

The Constitutional Question: A New Mechanism to Protect Human Rights

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ABSTRACT

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The Constitutional Court is vital in safeguarding human rights, particularly in conflicts between states and regions, and has addressed constitutional personhood issues, demonstrating the importance of such protection. This normative juridical research seeks to identify elements of the constitutional question that serve as a mechanism for protecting human rights. Protecting constitutional rights is critical to a democratic state and the rule of law. The Constitution guarantees human rights and establishes the Constitutional Court as a pillar of the modern legal system. Ensuring the general judiciary's highest position in the constitution maximizes protection and prevents general justice violations. The review of statutory regulations includes implementing norms, often resulting in complaints and constitutional questions. The Constitutional Court protects human rights by answering constitutional questions, interpreting and applying constitutional law, and shaping jurisprudence within the legal framework. It resolves conflicts, balances individual and collective rights, interprets the Constitution, and prioritizes the protection of basic rights based on the Constitution.

1. INTRODUCTION

Human rights protection has been a crucial issue in Indonesia, especially given the country's legal and constitutional framework. The formation of the Constitutional Court was a crucial step toward preserving the rule of law and safeguarding democracy and human rights, particularly civil rights. The basic goal of the rule of law is to defend citizens' liberties from state power, which demands a strong legal framework to guarantee these rights, especially for vulnerable populations. Furthermore, the Indonesian Constitution has multiple sections that underscore the safeguarding of human rights. Article 28H (1) ensures the right to a sound and healthy environment, whereas Article 28C (1) affirms the right to self-development, education, and access to knowledge. Nonetheless, significant deficiencies exist within the legal and regulatory framework, especially regarding intergenerational fairness and the enforcement of environmental rights.

The safeguarding of human rights is a fundamental component of any democratic constitutional state (*rechtsstaats*), and Indonesia is no exception. Following the modification of the 1945 Constitution, especially with the founding of the Constitutional Court in 2003, considerable advancements have been achieved in institutionalizing judicial review as a fundamental instrument for protecting individual rights. Nonetheless, despite these legal advancements, the Indonesian constitutional justice system continues to exhibit a significant disparity between what should be (*das Sollen*) and what already exists (*das Sein*). From a normative standpoint, the 1945 Constitution unequivocally guarantees numerous fundamental rights, ranging from legal equality (Article 27) to the safeguarding of minority rights (Article 28I). The state is required to respect, preserve, and realize human rights in alignment with the principles of justice and legal certainty. In principle, this constitutional rights ought to be easily enforceable and subject to judicial review.

Nevertheless, the empirical reality of the legal system reveals that numerous violations of constitutional rights persist unresolved, particularly in the absence of a direct mechanism enabling individuals or lower courts to challenge the constitutionality of laws or legal norms during ongoing judicial proceedings. Judicial review in Indonesia is centralized in Jakarta and is predominantly reactive, occurring only after norms have been implemented and litigated frequently too late to avert damage. Furthermore, ordinary courts lack a procedural mechanism to refer constitutional matters to the Constitutional Court, a deficiency that starkly contrasts with nations such as South Korea¹ and Thailand,² where the constitutional question model facilitates judicial collaboration across institutional tiers.³

This divergence between *das Sein* and *das Sollen* exemplifies a normative-institutional misalignment: the Constitution, as a normative ideal, ensures protection, however the institutional procedures inadequately provide practical enforcement. The lack of a structured system for constitutional inquiries hinders individuals' meaningful engagement with the constitution and impedes subordinate courts from upholding constitutional supremacy in routine adjudication.

This article contends that implementing a constitutional question procedure in Indonesia is crucial for bridging the disparity between constitutional aspirations (*das Sollen*) and legal reality (*das Sein*). It can bolster judicial responsiveness, guarantee the vertical coherence of judicial institutions, and function as a democratic instrument to augment the substantive protection of human rights. This paper elucidates how

¹ Tom Ginsburg, "Confucian Constitutionalism? The Emergence of Constitutional Review in Korea and Taiwan," 27 *Law & Social Inquiry* 763, 2002, 780.

² James Klein, "The Battle for Rule of Law in Thailand: The Constitutional Court of Thailand," *The Constitutional Court Of Thailand: The Provisions And The Working Of The Court*, 1997, 1–67.

³ I Dewa Gede Palguna, "Constitutional Question: Latar Belakang Dan Praktik Di Negara Lain Serta Kemungkinan Penerapannya Di Indonesia," *J. Huk. Ius Quia Iustum* 17, no. 1 (2010): 1–20.

institutional innovation in constitutional adjudication, by taking comparative lessons from South Korea and Thailand, can facilitate the development of a rights-based state in Indonesia.

2. RESEARCH METHOD

This research is classified as normative because it seeks to determine the truth about the problem's coherence and legitimacy, specifically whether the rules, regulations, or laws are consistent with norms, theories, and legal philosophy.⁴ This study supports primary legal materials with secondary data sources derived from existing literature, such as books and reputable scientific journals. The data that has been collected is then processed and further analysed using the prescriptive analysis method.

3. RESULTS AND DISCUSSION

3.1 Constitutional Decisions in Reviewing the Law: Influence on Government Policy

Constitutional review refers to a country's constitutional review of its constitution, established after World War II to ensure constitutional supremacy. The Constitutional Court, independent from legislative or executive power, maintains the democratic process and protects citizens' rights from state power violations. Its main functions include overturning inappropriate laws and administrative actions. Through constitutional review, it is the power of the court to overturn inappropriate laws and administrative actions.

The Constitutional Court in Indonesia can influence governmental policies through its authority to review laws that violate the Constitution.⁵ Constitutional courts shape government policies by relying on executive and legislative compliance, strategic judicial behavior, and maintaining judicial authority through endogenous and exogenous explanations.⁶ The constitutional court's decisions can influence governmental policies by upholding the rule of law, preventing power concentration, protecting human rights, and requiring political elite compliance for implementation.⁷ The Constitutional Court's decisions can influence governmental policies by intervening in policy design, development, and evaluation to protect fundamental rights, with defined limits to prevent

⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group, 2005); Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta, 1990).

⁵ Dian Agung Wicaksono and Faiz Rahman, "Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia," *Constitutional Review* 8, no. 2 (2022), <https://doi.org/10.31078/consrev823>.

⁶ Georg Vanberg, "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review," *Am. J. Pol. Sci.* 45, no. 2 (2001): 346.

⁷ Georg Vanberg, "Constitutional Courts in Comparative Perspective: A Theoretical Assessment," *Annu. Rev. Polit. Sci. (Palo Alto)* 18, no. 1 (2015): 167–85.

state agenda disruption.⁸ The Constitutional Court's final and binding decisions have executive power, impacting governmental policies by serving as a legal basis and source for law formation in Indonesia.

Constitutional courts can influence governmental policies through various mechanisms. They can shape judicial decision-making by showing deference to lawmakers who push constitutional boundaries in their policy choices. Furthermore, constitutional courts have the authority to intervene in the design, construction, and evaluation of public policies to ensure the effective protection of fundamental rights, but this role must have material limits to prevent interference with the state agenda. Furthermore, the executive power of constitutional court decisions is significant, as they are final and binding, serving as a source of law for the legislative and executive branches in forming laws. However, for constitutional courts to effectively influence governmental policies, they must strike a balance between upholding the rule of law, preventing the concentration of political power, and protecting human rights without excessively intervening in policy-making processes.

Constitutional Court decisions can shape public opinion towards government policies, provide legitimacy to supported policies and delegitimize opposing policies. This influence depends on the Court's public support level, which influences the aggregate and individual opinion level. The Constitutional Court provides influence to influence the government's actions through reviews and contributes to policy dynamics. The decision also gave rise to responses from legislators. In this case, lawmakers can change policy to prevent judicial intervention, and courts can challenge lawmakers who impose constitutional limits on their policy choices.⁹ The Constitutional Court's decision has significant legal implications for government policy, such as Decision No. 91/PUU-XVIII/2020, Decision No. 005/PUU-IV/2006 and Decision No. 35/PUU-X/2012. Analysis of the implications of these three decisions on government policy can be seen in Table 1.

Table 1. Analysis of the Implications of the Constitutional Court's Decision on Government Policy

The Constitutional Court Decision	Policy Sector	Main Legal Implications	Level of Influence
35/PUU-X/2012	Forestry, Indigenous Peoples' Rights	Customary forests are not state forests	High, as recognition of collective rights

⁸ Derecho Administrativo and Juan Carlos, "Las Órdenes de La Corte Constitucional: Su Papel y Límites En La Formulación de Políticas Públicas," 2014.

⁹ Philipp Schroeder, "Pushing Boundaries: How Lawmakers Shape Judicial Decision-Making," *Comp. Polit. Stud.* 55, no. 14 (2022): 2447–79.

The Constitutional Court Decision	Policy Sector	Main Legal Implications	Level of Influence
91/PUU-XVIII/2020	Legislation, Investment	Conditionally unconstitutional law	Very High, because it affects national strategic laws ¹⁰
005/PUU-IV/2006	Energy, natural resources	BP Migas was dissolved; the state is dominant.	High, because it changes the governance of national oil and gas ¹¹

Source: *The Constitutional Court Decision No. 35/PUU-X/2012, Constitutional Court Decision No. 91/PUU-XVIII/2020, and Constitutional Court Decision No. 005/PUU-IV/2006.*

The comparative analysis of the three verdicts is given below:

1. Decision No. 91/PUU-XVIII/2020 has the greatest impact because it addresses the structure and procedure of national legislation through the omnibus law, affecting thousands of articles in numerous sectoral laws.
2. Decision No. 005/PUU-IV/2006 has a considerable impact on natural resource management, although it is more technical in nature than the legislative parts that touch on democratic ideals, such as Decision No. 91/PUU-XVIII/20.
3. Decision No. 35/PUU-X/2012 has a substantial influence on customary law communities and the environment, but its implementation in practice is hampered by sectoral politics and bureaucracy.

3.2 The Constitutional Question in Constitutional Court Relates to Human Rights Protection

Constitutional questions are a mechanism for reviewing the constitutionality of applicable laws. The Constitutional Court decides on the question of the law's constitutionality, not the case itself. If the Supreme Court has not issued its decision, case examinations in court must be stopped. Constitutional questions can be general or specific, referring to any issue related to the Constitution. Court judges assess or doubt the law's constitutionality, asking "constitutional questions" to the Constitutional Court. The Court only decides on questions about the constitutionality of laws, not the case itself.¹²

Constitutional issues in the constitutional court are closely related to protecting human rights. On the role of constitutional courts in protecting human rights, the constitutional questions that arise in such cases, the interpretation and application of

¹⁰ Helmi Chandra Sy and Shelvin Putri Irawan, "Expansion Meaning of Public Participation in the Formation of Laws After Decision of Constitutional Court," *Jurnal Konstitusi* 19, no. 4 (2022): 766–93, <https://doi.org/10.31078/jk1942>.

¹¹ M. R. Nasution, "Hak Asasi Ekonomi Dalam Pengelolaan Sumber Daya Alam: Kajian Terhadap Putusan MK No. 005/PUU-IV/2006," *Jurnal Yustisia* 2, no. 3 (2013): 189–202.

¹² Jazim Hamidi and Mustafa Lutfi, "Constitutional Question (Antara Realitas Politik Dan Implementasi Hukumnya)," *Jurnal Konstitusi* 7, no. 1 (2010): 29–48.

constitutional law, the implications of court decisions on human rights protection, and the court's role in shaping human rights jurisprudence within the legal framework. The gateway to constitutional review becomes crucial when conflicts arise regarding constitutional protection of human rights.¹³ The Constitutional Court plays an important role in protecting basic rights, contributing to the legal situation of vulnerable groups and improving their protection. The presence of entrenched human rights laws, interpreted and enforced by courts, is a hallmark of judicial supremacy, which emphasizes the role of courts in protecting human rights.¹⁴ The role of constitutional courts in protecting human rights is determined by established international standards, which contribute to monitoring the constitutionality of laws and regulations.¹⁵ Finally, multi-level human rights protection needs to be established. Developing multilevel rights protection involves different courts in making final decisions regarding human rights trials, emphasizing the importance of the judiciary in protecting human rights.¹⁶

The constitutional questions that arise in these cases, the interpretation and application of constitutional law, the implications of court decisions for human rights protection, and the courts' role in shaping human rights jurisprudence are all ways in which constitutional courts protect human rights. Legal framework. Regarding the role of the Constitutional Court in protecting human rights, it will be explained further as follows: (1) The Constitutional Court has a fundamental role in protecting human rights within the legal framework¹⁷ (2) The Constitutional Court is tasked with resolving human rights conflicts and balancing individual and collective rights based on constitutional democracy.¹⁸ (3) courts interpret the Constitution and resolve disputes regarding competing rights and interests, especially within the complex legal framework of human rights protection¹⁹ and (4) protection of basic rights based on the Constitution is paramount. The focus of constitutional courts, as illustrated by their case examples.

Constitutional questions in Constitutional Court Cases involve Human Rights Protection, where Constitutional Court cases involving human rights protection often

¹³ Ibnu Sina Chandranegara, "Penafsiran Hakim Atas Undang-Undang Yang Mengubah Undang-Undang Dasar," in *Masa Depan Mahkamah Konstitusi RI, Naskah Konferensi Mahkamah Konstitusi Dan Pemajuan Hak Konstitusional Warga* (Jakarta: Pustaka Masyarakat Setara, 2013); Jimly Asshiddiqie and Ahmad Syahrizal, *Peradilan Konstitusi Di 10 Negara*, First (Jakarta: PT Sinar Grafika, 2012).

¹⁴ Titon Slamet Kurnia and Ninon Melatyugra, "Universality of Rights as an Interpretive Principle for the Indonesian Constitutional Court," *Const. Rev.* 10, no. 2 (2024): 474–504.

¹⁵ Heribertus Jaka Triyana, "The Role of the Indonesian Constitutional Court for an Effective Economic, Social and Cultural Rights Adjudication," *Const. Rev.* 1, no. 1 (2016): 72.

¹⁶ M Lutfi Chakim, "Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices," *International Journal for Court Administration* 12, no. 1 (2021), <https://doi.org/10.36745/ijca.308>.

¹⁷ Kurnia and Melatyugra, "Universality of Rights as an Interpretive Principle for the Indonesian Constitutional Court."

¹⁸ Triyana, "The Role of the Indonesian Constitutional Court for an Effective Economic, Social and Cultural Rights Adjudication."

¹⁹ Bisariyadi, "Referencing International Human Rights Law in Indonesian Constitutional Adjudication," *Constitutional Review* 4, no. 2 (2018): 249–70, <https://doi.org/10.31078/consrev424>.

raise key constitutional questions related to the interpretation and application of the Constitution, especially in situations of multiple rights conflicts,²⁰ and the courts are involved in conflict resolution in human rights cases, addressing disputes over competing rights and interests within the legal framework.²¹ The Constitutional Court is tasked with resolving human rights conflicts and balancing individual and collective rights based on constitutional democracy.²² The courts' role in protecting human rights within the legal system is a central aspect of their function, leading to the resolution of complex human rights conflicts.²³

In Canada, Through the Interpretation and Application of Constitutional Law to Protect Human Rights, constitutional courts interpret and apply constitutional law to protect human rights, focusing on protecting fundamental rights based on the Canadian Charter.²⁴ Courts play a crucial role in interpreting the Constitution and resolving disputes related to competing rights and interests to safeguard human rights within the legal framework.²⁵

The Constitutional Court's decisions on constitutional issues significantly influence the protection of human rights in the country by interpreting and enforcing constitutional provisions in administrative justice.²⁶ Furthermore, there are two implications of Constitutional Court Decisions on Human Rights Protection, namely that Constitutional court decisions have significant implications for human rights protection within the legal framework, especially in situations of multiple rights conflicts, and the court's rulings may affect the protection of fundamental rights under the Canadian Charter, illustrating the broader implications of their decisions on human rights protection.²⁷

Moreover, the practice in Europe, Constitutional courts significantly influence legal precedents and case law on human rights protection, playing a crucial role in promoting and evolving human rights standards through their case-law. International human rights standards often inspire domestic constitutional courts and the European

²⁰ Desi Hanara, "Mainstreaming Human Rights in the Asian Judiciary," *Constitutional Review* 4, no. 1 (2018): 77, <https://doi.org/10.31078/consrev414>.

²¹ Bisariyadi, "Referencing International Human Rights Law in Indonesian Constitutional Adjudication."

²² Kurnia and Melatyugra, "Universality of Rights as an Interpretive Principle for the Indonesian Constitutional Court."

²³ Federico FABBRINI, "States' Equality v States' Power: The Euro-Crisis, Inter-State Relations and the Paradox of Domination," *Cambridge Yearbook of European Legal Studies* 17 (2015): 3–35, <https://doi.org/10.1017/cel.2014.1>.

²⁴ Damon C Woods, "Constitutional Interpretation in Canada," *American Bar Association Journal* 20, no. 3 (1934): 176–79, <http://www.jstor.org/stable/25710345>.

²⁵ Woods.

²⁶ Mykola Onishchuk and Mykhailo Savchyn, "Direct Effect of the Constitution and Implementation of Its Provisions in Administrative Justice," *Slovo of the National School of Judges of Ukraine* 2, no. 2(31) (2020): 6–26, [https://doi.org/10.37566/2707-6849-2020-2\(31\)-1](https://doi.org/10.37566/2707-6849-2020-2(31)-1).

²⁷ David L Weiden, "Judicial Politicization, Ideology, and Activism at the High Courts of the United States, Canada, and Australia," *Political Research Quarterly* 64, no. 2 (2011): 335–47, <https://doi.org/10.1177/1065912909352775>.

Court of Human Rights, leading to convergence in case law.²⁸ In some legal systems, like in Ukraine, judicial precedent has become increasingly important, with courts relying on higher court practices when making decisions, emphasizing the significance of studying judicial precedent as a source of constitutional law.²⁹ Furthermore, constitutional interpretation is a norm-creation process that establishes the constitution as a norm, impacting the hierarchy of norms and judicial activism, ultimately influencing democracy and human rights protection.³⁰ The South African Constitution mandates that all legislation be interpreted in line with the Bill of Rights, demonstrating the transformative impact of constitutional interpretation on legal relations.³¹

Constitutional courts play a crucial role in safeguarding human rights by addressing constitutional questions, interpreting and applying law, and shaping jurisprudence within the legal framework. Click or tap here to enter text. The courts' decisions have significant implications for human rights protection, especially in complex legal frameworks involving multiple rights conflicts.³²

Meanwhile, in Indonesia, as seen in Constitutional Court Decision No. 35/PUU-X/2012, Constitutional Court Decision No. 91/PUU-XVIII/2020, and Constitutional Court Decision No. 005/PUU-IV/2006, these decisions have a significant impact on the protection of human rights (HAM) in Indonesia. The analysis of the Constitutional Court's decisions on the protection of human rights can be seen in Table 2.

Table 2. Analysis of the Influence of Constitutional Court Decisions on Human Rights Protection

The Constitutional Court Decision	Focus on Human Rights that are Protected	Constitutional Aspect	Level of Influence
No. 35/2012	The collective rights of indigenous peoples over land & culture	Article 28I paragraph (3), Article 18B paragraph (2)	High (local & cultural) ³³
No. 91/2020	Public participation and environmental rights	Article 28C, 28H, 28E	Very High (national & structural) ³⁴

²⁸ J G Merrills and Arthur Henry Robertson, *Human Rights In Europe: A Study of The European Convention on Human Rights* (Manchester and New York: Manchester University Press, 2001).

²⁹ Trevor L Brown and Charles R Wise, "Constitutional Courts and Legislative-Executive Relations: The Case of Ukraine," *Political Science Quarterly* 119, no. 1 (1994): 155.

³⁰ Onishchuk and Savchyn, "Direct Effect of the Constitution and Implementation of Its Provisions in Administrative Justice."

³¹ Hoyt Webb, "The Constitutional Court of South Africa: Rights Interpretation and Comparative Constitutional Law," *Journal of Constitutional Law* 1, no. 2 (1998): 205–83.

³² Hanara, "Mainstreaming Human Rights in the Asian Judiciary."

³³ P S Tobing, "Putusan MK No. 35/PUU-X/2012 Dan Implikasinya Terhadap Pengakuan Hak Asasi Masyarakat Adat," *Jurnal HAM* 6, no. 1 (2015): 45–56.

³⁴ S Pratiwi, "Partisipasi Publik Sebagai Hak Asasi Dalam Pembentukan Undang-Undang: Telaah Putusan MK No. 91/PUU-XVIII/2020," *Jurnal Konstitusi* 19, no. 3 (2022): 415–36.

The Constitutional Court Decision	Focus on Human Rights that are Protected	Constitutional Aspect	Level of Influence
No. 005/2006	The right to natural resources for welfare	Article 28H, Article 33	High (economic & structural) ³⁵

Source: The Constitutional Court Decision No. 35/PUU-X/2012, Constitutional Court Decision No. 91/PUU-XVIII/2020, and Constitutional Court Decision No. 005/PUU-IV/2006.

These three Constitutional Court decisions provide a strong legal foundation for the substantive protection of human rights in Indonesia, covering: Economic and environmental rights (Decision No. 005/2006 and Decision No. 91/2020), Political and legal participation rights (Decision No. 91/2020), and Collective and cultural rights of indigenous peoples (Decision No. 35/2012). In terms of its influence on the national legal system, Decision 91/PUU-XVIII/2020 shows the broadest impact, as it affects the governance of law-making and the standards of public participation in legislative democracy.

The constitutional court's interpretation of constitutional questions significantly impacts public perception of rule of law and human rights protection, demonstrating their crucial role in safeguarding democratic systems.³⁶ However, the public's perception of judicial independence and fairness can be negatively impacted by the existence of constitutional courts, although these effects tend to diminish over time in established democracies.³⁷ The constitutional judiciary must also maintain political neutrality to uphold the rule of law and ensure unbiased interpretation of the Constitution and laws.³⁸ Constitutional courts' interpretation of laws can significantly impact fundamental rights like innocence and property rights, potentially affecting legal security and consolidating essential principles and rights.³⁹

3.3 Future for the Constitutional Question at the Constitutional Court

Indonesia has the potential to implement constitutional measures to safeguard the constitution and individual rights. Constitutional issues involve a legal examination of ideas and substance, a concrete-posterior test of statutory regulations.⁴⁰ The

³⁵ Nasution, "Hak Asasi Ekonomi Dalam Pengelolaan Sumber Daya Alam: Kajian Terhadap Putusan MK No. 005/PUU-IV/2006."

³⁶ Éric, "Constitutional Interpretation as Norm Creation," n.d.

³⁷ Kathleen Hall Jamieson and Michael Hennessy, "Public Understanding of and Support for the Courts: Survey Results," *Georgetown Law Journal* 95, no. 4 (2007): 899–902.

³⁸ Jamieson and Hennessy.

³⁹ Dragan Stojanovic, "The Constitutional Court in Light of Interpretive Decisions in Normative Control Proceedings," *Zbornik Radova Pravnog Fakulteta, Nis* 55, no. 72 (2016): 37–54, <https://doi.org/10.5937/zrpfni1672037s>.

⁴⁰ 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* 10, no. 2 (2023): 148–71, <https://doi.org/10.22304/pjih.v10n2.a1>.

Constitutional Court conducts abstract, posterior legal reviews, but constitutional review can still be conducted considering the rationale and substance of the law.

The protection of constitutional rights is a crucial constitutional concern. Based on Article 1, paragraphs (2) and (3) of the Republic of Indonesia's 1945 Constitution. The Indonesian country aspires to be both a democratic and a rule-of-law state, hence it is critical that constitutional questions be thoroughly examined to better defend citizens' constitutional rights. The urgency of adopting constitutional issues might be considered from the following perspectives: First, constitutional rights are human rights that are governed by the Constitution. Constitutional rights are not simply tied to the constitution; they are part of it. Compliance with constitutional rights should be enforced. Court rulings are one of these enforcement instruments.

Second, the Republic of Indonesia's 1945 Constitution guarantees human rights, establishing the Constitutional Court as one of the actors of judicial power and a pillar of the contemporary rule of law, with a crucial role in the growth and protection of constitutional rights. The assignment of constitutional question authority to the Constitutional Court will allow the state (via Judges) to make maximum efforts to preserve and enforce constitutional rights. Judges will be able to evaluate, judge, and determine matters using laws that have been assured to be valid and constitutional. A judge's verdict as law not only settles disputes and punishes those found guilty, but it also has some social ramifications. The award of competence to decide constitutional matters would help to promote respect for human rights, deepen their protection, avoid constitutional infractions in general courts, and affirm the guarantee of legal certainty.

Third, the Republic of Indonesia's 1945 Constitution clearly guarantees people's legal certainty. Every person has the right to recognition, guarantees, protection, and fair legal certainty, and equal treatment before the law must be based on the principles of due process and equality before the law; justice must be certain while also being fair. The Constitutional Court's authority to hear constitutional questions will provide definite legal clarity in the judicial process. The guarantee of legal certainty in the ongoing judicial process will be attained if the Constitutional Court implements its constitutional jurisdiction. In terms of constitutional rights protection, if the norm is clearly stated and not subject to numerous interpretations, legal certainty is provided and safeguarded.

Fourth, to maximize the protection of people's constitutional rights, some countries use tangible review through constitutional question cases. Constitutional questions are meant as a serious attempt to prevent infractions in the general judiciary. The engagement of the general judiciary is intended to allow the general judiciary to contribute to upholding the paramount position of the constitution, which may not be followed by the executive branch.

Fifth, there is a trend for law testing to extend beyond the constitutional evaluation of legal norms that contravene the Constitution to include the execution of legal norms

that primarily result in constitutional complaints and constitutional problems. The Constitutional Court's ability to evaluate legal norms has been hampered by its lack of authority to review constitutional questions. The Constitutional Court declared in Constitutional Court Decision No. 13-22/PUU-IV/2006 that its constraints in interpreting a norm are as follows: "the interpretation and application of a norm are entirely different from the unconstitutionality of a norm."

To examine constitutional concerns in the Constitutional Court, the matter must first be referred from the general court to the constitutional court questioning the validity of the statute utilized in the general court examination. In South Korea and Thailand,⁴¹ during the examination of constitutional questions in the constitutional court, the case examination process is temporarily halted until a decision on the constitutionality of the requested law is made, or the examination can continue if the decision is not read during the proceedings. Table 3 shows a comparison of how constitutional question matters are resolved in the Constitutional Courts of South Korea and Thailand.

Table 3. Resolution of Constitutional Question Cases in South Korea and Thailand

The Aspects	CC of South Korea	CC of Thailand
Access for citizens	Limited, through the court (indirect), directly only for complaints (Article 68(2))	Directly possible by individuals, especially post-2017 Constitution
Applicant institution	General court judges, citizens via the court	Judge, individual, state institution, political party Judge, individual, state institution, political party
Elements of a Constitutional	<p>Elements of a Constitutional Question Request by an ordinary court (Court Referral) If the court believes that a law is contrary to the Constitution while handling a case, the judge can refer the constitutional question to the Constitutional Court (Article 41 of the South Korean Constitution).</p> <p>Application by citizens through the general court (Indirect Access) Citizens cannot directly file a judicial review of laws with the Constitutional Court, but</p>	<p>Request by a regular court or state agency (Court or Agency Referral) If there is doubt about the constitutionality of the law being used in the case, the court can submit a constitutional question to the Constitutional Court (Article 212 of the 2017 Constitution of Thailand).</p> <p>Direct application by individuals. In the new post-2017 Constitution system, citizens can directly file a petition with the Constitutional Court if they are</p>

⁴¹ Klein, "The Battle for Rule of Law in Thailand: The Constitutional Court of Thailand"; Constitutional Court of Korea, *Constitutional Court of Korea*, First Edit (Civil Petition Office, n.d.); Rodrigo González Quintero, "Judicial Review in the Republic of Korea: An Introduction," *Revista De Derecho* 34 (2010): 1–18; Tom Ginsburg, "The Constitutional Court and Judicialization of Korean Politics," in *New Courts in Asia*, 2009, 145–57, <https://doi.org/10.4324/9780203862841>.

The Aspects	CC of South Korea	CC of Thailand
	they can submit a request to a regular court to file a request with the Constitutional Court.	harmed by a law deemed unconstitutional.
	Direct application through constitutional complaint (Article 68 (2)) In certain cases, citizens can file a direct constitutional complaint against decisions made by state institutions that are deemed to violate their constitutional rights.	Petitions from political or independent organizations (such as the Election Commission, Ombudsman) The Constitutional Court also receives constitutional questions from other constitutional institutions.
The power of the decision:	Final & binding, applicable to all	Final & binding, immediately applicable
Composition of judges:	9 constitutional judges, 6 votes to annul the law	9 constitutional judges, simple majority
Focus	Individual rights and the principle of the rule of law	Political issues, elections, party dissolution
Character of the decision	Legalistic, based on human rights	Political-legal, a mix of constitutionality and political stability

Based on the comparative study above, the factors that need to be considered in formulating the constitutional question procedure will be outlined in Table 4.

Table 4. Formulation of the Constitutional Question Procedure in Indonesia

No	Elements of a Constitutional Question	Explanation
1	The party with legal standing	The court should be the petitioner of a constitutional question, albeit the parties in the case may protest to the validity of the statute. However, the application to the Constitutional Court remains with the court considering the matter.
2	Prerequisite Conditions for Constitutional Question Applications	Constitutional inquiries necessitate the presence of a tangible case to serve as the foundation for their application. This case must have previously been adjudicated, and the court is obligated to enforce a statute that conflicts with or is incongruent with the constitution.
3	Subject of the application	The framework of constitutional questions is that the Constitutional Court decides whether to invalidate statutes that the Court has ruled to be unconstitutional. Requiring the applicant to explain why the provisions of the law or the bill amending the law, as applied in a specific circumstance, are unconstitutional.

No	Elements of a Constitutional Question	Explanation
4	Fast Track Examination	Constitutional questions should ideally be addressed through expedited review, making the establishment of deadlines for resolving constitutional questions in the Constitutional Court relevant and important, given the time constraints of case resolution in the first instance court, appellate court, cassation, and judicial review in the Supreme Court.
5	Postponement of Court Hearing	Court hearings can be postponed, but there is an exception if the court deems that the hearing must be conducted immediately, then the hearing does not need to be postponed, except for the verdict reading session, which must wait until there is a decision regarding the constitutionality of the law by the Constitutional Court.
6	Evidence	Evidence refers to Article 36 of the Constitutional Court Law. Evidence must be legally accountable for its acquisition. If the evidence cannot be legally accounted for, it cannot be used as valid evidence. The Constitutional Court determines the validity or invalidity of evidence in the Constitutional Court proceedings.
7	The Decision of Constitutional Court	Proof Evidence pertains to Article 36 of the Constitutional Court Law. Evidence must be legally justifiable in its procurement. If the evidence cannot be legally justified in its collection, it is inadmissible as valid proof. The Constitutional Court adjudicates the legitimacy or invalidity of evidence in its proceedings. The Constitutional Court's ruling is conclusive and not subject to appeal by any entity. The Constitutional Court's ruling can definitively declare a statute unconstitutional, binding all individuals and entities. Final judgments have immediate legally binding effects upon their pronouncement in court. The decision is obligatory for legislative, executive, and judicial branches, administrative authorities, individuals, legal entities, and local governments.

Source: The Analysis Result

4. CONCLUSION

Constitutional rights are essential human rights governed by the Constitution, and their enforcement is crucial. The Republic of Indonesia's 1945 Constitution guarantees human rights, establishing the Constitutional Court as a pillar of the rule of law. The Court's authority to decide constitutional matters promotes respect for human rights, deepens protection, and ensures legal certainty. The Constitution guarantees people's right to recognition, protection, and fair legal certainty, based on due process and equality. The Court's authority to hear constitutional questions provides definite legal clarity in the judicial process. Some countries use tangible review through constitutional question cases

to maximize protection of people's constitutional rights. Law testing is also expanding beyond constitutional evaluation of legal norms that contravene the Constitution, despite the Constitutional Court's lack of authority to review constitutional questions.

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