



Comparative Analysis of Judicial Authority in Upholding Constitutionality: Indonesia's Constitutional Court and us Supreme Court

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ABSTRACT

In democratic governance, the Indonesian Constitutional Court and the United States Supreme Court serve as constitutional guardians, exercising judicial review within their respective legal traditions to uphold checks and balances and ensure the supremacy of the constitution. This study aims to compare the roles of the Indonesian Constitutional Court and the United States Supreme Court in implementing the principle of checks and balances through the judicial review mechanism. Using a normative juridical approach and comparative law methods, this study examines the institutional structure, scope of authority, and constitutional impact of the decisions of both institutions. The primary data sources include the constitutions of each country, specifically Article 24C of the 1945 Constitution and Article III of the United States Constitution, as well as Law Number 24 of 2003 concerning the Constitutional Court (in conjunction with Law Number 8 of 2011). The study shows that the United States Supreme Court has broader interpretive authority due to its common law tradition and the power of precedent, while the Indonesian Constitutional Court has limited authority within the context of a more normative civil law system. Differences in legal systems and institutional design affect the effectiveness of their oversight function.

A. INTRODUCTION

In a modern democratic governance system, the principle of checks and balances, or mutual oversight and balancing among branches of power, is a fundamental pillar to prevent excessive concentration of power in a single state entity. This principle not only promotes accountability and transparency but also safeguards the supremacy of law and the constitution as the highest norm. Within this framework, the judiciary holds a strategic position as the guardian of the constitution, tasked with limiting and reviewing the powers of the executive and legislative branches through the mechanism of judicial review. Judicial review serves as an essential tool to ensure that laws and governmental actions remain consistent with constitutional principles, thereby protecting fundamental rights and preserving democratic order. Two significant examples of constitutional guardian institutions are the Constitutional Court of the Republic of Indonesia and the Supreme Court of the United States, both of which illustrate how the principle of checks and balances is implemented in different legal traditions, with the former grounded in civil law and constitutional reform, and the latter shaped by common law precedent and a long-standing judicial tradition.

The main legal problem arises from the fundamental differences in how the United States Supreme Court and the Indonesian Constitutional Court exercise judicial review. The Supreme Court of the United States has exercised the function of judicial review since the landmark decision of *Marbury v. Madison*¹ which made it the highest and most influential judicial body in interpreting the United States Constitution.² With a common law legal system and the principle of binding precedent, the decisions of the U.S. Supreme Court hold significant binding authority and serve as a distinct source of law.³ On the other hand, the Indonesian Constitutional Court is a result of amendments to the 1945 Constitution, is a product of constitutional reform aimed at strengthening oversight mechanisms over state power.⁴ The Indonesian Constitutional Court operates under a civil law legal system, and its authority is expressly stipulated in the constitution. The authority of the Constitutional Court is explicitly regulated in Article 24C of the 1945 Constitution and Law Number 24 of 2003 (as amended by Law Number 8 of 2011), reflecting the civil law tradition that requires codified norms. This divergence creates a legal

¹ Edward S. Corwin, "Marbury v. Madison and the Doctrine of Judicial Review," *Michigan Law Review* 12, no. 7 (1914): 547.

² Kamil Strzępek, "Constitutional Review in Poland. On the 220th Anniversary of the Case of *Marbury v. Madison*," *Przegląd Prawa Konstytucyjnego* 6, no. 76 (2023): 358.

³ Martin Oyhanarte, "Supreme Court Appointments in the U.S. and Argentina," *Washington University Global Studies Law Review* 20, no. 4 (2021): 706.

⁴ Ahmad Wijaya and Nasran Nasran, "Comparison of Judicial Review: A Critical Approach to the Model in Several Countries," *Jurnal Legalitas* 14, no. 2 (2021): 97.

issue regarding the source, scope, and legitimacy of judicial review in both jurisdictions: whether judicial authority to annul legislation derives from constitutional interpretation by precedent (as in the United States) or from an expressly granted constitutional mandate (as in Indonesia), and how this affects the balance of power between the judiciary and the legislature.

In Indonesia, the normative basis of the Constitutional Court is regulated in Article 24 C of the 1945 Constitution and detailed in Law Number 24 of 2003 concerning the Constitutional Court as enacted by Law Number 8 of 2011. The provision emphasizes that the Constitutional Court is to test the law, however, in practice the effectiveness of the authority is still limited in biding power to political influence so that the decision model is contrary to the principles of constitutionality and democracy in policy formation.⁵ Meanwhile, in the United States, Article III of the Constitution provides the basis for judicial power that includes the authority for judicial review. The U.S. Supreme Court's decision has the precedent-setting power to bind and carry broader legal and political consequences.⁶ The limitations of the literature indicate a need to systematically and comprehensively examine how the Constitutional Court of Indonesia and the Supreme Court of the United States perform their institutional roles in maintaining the balance of state power. This research is expected to address the existing limitations by presenting a functional and structural analysis through a comparative legal approach.

Several previous studies, such as Adams,⁷ Nurambiya and Tiopan,⁸ and Nggilu et al.⁹ discussed the role of the Constitutional Court and the Supreme Court in maintaining constitutionality, both at the national and comparative levels. According to Turpyn and Mubarok¹⁰ (most studies emphasize the historical aspect or normative authority, and do not highlight in depth how the two institutions functionally apply the principle of checks and balances in the context of their respective state systems. Previous studies, such as those by

⁵ Diyar Ginanjar Andiraharja, "Judicial Review oleh Mahkamah Konstitusi Sebagai Fungsi Ajudikasi Konstitusional di Indonesia," *Khazanah Hukum* 3, no. 2 (2021): 77.

⁶ C. Nasir, "Judicial Review di Amerika Serikat, Jerman, dan Indonesia," *Jurnal Hukum Progresif* 8, no. 1 (2020): 69.

⁷ Todd B. Adams, "Reintegrating the Marshall Trilogy into US Constitutional Law: How the Court Failed to Protect a Persecuted Minority for Facially Neutral Reasons," *Dartmouth Law Journal* 19 (2021): 13.

⁸ Muhammad Abdul Aziz Nurambiya and Demson Tiopan, "Harmonisasi antara Lembaga Yudikatif Mahkamah Konstitusi dan Mahkamah Agung dalam Dinamika Hukum Tata Negara: Analisis Terkait Keseimbangan Kekuasaan di Indonesia," *UNES Law Review* 6, no. 2 (2023): 5208.

⁹ Nggilu, Novendri, Mohamad Rivaldi Moha, Muhammad Ridho Sinaga, and Adelia Rachmaniar. "Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 289.

¹⁰ Juan Malik Frederick Turpyn and Lutfi Mubarok, "Analisis Yuridis Konstitusional Dua Dekade DPD RI: Tinjauan Hukum Tata Negara terhadap Penguatan Kewenangan dan Penyerapan Aspirasi," *SUPREMASI: Jurnal Hukum* 7, no. 2 (2025): 275.

Adhani¹¹ and Roring,¹² have compared constitutional judicial institutions, particularly the Indonesian Constitutional Court.

Mahmuda,¹³ Febriansyah et al.,¹⁴ and Mendy and Sarr¹⁵ demonstrate that the government system, legal traditions, and the dynamics of power relations among state institutions play a decisive role in shaping the effectiveness of Indonesia's constitutional oversight function. Their studies underline that the institutional design of a state cannot be separated from its historical and political context, which ultimately determines how checks and balances are implemented in practice. In Indonesia, for instance, the Constitutional Court's ability to enforce constitutional supremacy is not only determined by the textual mandate of the 1945 Constitution but also by the broader political culture, the distribution of power among branches of government, and the responsiveness of other state institutions to judicial authority. Thohir and Sukriono¹⁶ further emphasize that the Indonesian Constitutional Court, as part of a presidential system rooted in the civil law tradition, tends to operate within a more rigid and codified framework. The Court's authority is carefully structured and bound by explicit constitutional norms, leaving limited room for judicial creativity or expansive interpretation. This condition, while ensuring legal certainty, may also restrict the Court's flexibility in responding to complex constitutional disputes, particularly those that require broader considerations of justice and democratic values beyond written provisions.

In contrast, Thym's¹⁷ findings highlight that institutional configuration and legal framework differ significantly across jurisdictions, shaping both the character and the effectiveness of judicial institutions. For example, in common

¹¹ Hani Adhani, "Mahkamah Konstitusi Indonesia di Era Digital: Upaya Menegakan Konstitusi, Keadilan Substantif dan Budaya Sadar Berkonstitusi," *Jurnal Penegakan Hukum dan Keadilan* 2, no. 2 (2021): 139.

¹² Edward Benedictus Roring, "Dekonstruksi Marwah Mahkamah Konstitusi Terkait Krisis Legitimasi Tafsir Etika Konstitusional," *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 2, no. 2 (2025): 158.

¹³ Irma Mahmuda, "Constitution in Power Dynamics: An Analysis of the Role and Implications in Indonesia," *Journal of Law and Humanity Studies* 1, no. 1 (2024): 7.

¹⁴ Muhammad Fadhel Febriansyah, Muhammad Aldiansyah, Muhammad Zaky Nugraha, Andrea Tanjung, and Sudirman Sitepu. "Efektivitas Sistem Peradilan Pidana Dalam Menangani Kasus Korupsi Di Negara Indonesia." *Jurnal Kajian Hukum Dan Kebijakan Publik* E-ISSN: 3031-8882 2, no. 2 (2025): 1020.

¹⁵ Ousu Mendy and Ebrima Sarr, "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia," *Journal of Indonesian Constitutional Law* 2, no. 1 (2025): 14.

¹⁶ Moh Thohir and Didik Sukriono, "Implementation Authority of the Constitutional Court in the Indonesian Constitutional Law System," *International Journal of Business, Law, and Education* 4, no. 2 (2023): 1498.

¹⁷ Daniel Thym, "Institutional and Constitutional Framework," in *Research Handbook on EU Migration and Asylum Law*, 65 (Cheltenham: Edward Elgar Publishing, 2022).

law systems such as the United States, the judiciary enjoys wider interpretive latitude, which allows the Supreme Court to play a more dynamic role in shaping constitutional norms and adapting them to evolving social and political contexts. This comparative perspective underscores that judicial effectiveness cannot be assessed solely on the basis of formal authority, but must also consider how institutional settings, legal traditions, and the balance of power between branches interact to determine the judiciary's actual capacity to perform constitutional oversight.

Furthermore, this research provides a critical evaluation of the influence of constitutional decisions made by the Indonesian Constitutional Court and the United States Supreme Court. It is shown here that although both perform the function of judicial review, there are significant differences in the binding power and political impact of their decisions. This has not yet been the main focus in previous studies, which tend to be limited to normative-historical research. Furthermore, this research also offers ideas for institutional reform in Indonesia, particularly in strengthening the binding power of Constitutional Court decisions, enhancing judicial independence, and the need for institutionalizing the principle of constitutional precedent. Therefore, this study is not only descriptive-comparative but also constructive by providing practical recommendations to enhance the role of the Constitutional Court as a more effective and authoritative guardian of the constitution within the Indonesian democratic system.

By considering the constitutional context, the dynamics of legal politics, and the normative frameworks applicable in each country, this study aims to demonstrate how differences in governance systems and judicial structures affect the effectiveness of judicial review in maintaining the principle of checks and balances. The purpose of this study is to critically compare the roles of the Indonesian Constitutional Court and the United States Supreme Court in implementing the principle of checks and balances, and to evaluate the extent to which their institutional strength, judicial authority, and the influence of their judicial decisions impact the constitutional systems of each country.

B. RESEARCH METHODS

This research employs a normative juridical approach with a comparative legal method to thoroughly examine the roles of the Indonesian Constitutional Court and the United States Supreme Court in upholding the principle of checks and balances within their respective constitutional systems.¹⁸ The normative juridical approach is considered appropriate because

¹⁸ Geofani Milthree Saragih, "A Judges' Role in Pursuing Justice: Oliver Wendell Holmes' Sociological Jurisprudence Perspective," *International Journal of Law Society Services* 3, no. 2 (2024): 63.

the main object of analysis in this study is the body of legal norms, doctrines, and constitutional provisions that determine the authority and supervisory functions of these two judicial institutions.¹⁹ By focusing on the normative dimension, the research seeks to analyze not only the textual foundations of the law but also how legal principles are articulated and operationalized within each constitutional framework.

The use of a comparative legal method is essential in order to identify the similarities and differences between the Indonesian Constitutional Court and the United States Supreme Court in terms of their structure, jurisdiction, and institutional authority. Through this method, the research does not merely juxtapose two legal systems but rather critically examines how each institution interprets and enforces the principle of checks and balances and how such mechanisms contribute to the consolidation of constitutional democracy in their respective contexts. Comparative analysis also allows for a deeper understanding of the extent to which historical, political, and cultural factors shape the design and performance of judicial institutions.

The data employed in this research is drawn from both primary and secondary legal materials. Primary legal materials include the constitutions of Indonesia and the United States, statutory regulations, such as Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011, landmark judicial decisions from both the Indonesian Constitutional Court and the United States Supreme Court, and the constitutional foundation of the Indonesian Constitutional Court contained in Article 24C of the 1945 Constitution of the Republic of Indonesia, which was introduced through the third amendment in 2001. These materials serve as the principal sources for understanding the normative mandates and institutional powers vested in both courts. Secondary legal materials include scholarly works, legal literature, scientific journals, textbooks, and previous studies that address the broader theme of judicial power and constitutional review, providing both theoretical insights and critical perspectives that enrich the analysis.

The analysis method applied is qualitative, which involves describing, interpreting, and systematically comparing the data collected.²⁰ By employing a qualitative interpretative framework, the research aims to extract substantive meaning from legal texts and judicial practices, and then highlight the key convergences and divergences between the two courts. In addition, this study also adopts a conceptual approach that explores the principle of checks and

¹⁹ Geofani Milthree Saragih, Mirza Nasution, and Eka Nam Sihombing, "Judicial Review oleh Mahkamah Konstitusi: Judicial Activism Vs. Judicial Restraint dalam Perspektif Kebebasan Kehakiman." *Jurnal Konstitusi* 22, no. 1 (2025): 43.

²⁰ Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia." *Jurnal Konstitusi* 20, no. 2 (2023): 284.

balances through the lens of constitutional theory and the doctrine of separation of powers. This conceptual foundation provides the necessary analytical tools to evaluate the judiciary's role not only as a legal actor but also as a constitutional guardian tasked with ensuring that no branch of government exceeds its lawful authority.

Ultimately, this methodological design is expected to generate a comprehensive and critical understanding of how both the Indonesian Constitutional Court and the United States Supreme Court contribute to maintaining constitutional supremacy and democratic accountability. Beyond descriptive comparison, the study also aims to formulate normative recommendations for strengthening the institutional capacity and authority of the Indonesian Constitutional Court, so that it may more effectively perform its role as a guardian of the constitution within the evolving framework of Indonesia's constitutional democracy.

C. DISCUSSION

1. Constitutional Basis and Historical Formation of the Indonesian Constitutional Court and the United States Supreme Court

The establishment of constitutional judicial institutions is an important element in the framework of a modern rule of law state. In Indonesia, the Constitutional Court was established after the 1998 reform as a response to the need for a more democratic and transparent constitutional system, as well as to uphold the principle of constitutional supremacy.²¹ The constitutional basis of the Indonesian Constitutional Court is contained in Article 24C of the 1945 Constitution of the Republic of Indonesia, resulting from the third amendment in 2001. Previously, Indonesia did not have a special judicial institution authorized to test laws against the constitution.²² The testing of laws was conducted in a limited manner by the Supreme Court through the mechanism of judicial review against regulations under the law. In this context, the establishment of the Constitutional Court marks the reformulation of Indonesia's judicial power structure and represents the institutionalization of the spirit of checks and balances in a previously centralistic and executive-centric presidential system.

The Indonesian Constitutional Court was established through Law Number 24 of 2003 on the Constitutional Court (which was later amended by Law Number 8 of 2011), with five main authorities: reviewing laws against the

²¹ Diyar Ginanjar Andiraharja, "Judicial Review oleh Mahkamah Konstitusi Sebagai Fungsi Ajudikasi Konstitusional di Indonesia," *Khazanah Hukum* 3, no. 2 (2021): 78.

²² Kusuma, Anggita Febby, Aura Mutia Rahma, Faradilla Kurnia Asyifa, and Kayla Devana. "Pro dan Kontra Mengenai Pengawasan Mahkamah Konstitusi oleh Komisi Yudisial." *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 64.

1945 Constitution, adjudicating disputes of authority between state institutions, deciding on the dissolution of political parties, resolving election result disputes, and providing opinions in the process of the dismissal of the president and/or vice president. The establishment of the Constitutional Court was not only a product of legal reform but also a symbol of the desire to create an institution that functions as the guardian of the constitution and protector of citizens' constitutional rights, in line with the growing awareness of the supremacy of the constitution as the highest legal norm.²³

The Supreme Court of the United States has a long history and holds a central place as one of the oldest judicial institutions in the modern government structure, playing a crucial role in establishing constitutional principles and overseeing state power.²⁴ Established under Article III of the United States Constitution, adopted in 1787, the Supreme Court plays a central role in interpreting the American Constitution and ensuring that all branches of government adhere to the principle of constitutionality. Although the U.S. does not explicitly mention its judicial review authority, the landmark precedent of *Marbury v. Madison* (1803), decided by Chief Justice John Marshall, firmly established that the Supreme Court has the authority to invalidate laws that violate the Constitution.^{25,26} Since then, judicial review has consistently been a key instrument in upholding the principle of checks and balances in the United States, particularly in controlling the excesses of power of the executive and legislative branches.

Unlike the Constitutional Court of Indonesia, which has limited authority in certain areas, the Supreme Court of the United States has broad and flexible jurisdiction. In addition to being the highest court in the federal system that can adjudicate various civil and criminal cases, the U.S. Supreme Court also serves as the final authority in all matters concerning constitutional interpretation.²⁷ The power of the U.S. Supreme Court does not lie in the number of formal authorities, but rather in the moral and jurisprudential authority built through monumental decisions that have changed the course of the American legal and political system, such as *Brown v. Board of Education*, *Roe v. Wade*, and *Obergefell v. Hodges*.²⁸

²³ Fauzil Azmi, "Disharmoni Putusan Mahkamah Konstitusi dan Mahkamah Agung bagi Calon Anggota DPD RI," *IJTIHAD* 38, no. 1 (2022): 11.

²⁴ Emily Nicolella, "Evolving Privacy Protections for Emerging Machine Learning Data Under *Carpenter v. United States*," *FIU Law Review* 17, no. 1 (2023): 458.

²⁵ Shawn Gunnarson, "Marbury V. Madison: A Case Study of Judicial Review," *Sigma: Journal of Political and International Studies* 8, no.1 (1990): 29.

²⁶ Matthew P. Harrington, "Saying What the Law Is: *Marbury v. Madison*'s Expansion of the Idea of Judicial Review," *Judicial Review* 16, no. 2 (2011): 148.

²⁷ William Baude, "Reflections of a Supreme Court Commissioner," *SSRN Electronic Journal* 1, no. 106 (2021): 6.

²⁸ Tracy Turner, "Protecting the Anti-Oppression Legacy of *Obergefell* after *Dobbs*," *St. John's Law Review* 98 (2024): 667.

The fundamental difference between the Constitutional Court of Indonesia and the Supreme Court of the United States is also reflected in the structure of their legal systems.²⁹ Indonesia adheres to a continental law system (civil law) that tends to place written law as the primary source, while the United States uses a common law system that emphasizes precedent and judicial interpretation. Therefore, the decisions of the US Supreme Court are nationally binding as jurisprudential law (binding precedent), whereas the decisions of the Indonesian Constitutional Court function more as final and binding on the tested norms, without creating precedents that must be followed in other cases.

Table 1. Constitutional Court of Indonesia and the Supreme Court of the United States

Aspect	Constitutional Court of Indonesia	Supreme Court of the United States
Constitutional Basis	Third Amendment of the 1945 Constitution	Article III of the U.S. Constitution
Establishment Year	2003	1789
System Type	Civil Law System	Common Law System
Primary Function	Constitutional review, election dispute resolution, and impeachment trials	Final appellate court, constitutional interpretation
Binding Nature of Decisions	Decisions are binding but not precedent-based	Decisions are binding and set precedent
Judicial Review Scope	Review of laws against the Constitution	Review of both statutes and executive actions
Number of Judges	9 Constitutional Justices	9 Justices
Appointment Process	Nominated by the President, the House of Representatives, and the Supreme Court; appointed by the President	Nominated by the President, confirmed by the Senate
Tenure	5-year term, renewable	Lifetime appointment
Role in Checks and Balances	Acts as a constitutional guardian within a limited mandate	Acts as a powerful check on legislative and executive branches

²⁹ Beni Kharisma Arrasuli and Yumni Nadhilah, "Praktik Judicial Activism dalam Putusan Mahkamah Konstitusi Dikaitkan dengan Prinsip Pemisahan Kekuasaan," *UNES Law Review* 6, no. 1 (2023): 757.

Table 1 shows that the Indonesian Constitutional Court and the United States Supreme Court were established in very different historical contexts and legal systems. The Supreme Court of the United States has been in existence since 1789, based on the US federal constitution, which adheres to the common law system, with extensive judicial powers, including conducting judicial review of legislative regulations and executive actions. Meanwhile, the Indonesian Constitutional Court was established post-reform through amendments to the 1945 Constitution in 2003, in response to the need to reorganize the state system and ensure constitutional protection within a more codified civil law system framework.

From the aspect of authority, the US Supreme Court has the power of judicial review that is not explicitly written in the Constitution but developed through judicial precedents, particularly in the case of *Marbury v. Madison* (1803), which affirmed the Supreme Court's authority to annul laws that are contrary to the Constitution.³⁰ On the other hand, the authority of the Indonesian Constitutional Court is explicitly written in Article 24C of the 1945 Constitution, including testing laws against the Constitution, resolving disputes of authority between state institutions, dissolving political parties, and adjudicating presidential impeachment cases. This shows that the Indonesian Constitutional Court has a more institutional mandate and is limited to the constitutional realm only.

In terms of institutional structure and the appointment of judges, a striking difference is evident in the selection mechanism and the number of judges. The US Supreme Court consists of nine justices who are appointed for life by the President with the approval of the Senate, a political mechanism that allows justices to have a long-term influence on the direction of national legal policy.³¹ Meanwhile, the Indonesian Constitutional Court consists of nine justices who are proportionally selected by three state institutions: the President, the House of Representatives, and the Supreme Court, with three justices from each, serving a five-year term that can be extended for one additional term. This mechanism is designed to ensure representation and balance of power among the branches of state power.³²

Next, from the perspective of legal doctrine, the US Supreme Court plays a significant role in shaping legal precedents through the interpretation of the constitution and laws, which then become permanent references in the

³⁰ Benjamin Alemparte, "Towards a Theory of Neoliberal Constitutionalism: Addressing Chile's First Constitution-Making Laboratory," *Global Constitutionalism* 11, no. 1 (2022): 95.

³¹ Tracy Turner, "Protecting the Anti-Oppression Legacy of Obergefell after Dobbs," *St. John's Law Review* 98 (2024): 667.

³² Muhammad Iqbal Samsudin, "A Comparison of Judicial Review in Indonesian Constitutional Court and French Constitutional Council," *Indonesian Comparative Law Review* 5, no. 1 (2022): 35.

common law system.³³ In contrast, the Indonesian Constitutional Court does not formally create binding legal precedents, because in the civil law system, judicial decisions are not the primary source of law, although in practice, the Constitutional Court's rulings are often referenced by other courts and lawmakers.

From the aspect of influence on the political and governmental system, the US Supreme Court has significant power in correcting government policies, even becoming the main arena in ideological political battles, such as in issues of abortion, minority rights, or the right to bear arms.³⁴ This is different from Indonesia's Constitutional Court, which positions itself more as a guardian of the constitution within formalistic boundaries, although it still has a significant impact in upholding citizens' constitutional rights and controlling legislative products.³⁵

Finally, in terms of stability and consistency of decisions, the US Supreme Court is relatively consistent due to the influence of jurisprudence and the long tenure of judges. In contrast, the Indonesian Constitutional Court is more dynamic due to the limited tenure and the possibility of quicker judge replacements, making consistency in decisions a challenge in itself.

The comparison shows that although both institutions perform judicial review functions and are important pillars in the principle of checks and balances, their character, structure, and effectiveness are greatly influenced by the constitutional context, legal system, and political culture of each country³⁶. This emphasizes that there is no single ideal model for implementing the principle of checks and balances, but both provide important lessons for strengthening constitutional democracy in other countries.

Thus, although both serve as guardians of the constitution, the context of their birth, constitutional foundations, and legal practices of each institution differ significantly. The Indonesian Constitutional Court emerged as an instrument of constitutional reform in a transitional democracy that seeks to strengthen the rule of law and limit power. On the other hand, the US Supreme Court has grown as the third pillar of state power, autonomous and significantly influential in shaping the direction of legal development and

³³ Titin Apriani, "The Concept of Compensation in Unlawful Acts and Defaults and Its Regulatory System in the Civil Code," *Jurnal Ganec Swara* 5, no. 1 (2020): 946.

³⁴ Samuel Chukwuma Ndema, "Federalism and Intergovernmental Relations: A Case for The American-Type Federal System in Nigeria," *International Journal of Social Sciences and Humanities* 11, no. 1 (2024): 267.

³⁵ Tareq Al-Billeh, "Freedom of Religious Belief and the Practice of Religious Rites According to The Jordanian Legislation: Difficult Balance Between International and Regional Requirements as Well as The National Legislative Controls," *Balkan Social Science Review*, no. 20 (2022): 124.

³⁶ Tanto Lailam and M. Lutfi Chakim, "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 158.

constitutional values in America. Understanding these differences is a crucial foundation for conducting comparative studies to assess the effectiveness of each institution in upholding the principle of checks and balances.

2. The Authority of Judicial Review and Its Challenges in the Check and Balance System

The authority of judicial review is a key pillar in maintaining the principle of checks and balances in a democratic constitutional system.³⁷ Through this authority, the judiciary is granted the power to test the constitutionality of legislative and executive actions to ensure that every legal product and public policy does not deviate from constitutional values.³⁸ In the context of a comparison between the Constitutional Court of the Republic of Indonesia and the Supreme Court of the United States, the function of judicial review shows fundamental differences in terms of the origin of authority, institutional structure, and its impact on the overall configuration of state power.

The Supreme Court of the United States obtained the authority of judicial review through judicial precedent, first established in the legendary decision of *Marbury v. Madison* (1803).³⁹ This ruling established that the court has the authority to declare a law that is contrary to the constitution as invalid. With the common law model, Supreme Court decisions become binding precedents, which then solidify the Court's position as the guardian of the constitution and a key factor in the system of checks and balances. In practice, the United States Supreme Court not only performs a legal function but also plays a role as a socio-political actor in various constitutional issues such as racial segregation (*Brown v. Board of Education*), the right to privacy (*Roe v. Wade*), and same-sex marriage (*Obergefell v. Hodges*).⁴⁰

On the other hand, the Constitutional Court of Indonesia explicitly obtained the authority of judicial review through the provisions of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In that provision, the Constitutional Court is mandated to review laws against the constitution, but with a scope limited to formal legal norms (laws in the formal sense). Nevertheless, this authority is strategic in upholding the principle of

³⁷ Vicente F Benítez-R, Fabio Enrique Pulido-Ortiz, and Pablo Rivas-Robledo, "Defining judicial activism: Judicial Activism as the (Im)proper Use of Judicial Powers and the Colombian Experience of Judicial Review Of Constitutional Amendments," *Penultimate Draft*, No. 1 (2021): 7.

³⁸ J. M. Nerney, *"The Constitutionality of Abortion"* (Thesis, Government Pre-Law Program, Liberty University, Virginia, 2020).

³⁹ Mexsasai Indra, Geofani Milthree Saragih, and Tito Handoko, "Pseudo-Judicial Review for the Dispute Over the Result of the Regional Head Election in Indonesia," *Lentera Hukum* 10, no. 1 (2023): 124.

⁴⁰ Saragih, Nasution, and Sihombing, "Judicial Review oleh Mahkamah Konstitusi: Judicial Activism vs. Judicial Restraint dalam Perspektif Kebebasan Kehakiman," *Jurnal Konstitusi* 22, no. 1, (2025): 47.

constitutional supremacy.⁴¹ Several decisions by the Constitutional Court have proven to have a significant impact on reconstructing national legal norms that are considered inconsistent with the spirit of the constitution, such as the review of the revised KPK Law, the Job Creation Law, and problematic articles in the Criminal Code and the ITE Law. However, because the Indonesian legal system adheres to the civil law tradition, the Constitutional Court's decisions do not have precedent power as in the common law system in the United States.

The fundamental differences in the characteristics of judicial review have direct consequences on the effectiveness of the check and balances principle implemented by each institution. The Supreme Court of the United States, with broader authority and strong institutional autonomy, is able to act as a constitutional actor that not only controls the legislative and executive branches but also substantially shapes the direction of national policy. The absence of term limits for judges and the power of decisions as precedents give the Court a very strategic position in the national legal-political landscape of the United States.

On the other hand, the Indonesian Constitutional Court operates within a more limited scope. Although independent, the Constitutional Court does not have the authority to review regulations under the law, and cannot annul government actions directly except in the context of law testing and inter-institutional authority disputes.⁴² On the other hand, the Constitutional Court also faces challenges in maintaining its independence from political intervention, especially in the context of the judge selection process involving the executive and legislative branches.⁴³

However, the existence of judicial review in Indonesia continues to make an important contribution in correcting legal products that are contrary to the 1945 Constitution and strengthening the position of the public in accessing constitutional justice. In many cases, the Constitutional Court has become a medium for the democratization of law, where civil society can challenge laws and assert their rights within the constitutional framework.

From the presentation, it can be concluded that although the Supreme Court of the United States and the Constitutional Court of Indonesia both perform the function of judicial review, they operate within very different legal systems and constitutional structures. On one hand, the US Supreme Court

⁴¹ Pandit Chanrochanakit, "Deformed Constitutionalism: Thai-Style Judicialization and the Problem of Parliamentary Supremacy," *Political Science and Public Administration Journal* 1, no.2 (2021): 9.

⁴² Soojin Kong, "The two modes of foreign engagement by the Constitutional Court of Korea," *Asian Journal of Comparative Law* 16, no. 2 (2021): 347.

⁴³ Lucky Mathebe, "The Constitutional Court of South Africa: Thoughts on Its 25-Year-Long Legacy of Judicial Activism," *Journal of Asian and African Studies* 56, no. 1 (2021): 25.

plays a more dominant role in balancing state power and interpreting the constitution progressively. On the other hand, the Indonesian Constitutional Court carries out a more normative task, yet remains significant in upholding the constitutionality of laws and strengthening procedural democracy. Both models demonstrate the importance of judicial review as a mechanism for power control, while also reflecting the legal and political dynamics in each country.

In the modern democratic system, the existence of constitutional guardian institutions such as the Indonesian Constitutional Court and the United States Supreme Court not only serves as interpreters of the constitution but also as the last bastion in upholding the rule of law and balancing power among state institutions.⁴⁴ However, this strategic role is not without various challenges, both internal to the institution and external, such as political pressure, power intervention, and the increasing complexity of legal and social issues in the era of globalization and digitalization. Therefore, analyzing the challenges faced and formulating recommendations for strengthening this institution is crucial to ensure their effectiveness and independence in upholding the supremacy of the constitution.

One of the main challenges faced by the Indonesian Constitutional Court is the potential politicization in the judge selection process. With a recruitment mechanism involving the executive, legislative, and judicial institutions (each appointing three constitutional judges), there are gaps for political intervention and conflicts of interest that can affect the independence of the institution.⁴⁵ In some cases, the public has criticized indications of judges' bias towards certain political forces, especially in strategic cases involving national interests or political elites. This is exacerbated by the lack of transparency in the selection process, as well as the minimal mechanisms for accountability and evaluation of the constitutional judges' performance during their tenure.

Moreover, the scope of authority of the Indonesian Constitutional Court is still limited. The Constitutional Court only has the authority to review laws against the Constitution, while legislation below the law falls under the jurisdiction of the Supreme Court.⁴⁶ This division often creates legal vacuums when the public faces detrimental regulations but lacks direct access to the

⁴⁴ Mexsasai Indra, Geofani Milthree Saragih, and Dessy Artina, "The Idea of the Bottom-Up Paradigm to Top-Down in Regional Arrangement in Indonesia," *Jurnal Hukum* 40, no. 2 (2024): 27.

⁴⁵ Teddy Asmara, "Legal Economic Culture in the Context Of Judges Settling Criminal Cases in Courts: What Can We Learn from Indonesia?," *Pakistan Journal of Criminology* 16, no. 1 (2024): 699.

⁴⁶ Rangga Hotman Hasibuan and Agustom Adhika Abraham, "Mahkamah Konstitusi Republik Indonesia dan Conseil Constitutionnel Republik Perancis: Sebuah Perbandingan," *Sovereignty: Jurnal Demokrasi dan Ketahanan Nasional* 2, no. 4 (2023): 336.

MK due to its limited authority. On the other hand, although the US Supreme Court has broad powers, challenges arise in the form of the politicization of the judicial appointment process by the President and Senate, which could potentially lead to a long-term shift in the ideological orientation of the institution, especially when the majority of justices come from a specific political spectrum.

Another challenge that arises is the gap between constitutional interpretation and the continuously evolving social dynamics. Contemporary issues such as digital rights, personal data protection, climate crisis, and the rights of vulnerable groups require an adaptive interpretation of the constitution while still adhering to the fundamental principles of the rule of law. In this context, constitutional guardians are faced with the dilemma of maintaining classical doctrine while addressing the needs of progressive law. The Indonesian Constitutional Court, for example, is still trapped in a rigid normative approach, while the US Supreme Court is more flexible in forming precedents, but is often deemed inconsistent on several issues, such as abortion rights and gun regulation.

3. Strategic Recommendation for Enhancing the Role of the Constitutional Court

To address these challenges, several concrete recommendations can be made to strengthen constitutional guardian institutions, particularly within the Indonesian context. One of the most urgent reforms is related to the system of selection and evaluation of constitutional judges, which must be designed to be more transparent, professional, and participatory in nature. The current practice, which still leaves room for political considerations and institutional bargaining, often undermines the credibility and independence of the judiciary. Therefore, the appointment of judges should be firmly grounded in merit-based principles, with emphasis on demonstrated integrity, proven track records, and strong academic as well as professional capacity, rather than being shaped predominantly by political affiliation or sectoral interests. To achieve this, the establishment of an independent judicial selection commission could serve as an effective alternative mechanism.⁴⁷ Such a body, comprising representatives from academia, civil society, and the judiciary itself, would not only enhance the credibility of the process but also serve to safeguard judicial independence by minimizing political intervention, thereby ensuring that the Constitutional Court truly functions as a guardian of the constitution and a guarantor of democratic checks and balances.

⁴⁷ Zichun Xu, "Human Judges in the Era of Artificial Intelligence: Challenges and opportunities," *Applied Artificial Intelligence* 36, no. 1 (2022): 28.

Second, the expansion of the Constitutional Court's authority to review regulations under the law is a crucial step in strengthening its role as the guardian of constitutional rights. At present, the division of authority between the Supreme Court and the Constitutional Court often results in jurisdictional fragmentation, which in turn creates inconsistencies in constitutional interpretation and weakens the protection of citizens' rights. Granting the Constitutional Court the authority to review subordinate legislation would not only reduce this fragmentation but also ensure that administrative actions and regulatory instruments remain consistent with constitutional norms. Such an expansion would reinforce the Court's function in providing comprehensive and effective legal protection for citizens against state actions that may infringe upon their fundamental rights. Third, in addition to enhancing judicial authority, efforts must also be directed toward strengthening the institutional capacity of the Constitutional Court itself. This includes improving the quality of legal research, advancing the use of information technology in judicial processes, and ensuring broader public access to trials and decisions.⁴⁸ Institutional reforms in these areas will contribute significantly to transparency and openness, which are indispensable in building and sustaining public trust. By reinforcing both its substantive authority and institutional capacity, the Constitutional Court will be better positioned to uphold the constitution, safeguard democracy, and maintain its legitimacy in the eyes of the public.

The results of the study show that the Constitutional Court's connection with the community through transparency and public access is an important factor in strengthening institutional legitimacy. Transparency, both in the trial process and the publication of the verdict, is able to increase public trust in the independence of constitutional judges and the objectivity of the decisions taken.⁴⁹ In line with the theory of judicial legitimacy, public acceptance of court decisions is not only determined by the content of the decision, but also by the extent to which the process is open, accountable, and accessible to the public.⁵⁰ In practice, the Indonesian Constitutional Court has sought to expand access through online court broadcasting and publication of decisions on the Constitutional Court's official website. However, its effectiveness is still limited because accessibility is not always accompanied by public understanding of the substance of the law and the constitution. Therefore, information

⁴⁸ Fauzil Azmi, "Disharmoni Putusan Mahkamah Konstitusi dan Mahkamah Agung bagi Calon Anggota DPD RI," *IJTihad* 38, no. 1 (2022): 7.

⁴⁹ Claudistya Fioretty Tokan, Azizah Zaskiyah, and Maria Magdalena Ina Reko, "Peran Mahkamah Konstitusi dalam Menjaga Konstitusionalitas Undang-Undang di Indonesia," *Multilingual: Journal of Universal Studies* 5, no. 1 (2025): 410.

⁵⁰ James L. Gibson, Gregory A. Caldeira, and Lester Kenyatta Spence, "Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment," *Political Research Quarterly* 58, no. 2 (2005): 193.

disclosure needs to be balanced with systematic public education programs, such as constitutional counseling, popular publications, and collaboration with universities and civil society organizations. This is in line with the findings of comparative research showing that the legitimacy of judicial institutions in modern democracies depends heavily on the success of building constructive communication with the public, not solely on the formal authority they have.

In the international context, the exchange of knowledge and cooperation among constitutional guardian institutions also becomes one of the strengthening strategies. Cross-border constitutional dialogue, comparative legal research collaboration, and the development of universal principle-based constitutional interpretation guidelines can strengthen the position of the Constitutional Court as a global actor in constitutional democracy. In addition, strengthening the internal and external oversight functions of this institution becomes an important element in maintaining the integrity and accountability of judges in carrying out their duties. The success of constitutional guardians in carrying out their functions highly depends on three main aspects: institutional independence, interpretative capacity, and public legitimacy. Without the three, the institution will lose its critical capacity to balance the executive and legislative powers and will fail to uphold the supremacy of the constitution. Therefore, strengthening the Constitutional Court and the Supreme Court as guardians of the constitution must be a strategic agenda in building a just, accountable, and citizen rights-oriented democracy.

D. CONCLUSION

This study demonstrates that the Constitutional Court of Indonesia and the Supreme Court of the United States serve as crucial guardians of the constitution, maintaining the principle of checks and balances inside their nations. Despite sharing analogous objectives, specifically the maintenance of constitutional supremacy and the equilibrium of power among state institutions, both function under distinct legal frameworks and constitutional architectures. The US Supreme Court functions under the doctrine of *stare decisis*, utilizing binding precedent and judicial review authority, so wielding significant influence over national policy direction. Conversely, the Indonesian Constitutional Court functions under a civil law legal system with restricted jurisdiction, specifically in evaluating laws against the 1945 Constitution, and lacks authority over regulations subordinate to the law. The study's findings indicate that the primary issues confronting the Indonesian Constitutional Court are constraints on its jurisdiction, the risk of politicization in the nomination of judges, and the necessity for institutional fortification and public legitimacy. Simultaneously, the US Supreme Court faces challenges in

maintaining ideological balance due to the political selection process and significant societal pressure surrounding constitutional decisions. Consequently, the fortification of these two institutions should focus on augmenting independence, institutional capacity, and the processes of transparency and accountability. This research underscores the necessity of robust, adaptable, and legitimate constitutional guardians to effectively uphold the principle of checks and balances in modern democracy, enabling a response to contemporary socio-political dynamics while preserving integrity and fundamental constitutional principles.

This study is limited by its reliance on normative and comparative legal analysis, which focuses on constitutional texts and judicial decisions without addressing the empirical dynamics of judicial practice and public perception. Nevertheless, the findings emphasize the need to strengthen judicial independence, authority, and legitimacy as key pillars for upholding constitutional supremacy, while also showing how legal traditions and institutional design influence the role of constitutional guardians. Future research should complement this approach with empirical studies, such as case law analysis, surveys, or interviews with judges and practitioners, to capture how these institutions function in practice and their broader impact on democratic consolidation.

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