

Constitutionality of Formal Testing of Draft Laws by the Constitutional Court

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Abstract: The Constitutional Court, as one of the state institutions regulated in the 1945 Constitution of the Republic of Indonesia, has the authority to test laws against the constitution. However, constitutional practice in Indonesia shows that there are tests of laws that have not been approved by the President or have not received a State Gazette number, which are still in the form of bills. This study aims to analyze the characteristics of laws as objects of testing in the Constitutional Court and the authority of the Constitutional Court in testing bills. The results of the study indicate that laws as statutory regulations are legal instruments that are stipulated under normal circumstances and can only be considered laws if they have gone through five stages: planning, drafting, discussion, ratification, and promulgation. Without fulfilling these stages, a text cannot be considered a binding law, so that testing in the Constitutional Court is not possible. The Constitutional Court only has the authority to test laws that have been passed, not bills against the 1945 Constitution of the Republic of Indonesia.

Keywords: Act, Bill, Constitutional Court, Judicial Review, Constitutional Preview.

Abstrak: Mahkamah Konstitusi, sebagai salah satu lembaga negara yang diatur dalam UUD NRI 1945, memiliki kewenangan untuk menguji undang-undang terhadap konstitusi. Namun, praktik konstitusional di Indonesia menunjukkan adanya pengujian terhadap undang-undang yang belum disetujui oleh Presiden atau yang belum mendapatkan nomor Lembaran Negara, yang masih berupa RUU. Penelitian ini bertujuan untuk menganalisis karakteristik undang-undang sebagai objek pengujian di Mahkamah Konstitusi dan kewenangan Mahkamah Konstitusi dalam menguji RUU. Hasil penelitian menunjukkan bahwa undang-undang sebagai peraturan perundang-undangan adalah instrumen hukum yang ditetapkan dalam keadaan normal dan hanya dapat dianggap sebagai undang-undang jika telah melalui lima tahapan: perencanaan, penyusunan, pembahasan, pengesahan, dan pengundangan. Tanpa memenuhi tahapan ini, suatu naskah tidak dapat dianggap sebagai undang-undang yang mengikat, sehingga pengujian di Mahkamah Konstitusi tidak dimungkinkan. Mahkamah Konstitusi hanya berwenang menguji undang-undang yang telah disahkan, bukan RUU terhadap UUD NRI 1945.

Kata Kunci: Undang-Undang, Rancangan Undang-Undang, Mahkamah Konstitusi, *Judicial Review*, *Constititonal Preview*.

Introduction

The practice of state administration in various parts of the world shows that each country has a constitution.¹ The constitution itself generally regulates various fundamental

¹ Owais Anwer dan Muhammad Ishaq Alam, "A Comparative analysis of the [First written constitution] Charter of Medina and the Magna Carta," *Al-Idah* 41, no. 2 (2024): 214, <https://doi.org/10.37556/al-idah.041.02.0865>; Hanna Lerner dan David Landau, "Introduction to Comparative Constitution Making: The state of the field," in *Comparative Constitution Making*, 2019: 2, <https://doi.org/10.4337/9781785365263.00005>; Josep M. Colomer, "Comparative Constitutions," in *The Oxford Handbook of Political Institutions*, 2009: 5, <https://doi.org/10.1093/oxfordhb/9780199548460.003.0012>.



matters, such as the form of state, government system, state institutions, human rights, and so on.² Likewise with Indonesia, Indonesia has a constitution commonly known as the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). Although there is currently debate as to whether the terminology of the 1945 Constitution of the Republic of Indonesia is the same as the constitution or not, the author himself is of the opinion that the 1945 Constitution of the Republic of Indonesia is included in the category of constitution.³ Therefore, the 1945 Constitution of the Republic of Indonesia is the constitution in Indonesia, then as is common in the practice of state administration in various parts of the world, the 1945 Constitution of the Republic of Indonesia regulates fundamental matters, one of which is state institutions.⁴

The state institutions explicitly mentioned in the 1945 Constitution of the Republic of Indonesia are very diverse, one of which is stated in Chapter IX concerning Judicial Power.⁵ Referring to this regulation, it is stated that judicial power is an independent power that functions to enforce law and justice. This judicial power is essentially implemented by two institutions, namely the Supreme Court and the Constitutional Court. The Constitutional Court as a state institution mentioned in the 1945 Constitution of the Republic of Indonesia has four authorities and one obligation, as stated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia.⁶ One of the authorities explicitly mentioned in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia is that the Constitutional Court has the authority to test laws against the Constitution.

The need for the Constitutional Court in testing laws against the 1945 Constitution of the Republic of Indonesia is very important to maintain the integrity and supremacy of law in Indonesia. As an institution authorized to assess the conformity of laws with the constitution, the MK functions as a fortress for protecting the constitutional rights of citizens. In a democratic system, this testing is crucial to prevent abuse of power by the legislature and ensure that every legal product produced does not conflict with the basic principles agreed upon in the Constitution. With the existence of the MK, the public has a channel to demand justice and express objections to laws that are considered detrimental, thus creating a transparent and accountable legal climate. The existence of the MK also reflects the state's commitment to the principle of the rule of law, where all government actions must be based on law and not violate the basic rights of citizens.

² M. A. Muqsith et al., "Revolutionizing Pancasila as the ideology of Indonesians," *RUDN Journal of Sociology* 22, no. 4 (2022): 862, <https://doi.org/10.22363/2313-2272-2022-22-4-860-871>; Surohmat dan Bambang Sudiarto, "Power Reduction in Constitutional Democracy," *KnE Social Sciences*, 2024: 189, <https://doi.org/10.18502/kss.v8i21.14716>; Hendra Wahanu Prabandani, "Discovering the Position of Pancasila as the Basic Norm in Indonesia," *Iblam Law Review* 2, no. 1 (2022): 163, <https://doi.org/10.52249/ilr.v2i1.63>.

³ Zainal Arifin Mochtar, *Politik Hukum Pembentuk Undang-Undang* (Yogyakarta: EA Book, 2022): 39.

⁴ Baharuddin Riqiey dan Miftaql Janah, "Election Omnibus: Efforts to Realize Legal Certainty in General Elections in Indonesia," *Mimbar Keadilan* 18, no. 1 (2025): 60, <https://doi.org/https://doi.org/10.30996/mk.v18i1.n1989>.

⁵ Rio Aldino Yosevan Silalahi, "Kedudukan Jaksa Agung Dalam Perspektif Independensi Penyelenggara Kekuasaan Kehakiman," *Transparansi Hukum* 7, no. 2 (2024): 25, <https://doi.org/https://doi.org/10.30737/transparansi.v7i2.5792>.

⁶ Baharuddin Riqiey dan Muhammad Ahsanul Huda, "Interpreting Article 22(2) of the 1945 Constitution of the Republic of Indonesia Post Constitutional Court Decision 54/PUU-XXI/2023," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 4, no. 1 (31 Januari 2024): 30, <https://doi.org/10.15294/ipmhi.v4i1.76687>; Baharuddin Riqiey, "Kewenangan Mahkamah Konstitusi Dalam Memutus Perselisihan Hasil Sengketa Pilkada Pasca Putusan Mahkamah Konstitusi Nomor 85/PUU-XX/2022," *JAPHTN-HAN* 2, no. 1 (31 Januari 2023): 112, <https://doi.org/10.55292/japhtnhan.v2i1.59>; Baharuddin Riqiey, "Urgensi Pembatasan Waktu Pengujian Perppu Oleh Mahkamah Konstitusi," *Jurist-Diction* 6, no. 4 (2023): 656, <https://doi.org/10.20473/jd.v6i4.45660>; Baharuddin Riqiey, "Pemilihan Kepala Daerah oleh Dewan Perwakilan Rakyat Daerah Pasca Putusan MK No. 85/PUU-XX/2022," *Constitution Journal* 2, no. 1 (2023): 22, <https://doi.org/10.35719/constitution.v2i1.42>.

The law as referred to is a statutory regulation formed by the People's Representative Council with the approval of the President.⁷ The process of forming the law itself includes five stages, namely, planning, drafting, discussion, ratification or determination, and promulgation.⁸ It can be said to be a law if the five stages have been fulfilled. For a regulation that has not passed the five stages, it can be called a Draft Law. Seeing this, what is meant by a draft law is an official document that contains regulatory norms but does not yet have binding legal force because it has not gone through the stages of forming statutory regulations as it should. The judicial review of a law against the Constitution by the Constitutional Court as referred to in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia is a law that has passed the five stages and received approval from the President. Regarding the Draft Law, the Constitutional Court of the Republic of Indonesia does not have the authority textually. Although there are Constitutional Courts in various countries that have adopted the authority to test Draft Laws (constitutional preview) against the constitution, such as the Constitutional Court of Thailand, the Constitutional Court of Cambodia, and others, the Constitutional Court of the Republic of Indonesia until now does not have this authority, either explicitly stated in the 1945 Constitution of the Republic of Indonesia or stated in the Decision of the Constitutional Court.⁹

The current problem is that there are students from one of the universities in Indonesia who are conducting a formal test of the law that has just been passed by the DPR, namely the Law on Amendments to Law Number 34 of 2004 concerning the Indonesian National Army. The test is based on the failure to fulfill the principle of openness in its preparation. Therefore, they are conducting a formal test of it. Simply put, a formal test is a test related to the process of forming a law.¹⁰ However, the problem is that the object being tested in the Constitutional Court has not received the President's approval and has not been signed by the President, and the object has not even received a State Gazette number. Regarding this, the author wants to research and examine two things, namely the characteristics of the law and the authority of the Constitutional Court to test laws that have not received the President's approval and do not yet have a State Gazette number.

This research is a contemporary research that has a high value of originality. Because, this issue is an interesting and debatable issue. This research was conducted with the aim of finding out about the characteristics of a law in testing at the Constitutional Court and to find out the authority of the Constitutional Court in testing laws that have not received Presidential approval and do not yet have a State Gazette number. Through

⁷ Saldi Isra, *Pergeseran Fungsi Legislasi : Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia* (Jakarta: RajaGrafindo Persada, 2010): 235; Charles Simabura, "Non-Delegation Doctrine Of Presidential Legislative Power In The Presidential Government System: A Comparative Study Between Indonesia And In The United States Of America," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 6 (2021): 6.

⁸ Syofyan Hadi et al., "Implementation of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Study in Bedahlawak Village, Jombang Regency)," *DiH: Jurnal Ilmu Hukum* 20, no. 1 (2024): 82, <https://doi.org/https://doi.org/10.30996/dih.v20i1.9589>; Syofyan Hadi et al., "Partisipasi Masyarakat dalam Penyusunan Produk Hukum di Desa Bedahlawak Kabupaten Jombang," *Prosiding Seminar Nasional & Call for Paper "Penguatan Kapasitas Sumber Daya Manusia Menuju Indonesia Emas 2024* 10, no. 1 (2023): 384; Syofyan Hadi et al., *Teknis Penyusunan Peraturan di Desa* (Yogyakarta: Jejak Pustaka, 2023): 25.

⁹ Diya Ul Akmal, Fatkhul Muin, dan Pipih Ludia Karsa, "Prospect of Judicial Preview in the Constitutional Court Based on the Construction of Constitutional Law," *Jurnal Cita Hukum* 8, no. 3 (2020): 614, <https://doi.org/10.15408/jch.v8i3.16940>; Ni'matul Huda, Dodik Setiawan Nur Heriyanto, dan Allan Fatchan Gani Wardhana, "The urgency of the constitutional preview of law on the ratification of international treaty by the Constitutional Court in Indonesia," *Heliyon* 7, no. 9 (2021): 3, <https://doi.org/10.1016/j.heliyon.2021.e07886>.

¹⁰ Jimly Asshiddiqie, *Pengujian Formil Undang-Undang di Negara Hukum* (Jakarta: Konstitusi Press, 2020): 103.

this research, it is expected to provide additional scientific knowledge, especially Constitutional Law and Constitutional Court Procedural Law. In addition, through this research, it is also expected to be able to be a reference for policy makers or Constitutional Court Judges in deciding the a quo case or similar cases in the future.

The evidence that this research has a high value of originality is the absence of similar research with previous research. The similar research as referred to is as researched by M. Jeffri Arlinandes Chandra with the title "Preview Of Draft Laws Practice Indonesia And France: Current Discussions On Common Areas Of Interest".¹¹ The research examines the potential of Indonesia to implement the concept of constitutional preview, while this research specifically examines the authority of the Constitutional Court to test laws that have not been ratified by the President. Second, by Igam Arya Wada, et al with the title "Ius Constituendum Judicial Preview Authority at the Constitutional Court of the Republic of Indonesia".¹² The research examines the construction of the authority of the Constitutional Court to test draft laws through amendments to the 1945 Constitution of the Republic of Indonesia and related regulations, while this research comprehensively examines the position of draft laws that have not been approved by the President as objects of testing at the Constitutional Court. Third, by Lefri Mikhael with the title "Comparative Study of the Direction of Expansion of the Authority of the Constitutional Court of the Republic of Indonesia".¹³ The study examines the differences in the authority of the Constitutional Courts of Indonesia, Austria, Hungary, and Turkey, while this study examines in depth the authority of the Constitutional Court in testing draft laws that have not received Presidential approval against the 1945 Constitution of the Republic of Indonesia. Looking at the three previous studies as above, it is clear that there are very significant differences. Thus, this study will later produce something new.

Research Methods

This type of research is legal research as described by Peter Mahmud Marzuki.¹⁴ The term used by the author is legal research only without adding the word normative after it. This is because there are 3 (three) reasons, (1) the meaning of the words law and normative are the same so that if the word normative is added after the word law it is an excessive statement; (2) if the word normative is added after the word law it is as if there is legal research other than normative; and (3) the author quotes the definition of legal research from Peter Mahmud Marzuki while Peter Mahmud Marzuki in his book or book title only mentions "legal research" without the word normative (this was also asked directly by the author in lectures). This research uses at least 3 (three) approaches, namely the statutory, conceptual, and case (court decision) approaches. Therefore, this is legal research, the materials used in this research are primary legal materials and secondary legal materials. Primary legal materials are collected through inventory and categorization, while secondary legal materials are obtained through literature searches. After that, both types of legal materials are identified, classified, and systematized based on their sources and hierarchies. Furthermore, all legal materials are analyzed using legal reasoning with the deductive method.

¹¹ M. Jeffri Arlinandes Chandra et al., "Preview Of Draft Laws Practice Indonesia And France: Current Discussions On Common Areas Of Interest," *Russian Law Journal* 11, no. 3 (2023): 1, <https://doi.org/10.52783/rj.v11i3.1991>.

¹² Igam Arya Wada, Felix Alexander Kurniawan, dan Agnes Sinta, "Ius Constituendum Kewenangan Judicial Preview Di Mahkamah Konstitusi Republik Indonesia," *Jurnal Kajian Konstitusi* 3, no. 1 (2023): 1, <https://doi.org/10.19184/j.kk.v3i1.37917>.

¹³ Lefri Mikhael, "Studi Perbandingan Arah Perluasan Kewenangan Mahkamah Konstitusi Republik Indonesia," *CREPIDO* 4, no. 2 (2022): 1, <https://doi.org/10.14710/crepido.4.2.148-160>.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021): 47.

Results and Discussion

Characteristics of Laws in Testing Laws at the Constitutional Court

Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia expressly states that the DPR holds the power to form laws. This provision explains that the DPR as a legislative institution plays an important role in the process of forming laws. Although it has a very significant role in the process of forming laws, this constitutional authority must also be balanced with good faith in the process of forming laws. The DPR is not permitted to take arbitrary actions, although the Constitutional Court said that this has very little potential by stating that the DPR is a compound position (vide Constitutional Court Decision Number 14-17/PUU-V/2007).¹⁵ Likewise, as a framework for legal protection for DPR members in forming laws, they may not be prosecuted either criminally or civilly in carrying out this constitutional authority (vide Constitutional Court Decision 76/PUU-XII/2014).¹⁶

Laws in the legal system in Indonesia have unique and crucial characteristics to maintain the legal order and implement the principles of democracy.¹⁷ One of the main characteristics of laws in Indonesia is the binding and generally applicable legal force. When a law is passed by the DPR and approved by the President, the law becomes a legal product that binds all citizens. This principle emphasizes that no individual or entity is above the law, so that everyone is obliged to comply with the provisions stipulated in the law without exception.

Another characteristic of the law in Indonesia is that the law must be in accordance with the constitution, namely the 1945 Constitution. This means that every law that is formed must not be contrary to the basic norms that have been set out in the constitution. In this context, the Constitutional Court plays an important role in supervising and interpreting laws so that they remain in line with the constitution.¹⁸ If a law is considered contradictory, it can be submitted to the Constitutional Court to be tested. This process shows the importance of the supremacy of law and the protection of human rights in the making of laws.¹⁹

Furthermore, laws in Indonesia also have characteristics that reflect the principles of openness and public participation.²⁰ The process of forming laws usually involves various parties, including civil society, academics, and the private sector, through public consultation and hearings. This aims to ensure that the resulting laws reflect the aspirations and needs of the community. Through public involvement, it is hoped that the resulting laws will be more legitimate and acceptable to the wider community, thereby increasing community compliance with the law.

¹⁵ Baharuddin Riqiey dan Syofyan Hadi, "Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives," *Mimbar Keadilan* 17, no. 1 (16 November 2023): 5, <https://doi.org/10.30996/mk.v17i2.9635>.

¹⁶ Viktor Santoso Tandiasa dan Aida Mardatillah, *Kompliasi Tafsir UUD 1945 dalam Putusan Mahkamah Konstitusi Tahun 2003-2022* (Yogyakarta: Laksbang Akademika, 2023): 76.

¹⁷ Dodi Jaya Wardana, Sukardi, dan Radian Salman, "Public Participation in the Law-Making Process in Indonesia," *Jurnal Media Hukum* 30, no. 1 (2023): 67, <https://doi.org/10.18196/jmh.v30i1.14813>.

¹⁸ Mexsasai Indra, Geofani Milthree Saragih, dan Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia," *Jurnal Konstitusi* 20, no. 2 (2023): 283, <https://doi.org/10.31078/jk2026>; Tanto Lailam dan Nita Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia," *Bestuur* 11, no. 1 (2023): 76, <https://doi.org/10.20961/bestuur.viii.70052>.

¹⁹ I D.G. Palguna, Saldi Isra, dan Pan Mohammad Faiz, *The Constitutional Court and Human Rights Protection in Indonesia* (Depok: Rajawali Pers, 2022): 35-55.

²⁰ Alda Rifada Rizqi, "Meaningful Participation in Local Regulation Making in Indonesia: A Study of Legislative Law," *Rechtsidee* 10, no. 2 (2022): 7, <https://doi.org/10.21070/jihr.viii.801>; Zainal Arifin Mochtar et al., "From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation," *Jurnal Media Hukum* 31, no. 2 (5 Desember 2024): 351, <https://doi.org/10.18196/jmh.v31i2.23557>.

An equally important characteristic is that the law is flexible and can be adjusted to the times. Along with social, cultural and technological changes, laws need to be revised to remain relevant to existing conditions. The amendment process to existing laws is designed to allow for such changes, as long as they follow established procedures. This shows that the legal system in Indonesia is not static, but rather dynamic and able to adapt to the needs of the ever-evolving community.

The laws in Indonesia also reflect the characteristics of the legal system that are national and local in nature. Although national laws apply throughout Indonesia, there are also regional regulations set by local governments to suit local needs and conditions. This creates a balance between general and specific legal norms, so that each region can regulate local affairs according to the local context and culture. Thus, the characteristics of the laws in the legal system in Indonesia reflect a commitment to maintaining justice, diversity, and the rule of law at various levels.

In Law No. 12 of 2011, the status of laws and Perppu is recognized as equal legal products, but both are formally different in terms of the process of their formation.²¹ Laws are formed through a legislative process involving the DPR and must follow strict procedures, including public consultation and ratification in a plenary session. Meanwhile, Perppu is issued by the President in an emergency and can be immediately effective, although it must be ratified by the DPR within a certain time to remain legally binding.

Laws and Perppu have fundamental differences in terms of their formation and context of use. Laws are usually formed in normal state conditions, where the legislative process runs according to established mechanisms. Under normal circumstances, the formation of laws involves the participation of various stakeholders, including the community, academics, and various interested organizations. This process usually includes in-depth studies, public discussions, and transparent ratification stages. Thus, the resulting laws are expected to reflect the aspirations and needs of the wider community.

In contrast, a Perppu is created in an emergency or a situation where the country is facing an abnormal condition, such as a natural disaster, conflict, or health crisis.²² In such a situation, the government needs to take quick action to address urgent issues that cannot be addressed through the normal legislative process. A Perppu provides the government with the flexibility to respond quickly to emergencies, although it also raises questions about the legitimacy and oversight of government actions. In this context, a Perppu becomes an important tool to ensure that the state continues to function and can provide protection to its citizens.

The process of making laws under normal circumstances involves a series of strict stages, starting from drafting, discussion at the commission level, to ratification in a plenary session.²³ Each of these stages provides an opportunity for legislators to provide input, criticism, and suggestions. This creates transparency and accountability in the legislative process. By involving various parties, the resulting laws are expected to be more comprehensive and in accordance with the needs of the community. Under normal circumstances, the public has the opportunity to participate in this process, so that the resulting laws are more legitimate and can be accepted by the wider community.

On the other hand, perppu has a shorter procedure and does not always involve a broad public consultation process. Although perppu must be submitted to the DPR for approval within a certain time, this process is often more limited compared to regular lawmaking. This can pose a risk that the decisions taken do not fully reflect the public

²¹ Daniel Yusmic P. FoEk, *Perpu Dalam Teori dan Praktik* (Depok: PT RajaGrafindo Persada, 2021): 396-398.

²² Ahmad Mukri Aji dan Siti Nurhalimah, "Examining the Restriction of Human Rights in Government Regulation in Lieu of Law," *Jurnal Cita Hukum* 8, no. 2 (2020): 363, <https://doi.org/10.15408/jch.v8i2.16504>.

²³ Yassar Aulia, Ali Abdurahman, dan Mei Susanto, "Fundamental Principles Of The Legislation Process," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 6, no. 1 (2021): 41, <https://doi.org/10.22373/petita.v6i1.109>.

interest, as well as the potential for abuse of power by the government. The existence of perppu in an emergency does allow the government to act quickly, but it is also important to ensure that the action remains within the legal framework and does not violate human rights.

Another fundamental difference between a law and a Perppu is in terms of duration and legal force. A law that has been passed has permanent legal force and is valid forever, unless amended or revoked by a new law. Meanwhile, a Perppu is temporary and must be submitted for ratification by the DPR within 30 days of being issued. If not approved, the Perppu will be automatically revoked. This creates pressure on the government to explain and justify the reasons behind issuing a Perppu, as well as ensuring that the steps taken are in accordance with the needs of the community.

The importance of the separation between laws and perppu is also seen in the context of democracy and the principle of checks and balances. Under normal circumstances, legislation through laws ensures that government power is not completely absolute, but is monitored by the legislative body. This is an important element in maintaining democracy and preventing abuse of power. Conversely, the use of perppu in an emergency must be done carefully to ensure that government actions do not violate democratic principles. Therefore, supervision from the legislative body and civil society becomes very important in this context.

Laws and bills have significantly different characteristics in the legal system in Indonesia, as regulated in Law No. 12 of 2011. One of the main differences lies in the legal status of both. A law is a legal product that has been ratified and is legally binding after being signed by the President. On the other hand, a bill is a document that is still in the discussion stage and does not have legal force until it is approved by the DPR and signed by the President. Thus, the legal status of a law makes it a norm that must be obeyed by all citizens, while a bill has not reached that stage.

In addition, the process of forming laws and bills is also fundamentally different. The process of making laws involves several clear stages, including drafting, discussion, and ratification in the DPR. Bills must follow strict mechanisms, including public consultation and discussion in DPR commissions. In this case, a bill is the initial step in the legislative process before becoming a valid law. The longer process for laws aims to ensure that each legal product is born from mature and participatory considerations.

Public involvement is also one of the characteristics that distinguishes between laws and bills. Bills provide an opportunity for the public to participate in the process of forming laws through public consultation and discussion. At this stage, the public can provide input and opinions that can influence the contents of the bill. On the other hand, after the bill is approved and becomes law, public participation decreases because the law is considered final and binding, so there is no room for change from the public.

Flexibility and revision are also important factors that differentiate the two. Draft laws can be changed and revised during the deliberation process in the DPR, in accordance with input from DPR members and the public. This allows for more dynamic adjustments to the needs and aspirations of the community. On the other hand, laws that have been passed can only be changed through a more complicated and structured amendment process, which requires re-approval from the DPR and the President.

The difference in legal force and implementation is a crucial characteristic. Laws have binding legal force and can be applied immediately after being enacted. In this case, laws become the legal basis for enforcement and implementation in the field. Meanwhile, bills cannot be applied until the legislative process is completed and the bill is approved as law. Thus, only laws can be used as legal norms that regulate the behavior of society and government institutions.

Seeing the characteristics as described above, the author can emphasize that the authority of the Constitutional Court to test laws against the 1945 Constitution of the Republic of Indonesia is laws that have been approved and have been enacted, not laws that have not been approved by the President or have not even been enacted. Although the passive attitude of a President in giving approval to a draft law submitted to him means agreeing to the draft, but in the context when it has not passed the time limit, the Constitutional Court does not have the authority to test the draft. If this happens, then in fact it is the Constitutional Court testing a draft law, not testing a law against the 1945 Constitution of the Republic of Indonesia.

The Authority of the Constitutional Court to Review Draft Laws

The Constitutional Court was officially established in 2003 under the mandate of Article 24C, which was the result of the third amendment to the Constitution in 2001. In addition, the existence of the Constitutional Court also became clearer after the issuance of Law Number 24 of 2003 and began operating in the same year.²⁴ The main authority of the Constitutional Court, as stipulated in Article 24C of the 1945 Constitution, is to test laws against the 1945 Constitution. This aims to ensure that all legislative products are in line with constitutional principles, as well as protect human rights. In carrying out its duties, the Constitutional Court functions as an institution that provides constitutional justice, where the public can submit a request to test laws that are considered to be in conflict with the constitution.

However, Indonesia has not adopted the authority for the Constitutional Court to review draft laws before they are passed. One reason is to keep the legislative process efficient and not hampered by early legal intervention. Granting this authority could potentially create conflict between the legislative and executive branches, as well as prolong the time needed for drafting laws. In addition, there are concerns that reviewing draft laws could diminish the role of parliament as a representative of the people and undermine the principles of democracy. Thus, although the Constitutional Court has an important role in reviewing laws that have been passed, the failure to adopt the authority to review draft laws reflects an effort to maintain a balance between the legislative and judicial powers in the Indonesian legal system.

The Constitutional Court in Indonesia has an important role in maintaining the constitution and upholding legal principles.²⁵ However, one clear limitation of the Constitutional Court's authority is that this institution is not authorized to test draft laws (RUU) before the RUU is passed into official law. According to the provisions stipulated in the 1945 Constitution and Law No. 24 of 2003 concerning the Constitutional Court, the Constitutional Court can only test laws that have been given a state gazette number, approved by the President, and have gone through all stages of the legislative process stipulated in Law No. 12 of 2011.

The Constitutional Court of Indonesia has a very specific role in the country's legal system, where its authority is limited to testing laws against the 1945 Constitution. Article 24C paragraph (1) of the 1945 Constitution explains that the Constitutional Court has the authority to test laws against the constitution, but does not have the authority to test draft

²⁴ Sugeng Riyadi et al., "The Urgency of Establishing Constitutional Court Procedural Law," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (2023): 209, <https://doi.org/10.24090/volksgeist.v6i2.9607>.

²⁵ John Sampe, Rosa Ristawati, dan Be Hakyau, "The Guardian of Constitution: A Comparative Perspective of Indonesia and Cambodia," *Hasanuddin Law Review* 9, no. 2 (2023): 212, <https://doi.org/10.20956/halrev.v9i2.4627>; Diantika Chayani dan Arif Wibowo, "The Role Of The Constitutional Court In Realizing A Democratic Law State Through State Administration In Indonesia," *JUSTICES: Journal of Law* 2, no. 3 (2023): 132, <https://doi.org/10.58355/justices.v2i3.47>.

laws before they are passed.²⁶ This results in all regulations that have been passed and enacted only being tested by the Constitutional Court after they have become laws, thus reducing the space for the public to intervene in the legislative process at an early stage. This limitation creates a significant difference with other countries such as Thailand and Cambodia.

In Thailand, the Constitutional Court has the power to review draft laws through Article 123 of the Thai Constitution of 2017, which allows for a constitutional review of draft laws before they are adopted by parliament. This provides space for public participation and ensures that all proposed bills are in line with constitutional principles. With this power, the public can raise objections or input on draft laws before they become binding laws, creating a more effective checks and balances mechanism in the legislative process.

Meanwhile, in Cambodia, the Constitutional Court is also empowered to review draft laws under Article 136 of the 1993 Cambodian Constitution, which facilitates the constitutionality of draft laws by the Constitutional Court before they are adopted by the legislative assembly. With this provision, the legislative process in Cambodia has become more transparent and inclusive, with the public and stakeholders able to provide meaningful input before a bill becomes law. This authority creates an environment where laws can be tested from a constitutional perspective, thereby preventing potential violations of people's rights that may arise from the laws passed. These differences show that the legal systems and roles of the Constitutional Courts in each country play an important role in shaping policy and protecting the constitutional rights of citizens.

First, it is important to understand that the Constitutional Court's authority is limited to legal products that have been passed. A bill is, in essence, a document that is still in the process of being discussed and does not yet have binding legal force. Therefore, testing a bill before it is passed is the same as trying to judge something that is not yet final. The process of forming a law involves many stages, including drafting, discussing, and passing in the DPR, all of which are designed to ensure that each legal product meets the needs and aspirations of the community. Thus, the Constitutional Court's limited authority reflects the principle that a bill must go through a complete legislative process before it can be tested.

Second, this limitation also serves to maintain a balance between legislative and judicial powers. If the Constitutional Court is given the authority to review bills, there will be potential conflict between the two institutions. The DPR, as a legislative institution, has the right to formulate and discuss laws in accordance with the mandate of the people it represents. Therefore, giving the Constitutional Court the authority to review bills can create uncertainty and disrupt the established legislative process. Thus, this limitation aims to maintain the independence and integrity of each institution in carrying out its functions and responsibilities.

Third, the legislative process involving bills is designed to ensure public participation and transparency. In the planning and drafting stages of bills, the public is given the opportunity to provide input and opinions. After the bill is discussed in the DPR, this process involves discussion and negotiation that can influence the final form of the law. If the Constitutional Court has the authority to review bills, there is a risk that input from the public and the results of discussions in the DPR will be ignored. Therefore, this limitation of authority reflects a commitment to maintaining public participation in the democratic process.

Fourth, the Constitutional Court's authority to review laws that have been passed provides a guarantee that the resulting legal product does not conflict with the

²⁶ Hufon et al., "Regional Head Election Post-MK Decision Number 60/PUU-XXII/2024 in the Constitutional Law Landscape," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 225, <https://doi.org/https://doi.org/10.22219/ljih.v33i1.39064>.

constitution. Once a law is given a state gazette number and receives the President's approval, it becomes part of the larger legal system. The Constitutional Court's review ensures that the law is in line with the basic principles contained in the 1945 Constitution. Thus, the Constitutional Court functions as a guardian of the constitution, protecting human rights, and ensuring that no law violates basic legal norms.

Fifth, with the Constitutional Court not having the authority to review bills, the legislative process can run more efficiently. Testing bills that are not yet final can slow down the process and create legal uncertainty. The long and complex legislative process is already challenging enough, and if the Constitutional Court is involved in testing bills, it can extend the time required to ratify the law. Therefore, this limitation allows the DPR to complete the legislative process without being hampered by intervention from the judiciary.

Sixth, this limitation on the Constitutional Court's authority also reflects the principle of separation of powers recognized in the Indonesian government system. The separation of powers between the executive, legislative, and judiciary is a fundamental element in maintaining democracy. Each institution has its own role and responsibility without interfering with each other. Thus, ensuring that the Constitutional Court does not test bills is an important step to maintain the integrity and autonomy of each institution in carrying out their functions.

Seventh, testing laws that have been passed by the Constitutional Court also serves as a mechanism to correct errors in legislation. If a law that has been passed is proven to be contrary to the constitution, the Constitutional Court has the authority to cancel or declare the law invalid. This process provides legal assurance to the public that the applicable laws are legitimate legal products and do not violate their constitutional rights. Thus, the Constitutional Court's limited authority in reviewing bills does not reduce its supervisory function over laws that have been passed. Therefore, if there is a bill that is deemed not to meet the principles and principles of the formation of laws and regulations as stipulated in Law No. 12 of 2011, the public has the right to file a judicial review with the Constitutional Court after the bill is approved by the President and receives a State Gazette number. This process is important to ensure that every applicable law truly reflects the aspirations and needs of the community, and complies with the basic principles that have been set out in the constitution and laws and regulations.

This judicial review functions as a monitoring mechanism for legal products that have been passed, where the public can challenge the validity of laws that are considered to be in conflict with the constitution. After the bill is passed and becomes law, the public has the opportunity to submit an application to the Constitutional Court to test whether the law is in accordance with the principles of the formation of laws and regulations stipulated in Law No. 12 of 2011. This creates space for public participation in the legislative process and strengthens democracy in Indonesia.

When the public files a judicial review, the object being tested is a law that has gone through a formal and legitimate legislative process, in accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This article explains that the Constitutional Court has the authority to test laws against the 1945 Constitution. Thus, if there is a law that is considered inappropriate, the Constitutional Court can assess the suitability of the law with constitutional norms. This provides legal assurance that the applicable legal product does not violate the constitutional rights of the public.

This judicial review process not only provides an opportunity for individuals or groups to voice their objections, but also serves as a social control over the legislative institution. By filing a judicial review, the public can express their dissatisfaction with laws that are considered unfair or not in accordance with good legal principles. This creates

accountability for the DPR and the government in the law-making process, thus ensuring that the interests of the public remain the main priority.

It is important to note that the filing of a judicial review must be done after the law has been given a State Gazette number and approved by the President. This shows that the public must wait until the law becomes a valid legal product before they can file a challenge. Although this process may seem lengthy, it also provides an opportunity to ensure that all stages of legislation have been properly completed, so that the Constitutional Court can conduct a more effective examination of the existing law.

After going through the judicial review process, if the Constitutional Court decides that the law does not meet the principles and principles of the formation of legislation, then the law can be declared unconstitutional. This decision will result in the law being invalid, thus creating an important precedent in the Indonesian legal system. The Constitutional Court's decision in this case will provide a valuable lesson for lawmakers to pay more attention to good and correct legislative processes, as well as increase public participation in the formation of laws.

Thus, judicial review becomes one of the key instruments in maintaining justice and legal legitimacy in Indonesia. The public has an important role in monitoring and criticizing legal products produced by legislative institutions. This process not only protects the constitutional rights of individuals, but also ensures that every applicable law reflects the values of democracy and justice expected by the public. With this mechanism, it is hoped that the legal system in Indonesia can be stronger and function well for the benefit of all parties.

Conclusion

The characteristics of a law as a legal instrument reflect the process of forming legislation that takes place when the country is in normal conditions. In order to be called a valid and binding law, a text must go through five important stages: planning, drafting, discussion, ratification or determination, and promulgation. If one of these stages is not met, the text cannot be categorized as a law that has legal force. Therefore, if there is a text that is still in the form of a bill, it cannot be tested at the Constitutional Court. The Constitutional Court only has the authority to test laws that have been ratified and given a State Gazette number against the 1945 Constitution of the Republic of Indonesia. Thus, testing a bill is not permitted, because the object being tested is still in the draft stage and has not reached final legal status.

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