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## The Role of the Constitutional Court in Legal Reform in Indonesia Through Judicial Review and Constitutional Legal Discovery

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**Abstract:** This essay examines how the Constitutional Court (MK) uses judicial review and constitutional law discovery (constitutional *rechtsvinding*) to strategically advance legal reform in Indonesia. The MK has the power to test laws against the constitution and interpret its fundamental principles as an organization that protects it, as stipulated in Article 24C of the 1945 Constitution of the Republic of Indonesia and operationalized by Law Number 24 of 2003 as amended by Law Number 7 of 2020. The phenomenon of increasing requests for judicial review indicates a gap between written law and the need for substantive justice in society. In this context, constitutional judges are required not to simply be mouthpieces of the law, but to investigate and comprehend the concept of social justice as required by Law Number 48 of 2009 about Judicial Power, Article 5 paragraph (1). This study demonstrates that the MK actively participates as a force for legal reform that may bridge the gap between social fairness and legal certainty by using the progressive legal theory approach developed by Satjipto Rahardjo. Decisions from the Constitutional Court, including those made during the judicial review of the Electronic Information and Transactions Law and the Job Creation Law, demonstrate the institution's transformational role in maintaining the relevance of law to current developments. Thus, the integration of judicial review and constitutional legal discovery makes the Constitutional Court a key instrument in shaping a legal system that is adaptive, responsive, and substantively just.

**Keyword:** Constitutional Court, Judicial Review, Constitutional Legal Discovery.

### INTRODUCTION

The Constitutional Court (MK) was created as a new institution within the state structure after the Republic of Indonesia's 1945 Constitution was amended, playing a fundamental role in upholding constitutional supremacy. (Siahaan, 2022) The establishment of the MK was a response to the need for an effective constitutional oversight mechanism to prevent deviations from the fundamental principles of the rule of law and democracy. As the ultimate interpreter of the constitution and its protector, the MK is tasked not only with

ensuring that every law is in line with the 1945 Constitution but also with ensuring that fundamental constitutional values, such as justice, equality, and the protection of human rights, remain alive in national legal practice. (Sari & Raharjo, 2022) Article 24C of the 1945 Constitution of the Republic of Indonesia, which was later operationalized by Law No. 24 of 2003 concerning the Constitutional Court, as revised by Law No. 7 of 2020, clearly lays out the legal foundation for the Constitutional Court's existence. (Wijaya, 2023) Through this provision, the Constitutional Court has gained a strong position as one of the judicial authorities alongside the Supreme Court, with the primary function of maintaining the purity and consistency of constitutional norms.

Over time, the dynamics of judicial review in Indonesia have shown a significant increase, reflecting the high level of public participation in overseeing the lawmaking process to ensure it remains in line with constitutional values. The surge in the number of cases filed with the Constitutional Court demonstrates the tension between rigid written law and the public's need for substantive justice. (Putri & Kharisma, 2022) The numerous judicial reviews of strategic laws, such as the Job Creation Law, the Electronic Information and Transactions (ITE) Law, and the General Elections (Pemilu) Law, demonstrate that the public is no longer passive in responding to state policies deemed inconsistent with constitutional principles. (Kurniawan, 2022) This phenomenon demonstrates that the Constitutional Court has become a constitutional arena for citizens to fight for their rights and strengthen a democratic legal culture.

In social and political contexts, Constitutional Court decisions often have far-reaching and even transformational impacts. For instance, the ruling on the Job Creation Law's judicial review, which declared the law conditionally unconstitutional, has shaken national political and legal dynamics, while demonstrating the Constitutional Court's courage in upholding the principle of checks and balances against law-making institutions. (Ramadan et al., 2022) Similar to this, the Constitutional Court was instrumental in defining the limits between the protection of individual dignity and freedom of expression during the legal examination of the ITE Law. With these rulings, the Constitutional Court serves as a catalyst for legal reform in addition to its role as a court, adapting the national legal system to constantly evolving social, political, and technological developments. (Sadzali, 2022)

However, the Constitutional Court's significant role is not without challenges, particularly regarding the consistency of its decisions and their implementation in practice. It is not uncommon for Constitutional Court decisions to face obstacles in their implementation due to weak political will from the legislative and executive branches or due to the lack of effective oversight mechanisms. Furthermore, differing interpretations of Constitutional Court decisions sometimes create confusion among law enforcement and the public. (Deta et al., 2024) This challenge highlights that legal reform through the judicial review mechanism is insufficient at the normative level and must be complemented by strengthening legal culture and constitutional awareness across all levels of society. (Safitri & Wibowo, 2023) Therefore, the Constitutional Court's existence is not only crucial as a guardian of the constitution but also as a catalyst in building a legal system that is adaptive, responsive, and based on substantive justice.

As the legal system in Indonesia develops, criticism has emerged of an overly textual approach to legal formalism, in which judges tend to interpret laws rigidly without considering the social context and values of justice prevalent in society. This approach often creates a gap between legal certainty and substantive justice, as laws that focus solely on text do not always address the real problems faced by citizens. (Rishan, 2021) The increasing number of constitutional disputes and judicial reviews demonstrates that the public expects decisions that favor the principles of justice and equality, rather than simply adherence to formal norms. In this regard, constitutional judges are required to go beyond their traditional

role as interpreters of the law and begin adopting a more contextual and humanistic approach, balancing legal certainty with the needs of social justice. (Adhani, 2021)

As part of their judicial duties, judges must investigate and comprehend the societal ideals of justice, according to Article 5, paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. This principal positions judges not merely as law enforcers but also as interpreters of norms capable of adapting the law to social change and the dynamics of people's lives. In the Constitutional Court, this obligation means that judicial review decisions must not only consider formal compliance with the 1945 Constitution but also interpret the meaning of constitutional rights and the broader public interest. (Tambunan et al., 2024) This approach forms the foundation for the practice of constitutional law discovery, in which judges play an active role in shaping law that is alive and relevant to the needs of the times.

The concept of constitutional law discovery, or constitutional *rechtsvinding*, emphasizes the role of constitutional judges as the living voice of the constitution, not only reading the text of the law literally but also exploring the basic principles and constitutional values contained therein. (Harini & Rahmat, 2025) The scope of *rechtsvinding* includes the interpretation of constitutional norms, adapting legal principles to social developments, and resolving conflicts of rights arising from ambiguity or legal gaps. In other words, constitutional law discovery serves as a means for judges to fill legal gaps, interpret constitutional rights progressively, and ensure that every decision is not only formally valid but also substantively fair and relevant. (Supena, 2022)

Evidence of the practice of *rechtsvinding* can be seen in a number of Constitutional Court decisions, in which judges reinterpret citizens' constitutional rights or the meaning of phrases in certain articles to better align with social realities. For instance, the Constitutional Court construed the right to vote and be elected as more than just a formal right during its judicial examination of the Election Law, but also as one that took into account the principles of equality and fair political representation. Similarly, in its decision regarding the Electronic Information and Transactions Law, the Constitutional Court aligned legal provisions with the principles of freedom of expression and privacy protection, demonstrating that *rechtsvinding* is not merely a textual interpretation but also the discovery of living constitutional values. Thus, the integration of judicial review and constitutional legal discovery strengthens the Constitutional Court's role as an agent of legal reform that is adaptive, responsive, and capable of bridging legal certainty with substantive justice.

The progressive legal theory developed by Satjipto Rahardjo emphasizes that law must serve humanity, not the other way around, thus enabling law to adapt to social change and societal needs. (Suparno & Jalil, 2022) This approach emphasizes flexibility, expediency, and justice as the primary principles in law enforcement, and rejects rigid interpretations that focus solely on normative texts. In the context of the Constitutional Court, this progressive legal theory is relevant because constitutional judges are required not only to enforce compliance with the law but also to actively explore the social, political, and moral values prevalent in society. Thus, the Constitutional Court acts as an agent of social change, capable of balancing legal certainty, legal utility, and substantive justice, ensuring that its decisions are not only formally valid but also positively impact society.

Analyzing the Constitutional Court's role in legal reform is crucial today, given the increasing complexity of legal challenges, particularly those related to digitalization, freedom of expression, personal data protection, democracy, and human rights. Rapid changes in technology and social dynamics demand an adaptive and responsive legal system, making the judicial review mechanism and the Constitutional Court's discovery of constitutional law crucial instruments in ensuring the law's relevance to current developments. This research provides an in-depth understanding of how the Constitutional Court is able to bridge the

conflict between formal norms and societal needs and demonstrates the institution's ability to maintain a balance between legal certainty and substantive justice.

Academically and practically, this research makes a significant contribution to the development of legal science and constitutional practice in Indonesia. Academically, this research enriches the literature on progressive legal theory and the role of constitutional institutions in legal reform. Practically, the research findings can be used as considerations for policymakers, judges, and legal practitioners in formulating legal strategies responsive to the demands of modern society. Furthermore, this study demonstrates that the Constitutional Court's existence serves as both a watchdog over the constitution and a catalyst for flexible legal reform, enabling it to preserve democratic, human rights, and social justice ideals in the national and state spheres.

## **METHOD**

The research method used in this study is normative juridical, with a focus on the analysis of relevant legal provisions and legal theories to understand the role of the Constitutional Court in legal reform through judicial review and constitutional law discovery. This study uses two main approaches, namely the statutory approach, which examines constitutional provisions, laws, and related regulations such as Article 24C of the 1945 Constitution, Law No. 24 of 2003 in conjunction with Law No. 7 of 2020, and other relevant laws and regulations, and the conceptual approach. Additionally, this study shows that the Constitutional Court's presence allows it to uphold democratic, human rights, and social justice values at the national and state levels by acting as a watchdog over the constitution and a catalyst for adaptable legal reform, scientific journals, books, and academic documents that support the conceptual analysis. The data collection technique was carried out through document studies and systematic literature reviews, while the data analysis technique used a qualitative approach with a descriptive-analytical method, namely describing, categorizing, and interpreting legal materials and literature critically to conclude the function, role, and contribution of the Constitutional Court in adaptive, responsive, and substantive just legal reform.

## **RESULTS AND DISCUSSION**

### **The Role of the Constitutional Court in Judicial Review as an Instrument for Legal Reform**

According to Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court (MK) has a clear constitutional foundation for using its judicial review powers. This article confirms that the MK has the power to decide on disputes pertaining to the legitimacy of governmental institutions, the dissolution of political parties, and the outcome of general elections, as well as to test laws against the constitution. Law Number 24 of 2003 concerning the Constitutional Court, which was subsequently updated by Law Number 7 of 2020, further regulates the MK's operating legal basis. This law defines the mechanism for submitting requests for judicial review, trial procedures, and the types of decisions that can be rendered, ensuring that the MK's authority to uphold constitutional supremacy has a strong and clear legal basis.

The MK's authority to test laws against the 1945 Constitution allows this institution to assess whether written legal norms comply with constitutional principles. The MK can annul all or part of the provisions of laws deemed to conflict with the 1945 Constitution, either formally or materially. However, this authority has limitations; The Constitutional Court does not have the authority to create new laws or substantively amend laws outside of the constitutional review process. Therefore, its role is corrective and supervisory, ensuring that

applicable laws do not deviate from the fundamental values of the constitution but remain within the framework of norms established by the legislators.

Preserving constitutional supremacy and the coherence of legal standards is the major goal of the Constitutional Court's judicial review process. The Constitutional Court protects fundamental values including equality, social justice, and human rights by evaluating laws in light of the 1945 Constitution. By rejecting or amending laws that could jeopardize the general interest or certain organizations, the Constitutional Court also defends citizens' constitutional rights. This function aligns with Article 28D paragraphs (1) and (2) of the 1945 Constitution, which guarantees citizens the right to legal protection and equal opportunity to obtain justice. Therefore, judicial review is a crucial instrument in democratic and just law enforcement.

Furthermore, judicial review also has a transformational function in legal reform, namely updating legal norms to remain relevant to social, political, and technological developments. The Constitutional Court's decisions not only uphold constitutional provisions but also adapt the law to the needs of modern society. For instance, the Constitutional Court reviewed the Electronic Information and Transactions Law, and the Job Creation Law interpreted legal provisions contextually to favor substantive justice while maintaining legal certainty. Thus, the Constitutional Court plays a role not merely as a constitutional oversight body but also as an agent of legal reform, bridging legal certainty and substantive justice.

Since the establishment of the Constitutional Court, the trend of judicial review applications in Indonesia has shown a significant increase year after year. This is reflected in statistical data on applications filed by both citizens and legal entities, indicating a growing public awareness of the protection of constitutional rights. This increase in the number of applications indicates that the public is not only demanding formal compliance with the law but also emphasizing the importance of substantive justice in legal practice. This phenomenon indicates the tension between rigid written law and the demands for justice within society, making the Constitutional Court a strategic arena for citizens to fight for their constitutional rights.

The types of laws frequently subject to judicial review vary, from economic laws to information technology and elections. For example, the Job Creation Law has drawn widespread criticism for its perceived reduction of worker and environmental protections, and the Electronic Information and Transactions Law (UU ITE) are frequently questioned regarding freedom of expression. Furthermore, the Election Law is also frequently subject to judicial review because it relates to citizens' constitutional rights to be elected and to vote fairly. These cases demonstrate that judicial review requests are driven not only by technical legal reasons but also by socio-political motives and the defense of human rights, which reflects the Constitutional Court's responsibility to maintain the harmony between the public interest and legal requirements.

The public's motives for filing judicial reviews are usually rooted in perceived substantive injustice resulting from the implementation of a particular law. Many requests are filed when a law is deemed unfair, discriminatory, or detrimental to a particular group. Furthermore, requests also arise from legal uncertainty, where the text of the law gives rise to ambiguous interpretations, thus raising doubts within the public. In this regard, the Constitutional Court's judicial review functions as a corrective tool to preserve the values of justice and legal certainty, while also providing a forum for citizens to express their constitutional aspirations.

The impact of Constitutional Court decisions on law and society is broad, both normatively and socio-politically. Legally, Constitutional Court decisions can lead to changes in norms, the annulment, or adjustments to articles in the law being reviewed. This updates the legal framework so that it remains relevant to the needs of the public. Socio-politically,

Constitutional Court decisions increase public constitutional awareness and strengthen citizens' rights to seek legal protection. The Constitutional Court's oversight function over the legislature and the executive branch is also evident in the vigilance of both institutions in formulating policies to ensure they do not conflict with the constitution, thus serving as a balance of power and a safeguard of democratic principles.

However, it is not always easy to put Constitutional Court rulings into practice. Obstacles often arise from executive or legislative officials being slow to follow up or even delaying the implementation of decisions. The potential for legal uncertainty also arises when interpretations of Constitutional Court decisions differ among law enforcement officials, leading to confusion in daily practice for the public and law enforcement officials. This situation demonstrates that judicial review, while formally effective, requires political and institutional support to function optimally in achieving substantive justice.

Furthermore, the Constitutional Court faces limitations in balancing legal certainty and substantive justice. Constitutional judges must be careful to ensure that decisions not only satisfy a sense of justice but also respect the existing legal framework. The conflict between formal norms and demands for social justice often presents a complex dilemma for the Constitutional Court. Therefore, the success of judicial review is measured not only by the decisions it produces but also by the Constitutional Court's ability to maintain a balance between legal certainty and substantive justice, ensuring that the law remains relevant, adaptive, and responsive to the dynamics of modern society.

### **The Discovery of Constitutional Law and the Progressive Legal Approach as the Basis for Substantive Justice**

Constitutional law discovery, or constitutional *rechtsvinding*, is a judicial approach in which judges not only interpret the text of the law literally but also find laws that align with constitutional principles. In practice, *rechtsvinding* enables constitutional judges to explore the fundamental values embodied in the 1945 Constitution, so that their decisions are not only formally valid but also relevant to the needs of society. This concept emphasizes that law is not merely written rules but must be alive and able to adapt to social, political, and cultural developments in society. Thus, constitutional *rechtsvinding* positions constitutional judges as active actors in shaping law in accordance with the spirit of the constitution.

The scope of constitutional *rechtsvinding* encompasses several important aspects, including the interpretation of constitutional norms, filling legal gaps, and adapting the law to social changes occurring in society. In this context, constitutional judges act not merely as interpreters of the law, but as interpreters of living and dynamic constitutional values. Thus, Constitutional Court decisions can close legal loopholes or correct ambiguous provisions to maintain their compliance with the principles of justice and the public interest. The relationship between legal review and judicial review is very close, as the judicial review process serves as a means for judges to find a constitutional interpretation that best aligns with the fundamental values of the 1945 Constitution.

The role of constitutional judges in legal review can also be described as the living voice of the constitution, that is, the voice of the constitution that lives within social reality. Constitutional judges do not simply read the text but understand the social, political, and cultural context, so that their decisions have practical relevance. With this approach, the Constitutional Court can uphold citizens' constitutional rights more substantively, including rights not previously regulated in detail in law. This concept expands the Constitutional Court's role from an institution that merely reviews legal formalities to an agent of legal reform responsive to societal demands.

The progressive legal approach proposed by Satjipto Rahardjo provides a relevant philosophical basis for the practice of legal review at the Constitutional Court. Progressive

law emphasizes that the law must serve humanity, not the other way around, so judges' decisions must consider the values of utility, justice, and social interests. This theory emphasizes the flexibility of the law to adapt to social change, so that the principle of substantive justice can be realized without sacrificing legal certainty. By adopting a progressive approach, the Constitutional Court is able to balance normative demands with the real needs of society.

The main principles of progressive law include a balance between legal certainty, legal utility, and justice. The Constitutional Court, through its judicial review decisions, strives to ensure that applicable legal norms are not only formally clear and certain but also beneficial and fair to society. For example, when interpreting laws related to voting rights, the right to information, or personal data protection, the Constitutional Court considers the social context and contemporary developments to ensure that its decisions remain relevant and substantively uphold constitutional rights. This demonstrates that progressive law is not merely theoretical but applicable in the practice of constitutional justice.

The implementation of legal principles in Constitutional Court decisions can be seen in various concrete examples. Constitutional judges frequently reinterpret citizens' constitutional rights, such as the right to freedom of expression, the right to protection of personal information, and political rights in elections. Furthermore, the Constitutional Court adjusts the meaning of phrases or provisions within specific articles to better align with constitutional principles and societal needs. This process demonstrates that Constitutional Court decisions not only adhere to the formal text of the law but also take into account the ever-evolving social, political, and technological context.

The impact of the implementation of legal principles is evident in the renewal of positive law and public awareness of the constitution. Progressive Constitutional Court decisions often lead to changes in norms, adjustments to articles, or the development of legal interpretations that are more responsive to public needs. This impact is not only normative but also socio-political, as it increases public awareness of their constitutional rights and strengthens a democratic legal culture. Thus, the Constitutional Court becomes an institution capable of bridging the tension between legal certainty and substantive justice.

The Constitutional Court's transformational function, through its progressive approach, strengthens its role as an agent of social change. The Constitutional Court balances legal certainty and substantive justice while adhering to existing norms, ensuring that its decisions adapt the law to current developments. This role is crucial in maintaining the relevance of the national legal system to social, political, and technological dynamics. Through a combination of legal principles and a progressive legal approach, the Constitutional Court serves as a driving force for legal reform that is adaptive, responsive, and able to meet the demands of modern society in a just and substantive manner.

## CONCLUSION

Based on the conversation, it can be said that the Constitutional Court (MK) strategically uses the processes of judicial review and constitutional law discovery (constitutional *rechtsvinding*) to act as an agent of legal reform in Indonesia. The Constitutional Court can maintain the supremacy of the constitution through judicial review, balance legal certainty with the need for substantive justice, and protect citizens' constitutional rights. The increasing trend in judicial review applications reflects a high level of public awareness of rights protection and the relevance of law to social life. Furthermore, the practice of *rechtsvinding* implemented by the Constitutional Court demonstrates the ability of constitutional judges to interpret norms contextually, adapt the meaning of articles to social, political, and technological developments, and uphold progressive legal principles that place humans at the center of legal formation. The integration of judicial review and

constitutional law discovery makes the Constitutional Court an adaptive, responsive institution capable of maintaining a balance between legal certainty, expediency, and substantive justice.

Based on these findings, several suggestions can be put forward to strengthen the Constitutional Court's role in legal reform. First, the implementation of Constitutional Court decisions must be supported by better coordination with the legislative and executive branches to ensure effective and consistent legal change. Second, the Constitutional Court needs to continue developing a progressive legal approach and rechtsvinding while still adhering to constitutional principles, so that decisions are not only formally valid but also substantively relevant to society. Third, constitutional education and increasing legal awareness among the public must be continuously strengthened so that judicial review applications can become an effective instrument in improving the national legal system. With these steps, the Constitutional Court will not only function as a guardian of the constitution but also as a driving force for adaptive, responsive, and socially just legal reform, enabling the Indonesian legal system to sustainably face modern challenges.

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