democracy in Indonesia" at the Constitutional Judges Conference in Cape Town, South Africa, on January 23-24, 2009, in general, the Constitutional Court has made a significant contribution to the development of democracy and human rights. Furthermore, Mahfud mentioned that since the establishment of the Constitutional Court, the People's Consultative Assembly (DPR) no longer creates laws solely based on political interests because the Constitutional Court can declare that a law no longer has legal binding force if it contradicts the 1945 Constitution (MD., 2009).

Thus, the Constitutional Court becomes the guardian of legal consistency and regulations based on the highest legal foundation in Indonesia (Lailam & Lutfi Chakim, 2023; Somody, 2023). The existence of the Constitutional Court creates a mechanism that allows citizens or interested parties to conduct a judicial review of laws deemed unconstitutional. One practical impact of the existence of the Constitutional Court is providing a guarantee of legal certainty.

2. The Existence of The Constitutional Court as Reflected In The Authority of The Constitutional Court as Part of The System of Separation of Powers And Checks and Balances.

The existence of the Constitutional Court (MK) as a constitutional judicial institution in Indonesia has significant implications for the compliance of legislation with the 1945 Constitution. Established as part of the Constitutional Court (MK), which serves as a constitutional judicial institution in Indonesia, it ensures the consistency of legislation with the principles of the state and guarantees legal certainty regarding the constitutionality of regulations. As the sole interpreter of the 1945 Constitution, the Constitutional Court holds considerable authority in assessing and interpreting constitutional provisions.

Therefore, the Constitutional Court serves as the guardian of legal consistency and regulations based on the highest legal foundation in Indonesia. The existence of the Constitutional Court creates a mechanism that allows citizens or interested parties to conduct a judicial review of laws deemed unconstitutional. One practical impact of the existence of the Constitutional Court is providing a guarantee of legal certainty.

The process of critical review undertaken by the Constitutional Court allows for comprehensive assessments of laws, regulations, and state rules. The decisions of the Constitutional Court provide a strong legal guidance on the constitutionality of regulations, ensuring clarity and legal certainty for citizens, economic actors, and the government. The Constitutional Court also serves as a check and balance mechanism among state institutions. Through its authority to review proposed laws, the Constitutional Court prevents the abuse of power by legislative and executive bodies.

Disputes over constitutional authority among state institutions involve differences of opinion accompanied by disputes and other claims regarding the authority held by each of these state institutions. This may occur due to the relational system between one institution and another

adhering to the principle of checks and balances, which means they are equal but mutually control each other. As a consequence of such relations, in exercising their respective authorities, the possibility of disputes arises in interpreting the mandates of the Constitution. The Constitutional Court (MK) in this context acts as a fair arbitrator to resolve such disputes. The authority regarding this matter has been regulated in Articles 61 to 67 of Law Number 24 of 2003.

In addition, the Constitutional Court actually has functions and roles that have been officially regulated in Article 24C paragraph (1) of the 1945 Constitution. This article stipulates that the Constitutional Court has four constitutionally entrusted powers and one constitutional obligation. These provisions are further clarified in Article 10 paragraph (1) letters a to d of Law Number 24 of 2003 concerning the Constitutional Court. The four powers of the Constitutional Court involve:

- 1) Reviewing laws against the 1945 Constitution.
- 2) Adjudicating disputes over authority between state institutions whose authority is granted by the 1945 Constitution.
- 3) Adjudicating the dissolution of political parties.
- 4) Adjudicating disputes over the results of elections.

Based on Article 7 paragraphs (1) to (5) and Article 24C paragraph (2) of the 1945 Constitution, as emphasized in Article 10 paragraph (2) of Law Number 24 of 2003, the obligation of the Constitutional Court is to make decisions on the opinion of the People's Consultative Assembly (DPR) that the President and/or Vice President have committed a legal violation, or reprehensible act, or do not meet the qualifications as President and/or Vice President as referred to in the 1945 Constitution.

Moreover, the positive influence of the Constitutional Court must be balanced with the compliance and obedience of all parties, including the government, legislative institutions, and the public. The significance of the Constitutional Court becomes more pronounced when all parties respect its decisions without questioning the legitimacy of the institution. In this context, it is crucial to continually foster a legal culture in society to create an environment that supports the implementation of the rule of law.

CONCLUSION

Based on the above presentation, the following conclusions can be drawn:

Firstly, the evolution of the legal paradigm in Indonesia after the reform era reflects efforts towards a more democratic legal system that respects human rights, with the existence of the Constitutional Court (MK) as a constitutional judiciary institution having a significant impact on the consistency of legislation with the 1945 Constitution (Marzuki, 2023; Szinek Csütörtöki, 2022). The MK has become a guardian of legal supremacy and has engaged in shaping progressive legal policies in line with the demands of societal development. However, several challenges faced by the Indonesian legal system still require serious attention. Resource limitations, regulatory complexity, and the lack of access to justice in certain segments of society need improvement in the context of creating a more inclusive and efficient legal system.

Secondly, MK decisions are final and binding. The mechanism of checks and balances requires a legal reconstruction related to the regulation of the nature of MK decisions by explicitly emphasizing the term "binding" both in the 1945 Constitution and in several related laws.

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