

Safeguarding Constitutional Democracy: The Role Of The Indonesian Constitutional Court Through Formal Review

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ABSTRACT

A good law is not only seen from the material aspect, but also a complementary side to the formal element as well as a factor in whether the law can be said to be good, especially in standings of the process of its making. The law-making progression is democratic; this process cannot be separated from public participation as the highest sovereign holder. However, there is a problem that public aspirations have not been meaningfully accommodated in the law-making progression as a form of substantive democracy. Hence, a formal checks-and-balances review in the Constitutional Court attempts to maintain democracy. Through a normative juridical approach, this study aims to explain the symptoms of a democratic crisis in Indonesia's law-making process and how the Constitutional Court's role protects democracy through a formal review of laws. The results of the research showed that legislators have not implemented democracy optimally, as evidenced by the neglect of the public's role in several processes of law-making processes and by the being of Constitutional Court Decision No. 91/PUU-XVIII/2020, which encourages the strengthening of democracy by prioritizing evocative civic involvement in the law-making progression.

Keywords: Constitutional Court, Democracy, Formal Review, Public Participation.

I. INTRODUCTION

Practically all countries in the world have made democracy an essential principle; this is based on the outcomes of a UNESCO study in the early 1950s which gathered more than 100 scholars and stated that in democratic countries, the giving of roles to the state and society has a large portion. Democracy as the principle of statehood has fundamentally provided a route for society's position in administering the state as its main organization. Still, democracy has taken different routes. Thus, the idea of democracy in practice has a double meaning.

This can be seen in how nations that obey the principle of democracy implement it differently. This inequality is not only in the formation of democratic institutions or apparatus but also in the balance of the division of roles between the state and the part of the people. (Sunarno, 2011, p. 41)

Democracy has the consequence that every government administration must contain the lively participation of the people in the management of the state, starting from formulation, implementation, and evaluation. However, in practice, democracy constantly changes metamorphoses according to the growth and development of the country concerned, so its performance differs from time to time. Democracy does not always grow and develop similarly for every country. The implementation of democracy can also be constrained because there are rulers who do not implement democracy if the people do not want to implement and support democracy. (Hidayati, 2019, p. 225)

Ancient Greek philosophers always emphasized that the absolute rulers in democracy were the people or demos, Populus. Therefore, the fundamental role of the demos is always highlighted in the ongoing political process. At least, in two main stages: first, agenda setting, namely the stage to choose what issues to discuss and decide on; second, deciding the outcome, namely the decision-making stage. Thus, in a democratic regulation of law, the role of the people is indispensable in determining what issues will be discussed and decided, as well as in decision-making. (Praptanugraha, 2008)

Public investment or interest is essential for the principles of democracy. One of the principal essentials in understanding this support is receptiveness or straightforwardness. The focal point of weakness contains something like two primary components empowering local area interest. To start with, the option to be aware (right to be aware, improve). In a democracy, this right is a fundamental one. In all matters connected with the public interest, people in

general ought to be aware in complete, bona fide, and precise. Second, the option to think (meedenken). It is the precise of the community toward participating and complicated in making contributions to support government policies after the community has access to information about what the district should know. (YLBHI dan PSHK, 2007, p. 218)

Democratic life in Indonesia has experienced ups and downs and exciting dynamics, one of which has become the momentum of the 1998 Reformation, which opened the faucet for democratization in various fields, including the press, organizations, the right to express opinions, and public involvement in policy formulation. However, after 25 years of reform, democracy still has homework to complete to grow in our rule of law country. According to the 2021 Democracy Index, Indonesia's low score is influenced by the formulation of controversial law policies and minimal public involvement, together with rewriting the Corruption Eradication Commission Law and forming the Job Creation Law.

The enactment of the Job Creation Law demonstrates how deficiencies in legislative procedures may result in the erosion of fundamental rights, particularly the rights to information and participation, thereby justifying constitutional scrutiny through formal review mechanisms. (Zainullah, 2023, p. 5)

The legislative process of the Job Creation Law characterized as an example of autocratic legalism, where democratic procedures were formally maintained but substantively undermined through procedural violations and limited public participation. This condition underscores the urgency of constitutional mechanisms capable of restoring procedural justice in lawmaking processes. (Mochtar & Rishan, 2022, p. 35)

Indonesia's democracy index is still relatively weak compared to other countries. Indonesia's democracy index ranks 52nd in the world with a value of 6.71, which is relatively weak. Various factors affect the low index of Indonesian democracy. (Syahrul Borman et al., 2024, p. 241)

The Government should be aware that the policies formulated mainly in the process of their making significantly affect the Democracy Index. The Government needs to enhance procedures with civic will. In its statement, the EIU supposed that Indonesia could raise its democracy quality index in two ways. First, the Constitutional Court Decision ordering Law No. 11 of 2020 regarding unconstitutional Job Creation requires that it be revised by substantively involving the public. Second, President Joko Widodo accommodated various political elite groups in his cabinet, which he considered conducive to realizing a consensus between political forces. (*Skor Indeks Demokrasi Indonesia Membaik, Tetapi Tantangan Masih Besar - Kompas.Id*, n.d.)

The problem of retention of democracy must be a serious concern considering that the Constitution has emphasized that the highest sovereign holder is the people. Therefore, the Constitutional Court was shaped as an institution, one of which has a role as guardian of democracy. The Constitutional Court's mission is to ensure and guarantee that the Constitution is respected and implemented consistently and accurately throughout all state apparatuses. The Constitutional Court serves as an interpreter, ensuring that the essence of the Constitution continually flourishes and contributes to the sustainability of the state and its civilization. The Constitutional Court functions as the protector of the Constitution, interpreter of the Constitution, and protector of democracy. In addition, the presence of the Constitutional Court is, at the identical time toward preserving the execution of a steady public

government and is an improvement to the involvement of constitutional lifetime in the earlier, which resulted in a dual clarification of the Constitution. (Mainake, 2021, p. 2)

The expert of the Constitutional Court, which is closely related to upholding democracy, is the review of laws or Judicial Review as a legal institution that gives control to the branch of judicial power regulated by the Constitution to be able to carry out a review and/or review through rendering the law and/or rendering Constitution to provide a juridical settlement. (Qamar, 2011, p. 2)

It is widely recognized that judicial review represents a process of “judicialization of politics” undertaken by the Constitutional Court in relation to legislative enactments. This concept stems from the assumption that legislative bodies frequently prioritize the political interests of the majority when performing their functions, often overlooking the integrity of the decision-making process. Accordingly, judicial review may be understood as a form of judicial oversight over legislative authority, grounded in the principles of the rule of law. (Sumodiningrat, 2023, p. 271)

The Constitution has given authority to the Constitutional Court to examine laws (Judicial Review) based on the 1945 Constitution. In practice, Judicial Reviews are divided into two types: formal reviews and material reviews. According to Jimly Asshiddiqie, based on Hans Kelsen's understanding, there are two categories of judicial review: “concrete norm review and abstract norm review.” Furthermore, based on the object being reviewed, reviewing legal products in general (toetsingrecht) is formed toetsingrecht and material toetsingrecht so that in a judicial review, there are also types of formal judicial review and material judicial review. After the

amendment to the 1945 Constitution, state administration put forward the dogma of "constitutional supremacy" and unrestricted the principle of "parliamentary supremacy." The role of the Constitutional Court is undoubtedly crucial in safeguarding the vitality of constitutional democracy. (Thohari, 2009, p. 97)

The attendance of the Constitutional Court in the Indonesian legitimate structure is in the framework of realizing a scheme of parting of influences through the belief of checks and stabilities. Each branch controls and shares the other branches' power, hoping there will be no abuse of the power of each independent organ. Judicial review can only be done correctly in a country that adheres to the rule of law and not parliamentary supremacy. The subsequent legal products cannot be disputed in countries that adhere to a parliamentary supremacy system because parliament represents people's sovereignty. The teachings of Trias Politica from Montesquieu remind us that state power must be prevented from being concentrated in one hand or institution. (Nawas, 2021, p. 161)

On this philosophical premise, the presence of the Constitutional Court has a critical significance and an essential job in the improvement of the present status organization. All arrangements or approaches state chairmen make can be estimated naturally or not by the Constitutional Court. Throughout its 21 years of existence, the Constitutional Court has received hundreds of cases filed annually, and numerous decisions have been issued, establishing Landmark Decisions that protect citizens' constitutional rights and uphold the course of democracy.

Previous studies reviewed by academics and practitioners from various perspectives show the reputation of formal review authority by the

Constitutional Court. Jorawati Simarmata's research entitled "Formal Review of Laws by the Constitutional Court: Is it Inevitable?" explained that the part of the Constitutional Court is actual central in defending the ride of constitutional democracy with the expert of Judicial Review, however the formal review is complex for the Constitutional Court to grant because the Constitutional Court prioritizes material review of laws in contradiction of the 1945 Constitution and prioritizes the principle of benefit.(Simarmata, 2017, pp. 39–48)

However, in its development, Dixon Sanjaya and Rasji through their research entitled "Formal Testing of the Job Creation Law in the Constitutional Court Decision Number 91/PUU-XVIII/2020", there was a formal test which was granted through the Constitutional Court Decision Number 91/PUU-XVIII/2020 which decided it was unconstitutional conditional on the formal review of the Job Creation Law because it does not fulfill the dealings for establishing the law, especially concerning the authority of state institutions, formation techniques, writing techniques, principles of forming regulations and community participation. Ultimately, in the context of formal review, it focuses attention on building the quality of political democratic products and balancing the forces of procedural democracy which rely on quantitative voting power in parliamentary political forums that sometimes do not care about the quality of the people's voice and the intelligence of justice that exists in civilization. Formal review carries out a pivotal and strategic function to safeguard democracy and the constitution so that they continue to be on a good and correct path in living together within the framework of the Indonesian legal state grounded on "Pancasila and the 1945 Constitution of the Republic of Indonesia". (Dixon Sanjaya, 2021, pp. 3255–3279)

Furthermore, Idul Rishan's research entitled "The Concept of Formal Review of Laws in the Constitutional Court" shows that through the growth of

democracy, the due process of law making has been a political reality. Political construction can serve as a tool to either influence or regulate the intentions of lawmakers. They incorporate ideological groups, vested parties, pressure gatherings, political specialized instruments, and political figures. A coalition of investors may control the country for a common interest. Legislative policies tend to be controlled by businesspeople, leading to the establishment of a law requirements grounded on an arranged and peaceable political progression. (Rishan, 2021, pp. 1–21)

The various studies above show that the formal review possessed by the Constitutional Court is an essential authority and should not be underestimated by legislators so as not to form legal products through haphazard processes. This research tries to show that the formal judicial review authority of the Constitutional Court plays a part in maintaining and upholding democracy which offers space for the people to partake in the progression of forming laws as political participation is part of human rights, apart from obeying the substance or material. This research confirms that the Constitutional Court Decision Number 91/PUU-XVIII/2020 is a landmark verdict to encourage legislators to carry out their duties in compliance with procedures.

Based on the background above, the authors have formulated two main issues: legal issues to be studied. First, how does the Constitutional Court uphold democratic principles through the exercise of formal review? the expertise of the Constitutional Court in upholding human rights-based democratic principles is explored, delving into the history of Judicial Review in the United States and the establishment of Austria's first constitutional court. The study also examined historical debates and the Constitutional Court's perseverance in maintaining democracy based on human rights.

Second, In what ways does Constitutional Court Decision No. 91/PUU-XVIII/2020 serve as a landmark case in reinforcing procedural democracy in Indonesia? the research investigates the implementation of a formal review by the Constitutional Court against laws that do not comply with the constitution and law-making procedures. This section explores the essential aspects of an excellent legal product, covering both substantive and procedural elements. It further discusses the evolution of formal review authority, where initially the Constitutional Court only possessed material review authority, then discusses the Constitutional Court Decision Number 91/PUU-XVIII/2020 as a Landmark Decision where the first This is the first period the Constitutional Court has arranged a formal test.

The aims are twofold: first, to analyze how the authority vested in the Constitutional Court is utilized in upholding human rights-based democratic principles; second, to analyze how the Constitutional Court conducts formal reviews of laws to maintain democratic principles.

II. RESEARCH METHODS

The applied research methodology is Normative Juridical (Legal Research), which specifically focuses on analyzing the application of guidelines or norms within the applicable positive law. (Ibrahim, 2006) Normative juridical is used by studying formal legal regulations, such as laws, and theoretical literature, which is then linked to the problem that is the subject of discussion. (Marzuki, 2019) The approaches comprise the statutory and conceptual. (Marzuki, 2019)

The types of data sources encompass primary legal materials, such as the '1945 Constitution of the Republic of Indonesia,' laws and regulations relevant to the Constitutional Court and Democracy, including Law Number 12 of 2011

as amended by Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Law-making, Law Number 7 of 2020 Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. Additionally, secondary legal resources include journal articles, books, scientific works, theses, and dissertations related to the authority and functions of the Constitutional Court within a democratic rule of law state.

The research applies two approaches: First, Statutory Approach, focusing on the 1945 Constitution, Law No. 12 of 2011 on Law-Making (as amended by Law No. 13 of 2022), and Law No. 24 of 2003 on the Constitutional Court (as amended by Law No. 7 of 2020). Second, Conceptual Approach, which explores theoretical perspectives on democracy, constitutional supremacy, and the principle of checks and balances.

The analysis applies deductive reasoning from general constitutional principles to specific legislative practices, supported by interpretative and systematic interpretation of legal norms. Case-based analysis is also employed, with Decision No. 91/PUU-XVIII/2020 serving as a landmark illustration of the Constitutional Court's role in strengthening democracy through formal review. This approach ensures that the study not only identifies relevant legal provisions but also critically evaluates their implementation and democratic implications.

III. RESEARCH RESULTS AND ANALYSIS

A. Constitutional Court: The Guardian of Democracy

The French Revolution and the concept of parting of influences from Rosseau and Montesqiau were the cornerstones of the development of judicial review, and the early successes of the Napoleonic armies and the continued influence of French law and culture carried these attitudes and approaches

throughout Europe with its different legal systems. However, American thinking about judicial review after the Marbury Madison case (1803) and then the infamous Dred Scott case in 1857 caused reforms on the European continent to begin to think that such courts might be helpful to Europe too. (Maruar Siahaan, 2011, p. 3).

Previously, the momentum for the Judicial Review was the Marbury vs. Madison circumstance in the United States in 1803; John Marshall chaired this case as chairman of the United States Supreme Court. John Marshall's pronouncement was based on something other than what was requested for the decision. However, using authority is based on what is interpreted in the Constitution. The plaintiff, or William Marbury case, requested that the government issue a writ of mandamus. However, the Supreme Court did not justify the provisions of Section 13 of the Judiciary Act 1789, which contradicted Article III, section 2 of the American Constitution. (Salman et al., 2018, p. 148)

The argument used by the Supreme Court in examining cases is not through the Judiciary Act 1789. Still, through the authority, it interprets from the American Constitution by canceling the Judiciary Act 1789, which is not from its jurisdiction and is not regulated in the American Constitution. The Supreme Court judges have sworn to sustain and defend the Constitution as a constitutional obligation. The rehearsal of judicial review is a breakthrough considering that issues of consistency and suitability of legislation have long been a problem in the legal studies of judges, where numerous central and public laws have been professed opposing to the Constitution through the Supreme Court. The growth of law in America is part of the checks and stabilities stipulated in the Constitution convention; where the Government may not have complete power over its authority, there must be a limit in its control, both over the laws that are its ownership rights. (Levy, 2005, p. 3)

Hans Kelsen was asked to draw up a constitution for the newly emerging Austrian Republic from the ruins of the Astro-Hungarian empire in 1919. Like Marshall, Kelsen believed that the Constitution should be preserved as a customary of legal norms that were larger toward commonplace law and should be strictly compulsory. Thereby, Kelsen also acknowledged widespread suspicion of the regular judiciary to enforce such constitutional responsibilities. Hence, he intended a special court distinct from the ordinary bench to rule over statutes and repeal them if they were found to contravene the Constitution. Although Kelsen devised this model for Austria, Czechoslovakia was the first to establish a constitutional court based on it in February 1920. It was in October 1920 that Kelsen's draft was realized in Austria.

The idea of a constitutional court with a strong-form review decision was developed by Kelsen when he lived and taught at Columbia University in the United States of America. The source of inspiration is the practice of judicial review in the United States Supreme Court, which was a pioneer of strong decision power. (Buana, 2024, p. 349)

After World War, the possibility of a protected court with legal survey spread all through Europe by laying out an established court separate from the High Court. Nonetheless, France embraced this origination diversely by shaping a sacred board (conseil established). The previous French states followed this French example. Eastern European former communist nations transformed themselves into liberal, constitutional democracies following the fall of the Soviet Union. The Constitution was immediately revised, and in the process, a new institution was created, namely a court consisting of officials of the judicial power with the authority to cancel other laws and regulations if they were found to be contrary to or inconsistent with a higher law, namely the Constitution.

A comparative perspective helps situate the Indonesian experience within the global discourse on judicial review. In the United States, judicial review is diffuse and tends to focus on substantive rights protection rather than procedural flaws. Austria, by contrast, developed the concentrated constitutional court model that includes strict procedural oversight. Indonesia has adopted elements of the Austrian model but with a distinctive emphasis on public participation as a constitutional principle. This makes the Indonesian Constitutional Court unique in its integration of participatory democracy into formal review, reflecting a hybrid approach that blends global models with local democratic needs.

In Indonesia, the Constitutional Court serves as one of the institutions exercising independent judicial authority, playing a pivotal role in safeguarding the constitution and upholding the principles of the rule of law, in accordance with the powers and duties prescribed in the 1945 Constitution. The 1945 Constitution regulates judicial authority in a distinct section, namely Chapter IX on Judicial Power, which comprises five articles: Article 24, Article 24A, Article 24B, Article 24C, and Article 25. (Samsudin, 2022, p. 33)

Indonesia is the 78th country to have adopted a constitutional court system that is separate from the supreme court up until this point. The Constitutional Court is a national institution that existed after the third amendment to the 1945 Constitution. In the constitutional situation of the Court, the Constitution is created as a protector of the Constitution whose function is to maintain constitutional justice during people's lives. Second, the constitutional court is tasked through reassuring and guaranteeing that the Constitution is esteemed and realized consistently and responsibly by all state components. Third, amidst the faintness of the prevailing constitutional arrangement, the constitutional court performances as an explainer that the

essence of the Constitution is continually thriving and complexion the sustainability of the public and civilization. (Jimly Asshiddiqie, 2006, p. 105)

The history of the Constitution, once in force in Indonesia itself, adheres to the idea that "the law cannot be contested." Grounded on the provisions of the 1949 RIS Constitution, the Supreme Court does not have the expert toward reviewing federal laws materially but only has the power to examine regional laws. Likewise, the provisions of the Provisional Constitution of 1950 do not recognize the right to review the constitutionality of a law. The existence of the law cannot be contested. Legislative products are seen as products of implementing institutions for people's sovereignty within the state administration structure. This is the influence of Dutch constitutional law in preparing our Constitution. During the discussion of the Constitution in the sessions of the Constituent Assembly, which was designated through the 1955 general election, many thoughts appeared that the review of the law be assumed to the Supreme Court. This awareness had wired. Nevertheless, previously the Constituent Assembly prospered in ratifying the Basic Law by a "Presidential Decree of 5 July 1959", the Convention was thawed, and the 1945 Constitution was replaced. (*Perintisan Dan Pembentukan Mahkamah Konstitusi | Mahkamah Konstitusi Republik Indonesia*, n.d.)

The knowledge of judicial review existed in 1945 when the BPUPKI carried out the discussion. Yamin, a member of the BPUPKI, expressed his opinion that the "Balai Agung," or the Supreme Court, should have the authority to compare laws in contradiction of the Constitution. However, Soepomo rejected this opinion because he saw that the Constitution that was being conscripted did not obey Trias Politica. Few permissible academics at that time needed to gain experience in conducting a judicial review.

A limited form of judicial review was introduced four years later under the short-lived Federal Constitution of 1949. Article 130 (2) of that Constitution explicitly stated that federal laws were immune from review (*tidak dapat diganggu gugat*), while other laws, including those enacted by the federation's constituent states, could be examined by the Supreme Court for conformity with the Constitution (Articles 156 to 158). This limited mechanism of constitutional review, however, was abolished by the 1950 Provisional Constitution, which replaced the federal system within a matter of months. Article 95 (2) of the Provisional Constitution unequivocally declared that laws could not be subject to review. This stance persisted from the time Soekarno reinstated the 1945 Constitution in 1959 until roughly four years after Soeharto assumed power in 1966. Judicial review of laws subordinate to statutes, tested against statutory provisions, was introduced through Law Number 14 of 1970 on Judicial Powers, with Article 26 granting such authority to the Supreme Court. Nonetheless, no court was permitted to review statutes or assess the constitutionality of any law until several years after Soeharto's fall from power in 1998. (Lindsey, 2018, p. 33)

The debate regarding constitutional review resurfaced in June 1992 when the chairman of the Supreme Court, Ali Said, considered that granting jurisdictional review rights to the Supreme Court was a proportional matter where the Supreme Court is one of the supports of democracy. Review the laws passed to give rise to the Indonesian Constitution's principle of checks and stabilities. (Zahra & Madalina, 2022, p. 542)

Lengthways through the impetus of the Amendment of the Constitution in the reform period, the impression of forming the Constitutional Court in Indonesia was acknowledged as an apparatus to controller the implementation of the Constitution in the arrangement of a law. The formation of the

Constitutional Court was also ambitious through the following details. In the first place, it came about because of understanding a vote-based law and order and a majority rule state in view of regulation. The reality shows that a choice fairly came to is just at times by the arrangements of the Constitution, which apply as the preeminent regulation. Hence, we really want an establishment with the position to inspect the lawfulness of regulations. Second, after the Second Amendment and Third Amendment, the 1945 Constitution altered the relationship of control on a large scale by adopting a scheme of parting of controls grounded on checks and stability. The increase in the number of public institutions and the rise in state institutional provisions has increased the possibility of disagreements among state institutions.

In the interim, there has been a change in perspective from MPR matchless quality to protected incomparability so there could be at this point not the most elevated state organization holding the greatest power with the position to determine questions between state establishments. In this manner, a different organization is expected to determine the question. Third, genuine cases that happened in Indonesia, to be specific the arraignment of President K.H. Abdurrahman Wahid from his administration through the MPR at the 2001 MPR Exceptional Meeting, which propelled the plan to discovery an exit from the lawful system utilized during the time spent excusing the President and VP, not exclusively founded on political reasons alone and by political foundations as it were. This is likewise an outcome of endeavors to clean the official framework. Thus, it was concurred that it is important to have a legitimate foundation is obliged to pre-survey regulation infringement committed by the President and VP that could make the President and VP be excused throughout their period of office. (*Perintisan Dan Pembentukan Mahkamah Konstitusi | Mahkamah Konstitusi Republik Indonesia*, n.d.)

At the 2001 MPR Annual Session, the Constitutional Court was ratified after in-depth discussions, examining the various institutions for reviewing constitutional laws, and hearing from a variety of parties, particularly constitutional law experts. Article 24 Paragraph 2 and Article 24C of the 1945 Constitution contained provisions regarding the institution known as the Constitutional Court because of the Third Amendment. The Constitutional Court is a constitutional organ in which the 1945 Constitution is given the expert to guard and oversee the Constitution by carrying out four authorities and one obligation. The function of the Constitutional Court is to uphold the 1945 Constitution as the uppermost state law. It is tasked with ensuring that the provisions in the 1945 Constitution do not only have semantic value but are practiced in the lifetime of the nation and state. The part of the Constitutional Court is significant in protecting the Constitution in Indonesia through the exercise of its authority, namely the judicial review or review of laws in contradiction of the 1945 Constitution. Laws formed through the DPR, and the Government are products of political institutions that allow storing pragmatic interests that are not in line with provisions of constitutional values and spirit. (*Akil Mochtar: MK Berperan Melindungi Hak Konstitusional Warga Negara | Mahkamah Konstitusi Republik Indonesia*, n.d.)

The development of the “Constitutional Court of the Republic of Indonesia” can be perceived since different borders, to be specific since the political sideways and the lawful side. After the political part of state organization, the presence of the Constitutional Court is important to adjust the law-production power that has a place with the President and the DPR; this is fundamental with the goal that the regulations are not abused by the President and the DPR, which individuals straightforwardly choose. The transition from the MPR's supremacy to that of the Constitution, the value of a particular

government, the value of democracy, and the value of the instruction of law are the legal factors that commanded to the establishment of the Constitutional Court. Article 1, Passage (1) of the 1945 Constitution expresses that the Province of Indonesia is a unitary state as a republic. The unitary state is not only interpreted as a unified geographical area and administration of Government. The value of a particular state necessitates the being of a national lawful scheme. In a republican public, the administration of a republican state is intended for the benefit of the people through a democratic system where the Government is from, by, and for the people. State Administration must be the will of all the people embodied in the Constitution. Therefore, all state administration must be based on the Constitution, known as the principle of constitutional supremacy. According to Mahfud MD, the Constitutional Court has made a substantial involvement to the development of democracy and human rights. (Thohari, 2009, p. 102)

Apart from that, according to Hans Kelsen, a special court is needed to ensure the conformity of the lower legal rules to maintain the sovereignty of the Constitution. Kelsen declared: (Kelsen, n.d., p. 157)

The application of the constitutional rules concerning legislation can be effectively guaranteed only if an organ other than the legislative body is entrusted with reviewing whether a law is constitutional and of annulling it if – according to the opinion of this organ – it is "unconstitutional." A unique organ may be established for this purpose, for instance, a special court, a so-called "constitutional court"...

This view is a consequence of the postulate of the hierarchy of legal norms, which culminates in the Constitution as the uppermost law of terrestrials. This grading simultaneously places the source for the legitimacy of a legal norm, explicitly the legal norm overhead it, and so on, up to the top and the first Constitution.

The General Explanation of Law Number 24 of 2003 regarding the Constitutional Court circumstances that one of the essential constituents in the amendment to the 1945 Constitution of the Republic of Indonesia is the presence of the Constitutional Court as a national establishment whose function is to holder convinced belongings in the ground of public management, to safeguard the Constitution from being implemented, dependably through the will of the individuals and the standards of democracy. The presence of the Constitutional Court is simultaneously to sanctuary the employment of a steady state management. Additionally, it is a alteration to the earlier constitutional lifetime experience brought about by various interpretations of the Constitution. (Thohari, 2009, p. 101) In this way, the proportion of equity and regulation that is maintained in the courts of the Constitution Court is the actual Constitution which is deciphered as a bunch of crucial standards as well as regarding the standards and ethics of the Constitution, counting the standards of a law and order and a vote based system, insurance of common liberties, and security of residents' protected freedoms.(Nawas, 2021, p. 163)

The Constitutional Court not only functions as a guardian of the constitution, but also plays a central role in maintaining democratic principles through its judicial review authority. (Butt, 2023, p. 264). In addition, the Constitutional Court plays a fundamental role in law enforcement in Indonesia, maintaining constitutional values, and supervising state administrators to ensure they comply with the mandate of the 1945 Constitution.(Saragih et al., 2024, p. 327)

This function is carried out through the authority possessed by the Constitutional Court, namely examining, hearing, and deciding convinced cases grounded on constitutional considerations. Automatically each choice of the Constitutional Court replicates the Constitution. At least five meanings

belong to the Constitutional Court, and they are carried out as its expert, including as protector of the Constitution, closing explainer of the Constitution, guard of human rights, shield of constitutional rights, and guard of democracy.

As an institution established under the 1945 Constitution, the authorities of the Constitutional Court are also granted and controlled in the Constitution. The authority of the Constitutional Court is explicitly stated in Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution as follows: “the Constitutional Court has the authority to try at the first and last levels whose decision is final to examine law against the Constitution; decide on disputes over the authority of state institutions whose powers are granted by the Constitution; decide on the dissolution of political parties and decide on disputes about election results; and the Constitutional Court is required to give a decision on the opinion of the President and Vice President regarding.” (Ardiansyah & Handoko, 2018, p. 2)

B. Upholding Human Democracy through Formal Review

The Constitutional Court of the Republic of Indonesia was established through the third amendment to the 1945 Constitution, which came into effect on November 9, 2001. This amendment formed part of the broader constitutional reform undertaken after the fall of the New Order regime, aimed at building a more democratic and transparent governance system. The Court’s establishment was influenced by the political dynamics among political parties, the government, and civil society. Its creation was driven by the prevailing circumstances of the time, particularly the commitment to establishing a democratic state governed by the rule of law and upholding constitutional democracy. (Sulastri et al., 2025, p. 43)

Upholding the notion of democracy must be interpreted as Indonesia's carrying out the orderly lifetime of the country and state by using democratic legal rules. Indonesia will realize a democratic coexistence order based on law. This means that Indonesia is obliged to place democratic principles and legal principles as complementary synergies in the concept of symbiosis-mutualism in comprehending the presence of a democratic national legal order in this country. The presence of regulation, a subsystem of the public general set of laws, possesses a critical job in fostering a majority rule public overall set of laws in Indonesia. The legislative process, which is also democratically formulated, is one of the instruments that make up the national legal system. (Wardana & Bachtiar, 2022, p. 289)

In a democratic state, public participation is essential to the realization of the rule of law. Involvement of citizens in shaping governmental policies through the various stages of the legislative process constitutes a fundamental tenet of democracy, which holds that government is established by the people, serves the people, and acts in their best interests. Public participation functions as a mechanism for determining state policies that influence the nation's future course. (Soeprapto, 2024, p. 189)

Democracy in a constitutional state is inseparable from the protection of citizens' fundamental rights, including the right to participate in public discourse and policy-making processes. (Fuqoha et al., 2024, p. 175)

The association among democracy and human rights has been stated in numerous agreements such as "the Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Social, Economic and Cultural Rights, Solidarity Rights". (Surbakti, 1999, p. 4) According to J.B.J.M ten Berge, as quoted by Ridwan HR, one of the principles

of democracy is the assurance and defense of human rights. (HR, 2006, pp. 9–10)

This is likewise long-established in the Preamble and Body of the 1945 Constitution which explicitly states the principles of democracy and the gratitude and protection of human rights. (Rosana, 2016, p. 51) Apart from that, human rights are also considered a process of progress in a democratic system. (Riyanti, 2023, p. 26) Democracy can be a way to realize and strengthen human rights, apart from that Democracy can be realized if there are human rights.

On the one hand, the state's existence plays a role in accommodating political conceptions to achieve the best life in society. The state is expected to be present to form a just and prosperous society. (Kusumastuti, 2020, p. 38) If we put it like this, democracy and human rights are like two sides of the same coin, it cannot be only one side that advances, but both go hand in hand and complement each other. There has been a close correlation between human rights and democracy since the introduction of civil liberties in the nineteenth century. This concept basically states that citizens have an irreducible right to influence the political process or determine how power is exercised, including the establishment of laws. (Pradjasto, 2014, p. 1) The principle of democracy or popular dominion can assure communal contribution in the policymaking process so that every legal regulation that is implemented and enforced truly reflects the community's sense of justice. Laws and statutory guidelines may not be strongminded and implemented separately through and or only for the authorities' welfares because this is opposing to the principles of democracy. The law is not envisioned to guarantee the safety of only a few people in control, nevertheless, rather to guarantee the benefits of justice for everyone.

A good law must consider the formal aspects of law-making, and there is the substance in law-making that can be grounded in the people's wishes in the

form of participation and substantial (the element of the law). Both are like one breath in the life of legislation. From a constitutional perspective, the law-making must pay attention to these two things. Something "in spirit" already exists in Law No. 12/2011 concerning Law-Making. Article 1 number 2: *"Regulations that contain legally binding norms in general and are formed or determined by state institutions or authorized officials through procedures stipulated in statutory regulations."* The meaning of the phrase "through the procedures stipulated in the laws and regulations" is confirmation that the proper aspect is essential. The formality of forming a law is an essential condition for legal legitimacy. (*Uji Formil Dan Senja Kala Legislasi - Kompas.Id*, n.d.)

A legal norm subordinate to the 1945 Constitution of the Republic of Indonesia, when enacted or amended in an undemocratic manner and failing to fulfill the law's fundamental philosophical purpose, can undermine the constitution by violating its core values. According to Muhamad Ali Safa'at, there are four forms of constitutional value violations: first, contravening the principle of popular sovereignty by disregarding the role of the highest authority in creating legal instruments that serve as the foundation of state administration and determine the people's destiny. Second, rejecting the notion that laws constitute the primary legal product established through democratic processes. Third, undermining the role of legislative bodies the House of Representatives and the government as democratic institutions that must consistently heed, consider, and respond to the aspirations of the people they represent. Fourth, permitting the legislative process to become a contest for power and dominance at the expense of safeguarding the people's rights and ensuring justice. (Wardana et al., 2023, p. 74)

Thus, what if law-making in this context must be done democratically or procedurally? One of the constitutional processes to annul a problematic law is

to review it at the Constitutional Court. There are two kinds of reviewing in practice: “material review and formal review”. In judicial review, the object of review is low-content material. If the judge decides that the articles being reviewed are unconstitutional, then those articles are canceled.

Meanwhile, the formal review questions the progression of establishing laws. If the judge requests a formal review, the entire law becomes null and void. The choice of the Constitutional Court is close and compulsory, so it takes effect immediately without the need to be ratified again through a new law.

When analyzed further, reviewing the constitutionality of laws can be approved in two patterns: First, if the movement of the political progression in law-making is measured opposing to the Constitution. Second, uncertain substance or substantial of the sections, articles, and a piece of the law is in opposition to advanced standards. The two examples overhead bear various results. Assuming the proper audit is conceded, these regulations don't have restrictive lawful power. In most layman's rationale, because the dogmatic movement or cycle of framing the law has abused the essential standards and standards of the Constitution, the law can be abrogated through the Constitution Court. The Constitutional Court can only annul the contented of articles or paragraphs avowed to be in violation of the Constitution in the judicial review, if decided. (Palguna, 2018, p. 162)

The formal review is an evaluation of the progression of founding laws not in line with the Constitution. A formal review of the law is generally proposed if, in its making, it is assessed that there are procedural defects because it is not by the principles and procedures for forming statutory regulations. In developing the process of reviewing the formal law, Jimly Asshidiqie asked the Constitutional Court to prioritize formal review because it has sharper effectiveness in guarding, controlling, and complementing the

influence of the democratic system. The Constitutional Court is not just the 1945 Constitutional Court in text only. However, one must delve deeper into the spirit, ideas, and philosophy whose scope is more comprehensive than just the transcript of the Constitution, let alone laws. The Constitutional Court must see a formal review as a check on democracy in parliament. (*HeyLaw Indonesia | Your Trusted Legal Edutech Platform*, n.d.)

In the formal review of the law in contradiction of the 1945 Constitution, the measure is the formality of law-making, which includes: first, the institution or institutions that propose and form laws. Second, preparatory procedures up to the ratification of the law include plans in the National Legislation Program, the President's mandate, the stages specified in the DPR Standing Orders, and the DPR quorum, third is decision-making, namely agreeing by acclamation, voting, or not agreeing. The development of formal review in practice has led to the category of formal review not only covering the review of the progression of forming a law. In Article 5 of Law Number 12 of 2011 regarding Law-Making, principles are set to create good rules and regulations so that they are a tool for carrying out formal examinations, specifically simplicity of purpose, proper institutional or forming organ, suitability among the type and content material, executable, serviceability and effectiveness, transparency of formulation, and directness. The development of a formal review also includes a appraisal of other matters not included in the material review. This is controlled in Article 4 paragraph (3) of the Constitutional Court Regulation (PMK) Number 06/PMK/2005, which stipulates that "Formal review is a review of laws relating to the process of forming laws and other matters that do not include material review as intended. in paragraph (2)." (Nastiti & Subekti, 2007, p. 611)

However, there are three challenges faced in the formal reviewing process. First, the burden of proof that the applicant has with the DPR and the President

is unequal due to the applicant's limited access to obtain documents in forming laws. The public is often denied entry by the government or the DPR to obtain documents used while forming statutes, even though these documents are legally public. The formulation document is essential to support the arguments for the application. Meanwhile, in the process of proving at trial, the DPR and the Government also often need to submit complete evidence that can assist the Constitutional Court in exploratory cases, such as the minutes of the trial for the law-making being reviewed. In fact, in the treatise, we can explore the discussion from each faction, the dialogue between legislators and various parties, and how decisions are made in the deliberations of a bill. (*Tantangan Pengujian Proses Legislasi Di Mahkamah Konstitusi — STH Indonesia Jentera*, n.d.)

Second, the use of the touchstone is still limited. In addition to the Constitution, the touchstone used in the formal review is the law on establishing laws and regulations and the rules of procedure for the legislature-forming institutions. This is because the progression of creating laws is not regulated in detail in the 1945 Constitution. In practice, limited regulations cause the Constitutional Court to interpret the Constitution, which is also minor. Not infrequently, the argument of the applicant's petition requirements to be fixed by the Constitutional Court's assessment that the legislators have formed laws by the Constitution because they only see the procedures regulated only by the principles in the Constitution. The part of the Constitutional Court as protector of the Constitution demands that the Constitutional Court look at the Constitution broadly, beyond the written text. Using the Constitution as a touchstone cannot be limited to several articles but also makes constitutional values and basic principles a guide and reference for assessing norms and actions in forming bars. In addition, the 1945 Constitution

must be realized that it is not only "the supreme source of law" but also "the supreme source of ethics" in the lifetime of the country and state.

Third, the Constitutional Court prioritizes the value of expediency rather than the belief of justice and legal certainty in the context of three primary considerations from Gustav Radbruch (1932), which are often used in legal reasoning. (*Tantangan Pengujian Proses Legislasi Di Mahkamah Konstitusi — STH Indonesia Jentera*, n.d.) Furthermore, formal review as a safeguard of constitutional democracy risks becomes ineffective when constitutional decisions are not internalized within the broader judicial system. Institutional disharmony and non-compliance undermine the corrective function of formal review, necessitating structural mechanisms to ensure coherence within judicial power. (Rasyid et al., 2023)

KoDe Inisiatif evaluates that the Constitutional Court has up until this point focused on procedural perspectives in the conventional survey of regulations, for regardless of whether in settling on the majority DPR entire meeting, the conversation of the law being referred to start with an official letter or not, and in that frame of mind of examining the law field a formal review (RDPU) or not, not seeing a additional comprehensive authenticity, whether the most common way of shaping the law being referred to has been remembered for the correct technique or not.

Jimly Asshiddiqie asserts that the formal review of laws is a crucial issue in the democratic process because it serves as a control mechanism for the Constitutional Court. The choice of the Sacred Court in a conventional preliminary should focus on equity and established truth; a proper preliminary is a more moderate hypothesis with respect to checking on that is the more extra procedural survey of regulation. In the US, this proper survey has been created a control component for the popularity-based framework with the goal that the

most recent hypotheses arose, for instance, a semi-procedural survey which later turned into an extra-procedural survey.

The role of the Constitutional Court as the guardian of constitutional democracy presupposes not only its authority to review legislation but also its openness to public participation through accessible legal standing doctrines. As Arifin et al. argue, overly rigid interpretations of legal standing undermine the Court's capacity to address collective and structural constitutional harms, particularly those affecting vulnerable groups. Consequently, judicial review risks becoming procedurally exclusive and detached from its democratic purpose. (Arifin et al., 2025)

Formal review assumes a fundamental part in dropping the law-production that is not done fairly; one of the most significant decisions ever made by the Constitutional Court is the "Constitutional Court Decision No.91/PUU-XVIII/2020". This decision was made in the circumstances of a formal review of Law Number 11 of 2020 regarding Job Creation that was acquired through several candidates, including private workforces, students, lecturers, Refugee CARE, the West Sumatra Nagari Customary Density Coordinating Board, and the Minangkabau Natural Customary Court. The candidates contended that the most common way of recruiting the Work Creation Regulation disregarded Article 22A of the 1945 Constitution and the arrangements in Article 5 letters a, e, f, and g of the PPP Regulation connecting with the rule of straightforwardness.

The candidates set forward one of the sorts of proof of the infringement of the creation of the Gig Creation Regulation, in particular the presence of deviations to Article 1 point 16, Article 51, Article 53, Article 57, and Article 89A in Regulation Number 18 of 2017 regarding Security of Indonesian Traveler Laborers (UU PPMI). The progressions specified in the Gig Creation Regulation

go against the standard of receptiveness and disregarding open support. This contention depends on the method involved with thinking the law, which does exclude local gatherings that are straightforwardly impacted by changes to related articles. The local gathering contains the Indonesian Traveler Laborers Association (SBMI), the Transient Consideration association, and other transient specialists' associations. (Putusan MK No. 91/PUU-XVIII/2020, 61.)

As its creation was deemed to disregard formal arrangements, several parties submitted a conventional review to the Constitutional Court. Only one proposal, Constitutional Court Decision No. 91/PUU-XVIII/2020, stipulated that the Copyright Law Unconstitutional aspects remain in effect until amendments are made within two years from the announcement of the decision on November 25, 2021. (Lelisari et al., 2022, p. 558)

This decision was partially granted, addressing 12 requirements for both formal and material review. The choice underlines that public support in regulation making should be significant. There are three prerequisites for meaningful participation. To start with, the option to be perceived (right to be caught). Second, the option to have their viewpoint thought of (appropriate to be thought of). Third, the option to get clarification or reply for the assertion given (right to be made sense of). (Putusan MK No. 91/PUU-XVIII/2020 (Poin 3.17.8), 392-393.)

Through Decision No. 91/PUU-XVIII/2020, The Constitutional Court transformed public participation from a merely procedural formality into a constitutional requirement of meaningful participation, encompassing the right to be heard, considered, and explained. This decision reflects the Constitutional Court's role not only as a negative legislator but also as a guardian of democratic legislative procedures. (Nursetiawan & Ardhanariswari, 2022, p. 266)

The Constitutional Court underscored that public participation in the legislative process is a constitutional imperative, rooted in the principle of popular sovereignty as a foundational pillar of the state. Such participation is recognized as a constitutional right under Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution, which guarantee citizens the opportunity to engage in governance and national development. The Court affirmed that the legislative process must be transparent and inclusive to safeguard the principle of popular sovereignty, and that neglecting public involvement may render the process invalid. Consequently, meaningful participation is required at every stage of the legislative process, encompassing planning, drafting, and deliberation. (Kardiansyah & Mochtar, 2025, p. 168)

This decision which gave rise to the concept of Meaningful Participation or better known as "meaningful participation" in Indonesia, is a doctrine that developed at the South African Constitutional Court when handling the *Doctors for Life* case, which became known as the Meaningful Participation Review which was presented to look at the aspects the procedural aspects of forming laws and regulations are complied with through the legislature to provide opportunities for citizens to be more participatory in determining a legal policy. (Pratama, 2022, p. 139). Public participation is certainly part of the method of forming laws to understand and accommodate the true desires of the people, as well as a method of examining government policies or lawmakers. (Prastyo, 2022, p. 415)

The role of meaningful public participation in the law-making process is to foster genuine public awareness in implementing and complying with collectively established regulations. In essence, meaningful participation enables the realization of three essential elements: democracy, participation, and accountability. In its legal reasoning, the Constitutional Court interpreted

public participation as “the opportunity for the public to engage in the formation of laws, which is, in fact, a constitutional mandate that upholds the principle of popular sovereignty as one of the state’s main pillars, as enshrined in Article 1 paragraph (2) of the 1945 Constitution.” Moreover, public participation is guaranteed as a constitutional right under Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution, which grant citizens the opportunity to take part in governance and contribute to the development of society, the nation, and the state. (Hasibuan et al., 2025, p. 1683)

Increasing public participation in the context of law-making will make it easier for legislators because it can serve as a more accurate comparison to determine the substance of draft laws needed by the public so that it is hoped that high-quality statutes and regulations will be formed and able to reflect the aspirations of the community. With this participation, implementing laws oriented towards people's aspirations can run smoothly without causing chaos and be carried out effectively in society.

Since the beginning of the progression of founding laws, it is essential to contain the public in a bottom-up manner to produce regulations that favor justice and democracy. By applying a democratic approach, legislators accentuate the importance of openness and public participation in decisive legal policy. Through this participatory process, there is a high possibility of forming a consensus just for the state and its people, increasing public trust in the Government. With the realization of synergy between the community and the government, joint support that benefits all the people will emerge.

These findings carry significant policy implications. To prevent future democratic deficits, legislative and executive bodies must institutionalize minimum standards of meaningful public participation in law-making. Otherwise, legislation risks being annulled by the Constitutional Court. Formal

review thus functions not only as a judicial safeguard but also as a constitutional directive for improving the quality of democratic governance in Indonesia.

IV. CONCLUSIONS

First, regarding how the Constitutional Court upholds democracy through formal review, this study finds that the Court strengthens democratic governance by ensuring compliance with constitutional procedures, mandating meaningful public participation in law-making, and preventing executive dominance in the legislative process. Formal review thus functions as a constitutional safeguard that complements material review, demonstrating that democracy must be preserved not only in substance but also in process. Second, concerning the significance of Decision No. 91/PUU-XVIII/2020, this study concludes that the ruling represents a landmark judgment in Indonesian constitutional law. For the first time, the Court declared a statute “conditionally unconstitutional” due to procedural flaws, thereby affirming that the absence of civic involvement constitutes a constitutional defect. This jurisprudence reflects a paradigm shift in the role of judicial review, embedding participatory democracy into the core of constitutional interpretation.

Third, the scholarly contribution of this study lies in both theoretical and normative dimensions. Theoretically, it strengthens the concept of meaningful participation as a foundation of procedural democracy. Normatively, it proposes a three-dimensional framework of formal review procedural compliance, public participation, and prevention of executive dominance as a safeguard against democratic backsliding. Finally, this study also carries policy implications and opens avenues for further research. Legislative and executive institutions should codify minimum standards for public participation in law-

making to ensure constitutional validity. Future research may explore how subsequent Constitutional Court decisions refine the standard of “meaningful participation” and how comparative experiences can inform the further development of Indonesia’s constitutional democracy.

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