

The Constitutional Court in Guaranteeing Citizenship Rights in Indonesia

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ABSTRACT: *This study aims to analyze the role of the Constitutional Court (MK) in protecting citizenship rights in Indonesia, with a focus on the authority of judicial review and the implementation of decisions related to the basic rights of citizens. This study uses a normative legal research method with a doctrinal approach that refers to primary, secondary, and tertiary legal sources. This approach also examines comparisons with constitutional courts in other countries, such as the United States and Germany, to assess the effectiveness and relevance of the MK's role in a global context. The results of the study show that the MK has a very important role in maintaining and enforcing citizenship rights, through judicial review of laws that are considered to be contrary to the 1945 Constitution. Through a number of important decisions, the MK has succeeded in strengthening the protection of individual rights, such as freedom of religion, the right to education, and the right to privacy. However, challenges in implementing decisions and potential political pressure are obstacles to the effectiveness of the MK. Compared to constitutional courts in other countries, the MK has its own challenges related to the social, political, and cultural context of Indonesia.*

Penelitian ini bertujuan untuk menganalisis peran Mahkamah Konstitusi (MK) dalam melindungi hak-hak kewarganegaraan di Indonesia, dengan fokus pada kewenangan uji materiil dan implementasi putusan-putusan yang berkaitan dengan hak dasar warga negara. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan doktrinal yang mengacu pada sumber hukum primer, sekunder, dan tersier. Pendekatan ini juga mengkaji perbandingan dengan lembaga peradilan konstitusional di negara lain, seperti Amerika Serikat dan Jerman, untuk menilai efektivitas dan relevansi peran MK dalam konteks global. Hasil penelitian menunjukkan bahwa MK memiliki peran yang sangat penting dalam menjaga dan menegakkan hak-hak kewarganegaraan, melalui uji materiil terhadap undang-undang yang dinilai bertentangan dengan UUD 1945. Melalui sejumlah putusan penting, MK telah berhasil menguatkan perlindungan terhadap hak-hak individu, seperti kebebasan beragama, hak atas pendidikan, dan hak privasi. Namun, tantangan dalam implementasi putusan dan potensi tekanan politik menjadi hambatan bagi efektivitas MK. Dibandingkan dengan lembaga peradilan konstitusional di negara lain, MK memiliki tantangan tersendiri terkait dengan konteks sosial, politik, dan budaya Indonesia.

Keywords: *Constitutional Court, Citizenship Rights, Indonesian Citizenship.*

I. INTRODUCTION

Citizenship rights are an important element of a democratic rule-of-law state. In Indonesia, these rights are guaranteed by the 1945 Constitution, which, following amendments in the early 2000s, provides broader and more explicit guarantees for various rights, such as freedom of expression, freedom of religion, the right to education, and protection from discrimination. Within the context of Indonesia's political and social dynamics, the Constitutional Court plays an important role in ensuring that these rights continue to be respected and are not violated by legislation that conflicts with the 1945 Constitution (Atqiya et al., 2024; Lailam, 2022).

The Constitutional Court, established under Law No. 24 of 2003, serves primarily as the guardian of the constitution (Law No. 24, 2003). It is authorized to conduct judicial reviews of statutes deemed to be in conflict with the constitution. The Court was established to protect citizens' fundamental rights from interference by the legislative or executive branches. Through this role, the Constitutional Court acts as a key institution in safeguarding citizens' rights, ensuring that every government policy or regulation aligns with constitutional principles (Hidayat, 2022).

Constitutional rights guaranteed by the 1945 Constitution, such as the right to education, freedom of religion, freedom of expression, and equal legal protection, have been examined in various cases before the Constitutional Court. For example, in Constitutional Court Decision No. 97/PUU-XIV/2016, the Court affirmed the protection of freedom of religion, stating that every individual's right to profess a religion according to their beliefs is a constitutional right that may not be restricted by discriminatory policies (MK No. 97, 2016). In addition, Decision No. 140/PUU-XVII/2019 clarified the importance of equal access to education without discrimination based on social status (MK No. 140, 2009). Nevertheless, despite the Constitutional Court's significant role in protecting citizens' rights, challenges remain, including weak implementation of Constitutional Court decisions by the government or relevant institutions. Policies or regulations declared unconstitutional by the Court are often not immediately adjusted, leaving citizens' rights at risk even after a judicial decision has been issued. Political pressure on the Court's independence is also a serious challenge, as certain parties may attempt to influence Constitutional Court decisions for particular interests, potentially undermining the institution's neutrality (Kirchhof, 2017).

The main reason for choosing this topic is the importance of exploring the role of the Constitutional Court in safeguarding citizens' rights amid complex political dynamics. Citizenship rights are not only the foundation of a healthy democracy but also a fundamental prerequisite for the existence of a just rule-of-law state. As more new policies and regulations are proposed and enacted, it is important to ensure that citizens' rights are not neglected or violated (Bell, 2020). In this era of globalization and digitalization, threats to citizens' rights have also become increasingly diverse, including issues of privacy

and the right to information, which require stronger legal protection (Viljoen & Murray, 2024).

In the international context, comparisons with constitutional institutions in other countries demonstrate the importance of judicial institutions in safeguarding citizens' rights. For example, the German Federal Constitutional Court (Bundesverfassungsgericht) is known as a highly effective institution for protecting individual rights, particularly privacy and freedom of expression. In 2008, the German Constitutional Court issued an important decision affirming that the protection of personal data is a fundamental right that must be safeguarded by the state (Verfassungsgericht, 2008). Meanwhile, the United States Supreme Court has also played an important role in protecting civil rights, as demonstrated by the landmark case *Brown v. Board of Education* (1954), which ended racial segregation in public schools. The South African Constitutional Court, meanwhile, has a long history of defending fundamental rights during the country's transition from apartheid to democracy (Greenhouse, 2020).

This study aims to examine in depth the role of the Constitutional Court (MK) in Indonesia in protecting citizens' rights, employing a case study approach focused on various landmark rulings. Additionally, the research draws comparisons with constitutional institutions in other countries to gain a broader perspective. The study involves a review of Constitutional Court rulings and legislation concerning citizens' rights, alongside interviews with constitutional law experts to understand the challenges the Court faces in safeguarding these rights. Through this comparative analysis, the research seeks to offer valuable lessons for Indonesia and contribute to the body of national constitutional law literature. The findings are also intended to serve as a reference for policymakers in strengthening the Constitutional Court's role in protecting and upholding citizens' constitutional rights.

II. METHOD

This study uses a doctrinal legal approach, namely a method aimed at identifying relevant principles, teachings, and doctrines for addressing issues concerning the protection of citizenship rights by the Constitutional Court. The study is prescriptive in nature, providing recommendations based on in-depth legal analysis. As normative research, the study focuses on reviewing legal literature derived from sources such as legislation, legal journals, jurisprudence, books, and other relevant documents.

This study emphasizes data collection and analysis through library research. The data used include:

1. Primary legal materials: the 1945 Constitution, laws concerning the Constitutional Court, and Constitutional Court decisions.
2. Secondary legal materials: books, journals, and articles discussing constitutional law, citizenship rights, and the role of the Constitutional Court.
3. Tertiary legal materials: encyclopedias, legal dictionaries, and other supporting sources that assist in understanding legal contexts and terminology.

This research uses qualitative analysis methods to process data. Data obtained from legal sources is analyzed systematically to produce relevant and in-depth findings. With this approach, research is expected to make a significant contribution to the development of constitutional law studies, especially regarding the role of the Constitutional Court in guaranteeing citizenship rights in Indonesia (Marzuki, 2016).

III. RESULT AND DISCUSSION

Citizenship Rights in the Indonesian Constitution

Citizenship rights are an integral part of human rights that are expressly regulated in the Constitution as fundamental rights that may not be violated. In the 1945 Constitution, these rights are regulated in detail, particularly in Articles 27 to 34, covering various aspects of citizens' lives. These include the right to associate and assemble, the right to decent employment, the right to education, the right to a dignified livelihood, and the right to equal and fair legal protection. In addition, Articles 28A to 28J, commonly known as the "Human Rights Articles," broaden the scope of these rights. They include the right to life, freedom of thought and expression, freedom of religion, and guarantees of equal treatment before the law without discrimination. These provisions demonstrate the Indonesian Constitution's commitment to respecting and protecting individual rights as the foundation of a democratic rule-of-law state.

The Constitutional Court (MK) bears a crucial responsibility to ensure that these constitutional rights are respected and protected by the state. A primary means by which the Court fulfills this responsibility is through the function of judicial review. In this

capacity, the Court serves as the final interpreter of the Constitution, issuing rulings that are final and binding regarding the conformity of legislation with constitutional principles. Through this role, the Court acts as the principal guardian, ensuring that no legislation conflicts with the fundamental rights of citizens (Febrianto, 2023; Irsyahma & Lestatika, 2024).

This function is crucial in the context of Indonesia's political and social dynamics. The Constitutional Court serves as the last line of defense for citizens in protecting their rights against potential abuses of power by the legislature or executive. For example, in several important decisions, the Court has annulled statutory provisions considered to violate freedom of religion, the right to education, or the right to equal treatment before the law. Thus, the Court not only safeguards constitutional supremacy but also promotes more inclusive social and political justice.

However, optimizing this role requires support from all elements of the state. The government and the House of Representatives (DPR) must ensure that every enacted regulation does not conflict with citizens' constitutional rights. Broader public dissemination of information concerning citizenship rights is also important so that citizens can understand and defend their rights through the mechanisms available to them. Through effective collaboration among the Constitutional Court, the government, and society, the protection of citizenship rights mandated by the Constitution can be realized more effectively (Asshiddiqie, 2018).

The Constitutional Court's Authority in Judicial Review

One of the primary powers of the Constitutional Court (MK) is to review laws against the 1945 Constitution (UUD 1945), a process known as substantive judicial review. This power authorizes the Court to evaluate whether the provisions of a law—whether in whole or in part—align with constitutional principles. In the context of citizenship rights, such reviews are frequently initiated by individuals, community groups, or organizations that believe their rights have been violated by the existence or application of a specific law. Through this mechanism, the Court serves as the principal guardian of constitutional supremacy, possessing the authority to strike down statutory provisions deemed to conflict with the fundamental rights of citizens.

Judicial review proceedings before the Constitutional Court often become important forums for legal debate, particularly for citizens who feel harmed by government or legislative policies. Since its establishment in 2003, the Court has handled numerous cases raising fundamental issues concerning citizenship rights, such as freedom of religion, the right to adequate education, the right to live with dignity, and the right to privacy. In each decision, the Court not only establishes clearer legal boundaries but also provides strong precedents for protecting citizens' rights in a more progressive manner.

One important Constitutional Court decision is Decision No. 46/PUU-VIII/2010, in which the Court ruled that a child born outside marriage has the right to recognition and a legal

relationship with their biological father (MK No. 46, 2010). The decision was based on a progressive interpretation of Article 28B of the 1945 Constitution, which guarantees every child's right to protection without discrimination. This step demonstrates how the Constitutional Court can interpret the Constitution contextually and innovatively, going beyond the traditional boundaries contained in previous regulations. The decision not only became an important milestone in protecting children's rights but also opened space for more inclusive legal interpretation, strengthening the Court's position as a protector of human rights and guardian of the Constitution.

In practice, this judicial review authority reinforces the Constitutional Court's role as an institution that bridges citizens' needs with the fundamental values embodied in the Constitution. Constitutional Court decisions focusing on citizens' rights demonstrate that the institution functions not only as a guardian of law but also as an instrument of social transformation. However, the effectiveness of judicial review remains dependent on the implementation of Constitutional Court decisions by the government, which must ensure that policies or regulations deemed unconstitutional are promptly adjusted to constitutional principles. Thus, the Court can continue to play its role optimally in protecting citizens' rights and promoting a fair and democratic legal system (Saputro et al., 2022).

The Constitutional Court's Role in Protecting Citizenship Rights

The Constitutional Court plays a central role in protecting citizenship rights through the mechanism of judicial review of laws against the 1945 Constitution. One important case demonstrating this role is the judicial review of the Blasphemy Law (Law No. 1/PNPS/1965), as decided in Decision No. 140/PUU-VII/2009. In this decision, the Court held that the law remained constitutional even though many civil society groups criticized it as restricting freedom of religion (MK No. 140, 2009). The Court argued that such restrictions were necessary to maintain public order and preserve interreligious harmony in Indonesia. This decision demonstrates the Court's approach of seeking to balance human rights protection with the public interest, as provided for in Article 28J of the 1945 Constitution.

However, this decision was not without criticism. Many parties considered that the Blasphemy Law could potentially be used to excessively restrict freedom of religion, particularly for minority groups. This highlights the challenge faced by the Constitutional Court in addressing the dilemma between individual freedom and social stability. In this context, the Court positions itself as an institution that establishes the boundaries of human rights protection while considering Indonesia's diverse social, cultural, and political context.

Another case demonstrating the Constitutional Court's progressive role is Decision No. 97/PUU-XIV/2016, concerning Article 284 of the Criminal Code on adultery (MK No. 97, 2016). In this decision, the Court reinterpreted the provision to cover only sexual relations involving one or both parties who are married, rather than all sexual relations outside

marriage. The decision affirmed the protection of citizens' privacy rights, which had previously existed in a legally ambiguous area. The Court viewed criminal law as inappropriate for interfering in private matters that do not directly affect the public interest or social order.

These two examples demonstrate the Constitutional Court's strategic role in ensuring that legislation does not conflict with citizens' fundamental rights guaranteed by the Constitution. Through judicial review, the Court functions not only as a guardian of the Constitution but also as an institution capable of interpreting the Constitution dynamically in accordance with the needs of the times. In carrying out its role, the Court faces the challenge of maintaining a balance between respect for individual rights and protection of the public interest. Through a prudent and progressive approach, the Court can strengthen the foundation of a rule-of-law state that guarantees justice for all citizens.

The role of the Constitutional Court in protecting citizenship rights is not only a characteristic of Indonesia's legal system but also an important function of constitutional judicial institutions in various countries. In the United States, the Supreme Court has demonstrated a vital role in ensuring citizens' constitutional rights through judicial review. One well-known landmark case is *Roe v. Wade*, in which the Supreme Court held that women's right to abortion was protected under the principle of personal liberty guaranteed by the U.S. Constitution. The decision became an important milestone in protecting women's reproductive rights, although it subsequently became the subject of legal and political debate for decades. This case illustrates how constitutional judicial institutions in democratic countries act as a counterbalance to power in protecting individual rights from potential abuse by the government or legislative institutions (Hardani & Wardhani, 2019).

In Europe, the German Federal Constitutional Court (*Bundesverfassungsgericht*) also plays a strategic role in protecting the fundamental rights of citizens guaranteed by the Basic Law or German Constitution (Currie, 2018). The Court consistently reviews and, where necessary, annuls laws considered contrary to democratic principles and human rights. One significant case occurred when the Constitutional Court annulled legislation restricting freedom of expression on the grounds that such restrictions were inconsistent with the democratic values upheld by the Constitution. Through this action, the Court affirmed that freedom of expression is a fundamental element in maintaining pluralism and democratic stability (Aqviriyo et al., 2022; Judijanto et al., 2024).

From a global perspective, the role of the Constitutional Court—or other constitutional judicial bodies—as a guardian of citizens' rights is universal. However, the manner in which these rights are interpreted and enforced is always adapted to the social, cultural, and political context of each country. In highly diverse nations like Indonesia, the primary challenge lies in balancing the protection of individual rights with the preservation of social harmony and the public interest. Meanwhile, in more homogeneous countries, the

challenge may lie in preventing the government from abusing its power to curtail citizens' rights.

In this context, Indonesia can learn from the experiences of other countries in strengthening its Constitutional Court institution, both in terms of independence and the courage to enforce constitutional principles. Conversely, Indonesia's experience can also provide important lessons for other countries on how constitutional judicial institutions can contribute to maintaining harmony amid complex and diverse social, cultural, and political conditions.

IV. CONCLUSION

The Constitutional Court plays a strategic role in protecting citizenship rights through judicial review of laws and enforcement of the Constitution. However, its effectiveness faces challenges, including weak implementation of decisions, political pressure, and limited public access to constitutional mechanisms. To strengthen the role of the Constitutional Court, strategic measures are needed, such as increasing public legal education and dissemination, strengthening the implementation of decisions, safeguarding institutional independence, and simplifying access to judicial review. Collaboration with academics and regular monitoring of regulations are also important to ensure legal relevance and justice. In practical terms, the Constitutional Court can become a more effective protector of citizens' rights, strengthen democracy, and create more inclusive and equitable legal certainty.

V. REFERENCES

- Aqviriyo, R., Rachman, A., & Nurhadi, A. (2022). Edukasi Peran Hak Asasi Manusia di Era Digital Lewat Filter Augmented Reality (AR) Instagram. *Journal of Computer Science and Visual Communication Design*, 7(1), 17–25. <https://doi.org/10.55732/jikdiskomvis.v7i1.497>
- Asshiddiqie, J. (2018). *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika.
- Atqiya, A. N., Nasoha, A. M. M., Pembayun, K. A. P., Bahiyah, K., & Devita, M. A. (2024). Peran Mahkamah Konstitusi dalam Menjamin Hak-Hak Kewarganegaraan di Indonesia. *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora*, 1(6), 302–313. <https://doi.org/10.62383/aliansi.v1i6.611>
- Bell, J. (2020). *French Constitutional Law*. Oxford University Press.
- Currie, D. P. (2018). *The Constitution of the Federal Republic of Germany*. University of Chicago Press.
- Febrianto, R. (2023). Perjuangan Panjang Hak Asasi Manusia kaum Buruh di Era Globalisasi. *Dekonstruksi*, 9(3), 122–132. <https://doi.org/10.54154/dekonstruksi.v9i03.180>
- Greenhouse, L. (2020). *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey*. Times Books.
- Hardani, A., & Wardhani, L. (2019). Implementasi Putusan Mahkamah Konstitusi Nomor: 30/PUU-XVI/2018 Menurut Sistem Hukum Di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 1(2), 182–193. <https://doi.org/10.14710/jphi.v1i2.182-193>
- Hidayat, A. (2022). *Hukum Tata Negara Indonesia: Perspektif Konstitusi*. Bandung: Refika Aditama.
- Irsyahma, A. Y., & Lestari, D. P. (2024). Hak Asasi Manusia di Era Globalisasi Pers. *Indonesian Research Journal on Education*, 4(4), 1870. <https://doi.org/10.31004/irje.v4i4.1568>
- Judijanto, L., Lubis, A., Karauwan, D., Bungin, S., & Mau, H. (2024). Efektivitas Kebijakan Perlindungan Data Pribadi dalam Menjaga Hak Asasi Manusia di Era Teknologi di Indonesia. *Sanskara Hukum Dan HAM*, 3(1), 34–42. <https://doi.org/10.58812/shh.v3i01.445>
- Kirchhof, P. (2017). *The German Federal Constitutional Court: The New Guardian of Human Rights in Europe*. Munich: C.H. Beck.
- Lailam, T. (2022). Peran Mahkamah Konstitusi Federal Jerman dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional. *Jurnal HAM*, 13(1), 65. <https://doi.org/10.30641/ham.2022.13.65-80>
- Marzuki, P. M. (2016). *Penelitian Hukum*. Jakarta: Prenada Media.
- MK No. 140. (2009). *Putusan MK No. 140/PUU-VII/2009*.

MK No. 46. (2010). *Putusan MK No. 46/PUU-VIII/2010*.

MK No. 97. (2016). *Putusan MK No. 97/PUU-XIV/2016*.

Saputro, J., Sinaulan, R., & Suganda, A. (2022). Implikasi Dan Implementasi Putusan Mahkamah Konstitusi Nomor 91/Puu-Xviii/2020 Terhadap Proses Pembentukan Peraturan Perundang-Undangan Di Indonesia. *Salam: Jurnal Sosial Dan Budaya Syar-I*, 9(6), 1905–1918. <https://doi.org/10.15408/sjsbs.v9i6.28924>

UU No.24. (2003). *Undang-Undang No. 24 Tahun 2003 tentang Mahkamah Konstitusi, Pasal 24*.

Verfassungsgericht. (2008). *Putusan Mahkamah Konstitusi Jerman*, 27 Februari 2008.

Viljoen, F., & Murray, R. (2024). What a Difference do 20 Years Make? The Impact of the Core UN Human Rights Treaties on the Domestic Level in Selected States between 1999 and 2019. *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years*, 1–32. https://doi.org/10.1163/9789004377653_002