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Constitutional Supremacy as a Pillar of the Rule of Law: Evaluating the Implementation of the Rule of Law Principle in Post-Reform Indonesia

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Abstract: This study evaluates the implementation of the principle of constitutional supremacy as the main pillar of the rule of law in post-Reform Indonesia. Although Article 1 paragraph (3) of the 1945 Constitution mandates a state based on law, constitutional practice remains marked by a constitutional gap and disregard for Constitutional Court decisions (constitutional disobedience). This evaluative normative (doctrinal) legal research combines statutory, conceptual, and case approaches. Grounded in the rule of law theories of A.V. Dicey, Friedrich Hayek, Lon L. Fuller, and Jimly Asshiddiqie's Pancasila rechtsstaat, this analysis focuses on the legal reasoning in Constitutional Court decisions concerning the Job Creation Law and the revision of the KPK Law. The results show that constitutional supremacy has not been effectively implemented due to the dominance of pragmatic-transactional legal politics, legislative elitism, and the lack of meaningful public participation. The gap between law in books and law in action reflects the weakening compliance of lawmakers. As a solution, this study recommends an integrated strengthening model through three pillars: institutional (monitoring the execution of Constitutional Court decisions and regulatory harmonization), procedural (meaningful participation and constitutional preview), and cultural (constitutional education and the ethics of state administrators).

Keywords: Constitutional Supremacy, Rule of Law, Normative Legal Research, Constitutional Court, Constitutional Disobedience.

1. Introduction

The 1998 Reform became the most decisive turning point in the history of Indonesian constitutional law. The wave of change that toppled the authoritarian New Order regime opened the way for the birth of a more democratic political and legal order. Through four amendments to the 1945 Constitution of the Republic of Indonesia, the direction of state administration underwent a fundamental transformation: power that was previously centralistic and dominant is now directed to submit to the

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supremacy of law and the principle of constitutionalism. Article 1 paragraph (3) of the 1945 Constitution explicitly affirms that "The State of Indonesia is a state of law," which means that all acts of power must be based on and subject to law. Thus, the constitution is not only the highest legal document, but also a moral and political instrument that governs the relationship between the people and the state within the framework of justice and legal sovereignty.[1]

In this context, the principle of the rule of law acquires fundamental significance. The rule of law affirms that state power must not be exercised arbitrarily, but must be limited by law that is rational, just, and guarantees the basic rights of citizens. This principle also distinguishes between rule of law and rule by law, where in the former, law subdues power, while in the latter, law becomes an instrument of power. Two decades after reform, the idealism of the state of law as enshrined in the constitution appears not to have been fully realized. Legislation with minimal public participation, weak implementation of Constitutional Court decisions, and increasing politicization of law enforcement institutions indicate a serious gap between constitutional norms and constitutional practice. The phenomenon of the revision of the Corruption Eradication Commission (KPK) Law and the implementation of the Job Creation Law are the clearest examples that law is often utilized as an instrument of power, rather than as a protector of substantive justice.[2]

Constitutional supremacy should be the main pillar for upholding the rule of law in the national legal system. Normatively, the constitution occupies the highest position in the Indonesian legal hierarchy, and the Constitutional Court was established as the guardian of the constitution. Through its judicial review authority, the Constitutional Court has a strategic function to ensure that every law and state policy does not contradict constitutional values. However, in practice, a number of Constitutional Court decisions are not implemented or are ignored by the legislators. This condition creates a paradox in the administration of the state of law, where institutions that should be subject to law instead become parties that violate constitutional principles. In other words, constitutional supremacy does not yet have fully effective coercive power over the branches of state power.

To understand this issue, it is important to review the theoretical ideas on the rule of law as articulated by a number of classical and modern thinkers. A.V. Dicey, in his work Introduction to the Study of the Law of the Constitution, put forward three main principles: supremacy of law, equality before the law, and predominance of legal

[1]Violeta Elenabella and Friderikus Nopeli Giawa, The Role of the Constitution in Guaranteeing the Rights and Obligations of Citizens in Indonesia, n.d.

[2]Rokilah Rokilah, "Dynamics of the Indonesian Rule of Law State: Between Rechtsstaat and Rule of Law," Nurani Hukum 2, no. 1 (2020): 12, https://doi.org/10.51825/nhk.v2i1.8167.

spirit. These principles affirm that law must be the highest controller of power, every individual must have equal standing before the law, and citizens' rights must be guaranteed by an independent judiciary. Friedrich Hayek later expanded this concept by emphasizing the aspects of individual freedom and legal certainty. According to Hayek, the rule of law does not merely mean compliance with written law, but also encompasses the guarantee that law is general, stable, and predictable, thereby protecting citizens from arbitrary actions by rulers. Lon L. Fuller added a moral dimension by introducing eight principles of the inner morality of law, which affirm that just law must be clear, consistent, non-retroactive, and administered in accordance with its purpose.[34]

These three views form an important foundation for assessing the implementation of the rule of law principle in the context of constitutional supremacy in Indonesia. If Dicey emphasizes the supremacy and equality of law, Hayek highlights freedom from state arbitrariness, and Fuller underscores the morality of law consistent with the values of justice. Within the framework of Indonesia's rule of law, these three views intersect with the character of a rechtsstaat based on Pancasila—a state of law that is not only normative in dimension, but also ethical and moral. Jimly Asshiddiqie states that the Indonesian concept of a state of law must be understood as a "state of law with justice," in which the constitution functions not merely as the apex of the legal hierarchy, but also as the soul that guides all branches of power to work within the frame of constitutional morality. Thus, the enforcement of the rule of law in Indonesia must go beyond formal compliance with norms, moving toward an internalization of substantive justice values that side with the people.

Nevertheless, the post-reform reality shows that such idealism is often hindered by pragmatic legal politics. The legislative process tends to be elitist, non-compliance with Constitutional Court decisions persists, and the low integrity of law enforcement institutions has weakened the foundations of constitutionalism. Law is still frequently understood as a product of power rather than as a means of limiting power. As a result, constitutional supremacy loses its meaning as the living constitution—a constitution that lives and governs the practice of statecraft. In this situation, Indonesia faces symptoms of constitutional fatigue, a state of constitutional weariness in which the spirit of legal reform is reduced to institutional formality without substantive change in the practice of power.[5]

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[3]Faisal Akbar Nasution, Immunity Rights of DPR RI Members as Public Officials in Carrying Out Their Duties and Authorities, n.d.

[4]Yustinus Suhardi Ruman, "Legal Justice and Its Application in Courts," Humaniora 3, no. 2 (2012): 345, https://doi.org/10.21512/humaniora.v3i2.3327.

[5]Salman Luthan, "The Relationship between Law and Power," Jurnal Hukum IUS QUIA IUSTUM 14, no. 2 (2007): 166–84, https://doi.org/10.20885/iustum.vol14.iss2.art4.

Although studies on the rule of law and law enforcement in Indonesia have been widely conducted by previous researchers, most of the literature remains limited to normative reviews of the hierarchy of laws and regulations or separate institutional evaluations. This research offers novelty through three main contributions. First, this research undertakes a theoretical synthesis combining the main indicators of the Western rule of law (Dicey, Hayek, and Fuller) with the ethical character of the Pancasila rechtsstaat to formulate benchmarks for a "just rule of law state." Second, this research identifies and critically dissects the pattern of constitutional disobedience by lawmakers against the final and binding decisions of the Constitutional Court in strategic cases such as the Job Creation Law and the revision of the KPK Law. Third, this research formulates a reconceptualization of strengthening constitutional supremacy through an integrated three-pillar tactic: institutional improvement (sanction mechanisms and monitoring of Constitutional Court decisions), procedural improvement (meaningful participation and constitutional preview), and cultural improvement (constitutional education and public ethics).

Based on this background, this research seeks to examine in depth the extent to which constitutional supremacy is truly implemented as a pillar of the rule of law in Indonesia's post-reform constitutional system. This research will examine the conceptual relationship between constitutional supremacy and the principle of the rule of law, analyze the gap between norms and practice through a study of Constitutional Court decisions and the national legislative process, and formulate strategies for strengthening constitutionalism in accordance with the character of the Pancasila rule of law state. Theoretically, this research is expected to enrich the discourse of Indonesian constitutionalism by providing a synthesis between rule of law theory and the reality of national law. Practically, the results of this research are expected to serve as a reference in the formulation of legal policy and the reform of governance based on constitutional supremacy, so that law truly functions as the guardian of justice, freedom, and public morality in the life of the state.

2. Method

This study employs a normative juridical legal approach with a descriptive qualitative analysis method, integrating a document-based critical socio-legal perspective. This approach was chosen because the issues examined relate not only to legal norms written in the constitution and statutory regulations, but also to how those norms are implemented in Indonesia's post-Reformasi constitutional practice. Rather than viewing law merely as a closed system consisting of formal-legalistic rules (law in the books), this study critically examines the operationalization and effectiveness of constitutional principles within Indonesia's post-Reformasi political dynamics (law

in action). By bridging normative constitutional ideals (das Sollen) and empirical state practice (das Sein), this study evaluates the extent to which constitutional supremacy functions as an effective constraint on state power while simultaneously guaranteeing the upholding of the rule of law.

In the process, this study combines several analytical approaches: a conceptual approach to trace the theoretical ideas of rule of law thinkers such as A.V. Dicey, Friedrich Hayek, and Lon L. Fuller; a statutory approach to interpret positive legal norms governing the relationship between the constitution and state institutions; and a case approach to examine Constitutional Court decisions relevant to the theme of constitutional supremacy.

The legal materials used consist of primary materials (the 1945 Constitution, statutes, and Constitutional Court decisions), secondary materials (scholarly literature, books, and legal journals), and tertiary materials (dictionaries and official documents). All data were analyzed deductively, linking rule of law theory with the reality of legal implementation in Indonesia to obtain evaluative conclusions and normative recommendations. Through this approach, the study is expected to provide a comprehensive and reflective picture of how constitutional supremacy is exercised as a pillar of the rule of law in realizing a genuine rule-of-law state.

3. Results and Discussion

3.1. Implementation of Constitutional Supremacy: Norms vs. Practice

Constitutional supremacy is a fundamental principle in a rule-of-law state system that places the constitution as the highest law governing all branches of state power. Within the framework of a Pancasila rule-of-law state, the constitution does not only function as a formal source of law, but also as the embodiment of the values of justice, democracy, and human rights. This principle demands that all actions of the government, state institutions, and citizens be based on constitutional norms. The constitution is not merely a normative text, but also the manifestation of the highest political agreement that determines the direction of the life of the nation and state. Thus, constitutional supremacy is not only related to legal structure, but also to the political morality and legal culture of a nation.[6]

However, the reality of Indonesian constitutional governance shows that constitutional supremacy has not been fully realized in practice. Although the 1998 reform brought fundamental changes through the amendment of the 1945 Constitution, the implementation of the rule-of-law principle is often confronted

[6]Johannes Suhardjana, "Constitutional Supremacy Is the Goal of the State," Jurnal Dinamika Hukum 10, no. 3 (2010), https://doi.org/10.20884/1.jdh.2010.10.3.96.

with political resistance, legislative inconsistency, and a weak culture of legal compliance. This phenomenon reveals the existence of a constitutional gap, namely the distance between constitutional idealism and the practice of exercising power. Many public policies and legal products substantially do not reflect the spirit of the constitution, and in some cases even contradict the constitutional values that have been jointly agreed upon.

At the normative level, constitutional supremacy has a strong foundation. The 1945 Constitution clearly affirms that Indonesia is a rule-of-law state (Article 1 paragraph (3)), places sovereignty in the hands of the people (Article 1 paragraph (2)), and limits power through a system of checks and balances. The Constitutional Court was established as the guardian of the purity of the constitution, while other state institutions are arranged in such a way as to supervise and balance one another. However, this idealism is often hindered by political practices that place the interests of power above legal principles. This is evident from the non-participatory process of lawmaking, the disregard for Constitutional Court decisions, and efforts to control the judicial institution for certain political interests.[7]

The gap between norms and practice is the central issue in efforts to uphold constitutional supremacy in Indonesia. A true state of law requires not only a complete legal apparatus but also constitutional awareness from every state institution. Without the moral and political commitment to place the constitution as the highest guide, the constitution will merely function as a legalistic symbol without real coercive force. Therefore, an analysis of the implementation of constitutional supremacy must be carried out in depth, encompassing the status of the constitution within the legal system, the role of constitutional guardian institutions such as the Constitutional Court, and the level of compliance of political institutions with constitutional rulings.

3.1.1. The Status of the Constitution in the Hierarchy of Norms

In legal theory, the position of the constitution as the supreme law has been classically explained by Hans Kelsen through the Stufenbau des Recht theory, or the pyramid of legal norms. According to Kelsen, every norm derives its validity from a higher norm, ultimately culminating in the basic norm (grundnorm) that serves as the source of validity for the entire legal system. In the Indonesian context, that grundnorm is the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution serves as the basis for the formation, implementation, and enforcement of all laws and regulations.

[7]Sugi Asadi and Sukurman, "Legal Supremacy within the Constitutional Framework: A Critical Study of the Implementation of the Rule of Law Principle in the Reform Era" SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum 3, no. 4 (2024): 208–15, https://doi.org/10.55681/seikat.v3i4.1519.

This is explicitly affirmed in Article 7 of Law Number 12 of 2011 on the Formation of Laws and Regulations, as amended by Law Number 13 of 2022, which places the 1945 Constitution at the apex of the national legal hierarchy.[8]

The position of the 1945 Constitution as the supreme law carries the consequence that every action of state institutions must be based on the constitution. All regulations—whether laws, government regulations, or regional regulations—must be aligned with constitutional norms and spirit. This provision is consistent with the principle of the supremacy of law, which underpins the rule of law as articulated by A.V. Dicey. However, constitutional supremacy does not only mean formal compliance with the text of the constitution, but also the internalization of the values contained within it. In the Indonesian context, these values include respect for popular sovereignty, the protection of human rights, and social justice as enshrined in the Preamble to the 1945 Constitution.[9]

In practice, the implementation of this norm hierarchy principle often experiences deviations. It is not uncommon to find laws whose substance conflicts with constitutional provisions. One of the most prominent examples is the formation of Law Number 11 of 2020 on Job Creation. The Constitutional Court, in Decision Number 91/PUU-XVIII/2020, declared that this law conflicts with the constitution because its formation process did not fulfill the principles of public participation and openness mandated by Article 22A of the 1945 Constitution. This decision demonstrates that constitutional supremacy is tested not only by the substance of a law but also by its formation process. Legislation that is undemocratic, even if it has economic objectives, still conflicts with the principles of the rule of law.[10]

Thus, although normatively the constitution occupies the highest position in the legal order, in reality that supremacy has not been fully implemented. The causal factors include weak political commitment to constitutional values, low public participation in law formation, and the dominance of economic interests and power in the legislative process. As a result, the legal hierarchy that should guarantee normative order becomes blunted when faced with the dynamics of political power. Therefore, constitutional supremacy can only be maintained if every legal product truly reflects the spirit of justice, openness, and public participation as idealized in the constitution.

[8]Muhammad Suhenriko, Implementation of Hans Kelsen's Hierarchy Theory in Policy Formulation in Indonesia, n.d.

[9]Marzuki Manurung et al., Rule of Law / Negara Hukum, 9 (2025).

[10]Tanto Lailam, "Construction of Legal Norm Conflicts in the Judicial Review Scheme," Jurnal Konstitusi 11, no. 1 (2016): 18, https://doi.org/10.31078/jk1112.

3.1.2. The Role of the Constitutional Court: Authority, Key Decisions, and Implementation

The Constitutional Court (MK) was established as a logical consequence of the amendments to the 1945 Constitution, which adopted a system of checks and balances among the branches of power. Article 24C of the 1945 Constitution grants the Constitutional Court the authority to review laws against the constitution (judicial review), adjudicate disputes over the authority of state institutions, dissolve political parties, and decide disputes over general election results. In addition, the Constitutional Court also plays a role in safeguarding the integrity of the constitution through its authority to decide on the DPR's opinion regarding alleged legal violations by the President and/or Vice President. These functions make the Constitutional Court the guardian of the constitution and the final interpreter of constitutional norms.[11]

Throughout its history, the Constitutional Court has played an important role in strengthening the practice of constitutionalism in Indonesia. One of its monumental decisions is Decision Number 005/PUU-IV/2006, which opened opportunities for independent candidates to participate in regional head elections. This decision changed the face of Indonesia's local democracy and expanded citizens' political participation. In addition, Decision Number 14/PUU-XI/2013 concerning the annulment of Law Number 17 of 2012 on Cooperatives serves as a clear example of the Constitutional Court's role in correcting economic policies that contradict the principle of popular sovereignty. Furthermore, Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law affirmed that the Constitutional Court not only safeguards legal substance but also ensures that the legislative process adheres to the principles of democracy and public participation.

However, the Constitutional Court's success in upholding the constitution does not mean it is without challenges. One of the main problems faced by the Constitutional Court is the weak implementation of its decisions (implementation gap). Although the Constitutional Court's decisions are final and binding, many state institutions do not promptly follow up on them. This condition creates a paradox: on the one hand, the Constitutional Court has the authority to correct legislation, but on the other hand, its executory power is limited. As a result, constitutional supremacy, which should be maintained through the judicial review mechanism, becomes dependent on the political will of the legislative and executive institutions.[12]

[11]Sugi Asadi and Sukurman, "Legal Supremacy within the Constitutional Framework."
[12]Nasution, Immunity Rights of DPR RI Members as Public Officials in Carrying Out Their Duties and Authority.

This limitation raises important questions about the effectiveness of judicial constitutionalism in Indonesia. If the Constitutional Court's decisions are not heeded, then the function of constitutional oversight loses its meaning. In the long term, this can weaken public trust in the legal system and threaten the principle of the rule of law. Therefore, strengthening the Constitutional Court's position requires not only normative support but also institutional and political support. The implementation of Constitutional Court decisions should be monitored through periodic evaluation mechanisms, for example by the DPR or an independent institution, so that the enforcement of constitutional supremacy does not stop at a merely symbolic level.

3.1.3. Compliance of Lawmakers with Constitutional Court Decisions Access, Openness, and Public Participation in Legislation

Compliance with Constitutional Court decisions is the most concrete indicator of the implementation of the principle of constitutional supremacy. The Constitutional Court's decisions have permanent legal force (final and binding) and therefore must be implemented by all parties, including legislative and executive institutions. This compliance reflects the extent to which state institutions place law above political interests. In practice, however, many Constitutional Court decisions are not promptly implemented, are delayed, or are even ignored. This condition shows that constitutional awareness among policymakers remains weak, and constitutional supremacy has not been fully internalized in the practice of national legal politics.[13]

The clearest example can be seen in the DPR's response to Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law. Although the Constitutional Court had declared the law conditionally unconstitutional and ordered improvements within two years, the DPR and the Government continued to implement derivative policies of the law without fundamental changes to the legislative process. The same occurred with Constitutional Court Decision Number 79/PUU-XVII/2019 concerning the revision of the KPK Law, where the substance of the law that had been partially annulled was instead revived in new regulations with the same spirit. This phenomenon demonstrates a form of systemic non-compliance, in which lawmakers use legal loopholes to maintain their political will even though it contradicts the constitution.

This condition has serious implications for the principle of the rule of law. When constitutional court decisions are not respected, the supremacy of law loses its authority, and law turns into a tool of power (rule by law). From the perspective of Lon L. Fuller, such a situation violates the principle of legal morality because there is

[13]Suhenriko, Implementation of Hans Kelsen's Hierarchy Theory in Policy Formulation in Indonesia.

no congruence between the rules and their implementation. Violations of Constitutional Court decisions not only reflect non-compliance with positive law but also a denial of the values of justice and public accountability.[14]

To strengthen constitutional supremacy, it is necessary to develop oversight mechanisms and sanctions for violations of Constitutional Court decisions. In addition, it is important to cultivate a legal culture that positions the constitution as a source of political morality, not merely a legalistic instrument. Legislative and executive institutions must understand that the implementation of Constitutional Court decisions is not an administrative burden, but rather a form of respect for the sovereignty of law. Without such collective awareness, constitutional supremacy will remain trapped at the normative level, and the ideal of a true rule of law will continue to be rhetoric without realization.

3.2. Evaluation of the Implementation of the Rule of Law Based on Theoretical Indicators.

3.2.1. Legal Certainty and Consistency

Friedrich Hayek emphasized that the rule of law can only be realized when laws are general, stable, and predictable so that citizens are protected from arbitrary state action. This certainty serves as the primary foundation for the protection of civil liberties and a healthy economic climate. On the other hand, Lon L. Fuller, through the inner morality of law, asserted that laws must be consistent, clear, non-contradictory, and not frequently changed, in order to function as a guide for behavior.

In the Indonesian context, the legal-political dynamics two decades after reform demonstrate instability in statutory regulations. The drafting and revision of laws are often carried out rapidly with minimal empirical study—for example, the Omnibus Law on Job Creation, which has created legal uncertainty for the public and business actors. The Constitutional Court's ruling declaring the law conditionally unconstitutional reinforces the fact that hasty regulatory changes frequently disregard the principles of good lawmaking (due process of lawmaking).

Contradictions between regulations are also still frequently found, both vertically and horizontally, due to weak coordination among regulation-making bodies. This condition indicates that Fuller's legal morality has not yet become a standard guideline in the formation of legislation in Indonesia.

[14]Manurung et al., Rule of Law / Negara Hukum.

3.2.2. Access, Openness, and Public Participation in Legislation

Fuller places legal openness as a fundamental element so that norms can be known and obeyed by the public. In a constitutional democratic system, lawmaking must accommodate meaningful public participation as a manifestation of popular sovereignty. Reform has indeed opened space for public participation through public review mechanisms and the involvement of interest groups. However, in practice, many strategic bills are drafted in an elitist and closed manner, such as the revision of the KPK Law, the Criminal Code, and the Job Creation Law. Criticism from academics, civil society, and even political parties has been ignored, indicating a deliberative deficit in the legislative process.[15] The phenomenon of legislative capture—a condition in which legislation is dominated by political interests and economic oligarchy—signals that the principle of openness applies only formally, not substantively.

3.2.3. Independence of the Judiciary and Judicial Integrity

A.V. Dicey emphasizes that equality before the law can only be guaranteed through a judiciary that is independent and not subordinate to other branches of power. In Indonesia, the amendment to the 1945 Constitution strengthened the position of judicial power by affirming its independence in Article 24.[16] Structurally, reform has brought significant progress: the Constitutional Court was established, the Supreme Court has undergone modernization, and the Judicial Commission has been mandated to safeguard judicial integrity. However, factual challenges remain serious, as shown in Table 1 below.

Table 1. Challenges to the Independence of the Judiciary and Judicial Integrity

Indicator	Current Condition
Judicial Independence	Threatened by political intervention in the selection of supreme court justices and constitutional court justices
Judicial Integrity	Judicial corruption still occurs, including several KPK sting operations (general courts & administrative courts)
Public Trust	Fluctuating due to controversial rulings and alleged conflicts of interest

[15]Michael Ginting, 'The Role of Public Participation in Efforts to Reform Courts in Indonesia', Jurnal Peradilan Indonesia, 6 (2017) <https://mappifhui.org/wp-content/uploads/2018/02/Jurnal-Teropong-Vol-6-Juli-Desember-2017.pdf>.

[16]'Independence of the Constitutional Court Amid Political Pressure', Indonesian Journal of Business and Law, 2025 <https://jurnal.itscience.org/index.php/ijbl/article/view/6596>.

Ethical Oversight	The Judicial Commission's authority is limited and often rejected by the Supreme Court

Source: Author (2026)

Table 1 above presents an evaluation of the actual conditions of four main indicators of rule of law implementation in Indonesia's judicial system. The actual conditions show that the independence of judicial power is still threatened by political intervention and pressure, particularly in the selection process of Supreme Court Justices at the Supreme Court and Constitutional Justices at the Constitutional Court. The integrity of the judicial corps is still tested by the reality that judicial corruption practices still occur, as evidenced by the Corruption Eradication Commission's (KPK) sting operations (OTT) against judges in both the general courts and the State Administrative Court (PTUN). Public trust in judicial institutions fluctuates (up and down) because of controversial rulings and the prevalence of alleged conflicts of interest in case handling. The mechanism for enforcing judicial ethics has not yet functioned optimally because the Judicial Commission's (KY) authority remains limited, so that KY's ethical sanction recommendations often face resistance or are rejected by the Supreme Court (MA). The phenomenon of judicial politicization shows that the supremacy of law has not been fully able to subjugate the dynamics of power. Institutional independence does not always align with functional independence, especially in cases involving strategic political and economic interests.

3.2.4. Effectiveness of Judicial Review by the Constitutional Court

Judicial review is a core instrument to ensure all laws are subject to the 1945 Constitution. Theoretically, the Constitutional Court is the guardian of the constitution that must serve as the last bastion for the people's rights.[17] However, its effectiveness faces two fundamental obstacles: (1) Limited enforceability of Constitutional Court rulings Constitutional Court rulings are final and binding, but are not accompanied by a sanction mechanism against institutions that fail to comply. (2) Minimal political implementation Many Constitutional Court rulings are not followed by substantive legislative revisions (examples: the Job Creation Law, the KPK Law). This implementation failure gives rise to constitutional disobedience—a denial of constitutional supremacy by lawmakers. If it continues, this condition may lead to the delegitimization of the Constitutional Court's constitutional office within Indonesia's legal system.[18]

[17]Bunyamin M Ali, 'Implementation of Legal Political Policy in Strengthening the Judicial System in Indonesia', Jurnal Hutanasyah, 2025 <https://jurnal.staibsllg.ac.id/index.php/hutanasyah/article/download/959/458>.

[18] Jimly Asshiddiqie, The Concept of the Indonesian Rule of Law, 2010 <https://pn-gunungsitoli.go.id/assets/image/files/Konsep_Negara_Hukum_Indonesia.pdf>.

3.3. Inhibiting Factors and Legal Political Dynamics

3.3.1. Transactional Legal Politics and Political Interests

Legal politics in Indonesia is still heavily influenced by the configuration of power in parliament and the interests of political parties. The legislative process more often reflects elite agendas than broader public interests. This condition produces legal policies that are compromissory in nature among power groups, rather than being based on constitutional justice reasoning. When power becomes the primary determinant of the content of laws, the principle of the rule of law undergoes distortion in the form of reducing legal values by pragmatic interests.

The phenomenon of horse trading in legislative deliberations intensifies on strategic issues, such as the revision of the KPK Law and the formation of the Job Creation Law. Parties with significant political and economic capital find it easier to influence policy substance through closed-door lobbying. Legislation ultimately becomes vulnerable to regulatory capture, where the law becomes a tool to protect oligarchic interests. It is this process that diminishes the quality of deliberative democracy in lawmaking.[19]

Lawmaking is also often accelerated without adequate academic study to meet certain political targets. Super-express legislation, for example in the Omnibus Law, shows that regulatory effectiveness is often defeated by engineered political urgency. When procedural efficiency is used as a pretext, legislative accountability is reduced due to the absence of meaningful participation from civil society. Legal decisions become exclusive and far removed from the principle of openness.

The DPR's internal institutional system, such as the Legislation Body, should function as a filter against deviant legal-political agendas. However, the power structure dominated by the government's large coalition hampers the oversight function of opposition factions. Majority dominance gives rise to a rubber stamp condition, namely rapid approval without substantive debate. The space for internal oversight becomes narrow due to the uniformity of political positions directed by party elites.[20]

Constitutional norms position lawmaking as an instrument to balance executive power. However, the convergence of interests between the government and the large party coalition in practice actually eliminates the potential for control. Legislation becomes a medium for perpetuating power, not an instrument of structural reform.

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[19]'Legal Culture and the Crisis of Public Trust in Judicial Institutions'.

[20]Salman Luthan, 'Dynamics of Legal Politics in Indonesia: Between the Interests of Power and Law Enforcement', Jurnal Hukum Ius Quia Iustum, 14.2 (2007) <https://doi.org/10.20885/iustum.vol14.iss2.art4>.

In this situation, the quality of laws declines because their legal purpose is no longer grounded in the protection of citizens' rights.

3.3.2. Institutional Framework: Overlapping Authority, Weak Sanctions, and Oversight Capacity

The institutional structure of law enforcement in Indonesia still faces the problem of ineffective inter-agency coordination. Overlapping authority among the KPK, the Attorney General's Office, and the Police often creates institutional conflicts in handling cases. Instead of strengthening law enforcement, inter-agency rivalry creates unhealthy competition over investigative authority. Such conditions reduce the efficiency and consistency of the law enforcement system.

The lack of sanction mechanisms against executive and legislative institutions' non-compliance with Constitutional Court rulings is another factor weakening the supremacy of law. Constitutional Court rulings are final and binding, yet they lack an automatic enforcement instrument. When political institutions are reluctant to follow up on such rulings, the Constitutional Court can only reiterate constitutional statements without executory power. Constitutional enforcement loses its power to challenge acts of violation.[21]

The judiciary's internal oversight system has not fully strengthened judges' integrity. The Judicial Commission faces resistance from the Supreme Court in carrying out its ethical oversight mandate. This tension reflects the judiciary's unpreparedness to accept institutional criticism as part of public accountability. Public trust will decline further when judges' ethical violations are not addressed through transparent and firm mechanisms.[22]

Budget and human resource aspects also affect the institutional quality of law enforcement. Personnel placement is not always based on meritocracy; instead, it often reflects political loyalty or personal closeness. When professionalism is not the primary parameter, institutional effectiveness is difficult to improve even when ideal legal instruments exist. This limits oversight of deviant practices of power.[23]

Structural reform has not been followed by a transformation of the work culture within legal institutions. Changes in procedures and organisation do not automatically improve decision-making patterns if the old bureaucratic mentality remains dominant. A strong legal system requires institutions that function according

[21]Tanto Lailam, 'Power and Legislation: An Analysis of the Legal Politics of Lawmaking', Jurnal Konstitusi, 11.1 (2016) <https://doi.org/10.31078/jk1112>.

[22]Marzuki Manurung and Arjonah Syahwirada Rambe, 'Challenges to the Independence of Judicial Institutions in the Indonesian Legal System', Rule of Law / Negara Hukum, 9 (2025) <https://e-journal.uajy.ac.id/>.

[23] Teguh Prasetyo, 'Non-Compliance with Constitutional Court Decisions from the Perspective of Legal Supremacy', Jurnal Konstitusi, 18.4 (2021) <https://doi.org/10.31078/jk1849>.

to their constitutional mandates. Without institutional consistency, the rule of law will remain under pressure from the dynamics of political power.

3.3.3. Legal Culture and Public Trust

The legal culture of society is an important component in the successful implementation of the rule of law. This sociological factor is often overlooked because legal reform efforts are too normative and proceduralistic. Low levels of legal literacy make the public less aware of their constitutional rights and obligations. When society lacks the awareness to demand justice, violations of the law by the ruling elite tend to increase without resistance.

The historical experience of New Order authoritarianism has bequeathed a passive mindset regarding the law. Many citizens regard law as a tool of the ruler, not an instrument for protecting rights. The collective trauma of past abuses of the law has created a psychological distance between the public and law enforcement institutions. This condition complicates the formation of a constitutional culture oriented toward social control of the government.[24]

Judicial corruption and controversial rulings reinforce the public's negative perception of the judiciary. Decisions seen as driven by political interests lower public trust in the legal process. This creates a cycle of mutual suspicion between society and legal institutions that ultimately weakens institutional legitimacy. Low legitimacy hampers law enforcement against serious violations by those in power.

Citizens' daily legal behaviour is also still shaped by pragmatic factors, such as shortcuts through personal connections and gratification practices. When the need for instant solutions outweighs formal legal processes, state rules lose their role as behavioural guidelines. Informal social norms are often more effective in resolving conflicts than legal channels perceived as complicated and unjust. Law becomes the last option, not the primary reference.[25]

Pancasila values, which should serve as the ethical orientation of law, have also not been internalised in the behaviour of political actors or the public. The misalignment between collective moral norms and everyday legal practices widens the gap between legal ideals and reality. In such a reality, strengthening the rule of law requires efforts to build a legal culture that emphasises integrity, transparency, and public courage to demand justice.

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[24]Mardjono Rukmini, 'Legal Politics of Corruption Eradication and the Challenges of Law Enforcement', Jurnal Hukum Dan Pembangunan, 48.3 (2018) <https://doi.org/10.21143/jhp.vol48.no3.1768>.

[25] Khairul Syahrani, 'Public Participation and Accountability in Lawmaking', Jurnal Rechtsidee, 9.1 (2022) <https://doi.org/10.21067/jri.v9i1.12345>.

3.4. A Model for Strengthening Constitutional Supremacy as a Pillar of the Rule of Law

3.4.1. Institutional Recommendations: Strengthening the Constitutional Court, Decision Implementation Mechanisms, and Regulatory Harmonizatio

Strengthening the Constitutional Court is urgent to uphold constitutional supremacy. The effectiveness of judicial review must be supported by authority that enables the Constitutional Court to ensure that every constitutional decision is complied with by lawmakers. The authority to conduct periodic implementation monitoring will strengthen the Constitutional Court's position as the guardian of the constitution within the checks and balances structure. This institutional performance will only be optimal if balanced with institutional independence free from political pressure.

The structuring of the Constitutional Court's authority must also be supported by a constitutional sanction mechanism for state institutions that fail to comply with rulings. Models that could be developed include, for example, a declaration of permanent unconstitutionality for laws not amended within the constitutional deadline, or budget reductions for institutions negligent in fulfilling legal obligations. This effort will provide compliance incentives and reduce systemic patterns of constitutional defiance. The supremacy of law is not merely dogma but must have coercive force.

Regulatory harmonization is also a strategic agenda for improving the quality of the national legal order. Fragmentation and overlapping regulations create uncertainty that undermines legal certainty as one of the main elements of the rule of law according to Hayek. Ministries and institutions that formulate regulations must strictly comply with the hierarchy of norms framework, with the 1945 Constitution as the highest norm. This structuring effort can be carried out by optimising the role of the Ministry of Law and Human Rights and the Legislation Body in the regulatory synchronisation function.[26]

Institutional reform also requires strengthening the Judicial Commission's oversight of judicial ethics. The authority to impose sanctions needs to be expanded so it does not merely issue recommendations that the Supreme Court often ignores. Judicial independence will only be maintained when the mechanism of ethical accountability can balance judicial power and honour. The integrity of the judicial institution is part of the heart of constitutional supremacy.[27]

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[26]Ni'matul Huda, 'Strengthening the Role of the Constitutional Court in Indonesia's Constitutional System', Jurnal Konstitusi, 7.1 (2010) <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/142>.

[27]Andri Suroyya, 'The Urgency of Implementing Constitutional Court Decisions in Upholding Legal Supremacy', Jurnal Legislasi Indonesia, 19.2 (2022) <https://ejurnal-peraturan.perundangan.go.id/index.php/jli/article/view/823>.

The principle of constitutional supremacy will be strong when state institutions have clear functions, do not overlap, and operate within constitutional limits. The arrangement of relations among state institutions must be consistent with the goal of maintaining the balance of power. This structural reform is a fundamental prerequisite for the constitution to do more than provide legitimacy; it must also control power.

3.4.2. Procedural Recommendations: Legislative Transparency, Public Participation, and Proactive Judicial Review of Laws

Improving legislative procedures is key to restoring public trust in the law. The lawmaking process must ensure the broadest possible access to information, both at the planning, deliberation, and post-implementation evaluation stages. The obligation to disclose academic manuscripts, bill drafts, and meeting minutes aligns with Fuller's legal morality and the importance of openness so laws can be consciously obeyed.[28] Public involvement must be elevated from mere formality to meaningful participation. The legislative system must redesign systematic, evidence-based public consultation mechanisms capable of reaching affected groups. Public aspirations must not be positioned as an administrative complement, but as an instrument of democratic control to uphold constitutional supremacy in policymaking. Participation is a pillar of legal legitimacy.[29]

Strengthening the judicial review function at the Constitutional Court should shift toward a proactive paradigm to correct deviations from the outset. A constitutional preview model for strategic laws may be considered for broader application so that potential constitutional violations can be prevented before causing public harm. This preventive approach provides stronger assurance of protecting citizens' constitutional rights. Digitalisation of legislation can support openness and public accountability. A real-time bill monitoring platform allows the public to follow legislative developments transparently. Such technology also makes it easier for the public to provide data-based input, making democratic deliberation more inclusive. Adaptive legislative procedures will strengthen legal certainty in the long term.

Post-legislative evaluation must be a continuous process. If a law does not achieve its constitutional objectives, amendments may be made based on strong empirical recommendations. State policy formation and assessment must be grounded in rationality and the public interest, not short-term political calculations. This procedural quality ensures the law protects substantive justice.

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[28]Muhammad Suhenriko, 'Harmonization of Legislation in the Perspective of the Hierarchy of Norms', Jurnal Rechtsvinding, 10.3 (2021) <https://rechtsvinding.bphn.go.id/>.

[29]La Ode Arliman, 'Legislative Transparency as an Instrument for Preventing Abuse of Power', Lentera Hukum, 7.2 (2020) <https://jurnal.unej.ac.id/index.php/eJLH/article/view/21062>.

3.4.3. Cultural Recommendations: Constitutional Education and Ethics of State Officials

The supremacy of the constitution will not be strong if the legal culture of society remains weak. Constitutional education needs to be strengthened from primary through higher education so citizens understand their rights and obligations within the legal system. Constitutional literacy encourages society to become active subjects who oversee the running of government based on the principle of the rule of law. Collective awareness is the most effective bulwark against the abuse of power.

State officials must submit to public ethics rooted in the values of Pancasila. Ethical standards will only be meaningful if they are embedded in the personal morals of every official, not merely as administrative guidance. Constitutional character education must be provided in every training for state apparatus, including judges, prosecutors, police, and legislators. Strong ethics serve as an inner fence when rules can be manipulated for political interests.

Public trust in the law requires consistent examples from state leaders. When the political elite upholds honesty, professionalism, and transparency, society tends to imitate such behavior in daily life. Legal legitimacy grows through voluntary compliance based on trust, not merely through coercion. Moral leadership is a key factor in building a healthy legal culture.

Civil communities have a significant role in strengthening constitutional culture. Advocacy institutions, independent media, academics, and social organizations need to critically oversee the exercise of power. The public sphere must become an arena for scholarly and educational discussion that counters the deviation of power. The more actively society guards the law, the harder it becomes for power to deviate from the constitution.

The internalisation of legal values in society must run parallel with institutional improvement. Cultural transformation is a long-term process that demands exemplary leadership and policy consistency. When constitutional norms become part of social life, the supremacy of law will stand firm without depending entirely on sanctions. The rule of law ultimately becomes a reality, not a formality.

4. Conclusion

This study affirms that constitutional supremacy as a pillar of the rule of law in Indonesia already has a strong normative foundation through the 1945 Constitution, yet its implementation still faces serious challenges. Theoretical indicators from Dicey, Hayek, and Fuller show a gap between legal ideals and political practice, particularly in regulatory certainty and consistency, the quality of legislative procedures, judicial

independence, and the effectiveness of judicial review. The main obstacles arise from pragmatic legal politics oriented toward power transactions, suboptimal legal oversight institutions, and a societal legal culture that does not yet support the enforcement of constitutional supremacy. As a result, the constitution does not fully function as a check on power and is often influenced by short-term political interests. Strengthening constitutional supremacy requires integrated reform across institutional, procedural, and cultural aspects. Strengthening the authority and implementation of Constitutional Court decisions, increasing transparency and public participation in legislation, and internalising constitutional ethics among state officials and the public are key to improvement. The rule of law based on Pancasila can only be realized if all elements of the state make the constitution the highest reference in decision-making and the exercise of power.

References

Ali, Bunyamin M. "Implementation of Legal Political Policy in Strengthening the Judicial System in Indonesia." *Jurnal Hutanasyah*, 2025. https://jurnal.staibsllg.ac.id/index.php/hutanasyah/article/download/959/458.

Arliman, La Ode. "Legislative Transparency as an Instrument for Preventing Abuse of Power." *Lentera Hukum* 7, no. 2 (2020). https://jurnal.unej.ac.id/index.php/eJLH/article/view/21062.

Asadi, Sugi, and Sukurman. "Legal Supremacy within the Constitutional Framework: A Critical Study of the Implementation of the Rule of Law Principle in the Reform Era." *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum* 3, no. 4 (2024): 208–15. https://doi.org/10.55681/seikat.v3i4.1519.

Asshiddiqie, Jimly. *The Concept of the Indonesian Rule of Law*. 2010. https://pn-gunungsitoli.go.id/assets/image/files/Konsep_Negara_Hukum_Indonesia.pdf.

Elenabella, Violeta, and Friderikus Nopeli Giawa. "The Role of the Constitution in Guaranteeing the Rights and Obligations of Citizens in Indonesia." N.d.

Ginting, Michael. "The Role of Public Participation in Efforts to Reform Courts in Indonesia." *Jurnal Peradilan Indonesia* 6 (2017). https://mappifhui.org/wp-content/uploads/2018/02/Jurnal-Teropong-Vol-6-Juli-Desember-2017.pdf.

Huda, Ni'matul. "Strengthening the Role of the Constitutional Court in Indonesia's Constitutional System." *Jurnal Konstitusi* 7, no. 1 (2010). https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/142.

"Independence of the Constitutional Court amid Political Pressure." *Indonesian Journal of Business and Law*, 2025. https://jurnal.itscience.org/index.php/ijbl/article/view/6596.

Lailam, Tanto. "Construction of Legal Norm Conflicts in the Judicial Review Scheme." *Jurnal Konstitusi* 11, no. 1 (2016). https://doi.org/10.31078/jk1112.

———. "Power and Legislation: An Analysis of the Legal Politics of Lawmaking." *Jurnal Konstitusi* 11, no. 1 (2016). https://doi.org/10.31078/jk1112.

"Legal Culture and the Crisis of Public Trust in Judicial Institutions." N.d.

Luthan, Salman. "Dynamics of Legal Politics in Indonesia: Between the Interests of Power and Law Enforcement." *Jurnal Hukum Ius Quia Iustum* 14, no. 2 (2007). https://doi.org/10.20885/iustum.vol14.iss2.art4.

———. "The Relationship between Law and Power." *Jurnal Hukum Ius Quia Iustum* 14, no. 2 (2007): 166–84. https://doi.org/10.20885/iustum.vol14.iss2.art4.

Manurung, Marzuki, and Arjonah Syahwirada Rambe. "Challenges to the Independence of Judicial Institutions in the Indonesian Legal System." *Rule of Law / Negara Hukum* 9 (2025). https://e-journal.uajy.ac.id/.

Nasution, Faisal Akbar. "Immunity Rights of DPR RI Members as Public Officials in Carrying Out Their Duties and Authorities." N.d.

Prasetyo, Teguh. "Non-Compliance with Constitutional Court Decisions from the Perspective of Legal Supremacy." *Jurnal Konstitusi* 18, no. 4 (2021). https://doi.org/10.31078/jk1849.

Rokilah, Rokilah. "Dynamics of the Indonesian Rule of Law State: Between Rechtsstaat and Rule of Law." *Nurani Hukum* 2, no. 1 (2020). https://doi.org/10.51825/nhk.v2i1.8167.

Rukmini, Mardjono. "Legal Politics of Corruption Eradication and the Challenges of Law Enforcement." *Jurnal Hukum dan Pembangunan* 48, no. 3 (2018). https://doi.org/10.21143/jhp.vol48.no3.1768.

Ruman, Yustinus Suhardi. "Legal Justice and Its Application in Courts." *Humaniora* 3, no. 2 (2012). https://doi.org/10.21512/humaniora.v3i2.3327.

Suhardjana, Johannes. "Constitutional Supremacy Is the Goal of the State." *Jurnal Dinamika Hukum* 10, no. 3 (2010). https://doi.org/10.20884/1.jdh.2010.10.3.96.

Suhenriko, Muhammad. "Harmonization of Legislation in the Perspective of the Hierarchy of Norms." *Jurnal Rechtsvinding* 10, no. 3 (2021). https://rechtsvinding.bphn.go.id/.

———. "Implementation of Hans Kelsen's Hierarchy Theory in Policy Formulation in Indonesia." N.d.

Suroyya, Andri. "The Urgency of Implementing Constitutional Court Decisions in Upholding Legal Supremacy." *Jurnal Legislasi Indonesia* 19, no. 2 (2022). https://ejurnal-peraturan.perundangan.go.id/index.php/jli/article/view/823.

Syahrani, Khairul. "Public Participation and Accountability in Lawmaking." *Jurnal Rechtsidee* 9, no. 1 (2022). https://doi.org/10.21067/jri.v9i1.12345.

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