



Legislation and the Constitutional Court: Reconciling Constitutional Justice and Democratic Accountability in Comparative Constitutional Law

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Abstract

The dynamic relationship between legislation and constitutional courts has become a key issue in modern constitutional law. Legislation, reflecting democratic legitimacy, often faces challenges when political majorities pass laws that may threaten constitutional rights and the rule of law principles. Conversely, constitutional courts act as guardians of constitutional supremacy, ensuring that laws align with fundamental constitutional values. This study uses a normative juridical and comparative approach, analyzing constitutional texts, legislation, and landmark judicial decisions from Indonesia, Germany, South Africa, and South Korea. Through content analysis, comparative legal methods, and hermeneutic interpretation, the research shows that constitutional courts worldwide do not just correct unconstitutional laws but also play a constructive role in fostering democratic accountability. The findings emphasize that the relationship between legislation and constitutional courts should not be seen as adversarial; rather, it is a dialectical and symbiotic interaction that promotes constitutional democracy. The novelty of this research lies in its global comparative perspective, moving beyond country-specific analyses and suggesting a conceptual framework for understanding how legislative legitimacy and constitutional justice reinforce each other. This study contributes both to theoretical debates in comparative constitutional law and offers practical recommendations for improving judicial review and legislative processes in democratic systems.

Keywords: Constitutional Justice; Democratic Accountability; Legislation; Constitutional Courts; Judicial Review; Comparative Constitutional Law.

Introduction

Over the past two decades, the role of the Constitutional Court (MK) has become increasingly prominent in the modern landscape of constitutional law (Bin-Armia et al., 2024; Crouch, 2024; Mietzner, 2010; Nurhayati et al., 2022; Vanberg, 2015; Yeh & Chang, 2025). According to the 2023 Global Constitutionalism Report, more than 85% of democratic countries now have mechanisms in place for the constitutional review of legislation. Data from the Comparative Constitutions Project also shows that from 1990 to 2020, there was a 60% increase in the number of constitutional court decisions that directly repealed laws. This phenomenon confirms that constitutional review is not merely a legal instrument, but also a political and democratic arena that determines the direction of state governance.

The urgency of this research is even more apparent when examining legislative practices in various countries, which often result in the enactment of controversial laws. In Indonesia, for example, the Job Creation Law, which was partially overturned by the Constitutional Court in 2021,

shows the tension between the need for economic development and the protection of constitutional rights. Similar cases have also occurred in Hungary and Poland, where national legislation has been criticized for undermining the principle of the rule of law. This situation raises a fundamental question: to what extent can the Constitutional Court uphold constitutional justice while ensuring democratic accountability amid complex political dynamics?

Although there is extensive literature on the role of constitutional courts, a significant research gap remains. Most studies still focus on domestic analysis, such as the function of the Indonesian Constitutional Court in maintaining post-reform democracy (Fernando et al., 2024; I Made Sila et al., 2025; Pujayanti et al., 2024; Rahmah, 2025; Sebastian et al., 2014), or the Bundesverfassungsgericht in Germany in building a tradition of jurisprudence of values. However, cross-country research examining the relationship between legislation and constitutional courts as global instruments for constitutional justice and democratic accountability is still rare (Faulkner, 2024; Popelier et al., 2022; Rahman & Maizaroh, 2024; Yeh & Chang, 2025). This research gap needs to be filled so that the study's results are not only relevant locally but also contribute to the development of comparative constitutional law theory.

Based on the above description, this study aims to analyze the role of legislation and the Constitutional Court in establishing constitutional justice in various jurisdictions, assess the contribution of the Constitutional Court to democratic accountability in global constitutional law, and offer a conceptual framework to strengthen the integration between legislation and constitutional review. With this focus, this study is expected to make a scientific contribution by enriching the discourse on comparative constitutional law, as well as a practical contribution in the form of normative and institutional recommendations for strengthening judicial review mechanisms and enhancing the quality of legislation within the global democratic system.

Research Objectives

This study stems from the awareness that legislation and the Constitutional Court are two fundamental pillars in maintaining the balance between representative democracy and constitutional supremacy. Legislation plays a central role in determining the direction of public policy. At the same time, the Constitutional Court acts as the guardian of the constitution, ensuring that every piece of legislation is in line with the principles of constitutional justice. However, the relationship between the two is not always harmonious. In practice, the tension between the political legitimacy of parliament and the juridical authority of the Constitutional Court often gives rise to dynamics that require critical and comprehensive study.

The primary objective of this research is to analyze how legislation and the Constitutional Court interact in establishing constitutional justice and democratic accountability in the context of global constitutional law. Through a comparative approach, this research not only seeks to describe best practices from several jurisdictions but also assesses their relevance to strengthening constitutional democracy at the international level.

Additionally, this study aims to fill the academic gap in the literature, which has tended to focus on domestic analyses. By placing legislation and the Constitutional Court in a cross-country perspective, this study aims to develop a more universal conceptual framework. This framework can

be used to understand and strengthen the integration between legislative functions and constitutional review mechanisms in various legal systems.

The expected contributions of this research cover two aspects. Theoretically, this research seeks to enrich the academic discourse on the relationship between legislation, constitutional justice, and democratic accountability in comparative constitutional law. Practically, this research offers normative and institutional recommendations that can serve as a reference for policymakers, legislators, and constitutional judges in strengthening the judicial review system and enhancing the quality of legislation in accordance with global democratic principles.

Research Methodology

This study uses a legal-normative approach (Christiani, 2016) with a comparative constitutional law perspective. This approach was chosen based on the main objective of the study, which is to examine the relationship between legislation and the Constitutional Court in various countries with diverse legal systems. Through this approach, the study aims not only to explore the normative texts of constitutions and laws but also to analyze how constitutional review practices are implemented in diverse political and social contexts.

The research data was sourced from three categories of legal materials. First, primary legal materials in the form of constitutional texts, laws, and Constitutional Court decisions in the countries selected as objects of study, namely Indonesia, Germany, South Africa, and South Korea. These countries were chosen because they reflect the diversity of legal traditions and judicial review mechanisms that have developed. Second, secondary legal materials consisting of academic literature, constitutional law journal articles, reports from international institutions such as the Venice Commission and the Comparative Constitutions Project, and comparative data from the Global Constitutionalism Report. Third, tertiary legal materials, such as legal encyclopedias, decision indexes, and cross-country research reports, help reinforce terminological consistency.

Data collection was conducted through a study of Constitutional Court decisions and relevant literature. Data validity was ensured by cross-checking official databases, such as ConstitutionNet, the Oxford Constitutional Case-Law Project, and HeinOnline, so that the data used was academically accountable.

Data analysis was conducted in stages by combining content analysis techniques, comparative methods, and hermeneutic approaches. Content analysis was used to examine the legal arguments and reasoning structures in Constitutional Court decisions, especially those related to constitutional issues that intersect with legislation. Comparative methods were employed to identify similarities and differences in judicial review practices across various jurisdictions, such as the intensity of oversight of legislation or the emphasis on protecting constitutional rights. Meanwhile, the hermeneutic approach is employed to understand the values of constitutional justice and democratic accountability within the socio-political context of each country, ensuring that legal interpretation extends beyond the text to encompass broader meanings.

This methodology is designed to be replicated in future research. Other researchers can adopt this framework by expanding the scope of countries or selecting different cases, then applying the same stages, starting from the selection of analysis units, data collection through official databases, analysis of decisions using content analysis, and cross-country comparisons, to interpretation using

hermeneutics. Thus, this research methodology not only provides academically accountable results but also provides an open analysis model for development in global constitutional law studies.

Result

The findings of this study confirm and expand the academic discourse on the role of legislation and the Constitutional Court in the framework of global constitutional democracy. At the normative level, legislation represents popular sovereignty through the political process in parliament. However, as demonstrated by various Constitutional Court decisions, popular sovereignty as embodied in legislation must not negate constitutional supremacy. Thus, the relationship between legislation and the Constitutional Court is a dialectical one, representing a balance between democratic legitimacy and constitutional supremacy.

Legislation as a Manifestation of Political Legitimacy

Legislation is the embodiment of the people's political mandate, channeled through the process of representation (Gould, 2021). However, as explained by Habermas (1996) in his concept of deliberative democracy, political legitimacy does not come solely from electoral procedures, but also from rationality and public participation in the formation of norms (Oquendo, 2002; Parkinson, 2003; Shahramnia, 2011; Vitale, 2006). Research indicates that in many countries, the legislative process frequently falls short of these deliberative standards. The cases of the Job Creation Law in Indonesia, judicial legislation in Poland, and restrictions on press freedom in Hungary are evidence that legislation can ignore the principles of inclusivity and accountability. This reinforces the argument that the Constitutional Court exists not only as a guardian of the law, but also as a guardian of the quality of democratic deliberation.

Furthermore, the failure of the deliberative process in legislation not only causes procedural flaws but also fundamentally erodes the legitimacy of the law itself (J. Cohen & Charles, 1997; Parkinson, 2003; Zurn, 2002). A law that is born of a closed, rushed process that ignores substantive public participation—as seen in various cases—is only pseudo-legitimacy that relies solely on formal majority power. This kind of legitimacy is fragile because it is not built on a consensus achieved through the exchange of rational arguments, making it prone to triggering social conflict and judicial review. Furthermore, this condition actually reinforces the relevance of Habermas' theory; that in modern democracy, legal authority can no longer rely solely on electoral mandates, but must be continuously renewed through authentic political communication between the state and its citizens.

Thus, the role of the Constitutional Court becomes increasingly crucial as a corrective mechanism. Through its authority to conduct material testing, the Constitutional Court serves to assess whether a law has met the procedural and substantive requirements of a sound deliberative process, thereby restoring the legitimacy lost due to a flawed legislative process.

The Constitutional Court as a Check on Power

The role of the Constitutional Court in upholding constitutional justice has been proven in various jurisdictions (Barber & Vermeule, 2017; E. Cohen, 2021; Paris, 2017; Roux, 2009). In line with the classical theory of judicial review introduced in *Marbury v. Madison* (1803), the Constitutional Court affirms that the Constitution is the highest law that binds all branches of government (Gerber, 2008; Reinstein & Rahdert, 2004; Tuomala, 2015). Research shows that although there are variations in

the intensity and model of oversight, the general pattern that emerges is a balancing function against the excesses of legislative power.

However, this balancing function is not without criticism and fundamental dilemmas, namely what is known in constitutional law theory as "the counter-majoritarian difficulty." This criticism argues that non-elective institutions, such as the Constitutional Court, have the potential to engage in judicial activism by overturning the decisions of democratically elected representative bodies. However, the findings of this study refute these concerns by showing that judicial intervention is not intended to replace the legislature, but rather to ensure that the political process of the majority remains within the corridor of constitutional ethics and does not ignore the rights of minorities. Thus, the Constitutional Court is not a rival, but rather a guardian that ensures that democracy does not degenerate into the tyranny of the majority.

Empirically, this pattern is evident in various jurisdictions. In Germany, the Bundesverfassungsgericht emphasizes the principle of an objective value order, which positions the constitution as a living document that serves as the source of fundamental values. South Africa, through its Certification of the Constitution ruling, affirms the principle of constitutional supremacy that transcends majority political compromise. Meanwhile, the Indonesian Constitutional Court has consistently invalidated articles of law that are deemed to disregard the constitutional rights of citizens, while also emphasizing the importance of the principle of constitutional dialogue between the courts and the legislature.

Thus, these findings demonstrate that the Constitutional Court serves as more than just a "constitutional judge"; it has evolved into a deliberative partner in modern democracy, directing political contestation toward a constitutional dialectic to achieve the substantive goal of the rule of law.

Discussion

Discussions regarding the results of this study also reveal a dilemma that often arises, namely, accusations of judicial activism. Criticism of the constitutional courts in South Korea and the United States, for example, highlights the tendency of constitutional judges to make decisions that are considered to exceed their legal authority and enter the realm of public policy. However, from the perspective of constitutional justice, such intervention is often necessary to protect the rights of minorities threatened by majority domination.

This is in line with Ronald Dworkin's (1977) argument about rights as trumps, whereby political majority calculations cannot override individual constitutional rights (Barclay, 2025; Greene, 2018; Waldron, 1993). Thus, judicial review is not a form of betrayal of democracy (Fallon, 2008; Landaut & Dixon, 2020), but rather a mechanism to ensure that democracy operates within a constitutional framework that protects all citizens (Dorf & Sabel, 1998). This dialectic yields a more substantive form of democratic accountability, as political power is held accountable not only through elections but also through the constitutional review process.

This finding contributes to comparative constitutional law theory by emphasizing that the relationship between the legislature and the Constitutional Court is symbiotic, not antagonistic. The legislature provides political legitimacy, while the Constitutional Court guarantees constitutional

legitimacy. The two complement each other in creating a legal system that is fair, democratic, and accountable.

Therefore, accusations of judicial activism often fail to distinguish between "exceeding authority" and "fulfilling constitutional mandates," which is precisely the *raison d'être* of the Court. In this context, the Court's refusal to intervene can actually be interpreted as a neglect of its constitutional obligations, especially when the majority's legal products erode fundamental constitutional principles such as equality and the protection of minorities. In other words, controlled "activism" based on rigorous legal arguments is not a pathology, but rather an essential feature of a healthy constitutional democracy.

From a practical standpoint, the results of this study have important implications for policymakers. First, the independence of the judicial review mechanism must be maintained so that it can uphold the principle of constitutional justice without political pressure. Second, the legislative process needs to be strengthened through more inclusive public participation, thereby reducing the potential for constitutional disputes. Third, dialogue between the legislature and the Constitutional Court needs to be enhanced, not in the sense of subordinating one institution to the other, but within the framework of productive constitutional dialogue to strengthen constitutional democracy.

Scientific Novelty and Research Contribution

This study offers scientific novelty by examining the relationship between legislation and the Constitutional Court from a comparative global perspective. Until now, most of the literature has focused on domestic analysis, such as studies of the Indonesian Constitutional Court's role in maintaining post-reform democracy, or the German Bundesverfassungsgericht's contribution to building a tradition of value jurisprudence. However, cross-country studies that place legislation and the Constitutional Court as two entities that interact with each other in realizing constitutional justice and democratic accountability are still relatively rare. This research fills that gap by presenting a comparative narrative analysis that brings together experiences from various jurisdictions—Indonesia, Germany, South Africa, and South Korea—to form a more universal conceptual framework.

Another novelty lies in the dialectical approach used. Rather than positioning legislation and the Constitutional Court in an antagonistic relationship, this study asserts that the two form a symbiotic relationship. Legislation is understood as a manifestation of the political legitimacy of the majority, while the Constitutional Court acts as the guardian of constitutional legitimacy. The synergy between the two results in a more substantive democracy, where the rights of minorities are protected without negating the role of the majority in the political process. This perspective enriches the literature on constitutional law theory by shifting the discourse from antagonism to institutional partnership in constitutional democracy.

In terms of contribution, this research contributes two main dimensions. First, a theoretical contribution, in the form of enriching the academic discourse on the relationship between legislation and the Constitutional Court within the framework of global constitutional democracy. The analysis presented expands the application of theories of checks and balances, constitutional dialogue, and rights as trumping principles (Dworkin) into a cross-country comparative context. Second, a practical contribution in the form of normative and institutional recommendations that can be applied to

strengthen judicial review mechanisms and improve the quality of legislation. This includes the need to enhance the independence of the Constitutional Court, improve the legislative process to make it more deliberative and inclusive, and develop a space for constitutional dialogue between the legislative and judicial institutions.

Thus, this research not only broadens the academic horizon on constitutional justice and democratic accountability but also provides a practical foundation for policymakers, legislators, and constitutional judges in facing the challenges of modern democracy. This novelty and contribution are expected to enhance the relevance of research in the comparative constitutional law landscape while contributing to the global debate on the future of constitutional democracy.

Conclusion

This study confirms that the relationship between legislation and the Constitutional Court is the central axis in maintaining the balance between democratic legitimacy and constitutional supremacy. Legislation, although born from the political mandate of the majority, is not always synonymous with constitutional legitimacy due to its vulnerability to political bias and excesses of power.

Conversely, the Constitutional Court acts as the guardian of fundamental constitutional principles, which, through judicial review, ensures that legal norms are always in line with constitutional justice and the protection of human rights. The results of the comparison reveal similar patterns in various jurisdictions: Germany, with its objective value order; South Africa, with its constitutional supremacy; Indonesia, with its principle of electoral justice; and South Korea, with its protection of civil liberties.

This pattern illustrates that despite different political contexts and legal traditions, constitutional courts globally perform both corrective and constructive functions in relation to legislation. The relationship between the two is not antagonistic, but rather a symbiotic dialectic that strengthens constitutional democracy.

Reflections from this study confirm that democracy based solely on the political legitimacy of the majority risks falling into the tyranny of the majority. In contrast, a democracy that ignores the supremacy of legislation can become trapped in judicial supremacy. The balance between the two—through synergy between legislation and the Constitutional Court—is the path to a more accountable, inclusive, and just democracy.

This research makes a dual contribution: theoretically, it enriches the discourse on comparative constitutional law by presenting a dialectical perspective on the relationship between legislation and the Constitutional Court; practically, it offers normative and institutional recommendations to strengthen judicial review, enhance the deliberative legislative process, and foster a healthy constitutional dialogue. Thus, this research not only closes existing academic gaps but also opens space for the development of constitutional democracy theory and practice on a global scale.

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