

## Investigating the effectiveness of the judicial review practices within Indonesian legal system

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### Abstract

The implementation and practice of judicial review in Indonesia is problematic. This is because it is accompanied with the inconsistencies between the theoretical regulations and laws with practical implementation in the country. This issue has led to the imbalances in the legal process, lack of trust within the judicial process. This research aims to examine the effectiveness of the judicial review system in Indonesia. The suitable method for the present study is qualitative research. This method is adopted due to the fact that the researcher is not collecting primary data through survey of which quantitative analysis will be conducted. However, the major design selected for this study is desktop research design. It is type of data collected without field work. The main fields for data collection for this kind of research are libraries and internet. As said earlier that the major sources of this desktop research involves the internal data which are collected within the judicial and legal institutions in Indonesia such as legal report, and other important judicial information. The second source of data in the present study is the library and the items to be collected in the library consist of the hardcopies of journals, newspapers, directories and government statistics. Online data base is the third strong source of data collection in the present study. This research has succeeded in explaining the judicial review concept and its process in Indonesia. It narrates the historical background of the judicial review process by explaining the shortcomings of central judicial review system authority previously conferred on the Supreme Court that led to the institution of constitutional court as promulgated in the third amendment of the 1945 constitution in 2003. The meaning, importance and benefits of the constitutional court were highlighted as well as the strategies for strengthen constitutional court independence and integrity. The section finally explains the challenges confronting the judicial review process and implementation.

**Keywords:** judicial, review, Indonesia, legal, system

### Introduction

The historical analysis of the Indonesia legal framework has led to the deduction that, contemporary legal issue of the sovereign entity called Indonesia is fundamentally built on the past customary laws, Islamic laws and the legacies of the colonial masters. It is equally believed that the geographical location as well as the atmospheric endowment of the country greatly influences the type of customary and cultural practices of the people which later culminated to the legal framework. Meanwhile, the Indonesia legal framework after it has been consolidated by the old cultural practices and the customary laws as well as the heritage of the colonial masters gave birth to the three main tiers of government which are executive, legislature and the judiciary. These three arms of government are pillars of democracy in any nation. These three arms work complementarily but independently to sustain democracy in any political entity. However, the judicial arm of government is very paramount in ensuring checks and balances within the three tiers of government for smooth running and flow of democracy. In view of this, the present chapter is considering and examining one of the mechanisms used by the Judiciary to sustain justice and democracy in a polity which is called judicial review.

Meaning and Historical Account of Judicial Review in Indonesia

The process by which the judicial arm of government exercises the annulment of the executive and legislative arms of government's acts which are in contrary to the federal constitution is known as judicial review

(Sukmariningsih, 2018; Syari'ah, 2018) <sup>[20, 21]</sup>. Judicial review is equally seen as the procedure used by court to investigate the conformity of the executive and legislative arms of government's acts to the constitutional provision (Simamora, 2016a) <sup>[15]</sup>. Judicial review is one of the mechanisms used by the court to review legislation to ensure it is coherence and compliance with higher hierarchy rules or legislation (Chalid, 2017) <sup>[6]</sup> which sprang from the federal constitution. It is the power conferred on the judiciary to hold any law unconstitutional, hence unenforceable as well as any act of government official which are in conflict with the federal constitution to be null and void (Siregar, 2015) <sup>[17]</sup>. It is opined that, judicial review is a valid evidence to practice and execute rules of law by placing the constitution as the highest authority in terms of legal sources in a given nation.

The operation of judicial review assures the right of citizen by protecting their constitutional rights (Soemadipradja & Taher, 2014) <sup>[19]</sup>. For instance it was affirmed that most modern constitution comprise a bill of fundamental human right and freedom which are directly applicable to the citizen. Judicial review is potent in this regard, due to the fact that, most countries' legal framework made constitutional provision prevails over any other law. The dominant justification for the institution of judicial review is based on the impeccable roles of the court to protect individual and organizational fundamental human right as explicitly entrenched in the in the nations' constitution. One of the major argument to support the ardent demand for judicial review in Indonesia is due to the premise that, a

strong constitution under democracy is not based on blind respect to unstrained will of majority, but protect individual as well as minority right against the majority (Global-Campaign-for-Free-Expression, 2010). The political majority might always find its way to achieve its interest if not restrained but not always care sufficiently for the protection of the minority and individual dissidents. That is why (Sadurski, 2005) <sup>[14]</sup> posited that political majority should not always be allowed to prevail over those individual or minority group who disagree with them in terms of preference and choice. The presence of judicial review conferred the authority the power on the judiciary to make a strong verdict related to the usability and validity of a legislation of which the final decision shall be respected and abided by all the branches of government (Simamora, 2016a) <sup>[15]</sup>. Similarly, judicial review is used for arbitration among conflicting political parties, branches of government and individual by engaging in judicial scrutiny of the statutes or legislations that cause disagreement (Butt, 2019) <sup>[4]</sup>. The judiciary through judicial review assist the nation to prevent abuse of power by other branches of government (Butt & Parsons, 2014) <sup>[3]</sup>. That is why (Cappelletti, 1970) <sup>[5]</sup>, view that, for a country to be democratically sustained there should be presence of judicial review accompanied by double faiths from the public. One of which is the faith in higher law binding even the democratic legislature and the principal content, which are norms that protect individual right and liberties against the tyrannies of political and democratic majorities. The second one is faith in court, constitutional or general, regular or supreme as the most efficient and effective guarantee for the enforcement of such higher law. Due to this, judicial review is seen as the hallmark of every country's rule of law and democracy. On this ground, it was posited and affirmed that, democracy without a form of judicial review is considered deficient (Lustig & Weiler, 2018) <sup>[10]</sup>.

Meanwhile, in order to emphasize the importance of the judicial review to Indonesia democracy there was an initial attempt to institutionalize judicial review authority since the preparation of the 1945 constitution. It means the proposal of authority to implement judicial review has been in existence since independent constitution. However, due to several considerations the proposal has not been accommodated. This is due to the fact that, Indonesia as an entity did not have any legal expert to run the institution (Bundjamin, 2011) <sup>[2]</sup>. Therefore, during the enactment of the 1945 constitution there was not judicial review authority. In this regard, the judicial review was present in the constitution in concept or theory but not in practice for implementation because it has not been institutionalized (Bundjamin, 2011) <sup>[1]</sup>. More so, during the enactment of the 1949 constitution attempt to institutionalize the judicial review authority resurfaced through the article 156 paragraph (1) of the constitution states that *"if the supreme court or other courts arbitrate or adjudicate in civil cases considers that a rule of law of a section is contrary to the constitution the decision of the judiciary as well, is that the provision explicitly not according to the constitution"* (Bundjamin, 2011, Pg 3) <sup>[2]</sup>.

Paragraph 2 of the same section of the constitution states that;

*"Supreme court equally possess the authority to declare that a provision in the constitutional regulation are not in consonance with the constitution, in as much there is*

*request for that, either by government of the Republic of the United State of Indonesia"*

According to the above provision the Supreme Court possess the power to implement judicial review but restricted only to reviewing the state legislation against the constitution. In this regard, the second phase of the integration of judicial review into the body of Indonesia constitution. The next phase of the judicial review development was the period of provisional constitution of 1950 when the judicial review authority was abolished due to the change in the nation's politics. This witness the period when President Soekarno abolished the institution of separation of powers and the executive arm of government was meddling in judicial matters (Siregar, 2015) <sup>[17]</sup>. The judiciary of this period was less effective, powerless and corrupt to the extent that, the public regarded them as the most corrupt institution in the nation.

However, the enactment of the presidential decree of July 1969 in Indonesia brought back the idea of judicial review (Simamora, 2016b) <sup>[16]</sup>, even failed to be realized in this period. Meanwhile, the promulgation of law 14 in 1970 on judicial review was accommodated again. Article 26 paragraph (1) of the law state that: the supreme has the power to outlaw all the legislations from the lower level of the law on the reason that it is in contrary to the higher legislation (Simamora, 2016a) <sup>[16]</sup>. Meanwhile, the judicial review authority was not fully and actively implemented (Falaakh, 2001) <sup>[8]</sup>. Concerning this article the Supreme Court was given power to conduct judicial review but restricted only to the legislation under the law. The authority to conduct judicial review was equally given in 1985 but the provision was not different from that of 1970 (Simamora, 2016a) <sup>[15]</sup>.

The barrier preventing the practical implementation of judicial review authority was finally broken during the third amendment of the 1945 constitution in 2001. Since this time it has become a milestone to the development of the judicial review in Indonesia. Several crucial changes were made to the 1945 constitution in relation to the judicial review, which state that:

Article 24 (2):

*"Judicial power shall be exercised by a Supreme Court and its inferior courts, in the jurisdictions of general courts, the religious affair courts, the military tribunal, the state administration courts, and by a Constitutional Court"*.

Article 24A (1):

*"The Supreme Court shall have the authority to hear a trial at the cassation level, to conduct judicial review of regulations made under any law against such law, and shall have other authorities as provided by law"*.

Article 24C (1):

*The Constitutional Court shall have the authority to hear cases at the first and final level the decisions of which shall be final, in conducting judicial review on laws against the Constitution, to decide disputes concerning to the authorities of state institutions whose authorities provided by the Constitution, to make decisions on the dissolution of political parties, and to decide disputes concerning the results of general elections. (Simamora, 2016a; pg 28) <sup>[16]</sup>*

These constitutional amendments in the article 24 above has succeeded is separating the judicial power into two judicial branches which are Indonesia Supreme court (Mahkamah Agung MA) and Indonesia Constitutional court (Mahkamah Konstitusi MK). It means the Judiciary in the area of

discharging judicial review responsibilities was dualized in terms of structure and responsibilities. The constitution states that, the Supreme Court shall conduct judicial review on regulations made under any other legislations or statutes against such legislation or statute, while the constitutional court was conferred with the authority to conduct judicial review on any laws, legislations or statutes against the federal constitution (Simamora, 2016a; Siregar, 2015)<sup>[15, 17]</sup>. This provision has instituted the authority of judicial review, as it is entrenched and practically instituted in the polity of the country.

The main rationale for the establishment of dualism in judicial review which grants the Supreme Court the authority to examine legislation under the law was in fact due to both historical and practical reasons. It should be noted that the authority to conduct judicial review was initially given to the Supreme Court long before the third amendment of the 1945 constitution in 2001. However, when it was generally apparent that the judiciary was less effective, powerless and corrupt then there is need for constitutional amendment which brought about the constitutional court. In the same vein, there is slow process within the existing Supreme Court in the area of institutional reformation which generates distrust about the court from the public. Even the judiciary was heavily influenced by the executive due to the fact that, the supreme court Judge was solely appointed by the president without interference from any third party (Siregar, 2015)<sup>[16]</sup>. Therefore, the citizens' expectation of fast, just, clean and reliable judiciary was not achieved by the Supreme Court.

### Supreme Court and Judicial Review in Indonesia

As it was discerned from the article 24 cited above that Indonesia legal framework adopt dualism of judicial review which means the country has two separate judicial bodies namely the Supreme Court and the constitutional court. According to the constitution the Supreme Court conduct review of the legislation of the lower hierarchy against the relevant law or review on the legality of regulations which is otherwise termed legal review. In summary the Supreme Court conducts an aspect of judicial review called legal review (Chalid, 2017)<sup>[6]</sup>.

Equally, the Supreme Court was given the authority to conduct a judicial review on a law below a statute which is suspected to be conflicting with a statute. Therefore, the supreme court possess the authority to declare a law below a statute invalid if such law conflicted with higher level laws. The court equally have legal authority to review legislation lower than a statute against a higher-level law. Mainly the major difference between the review powers of both courts lies in the fact that, the Supreme Court evaluates the validity of lower level laws either against statute or higher-level laws, while the constitutional court reviews the constitutionality of statutes and legislations. Similarly, the supreme court has the authority to invalidate any legislation that violate the fundamental human right of citizens and any law that permit government to circumvent its legal obligation (Butt & Parsons, 2014; Sukmariningsih, 2018)<sup>[4]</sup><sup>[20]</sup>.

More so, several of the legislation which can be reviewed by the supreme court need to be signed to law by the government official such as President or the minister or passed by the regional legislative assemblies of which the deliberations are not widely reported (Sukmariningsih,

2018)<sup>[20]</sup>. It is seen here that, there is potential of the laws for less public scrutiny and transparency, which are likely to impede the right of citizens, due to the fact that, public complaints might be blurred from predatory and discriminatory legislation against them (Wiratraman, 2018)<sup>[22]</sup>.

Meanwhile, in a situation where there are inconsistencies between government decision or regulation on issues and precedence prevailing legislations the supreme court will be requested to make judicial review on this through the public or institutional applications. On this issue the supreme court on the judicial review proceedings is the final and binding which shall be enforceable within 90 days from the date of issue (Bundjamin, 2011)<sup>[2]</sup>. The supreme court equally investigate whether the substance of a law is valid as well as evaluate whether all the procedures for law enactment are strictly followed (Syari'ah, 2018)<sup>[21]</sup>.

Judicial review application can either be made directly to the Supreme Court or through the local district of the application. There are some criteria to be met by the applicant in order to have a legal standing. Firstly, the applicant must apparently that his/her right or interests have been affected adversely by enacting the legal instrument. The applicant must be individual citizen, customary community groups and public or private legal entities. The judicial review opportunity is available to local government, business as well as citizen alike. Meanwhile, any legislations or laws struck down by the supreme court will not legally binding any longer and the supreme court verdict is not subject to appeal (Butt & Parsons, 2014)<sup>[4]</sup>.

More so, the empirical research conducted by (Butt & Parsons, 2014)<sup>[3]</sup> revealed some procedural weaknesses in the process of Supreme court judicial review. There is apparent lack of transparency in the administration and management of case. The applicants are not furnish with credible information as the case progress making it very hard to understand the exact stages of the judicial review case handling and monitoring the petition filed. The outcome will just be posted to the Supreme Court website without prior notification for the applicant. In this regard, the applicant will not be able to follow up their cases and might express dissatisfaction in case the outcome is not favorable.

By filling a written objection with a viable court requesting that the conflicting state administrative decision should be declared null and void with or without compensation or rehabilitation. The applicant should be able to state the reasons for supporting their claims which could state that "the state administrative legislation is against the prevailing laws and regulation or the state administrator legislation is against the general principles of governance. It is equally important for the applicant to cite practical examples to support his/her claims (Bundjamin, 2011)<sup>[2]</sup>.

Equally, the way their argument is presented is considered as another procedural error. The Supreme Court does not provide opportunity to the applicant or the parties involve presenting their oral argument or directly responding to the submission of other parties. After the application to the court through written submission, the court allocate the case to judges that constitute the review team, they meet to discuss the case thereafter and come up with decision. Thirdly, bye law practices has been adopted the supreme court no matter how terribly the bye law violates citizen's right, it will be applied while the court is still deciding its

validity. Meanwhile, the court take an average period of three years to decide each bylaw under review, with shortest period taking one month, while the longest period is taking eight years. However, there is no provision for an interim or interlocutory injunction on the bylaw under review. Meanwhile, in this situation the citizen will continue to labour under an oppressive law until the review is concluded (Simamora, 2016a; Syari'ah, 2018) <sup>[15, 21]</sup>. Even if discovered to be invalid the bylaw will be held to be null and void from the date of Supreme Court final decision not from the period of enactment. Whereas, refusal to invalidate from the time of enactment will definitely diminishes the utility for citizens of bring a claim which will finally undermine the courts' authority (Butt & Parsons, 2014; Simamora, 2016a) <sup>[15, 4]</sup>.

It was equally recounted and affirmed that, Supreme Court's reasoning and jurisprudence in judicial review cases is simplistic and superficial. This is due to the fact that, its judgments are often terse and provide little in the way of reasoning, of which future Judges will not be able to develop as jurisprudence, neither the applicant can use it to make argument in future cases (Butt & Parsons, 2014) <sup>[3]</sup>. In summary, the major problem highlighted under the Supreme Court Judicial review procedures is hanged on the fact that, the regulations are not reflecting the comprehensive procedural law as well as lack of transparency in judicial review case handling process. This problem has led to public trust in judicial process of the supreme court (Simamora, 2016a) <sup>[15]</sup>.

#### **Constitutional Court and Judicial Review in Indonesia**

The problematic situation of the centralized judicial review authority by the Supreme Court led to the amendment of the constitution in 2003 which brought about the constitutional court in Indonesia. It was claimed that the previous judicial review authority by the supreme court characterized itself with political immaturity and weaknesses in form of favoritism and corruption among the judicial personnel as well as failures of political that stem from their incessant conflicts and open disagreement made imperative and critical to have separate court aside the supreme court (Muhammad Siddiq Armia, 2017) <sup>[12]</sup>. Equally, it was asserted by (Siregar, 2008, 2015) <sup>[17]</sup>, that the proximate cause of the creation of the constitutional court was the quest for an impartial and efficient institution to oversee the presidential impeachment process. The constitutional court was the outcome of a deliberate decision to elevate a law to the position of co-equal status with politics (Chalid, 2017) <sup>[6]</sup>. In this regard, the constitutional court in Indonesia has been able to gathered public support and has become a strong institution which has earned respect from other legal institution (Siregar, 2008) <sup>[16]</sup>.

The main mandate given to the constitution court as entrenched in Article 24c section 2 is primarily the judicial review authority. That is, the authority to review the statutes or legislations against the Indonesia constitution of 1945 (Muhammad Siddiq Armia, 2017) <sup>[12]</sup>. This was conferred to the court in order to protect people against the potential abuse by the DPR and the executive arm of government, to ensure respect for the fundamental human right. The secondary authority given to the constitutional court is the power to settle disputes concerning the state's institutions established under the amended constitution of 1945. The court equally, uses the process of judicial review to settle

disputes between the constitutional institutions of the state. This was intended to jointly recognize the concept of separation of power and provide mechanisms for dispute resolution between the institution (Ramlan, 2019) <sup>[13]</sup>. The third power is the authority to dissolve political parties under the previous regime in order to curtail political competition. The court was equally conferred with the authority to settle disputes regarding the result of the general election and lastly the court possess the authority to adjudicate accusation of wrongdoing made by the DPR against the executive arm of government especially the president or vice president as part of the impeachment process (Chen, 2013) <sup>[7]</sup>.

The constitutional court is connected to the general principles of an independent judicial power it is free from the influence of other justice and law enforcing institutions. It is the first and final level judicial institution of which its decisions are binding and final. The constitutional court existed to maintain a stable government and equally correct the provision of the constitutional experience of multiple constitutional interpretations through judicial review. The concept of constitutional judicial review has attracted people attention due to the fact that, it has assisted in shifting the paradigm from the parliamentary supremacy doctrine to the constitutional supremacy doctrine (Ardhanariswari, Fauzan, & Komari, 2018) <sup>[1]</sup>. Previously the law was inviolable but with the advent of judicial review the promulgation and existence of any law is questionable in its alignment with the constitution.

Therefore, the constitutional court is an institution given the authority to examine law against the constitution. The mechanism by which the constitution examines this authority is the through judicial review. By this, the provision of the acts will be safeguard in order not to be conflicted with constitution as well as not impair the constitutional right of the citizen. The constitutional court through the judicial review equally strengthens the principle of separation of power and law by ensuring the supremacy of the law and maintain people equality before the law (Ardhanariswari *et al.*, 2018) <sup>[1]</sup>.

The conditions concerning application for the constitutional judicial review generally states that, the applicant must be an Indonesia citizen, an indigenous (Adat) community recognized by law, a private or public organization recognized by law, and a government body. In addition, the content of the application must obviously involve the violation of a constitutional right which must meet the following criteria:

- The right must be constitutionally guaranteed for the applicant
- The right must be violated by the operation of the law requested to be reviewed
- Constitutional loss or harm must be apparent and specific
- There should be causal relationship between the allegedly constitutional harm suffered and the operation of the law in question
- And lastly, there should be possibility that, granting the request for the review will result in prevention of constitutional loss and harm cessation

#### **Independence of the Constitutional Court**

In order to ensure that the constitutional court is independent the court has put several things in places:

### 1. Impartial Strategy of Recruitment of Judges

- The first aspect is the area of recruitment of its judges. It makes sure that, each arm of government has representation to ensure the principle of check and balances. It means the executive arm of government will nominate three judges, while the legislative arm will equally nominate three and the judiciary will also appoint three. Making nine Judges that will constitute the members of the constitutional court. It means that, it will not create a situation of “he who pays the piper dictates the tune”. That is no interest of any of the three arm of the government will prevail. Since all the three tier of government are equally represented. Due to this the constitutional Judges will work independently and will be free from external or internal intervention of influence from any branch of government (Mahfud, 2011) <sup>[11]</sup>. In essence, they are totally free and detached from the personal interest of any institution that nominates them.

### 2. Institution of Codes of Ethics

- Another strategy employ by the court to further strengthen the level of independence of the constitutional court, is the institution of codes of ethics. These were formulated to be in line with the Bangalore principles of judicial conduct; such as the principles of independence, integrity, propriety, impartiality, equality, diligence and competence. Any Judge that deviate from any of these codes of ethics will be sanctioned and punishment will be imposed on the erred Judge, after the honorary council of the constitutional court has internally examined the issue. Adhering to these codes on the other hand will make the constitutional court Judges not affected by the intervention and influence by any organ of government (Mahfud, 2011) <sup>[11]</sup>.

### 3. Stringent Measure to become a Constitutional Court Member

- In addition to the impartial strategies in choosing and nominating the constitutional court Judges, stringent measure was put in place in becoming a member of the constitutional court Judges. Therefore, to become a member the person must possess an impeccable personality and person of integrity, being a statesman, being fair and profound in state administrative and constitution mastery. Being a statesman is one of the profound criteria the intending judge must possess. The statesman based on the constitutional court definition is that individual who placed the state interest above his/her own selfish interest.
- Second requirement of becoming one of the judges of the constitutional court is to be a nationality of Indonesia.
- Specialized in law
- Such person is not having criminal record for the last five previous years,
- He or She has not been declared bankrupt,
- Having 10 years of professional experience as lawyer and being independent.
- The prospective Judge is not allowed to hold any concurrent public office;
- Not being a member of a political party, not a civil servant nor entrepreneur

- Finally, on this is the minimum age for the prospective Judge must not less than 40 years.

### 4. Transparency in the hearing Process

- Another means in which the constitutional court enhances its independence and legitimation is the fact that, the hearing process is transparently implemented. It is freely open to the public and the press.
- No single word or legal verdict is concealed nor is any information dodged or manipulated. This is because the entire procedure of the hearing is recorded in visuals and audio gadgets.
- To further extend its hearing to the public 34 video conferencing networks were owned by the constitutional court which are placed across all the provinces and law schools in Indonesia. It equally provides live video streaming facility via its website. This will enable the entire people who are interested in legal and judicial issues in the country and outside the country to easily have access to the court hearing. Therefore, people will follow the court hearing live in their respective places without any obstruction.
- Even the final decision and conclusion reached by the Judges will be boldly displayed on a very big screen in the court. So that people who are present at the court will be able to read the decision and conclusion again after it has been initially read by a Judge for the purpose of seeking clarifications and removing ambiguity. This reading will equally prevent any back-door manipulation of the court ruling since everybody already has access to the decisions and conclusions.

### 5. Fair way of submitting Petition for Judicial Review

- More so, the constitutional court put some mechanisms in place for the submission of petition for judicial review, in order to uphold the spirit of fairness and justice. Firstly, there is no any prerequisite condition for filling a petition to the court. This will allow both the rich and the poor to have access to the justice provided by the court. In this sense the voice of the minority group can be heard and their interest can be constitutionally sustained. It means the minority group even the ordinary citizens have equal right before the constitutional court (Mahfud, 2011) <sup>[11]</sup>. For example many petitions accepted and granted by the constitutional court were from the minority group. All socio-economic level were not obstruct from seeking justice in the court so that everybody will have access to fair justice. They made it easy and permissible that, filling petition can be done in the constitutional court both online and offline.

The constitutional court has created successful land mark through its decisions and activities which has brought about a conducive political situation and has contributed significantly in consolidating Indonesian local democracy (Mahfud, 2011) <sup>[11]</sup>.

### Dualistic Judicial Review System in Indonesia

Dualistic judicial review system has been officially adopted in Indonesia according to the third amendment of the 1945 constitution in 2001. Under this system the power to conduct judicial review is conferred and divided among two judicial organs of which each organ has its own scope of

review. The Supreme Court reviews legislation below the level of law, while constitutional court on the other hand reviews legislation against the federal constitution. Expert proclaimed that, dualistic judicial review system adopted by Indonesia is unusual (Chalid, 2017) <sup>[6]</sup>. It was posited empirically that there is difference between the kind of judicial review adopted by Indonesia and the judicial review system commonly adopted by many countries across the world. Theoretically there are two kinds of judicial review commonly used across the world these are centralized and decentralized judicial review (Chalid, 2017) <sup>[6]</sup>. The main feature of the decentralized judicial review system that differentiate it from the centralized one is that all courts at each level are authorize to conduct judicial review. In this situation judicial review authority is not institutionalized. The centralized judicial review model on the other hand, is the situation whereby the judicial review is only conducted by either the constitutional court or the Supreme Court depends on the legal framework of the country. However, Indonesia model of judicial review is not within the two models. It is rather unique and unusual as it divides the judicial authority between the Supreme Court and constitutional court. It means the dualistic judicial review system was uniquely created by Indonesian to confront the turbulence political condition of their country. However, the implementation and procedures in Indonesian judicial review system is not free from its own itches and problems but it has able to serve the purpose of its creation.

### Problems of Judicial Review in Indonesia

The philosophy behind the institution of judicial review was to protect the fundamental human right of the common citizen and sustain democracy. It means that, it means the public is even the focus of the judicial review implementation. However, the judiciary at the onset of the implementation of the judicial review bereft public trust as the result of the previous judicial process run by the Supreme Court not being transparent and void of integrity. This conception has been transferred to the present constitutional amendment that brought about the current judicial review system (Simamora, 2016a; Sukmariningsih, 2018) <sup>[15, 20]</sup>. In view of this, several people felt aggrieved with the enactment of the judicial review.

Equally, it was recounted by expert that Supreme court failed to provide legally comprehensible and comprehensive reasoning in its decision-making process which is not only restricted to the judicial review but also other categories of cases (Butt & Parsons, 2014) <sup>[4]</sup>. Several reasons are reported to be responsible for this point. These range from insufficient time in writing the judgment and considering their cases, the lingering effect of the civil law tradition whose judgment were customarily short, influence of corruption rampant in the court and courts' lack of technical and legal capacity as well as experience in handling judicial review cases.

Another blatant challenge confronting judicial review is the inconsistencies of the courts' (Constitutional and Supreme) Judicial review decisions with one another (Butt, 2019) <sup>[3]</sup>. For instance constitutional court might retain and adopted a particular legislation against the constitution but the Supreme Court might declare the same legislation or statute null and void putting the public to confusion. It was added by (Muhammad Siddiq Armia, 2017) <sup>[12]</sup>, that the dualistic review system adopted by Indonesia cause difficulty to the

political life of the country (Muhammad Siddiq Armia, 2017) <sup>[12]</sup>. Practically, dualism model of judicial review is susceptible to conflicting stances between the Supreme Court and the constitutional court. This stance was supported by (Simamora, 2016a) <sup>[16]</sup> that the categorization of judicial review authority into two separate institutions may trigger serious legal problems as well as corrupt the principle of law.

### Conclusion

This chapter has succeeded in explaining the judicial review concept and its process in Indonesia. It narrates the historical background of the judicial review process by explaining the shortcomings of central judicial review system authority previously conferred on the Supreme Court that led to the institution of constitutional court as promulgated in the third amendment of the 1945 constitution in 2003. The meaning, importance and benefits of the constitutional court were highlighted as well as the strategies for strengthen constitutional court independence and integrity. The section finally explains the challenges confronting the judicial review process and implementation. Therefore, the chapter has presented a comprehensive outlook of judicial review process in Indonesia of which accurate comparism can be made with Malaysia judicial review process.

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