

Current Challenges and Future Directions for Strengthening Democracy through Constitutional Jurisdictions: The Perspective of the Indonesian Constitutional Court

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Constitutional Justice

The Constitutional Court of the Republic of Indonesia

The constitutional jurisdiction in Indonesia dramatically changed following the the Reformation Era and amendments to the 1945 Constitution. The dynamics of these changes has indeed affected how judicial institutions play a role in safeguarding democratic principles. The Indonesian Constitutional Court has played a crucial role in strengthening democracy in Indonesia. The Constitutional Court was established in 2003 and has served as the country's highest authority on constitutional matters.¹ Its primary function is to review the constitutionality of laws, regulations, and government actions to ensure they align with the principles and values enshrined in the Indonesian Constitution.

Article 24C of the 1945 Constitution states that the Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review the constitutionality of laws, to pass judgement on any authority disputes of state institutions whose authorities are granted by the Constitution, the dissolution of a political party, and on any challenges to the results of a general election. The Constitutional Court shall also render judgment on a petition of the People's Representative Council regarding any alleged violation by the President and/or the Vice President according to the Constitution.

Theoretically, the transition from an authoritarian regime to democracy takes place over several phases. There are at least four phases that Indonesian politics have supposedly undergone, namely: pre-transition, liberalization, democratic transition, and democratic consolidation. The final stage of democracy (maturation) is predicted

¹ Moh. Mahfud MD, Separation of Powers and Independence of Constitutional Court in Indonesia”, https://www.venice.coe.int/WCCJ/Rio/Papers/INA_Mahfud_E.pdf

to take place within a more extended period.² The consolidation of democracy should be a process that unfolds at various stages – the level of representation, the level of political institutions, and the level of integrating potential veto powers. This process should be supplemented by the formation of a democratic civil society whose concrete contribution towards democratizing a country is indispensable. “Further groups of particular importance in this process include the elites that hold governmental and political powers and functions, the business elites, and those leading elites of civil society who are friendly towards democracy.”³

The contribution of the Indonesian Constitutional Court to strengthen democracy can be seen in how the court realizes its authority. *First*, judicial reviews of laws. The Indonesian Constitutional Court has the power to review and strike down laws and regulations that are deemed unconstitutional. This mechanism ensures that the legislative branch does not exceed its constitutional limits and that laws are in line with fundamental rights and democratic principles.⁴ This notion can be traced back to the idea of Balancing Power Among Branches. The court acts as a check and balance on the powers of the executive and legislative branches of government. By reviewing the constitutionality of their actions, the court helps prevent the abuse of power and promotes a system of checks and balances.

Secondly, the protection of human rights: The court's decisions have often centred on protecting and upholding human rights, including freedom of speech, assembly, religion, and other civil liberties. By safeguarding these rights, the court helps foster an environment of pluralism and tolerance essential for a thriving democracy.

Thirdly, safeguarding the Electoral Process: The Indonesian Constitutional Court oversees election-related disputes, ensuring the fairness and integrity of

² Ikrar Nusa Bhakti, “The Transition To Democracy In Indonesia: Some Outstanding Problems”, p. 200, [http://apcss.org/Publications/Edited%20Volumes/RegionalFinal%20chapters/Chapter12Bhakti.pdf], accessed 19/02/2018

³ Michael Hollaender, “Consolidating Indonesia’s Democracy by Educating Civil-society Leaders in Democratic Politics”, p.1, [http://www.kas.de/wf/doc/kas_8899-544-2-30.pdf?060801125002], accessed 19/02/2018.

⁴ Eddyono, Luthfi Widagdo. 2018. “The Constitutional Court and Consolidation of Democracy in Indonesia”. *Jurnal Konstitusi* 15 (1):1-26. <https://doi.org/10.31078/jk1511>.

Indonesia's electoral process. This includes resolving election disputes and overseeing the conduct of general elections, presidential elections, and regional head elections

Fourth, public accountability: The Indonesian Constitutional Court's decisions are made publicly available, promoting transparency and allowing citizens to understand the legal reasoning behind the court's judgments. This enhances public trust in the judiciary and contributes to a more accountable government. Everyone can access the Indonesian Constitutional Court's decisions through mkri.id after only a few hours of the decision hearing.

Fifth, resolving political disputes. The Indonesian Constitutional Court serves as an independent and impartial forum for resolving political disputes, reducing the likelihood of political conflicts escalating into broader crises.

Sixth, upholding the Rule of Law: The Constitutional Court's decisions are binding and set precedents for future cases, establishing a consistent application of the rule of law. This consistency fosters stability and predictability in the legal system, contributing to the overall strength of Indonesia's democracy.

However, it is important to note that the effectiveness of any institution in strengthening democracy depends on various factors, including the political will of the government and the broader societal context. In the era of *Society 5.0*, challenges in strengthening democratization may arise as follows:

1. Erosion of Democratic Institutions: In some countries, there has been a gradual erosion of democratic institutions, weakening the checks and balances that are crucial for a robust democracy. This could be due to executive overreach, political polarization, and attacks on the independence of the judiciary.⁵
2. Threats to Rule of Law: Upholding the rule of law is essential for a functioning democracy. Challenges arise when governments or powerful entities undermine the rule of law, leading to a lack of accountability and transparency.
3. Electoral Integrity: Ensuring the integrity of elections is fundamental for democracy. Challenges include electoral fraud, voter suppression, misinformation campaigns, and inadequate election laws and regulations.

⁵ Eve Warburton, "Deepening Polarization and Democratic Decline in Indonesia," *Political Polarization in South and Southeast Asia*, 2020, <http://www.jstor.org/stable/10.7864/j.ctvbd8j2p.11>.

4. Protecting Human Rights: Democracies need to ensure the protection of human rights and individual freedoms. Challenges arise when there are attempts to curtail or infringe upon these rights, especially for minority groups.

In order to realize the role of constitutional jurisdiction in strengthening democracy, here are some future steps that could be taken:

1. Strengthening Judicial Independence: Ensuring the independence of the judiciary is crucial for maintaining checks and balances in a democracy. Establishing robust mechanisms to protect judges from political interference is essential. Endeavours for fostering the independence of Constitutional Justices of course start as early as the selection process for recruitment by providing the broadest opportunity for public participation to the greatest possible extent. In order to maintain the independence of Constitutional Justices, the Indonesian Constitutional Court has also formulated the Constitutional Justice Code of Ethics. The Code of Ethics has been made with reference to the principles set out in *The Bangalore Principles of Judicial Conduct*, namely the principles of *independence, impartiality, integrity, propriety, equality, competence and diligence, as well as implementation*. By adhering to the Code of Ethics, Constitutional Justices are able to remain unaffected by any influence or intervention by any party in performing their duties, including public opinion or mass media.
2. Electoral Reforms: Implementing electoral reforms to enhance transparency, fairness, and inclusivity can strengthen the democratic process. This may include improving voter registration, campaign finance regulations, and redistricting. The five fundamental principles of democratic elections⁶ which were adopted by the Venice Commission should also be implemented in Indonesia. Those principles are universal, equal, free, secret, and direct.
3. Embracing Technology: Utilizing technology to enhance citizen participation and engagement in the democratic process can lead to more informed decision-making and increased accountability. The Indonesian Constitutional Court has

⁶ “Electoral Systems: Strengthening Democracy in the 21st Century,” 2009, https://www.coe.int/t/dgap/forum-democracy/Activities/Forum_sessions/2009/Working_documents/Proceedings_EN.pdf.

experience in utilizing technology in the judicial system to substantively provide justice for all (*Justitia bellan*) across the archipelago of Indonesia.

4. Promoting Civic Education: Educating citizens about their rights, responsibilities, and the importance of active participation in democracy can lead to a more informed and engaged citizenry.
5. Combating Disinformation: Developing strategies to combat the spread of misinformation and disinformation can help safeguard the integrity of the democratic process.
6. Ensuring Access to Justice: Making the justice system accessible to all citizens, regardless of their socioeconomic status, is crucial to upholding the rule of law and protecting individual rights. Access to justice should also be implemented in the development of digital infrastructure that can support the strengthening of democracy through judicial processes.

In conclusion, we have seen that the Indonesian Constitutional Court had played a significant role in upholding democratic principles by realizing its authority. However, the direction taken in the future should be implemented synergically with related stakeholders and the government to promote the roles of constitutional jurisdiction in safeguarding democratic principles.