



**THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**Strengthening Democracy Through Constitutional Court Interpretation  
in Protecting Citizens' Constitutional Rights and Human Rights <sup>1</sup>**

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The Constitutional Court as the guardian of the constitution and the democracy has made fundamental changes in the constitutional system, including in the context of realizing constitutional democracy. In its 20th year, the Constitutional Court has tried to organize Indonesia's democratic system towards a constitutional democratic state. Settlement of election disputes, regional head elections and also review the constitutionality of laws are very influential authorities in changing the democratic system in Indonesia. The presence of the Constitutional Court not only enforces procedural justice, but also substantive justice which is reflected in its decisions. The constitutional rights of citizens guaranteed by the constitution have been protected in every decision taken by the Constitutional Court.

The efforts to protect and assure Human Rights in Indonesia have been made continuously and have been increasingly showing progress. The fundamental effort to protect and enforce Human Rights has been made by making Amendments to the 1945 Constitution in 1999 up to 2002. The formulation of human rights in the Indonesian constitution is very important considering that human rights as a universal value has been fully integrated in

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the Constitution through constitutional amendments from 1999 to 2002. The promotion and protection of human rights in this context is interpreted not only at the national level but also at the global level.

Why does the amended 1945 Constitution comprehensively introduce the provisions on Human Rights protection and enforcement? In general, the inclusion of Human Rights in the articles of the constitution is considered as a characteristic of a modern constitution as well as a prerequisite to the development of foundation for constitutionalism. Constitution as an instrument to reach constitutionalism must include provisions on control over political power and protection of Human Rights. On such basis, constitution should not only acknowledge Human Rights, but it also have to provide protection and guarantee for their fulfillment. Emphasis is given on this matter, because the fundamental interest of every citizen is to have their rights as a human being and a citizen enforced and fulfilled.

What is the difference between Human Rights and the constitutional rights of citizens? In my opinion, not all constitutional rights are Human Rights, although all Human Rights constitute the constitutional rights of citizens. In Indonesian context, constitutional rights are the rights provided for in the 1945 Constitution. It indicates that all citizens' rights provided for in 1945 Constitution fall into the category of constitutional rights, which must be guaranteed and protected without any exception.

In that case, how does the Constitutional Court play its role in protecting the constitutional rights of citizens? Under Article 24C paragraph (1) of the 1945 Constitution, the Indonesian Constitutional Court have 4 (four) types of authority and one constitutional obligations, namely (1). To conduct a review of laws

against the 1945 Constitution; (2). To settle disputes on authority between state bodies, which authority is granted by the 1945 Constitution; (3). To decide the dissolution of a political party; and (4). To settle disputes over the result of general election, and the Constitutional Court is required to make decisions based on the opinion of the People's Legislative Assembly about the alleged violation by the President and/or Vice President under the 1945 Constitution.

Through such authority and obligation, the Indonesian Constitutional Court is principally established with the purpose of protecting the constitutional rights of citizens from the norms of laws contradictory to the constitution.

The review of a law against the Constitution conducted by the Constitutional Court may be either formally or materially performed. In formal review, if the petitioner successfully proves that the formation of a law is contradictory to the 1945 Constitution, which consequently impairs his/her constitutional rights, it means that the entire law shall be declared to be contradictory to the 1945 Constitution and shall not have binding legal force. At the same time, the material review is a review related to paragraph, article and/or certain section of a law which are deemed to be contradictory to the 1945 Constitution. If the petitioner successfully proves such matter, the aforementioned paragraph, article and/or certain section of the law shall be the paragraph, article and/or certain section which are declared by the Constitutional Court to be contradictory to the 1945 Constitution and shall not have binding legal force.

The party which may submit a petition for review of a law against the Constitution is the party which considers that its constitutional rights is impaired by the coming into effect of a law, namely: (a) an individual Indonesian citizen,

including a group sharing the same interests; (b) a customary law community unit insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic Indonesia governed by law; (c) a public or private legal entity, or; (d) a state body.

In the case of judicial review, the object of such review is the abstract and generally binding norms of the law. Therefore, despite the impaired constitutional rights of the petitioner as the grounds for petition for review, such action, however, actually represents legal interest of the entire community, namely the upholding of the constitution. In the case of judicial review, the People's Legislative Assembly and the President are not the defendants or respondents being responsible for the fault committed, but rather as the party concerned providing a description of the background and objectives of the provision of the Law petitioned. It is intended that the provision subject to review is not constructed merely based on the view of the petitioner or the Constitutional Court, but also based on legislator's view, so that there is legal assurance on whether or not it is contradictory to the constitution.

With respect to decision, it is stipulated in the 1945 Constitution that the decision of the Constitutional Court shall be final, which means that there is no further legal remedies are available. The decision of the Constitutional Court shall also be binding as from its pronouncement in the decision pronouncement hearing open for public. All parties, both state administrators and community, are required to comply with and be subject to such decision.

In addition to the authority to conduct a review of a law against the Constitution, the role of the Constitutional Court in protecting the constitutional

rights of citizens is also actually performed by virtue of the authority to settle disputes over the result of general election, either presidential/vice presidential general election, legislative general election, or regional head general election. By virtue of the aforementioned authority, the Constitutional Court safeguards the democracy by protecting the right of a citizen to elect and/or to be elected in a General Election so as to be able to be granted in accordance with the principle and rule of a democratic General Election as assured under the 1945 Constitution. The Constitutional Court ensures that the right to elect and/or the right to be elected as a citizen are shielded from manipulation and any form of misappropriation which is not only contradictory to the democracy, but also detrimental to citizens. In the event that the result of general election is proven to have been obtained by manipulating the right to elect and/or the right to be elected and violating the principle of democracy, the Constitutional Court may rescind the aforementioned result of general election.

Within the same framework for safeguarding the democracy, the Constitutional Court also plays a role in the effort to equalize democracy and nomocracy. Indeed, the emphasis between democracy and nomocracy is different, but it does not necessarily mean that it cannot be equalized. Democracy is focused on political aspect in order to uphold people's sovereignty, while nomocracy is focused on legal aspect. In the process, democracy tends to be rebellious and anarchic due to the leniency resulting from the freedom given to citizens. Moreover, the freedom is often expressed through behavior which is not only contradictory to the law and democracy, but also jeopardizes the integration of the Unitary State of the Republic of Indonesia. In this context, by virtue of its authority, the Constitutional Court as

the body safeguarding the constitution and democracy equalizes the democracy and democracy. The Constitutional Court stands on the front guard to make Indonesia as a democratic constitutional state and democratic state under the laws, which also means taking a role in protecting the integrity of the Unitary State of the Republic of Indonesia.

As the conclusion of this presentation, I would like to emphasize that the Indonesian Constitutional Court plays a role in recovering the constitutional rights of citizens violated by the coming into effect of norms of law through the exercise of the authority to conduct a review of a law against the Constitution. Furthermore, by virtue of such authority to conduct a review of a law, the Constitutional Court is able to control the legislator, so as to be prudent in the formation of a law. It shall not violate and/or disregard the obligation to provide protection to the constitutional rights of citizens.

In addition, by virtue of the authority to settle disputes over the result of general election, the Constitutional Court plays a role in assuring and ensuring that the right to elect and/or the right to be elected as the constitutional rights of citizens are shielded from any form of manipulation and misappropriation detrimental to citizens. Likewise, the Constitutional Court plays a role in protecting the integrity of the Unitary State of the Republic of Indonesia, namely protecting the democracy so as to be established in accordance with and under the 1945 Constitution.

Hence, this is my presentation and thank you.