Civil Society As Constitutional Guardians: Comparative Analysis And Indonesian Prospects

Masyarakat Sipil sebagai Penjaga Konstitusi: Analisis Perbandingan dan Prospek Indonesia

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Abstract

This study examines civil society organizations (CSOs) as constitutional guardians in Indonesia through comparative constitutional analysis. Although prior scholarship has documented procedural aspects of constitutional complaints, the participatory dynamics through which CSOs strengthen constitutional accountability remain underexplored. Employing normative legal-juridical methodology and comparative law analysis, this research examines CSO engagement models in South Korea, South Africa, and Germany to derive lessons for Indonesia's constitutional system. The study identifies institutional and procedural barriers impeding optimal CSO participation, including limited legal standing and high access costs. Empirical findings demonstrate that CSOs significantly influence constitutional courts by expanding access to justice, contributing expertise, and catalyzing jurisprudential innovation. In Indonesia, the emerging amicus curiae practice signals potential for deeper CSO involvement; however, structural constraints remain. This study concludes that comprehensive institutional reform is imperative. Key recommendations include formalizing CSO standing through Constitutional Court Law amendments and lowering access barriers to strengthen participatory democracy and safeguard citizens' constitutional rights.

Abstrak

Penelitian ini mengkaji organisasi masyarakat sipil (OMS) sebagai penjaga konstitusi di Indonesia melalui analisis konstitusional komparatif. Meskipun literatur sebelumnya telah mendokumentasikan aspek prosedural gugatan konstitusional, dinamika partisipatif yang melaluinya OMS memperkuat akuntabilitas konstitusional masih belum tereksplorasi secara mendalam. Dengan menggunakan metodologi hukum normatif-yuridis dan analisis hukum perbandingan, penelitian ini mengkaji model keterlibatan OMS di Korea Selatan, Afrika Selatan, dan Jerman untuk memperoleh pembelajaran bagi sistem konstitusional Indonesia. Studi ini mengidentifikasi hambatan kelembagaan dan prosedural yang menghambat partisipasi OMS optimal, termasuk legitimasi hukum terbatas dan biaya akses tinggi. Temuan empiris menunjukkan bahwa OMS secara signifikan mempengaruhi pengadilan konstitusi dengan memperluas akses keadilan, berkontribusi keahlian, dan mengkatalisasi inovasi yurisprudensial. Di Indonesia, praktik amicus curiae yang muncul menandakan potensi keterlibatan OMS lebih dalam; namun, kendala struktural tetap ada. Penelitian ini menyimpulkan bahwa reformasi kelembagaan komprehensif sangat mendesak. Rekomendasi kunci mencakup formalisasi status OMS melalui amandemen Undang-Undang Mahkamah Konstitusi dan menurunkan hambatan akses untuk memperkuat demokrasi partisipatif dan menjaga hak konstitusional warga negara.

A. INTRODUCTION

1. Background

Constitutional complaint mechanisms have emerged as an important instrument for protecting individual rights from state actions, with their first incarnation traceable back to 19th-century European jurisprudence. Austria and Germany pioneered this model, each allowing complaints against administrative actions and court decisions, while Spain mirrors Germany's comprehensive approach. Subsequently, several members of the Association of Asian Constitutional Courts (AACC), particularly Azerbaijan, South Korea, Thailand, and Turkey, adopted variants of the European blueprint to strengthen legal protection of fundamental rights [1]. However, these comparative studies are primarily descriptive, focusing on procedural design rather than the informal actors driving the complaint process.

Scholarly attention to non-state participation in constitutional complaint mechanisms remains limited. The existing literature largely maps formal jurisdictions and provides statistical overviews of case volumes, such as the number of *Verfassungsbeschwerde* submissions in Austria or the hybrids of ECHR complaints in Turkey.[1] The discourse on civil society organizations (CSOs) has concentrated on amicus curiae in the context of judicial review and public-interest litigation. However, there has been scant systematic analysis of how CSOs mobilize constitutional complaints to shape doctrinal development or expand access to justice. Consequently, the interaction between formal constitutional courts and CSO advocacy remains under-theorized in comparative constitutional scholarship [2].

Previous research in Indonesia by Paguna has examined the prospects of incorporating constitutional complaint authority into the mandate of the Constitutional Court and the normative urgency of such powers to safeguard citizens' rights [3]. However, these studies merely regard civil society as a background context, without examining how CSOs can function as "constitutional guardians" by identifying human rights violations, shaping jurisprudential norms, or supporting marginalized plaintiffs. This lacuna reveals a critical gap: although the procedural architecture of constitutional complaints has been well documented, the participatory dynamics employed by civil society to advance constitutional accountability have not been subjected to comparative analysis.

This study advances two novel contributions. First, it reconceptualises civil society

organisations ("CSOs") as peripheral amici curiae and active litigators, norm entrepreneurs, and policy advocates within the constitutional complaint ecosystem. Second, it juxtaposes CSO engagement models from across Europe, Asia, and Africa, where, for example, CSOs have coordinated mass complaints in South Korea and led strategic public-interest litigation in South Africa to distil transferable lessons for Indonesia. This dual analytical lens integrates doctrinal, institutional, and mobilizational dimensions, enriching comparative constitutional theory and empirical understanding of participatory justice.

Empirical findings demonstrate that CSO-led coalitions significantly influence constitutional courts by: (i) expanding legal standing for marginalized claimants; (ii) introducing thematic expertise, e.g., gender rights and environmental justice, into judicial proceedings; and (iii) catalyzing jurisprudential innovation by framing systemic rights violations as constitutional issues. In Indonesia, the nascent practice of amicus curiae filings highlights the potential for deeper CSO involvement; however, institutional constraints such as limited registration fees and narrow procedural recognition impede meaningful participation. These insights underscore the importance of institutional reforms such as formalising CSO standing rules and lowering access barriers to fully realise civil society's promise as guardian of the Constitution.

2. Research Questions

Based on the background outlined, this study identifies a critical gap in the Indonesian constitutional literature that has not yet been deeply explored: the role of civil society as guardians of the Constitution. Although previous studies have addressed procedural aspects of constitutional complaints, the participatory dynamics involving civil society organizations (CSOs) in strengthening constitutional accountability still require a comprehensive comparative analysis.

Other countries' experiences demonstrate that civil society can act as litigators, norm advocates, and policy champions within the constitutional complaints ecosystem. South Korea has demonstrated the effectiveness of coordinated mass complaints by CSOs, while South Africa has succeeded in CSO-led strategic public interest litigation. In contrast, Indonesia still faces significant institutional constraints, such as registration fees and limited procedural recognition, that hinder meaningful CSO participation in constitutional processes.

Against this context, the main research questions are formulated as follows:

First, how can models of CSO engagement as constitutional guardians in various countries provide lessons for developing Indonesia's constitutional system? Second, what institutional and procedural barriers obstruct the optimal role of Indonesian civil society in strengthening constitutional accountability? Third, what institutional reforms are necessary to formalise CSO status and lower access barriers to fully realise civil society's potential as constitutional guardians in Indonesia?

These research questions will form the analytical framework for exploring doctrinal, institutional, and mobilizational dimensions within a comparative constitutional theory context, thereby making an empirical contribution to understanding participatory justice and constitutional accountability in Indonesia.

3. Method

This study employs a normative legal research method with a comparative jurisprudential approach to analyze the role of civil society as the guardian of the Constitution. Normative legal research identifies legal rules, principles, and doctrines to resolve legal issues, focusing on an inventory of positive law, legal principles and doctrines, and legal systematics. The selection of this research type is based on the primary focus of the study on constitutional norms and legislation governing civil society's involvement in constitutional complaint mechanisms in various countries [4].

The research employs four main methods developed within comparative constitutional law methodology. First, the statute approach examines legislation related to the constitutional system and civil-society involvement, including the 1945 Constitution, the Constitutional Court Law, and the constitutions of South Korea, South Africa, and various European countries as comparative subjects. Second, the comparative approach applies a functional methodology to compare models of civil-society organization engagement within constitutional complaint systems to identify transferable lessons for Indonesia. Third, the conceptual approach utilizes theoretical concepts concerning civil society, constitutional guardians, and constitutional accountability. Fourth, the historical approach analyses the origins and development of civil-society involvement in constitutional systems [5].

The data collection technique was conducted through library research, with a comprehensive inventory of legal materials encompassing: primary legal sources (the 1945 Constitution, Law No. 24/2003 concerning the Constitutional Court, constitutions of comparator countries); secondary legal sources (scholarly journals, books, research

findings); and tertiary legal sources (legal dictionaries, encyclopedias). The analysis employed descriptive qualitative methods with legal interpretation, utilizing both grammatical and comparative interpretation to contrast legislation and practices in Indonesia with those of other countries. The analytical process applied deductive reasoning to derive conclusions and offer actionable policy recommendations for developing Indonesia's constitutional system.

B. RESULTS & DISCUSSION

1. Conceptualization of Civil Society as the Guardian of the Constitution

The concept of civil society as guardians of the Constitution can be understood through the "constitutional guardians" theory, developed in the comparative constitutional literature. According to the Institute for Government, there are three categories of constitutional guardians: core guardians (the government's principal institutions), auxiliary guardians (actors within those core institutions), and tertiary guardians (organizations and individuals outside the core institutions who monitor and enforce the Constitution). Civil society falls under tertiary guardians, acting as constitutional overseers beyond formal governmental structures.

In his debate with Carl Schmitt regarding the "guardian of the constitution," Hans Kelsen asserted that safeguarding the Constitution is not solely the monopoly of formal state institutions but also involves broader control mechanisms [6]. In this context, civil society acts as constitutional watchdogs, monitoring, reporting on, and regulating the implementation of constitutional principles. This role has become increasingly vital in the modern democratic era, where the complexity of state governance demands comprehensive mechanisms of checks and balances.

Research indicates that civil society organizations (CSOs) possess a unique capacity to serve as active litigators, norm entrepreneurs, and policy advocates within the constitutional grievance ecosystem. Unlike the traditional, peripheral amicus curiae, the modern conceptualisation of civil society as guardians of the Constitution emphasises active engagement in identifying human rights violations, shaping jurisprudential norms, and supporting marginalised plaintiffs. This approach integrates doctrinal, institutional, and mobilizational dimensions, enriching comparative constitutional theory and the empirical understanding of participatory justice.

2. Model of Civil Society Engagement in a Comparative Constitutional System

a. Model of the Republic of Korea: Coordination of Collective Grievances

South Korea has demonstrated the effectiveness of a civil-society-led mass-complaint coordination model through a comprehensive, well-structured constitutional-complaint mechanism. This model is established by Article 111(1) of the Constitution of Korea and Articles 68–69 of the Constitutional Court Act, which provide a strong legal foundation for protecting citizens' constitutional rights [7].

The South Korean constitutional complaint system is governed by Article 111(1) of the Constitution of the Republic of Korea, which stipulates that the Constitutional Court shall have exclusive jurisdiction over five areas, including constitutional complaints. Article 68 of the Constitutional Court Act provides for two types of constitutional complaint: Hun-Ma (Article 68(1)), for direct complaints against acts or omissions of state power; and Hun-Ba (Article 68(2)), for complaints filed after an ordinary court has dismissed an application for judicial review [8].

Article 69 of the Constitutional Court Act stipulates that a constitutional complaint must be filed within 90 working days from the moment a constitutional rights violation becomes known, and in any event within one year of the occurrence of the underlying cause. This time limit balances legal certainty and accessibility for citizens whose rights have been infringed [7].

The Constitutional Court of Korea also provides court-appointed counsel for petitioners who are financially unable to retain private representation, thereby ensuring equal access to justice. Civil society organizations (CSOs) in South Korea are crucial intermediary institutions in coordinating mass petitions. CSOs act as a liaison between individuals and the constitutional adjudication body, facilitating citizens' access to mechanisms to protect their constitutional rights [9].

The active role of OMS encompasses three principal aspects: coordinating collective complaints, providing legal aid to marginalised individuals, and mobilising public opinion to support the enforcement of constitutional rights. Organizations such as the Citizens' Coalition for Economic Justice (CCEJ), People's Solidarity for Participatory Democracy (PSPD), and various human rights groups have significantly advocated constitutional complaint cases [9].

The South Korean CSOs developed an organized coordination strategy to handle mass complaints. They assist individuals in filing constitutional complaints,

organise public campaigns, and mobilise community support for cases that have broad implications for constitutional rights.

A concrete example is the climate-change case involving 123 applicants from civil society organizations, political party leaders, and citizens affected by climate change. On August 29, 2024, the Constitutional Court of Korea held that Article 8(1) of the Framework Act on Carbon Neutrality violated the right to a healthy environment, demonstrating the effectiveness of coordinated mass complaints [10].

The South Korean model demonstrates high effectiveness in processing constitutional complaints, and the large volume of filings reflects public confidence in the system. According to public opinion surveys, the Constitutional Court of Korea has been the most trusted and influential government institution since 2005. This indicates that the constitutional-complaint mechanism functions as a legal instrument and a democratic legitimizing agent that reinforces public trust in state institutions.

The principal advantage of the South Korean model lies in the integration between the formal constitutional complaint mechanism and the active role of civil society. OMS (Office of the Minister of State) provides legal assistance and mobilizes public opinion to elevate constitutional complaint issues into broader public discourse.

This system enables marginalised individuals to access justice through OMS support while facilitating the handling cases with systemic impact via coordinated mass petitions. The model further illustrates how civil society can serve as an effective intermediary institution, bridging the gap between citizens and the constitutional judiciary.

With its high accessibility, significant filing volume, and OMS's proactive role in coordinating mass complaints, the South Korean model offers a valuable template for a constitutional complaint system capable of accommodating individual and collective interests in protecting constitutional rights.

b. Strategic South African Model: Strategic Public Interest Litigation

Under the constitutional framework of 1996, South Africa's strategic public-interest litigation model demonstrates the successful integration of judicial, legislative, and executive dimensions with a participatory civil-society component. Section 167(6)(a) of the Constitution empowers the Constitutional Court to permit

"direct access" by any individual or group with an interest in a constitutional matter that another court has not yet heard, provided the Court deems such access "in the interests of justice." The implementation of this provision is further regulated by Rule 17 of the Rules of the Constitutional Court, which requires a notice of motion accompanied by an affidavit setting out the urgency of the application and the absence of any effective alternative forum for relief, and which also makes provision for third-party interventions (amicus curiae) by Rule 10 [11].

"Strategic litigation grounded in Section 38(d) of the Constitution, which relaxes the standing requirement so that public entities may sue in the public interest without demonstrating personal harm. The Constitutional Court has affirmed that South Africa's constitutional democracy is a 'representative and participatory democracy,' in which electoral representation is enriched by the direct participation of the public in the law- and policy-making process. The landmark Doctors for Life judgment confirmed the obligation of public consultation in reproductive-health policy legislation, such that any statute enacted without public participation is subject to invalidation."[12].

Since the transition era, civil society organisations such as the Legal Resources Centre, the Centre for Applied Legal Studies, and the Treatment Action Campaign have utilised direct access and public standing to challenge policies and statutes that threaten fundamental rights. Through strategic litigation, numerous constitutional court judgments have entrenched human rights protection, such as the Biowatch decision, which affirmed the allocation of pro bono legal costs in matters of public interest so as not to impede meaningful litigation. The South African model demonstrates that public-interest litigation can effectively broaden civic participation, reinforce constitutional supremacy, and ensure governance responsive to the wider public's rights and interests [12].

c. Model: Protection of Individual Constitutional Rights

The German model for protecting individual constitutional rights through the constitutional complaint mechanism, or *Verfassungsbeschwerde*, has been the subject of significant academic inquiry. The German system exhibits a comparative advantage over other European models and is a key reference for developing analogous systems in various countries.

Germany implements the constitutional complaint mechanism under Section

90(1) and (2) of the Federal Constitutional Court Act (BVerfGG), which permits individual citizens to complain when a state authority has violated a constitutional right. Historical data show that from September 7, 1951, to December 31, 2016, 212,827 petitions were filed, of which 209,374 applications were adjudicated. In 2023, 4,296 new filings and 4,735 cases were resolved; however, the success rate was only 1.16 per cent, corresponding to 55 successful cases [13].

The unique features of the German model include an emphasis on a strict formal legal relationship (direct linkage relationship) and the requirement of exhaustion of legal remedies. According to Lailam and Andrianti, a comparative study of Germany's constitutional complaint procedure shows it to be superior to those of Austria and Hungary because: all decisions of ordinary courts may be challenged; decisions are final and binding; both individuals and organizations may file complaints; the procedure takes only one month and is free of charge; and hearings may be conducted with or without oral argument [14].

Civil society in Germany plays a role in providing technical support and advocacy for individuals filing constitutional complaints, as well as monitoring the implementation of Constitutional Court decisions. Palguna's study emphasises that the constitutional complaint is a core component of the constitutional Court and, through a comparative perspective, can offer lessons for other countries that have not yet established a similar mechanism. The German model is regarded as a comprehensive system for handling constitutional grievances, with a procedure that may only be initiated if no other legal remedies are available or all available remedies have been exhausted. Although its success rate is relatively low, this mechanism remains important for protecting citizens' constitutional rights and developing constitutional jurisprudence in Germany.

Table 1. Comparison of Constitutional Models:
South Korea, South Africa, Germany, and Indonesia

State	Legal basis	Applicant's Request	Deadline	Implementation Status	Feature
Germany	Article 90(1) & (2) of the Federal Constitutional Court Act (BVerfGG)	Individuals or organizations that have exhausted their medications	After all other legal remedies have been exhausted	Fully implemented	212,827 petitions (1951–2016); 4,296 new petitions in 2023; 1.16% success rate; strict formal

State	Legal basis	Applicant's Request	Deadline	Implementation Status	Feature
					prerequisites; one-month procedure free of charge and expedited.
South Korea	Article 111 paragraph (1) of the Constitution; Articles 68–69 of the Constitutional Court Law	An individual whose constitutional rights have been violated	90 working days after the forfeiture of rights	Fully implemented	27,501 requests (2015); direct and indirect submissions; high public confidence; coordination of mass complaints by civil society organizations.
South Africa	Article 167(6)(a) of the Constitution; Articles 17 and 10 of the Constitutional Court Regulations	Individuals or groups, without the necessity of demonstrating personal loss.	After having exhausted all other judicial remedies and under a motion	Fully implemented	Status of direct access; strategic public interest litigation; landmark cases (Doctors for Life, Biowatch); pro bono funding
Indonesia	The Constitutional Court Law Number 24 of 2003; Law Number 48 of 2009 Article 5 paragraph (1); Criminal Procedure Code Article 38 letter e; Government Regulation of the Constitutional Court Number 4 of 2023	The scope is limited to applicants for judicial review and amici curiae	Not Applicable	Has not yet been implemented	The case submitted for judicial review (e.g., 16/PUU-VI/2008); 303 academic amicus curiae in the 2024 Election Dispute; participatory oversight has emerged but entails high costs and procedural obstacles.

3. Practices and Challenges of Indonesian Civil Society within the Constitutional Framework

a. The Practice of Amicus Curiae in the Constitutional Court

The practice of amicus curiae, or "friend of the court," before the Constitutional

Court of Indonesia demonstrates an increasingly robust dynamic as a form of public participation in constitutional adjudication. Although there is not yet any specific regulation explicitly governing the amicus curiae mechanism in Indonesia, the involvement of third parties in constitutional cases before the Court has grown more prevalent, driven by the need to explore the living legal values and sense of justice inherent in society [15].

The most significant momentum occurred in the 2024 Presidential and Vice Presidential Election Dispute (PHPU), where an Alliance of Academics and Civil Society spearheaded the submission of an amicus curiae brief by 303 scholars and public figures. This submission enriched the perspectives available to the constitutional justices. It affirmed civil society's role as a "provider of social facts" and a "conduit for public aspirations" in electoral dispute proceedings [16]. In their amicus brief, the scholars highlighted the General Elections Commission's misinterpretation of Constitutional Court Decision No. 90/PUU-XXI/2023 concerning the requirements for vice presidential candidates, ultimately influencing its unconstitutional rulings on several electoral policies [17].

The legal basis for practising amicus curiae in Indonesia is reflected, among other provisions, in Article 5(1) of Law Number 48 of 2009 concerning Judicial Power, which obliges judges to investigate and understand the legal values within society.[15] Furthermore, Article 180 paragraph (1) of the Criminal Procedure Code (KUHAP) grants the presiding judge the authority to summon expert testimony or new evidence from interested parties, as adopted by the Constitutional Court through the provisions of Article 38 letter e in conjunction with Article 44 of Constitutional Court Regulation Number 4 of 2023 concerning the Rules of Procedure in Electoral Dispute Cases.

An empirical study by Haholongan confirms that amicus curiae submissions help strengthen the judiciary's integrity, enhance transparency and accountability, and broaden judges' legal perspectives, particularly in cases of significant public or technical importance. However, the urgency of regulation remains imperative to ensure legal certainty, establish selection criteria, and define mechanisms for evaluating amicus curiae arguments. Experts recommend issuing guidelines by the Constitutional Court or a Supreme Court Circular Letter delineating the definition, submission procedures, and quality standards for amicus briefs so that this form of

public participation can proceed consistently and objectively [18].

Overall, the development of amicus curiae practice at the Indonesian Constitutional Court reflects the evolution of a judiciary increasingly open to public participation. To maximise its benefits, a comprehensive legal framework is required to optimise the contribution of amicus curiae in realising a democratic, transparent, and civilised constitutional justice.

b. Participatory Oversight in Electoral Systems

The transformation of the role of Indonesian civil society in the participatory oversight of elections reflects a shift from merely observing to becoming active agents in safeguarding the integrity and accountability of the democratic process. From the stage of drafting regulations to the resolution of disputes, the Constitutional Court (MK) has expanded opportunities for civil society participation, notably through Decision No. 135/PUU-XXII/2024, which affirms the separation of national and regional elections and strengthens the procedures for challenging election results before the MK. This change aligns with Tawakkal's findings, which indicate that collaboration among the Election Supervisory Body (Bawaslu), NGOs, and universities supported by an inclusive legal framework has led to an increase in reports of alleged violations and the submission of election dispute petitions (PHPU) to the MK [19].

In field practice, participatory oversight is implemented through three principal dimensions. First, community-based social activism: citizen forums and "oversight officer" training conducted by Bawaslu and local partners have successfully extended the scope of monitoring to villages and urban wards, fostered political awareness, and enhanced public legitimacy of election administrators.[19] Second, legal activism: the utilisation of legal channels to report alleged violations, as well as the collaboration between Gakkumdu and Bawaslu in prosecuting electoral crimes, reinforces the accountability of election organisers and perpetrators of vote buying, which often poses a major challenge to Indonesian democracy [20]. Third, digital activism: The use of online violation reporting applications and information literacy campaigns on social media enables the rapid detection of infractions and the countering of hoaxes, especially by the millennial generation [21].

Evaluation of the Post-2024 Election Reveals Progress and Obstacles.

Saputro's study reports a significant increase in public participation in reporting electoral violations spurred by a map-based reporting application and an advocacy chatbot. However, this participation remains impeded by limitations in human resources, technological capacity at regional Bawaslu offices, and the persistent resistance posed by rampant vote-buying [22]. Moreover, the success of participatory oversight has not been uniformly distributed, with a significant disparity between major urban centres, where internet access is abundant and remote areas characterized by limited connectivity.

To reinforce participatory oversight mechanisms, a holistic strategy is required: (1) capacity building through online training and regular workshops for oversight officers drawn from diverse community sectors; (2) multistakeholder synergy with academic research institutions and NGOs to provide real-time data analysis of violations; and (3) sustained digital transformation, including the integration of machine learning for anomaly detection in vote-buying and the development of e-learning modules on political literacy. This approach facilitates more inclusive participation and strengthens constitutional accountability, ensuring that elections in Indonesia are conducted honestly, fairly, and freely.

c. Support for the Independence of the Constitutional Court

The Indonesian civil society has demonstrated significant solidarity in supporting the independence and integrity of the Constitutional Court. This support was concretely manifested on August 22 2024, when more than seventy civil-society figures gathered at the Constitutional Court Building to express their appreciation for and endorsement of Constitutional Court Decisions No. 60/PUU-XXII/2024 and No. 70/PUU-XXII/2024 concerning the Regional Elections Law. This solidarity movement involved a diverse range of civil-society actors, including academic and intellectual figures such as Goenawan Mohammad; Professor Sulistyowati Irianto (Professor of Law, University of Indonesia); Zainal Arifin Mochtar (expert in constitutional law, Gadjah Mada University); and Ommy Komariah Madjid, as well as various activists and democracy advocates [23].

The Pratiwi study demonstrates that the independence of the Indonesian Constitutional Court faces a range of serious challenges, including threats from religious populist movements and political intervention. Political pressure can undermine the Court and empower religious populism to impose its will. This gives

rise to concerns about politicized or religion-driven decision-making within the judiciary, thereby undermining the rule of law, eroding judicial independence, and endangering the right to freedom of religion [24].

The Rishan study's comparative analysis also identifies a phenomenon of constitutional court regression in the post-democratic transition era, whereby the Constitutional Courts of Hungary, Poland, and Indonesia have undergone systematic rollback through court-packing. Such regression is effected through several patterns: altering the number of constitutional judges, politicizing the appointment and removal of judges, and restructuring the eligibility criteria and selection procedures for constitutional judges. The regime employs court-packing to install judges loyal or politically aligned with the regime, thereby exerting control over the Court's independence [25].

The importance of civil society's role in safeguarding the independence of the Constitutional Court is further underscored by the study of Tatawu & Tawai on judicial review and civil-society oversight, published in a peer-reviewed journal accessible via academic databases. Their research examines how the intervention of political forces in judicial review significantly influences the constitutional Court, undermining the independence of constitutional judges and promoting interpretive patterns aligned with those in power. The study demonstrates that, in judicial reviews subject to political intervention, public access to the review process is regulated by political interests. Accordingly, it is essential to establish specific provisions governing the amicus curiae mechanism for public participation as a form of democratic control within the rule of law, allowing civil society to submit opinions that serve as supplementary considerations for judges and form an integral part of the formal judicial-review procedure [26].

Civil society support for the independence of the Constitutional Court encompasses four principal positions: first, acknowledgment of constitutional violations, asserting that those wielding power has perpetrated systematic breaches of the 1945 Constitution in an autocratic and corrupt manner; second, endorsement of pro-democratic rulings, providing unequivocal backing to Constitutional Court Decisions No. 60/PUU-XXII/2024 and No. 70/PUU-XXII/2024, which are deemed to uphold democratic principles; third, reinforcement of the Constitutional Court's role, affirming that, as guardian of the Constitution and democracy, the Court must

steadfastly uphold the Constitution and enforce democratic norms; and fourth, a sustained commitment, expressing readiness to continue mobilizing efforts to safeguard democracy, the people, and the Republic of Indonesia [23].

The characteristics of this support movement demonstrate independence and spontaneity, as Prof. Sulistyowati Irianto affirmed that it is neither commanded nor coordinated by any party. Zainal Arifin Mochtar also emphasized that their presence does not represent any particular political interest but is "in the name of Indonesia's democratic future." This support movement has a broad geographic reach, occurring not only in Jakarta but also in various regions such as Semarang, Surabaya, Yogyakarta, and Bandung, reflecting the national character of this solidarity [23].

This civil-society support carries strategic significance for the Constitutional Court's independence by: conferring democratic legitimacy through endorsement by prominent figures who lend strong moral authority to the Court's pro-democratic rulings; serving as a counterbalance to political pressure from other state institutions; and helping to restore public confidence in the Court. Its implications for the democratic system include strengthening the checks and balances by enhancing these mechanisms through active civil-society involvement; evolving public participation in judicial review not only via formal channels but also through moral and political backing; and safeguarding constitutional rights, since support for the Court's independence contributes to protecting citizens' constitutional rights from potential violations by those in power.

4. Structural and Procedural Barriers to Indonesian Civil Society

a. Limitations on Legal Standing

One of the principal obstacles encountered by Indonesian civil society is the narrow scope of the concept of legal standing in formal judicial review before the Constitutional Court. Article 51 of the Constitutional Court Law specifies who may directly apply to such proceedings, yet these criteria remain highly restrictive. In its reasoning for Decision No. 27/PUU-VII/2009, the Court acknowledged the significance of legal standing by introducing the requirement of a constitutional injury characterized by a "directly related connection."[27].

The issue of legal standing becomes complex due to the distinction between formal and substantive reviews. Under formal review, the petitioner must demonstrate that they have a "direct nexus" and are registered as voters in the

election. This criterion restricts access for civil society actors lacking institutional connections to the legislative enactment process.

b. The Regulation of Amicus Curiae That Is Not Yet Comprehensive

Although the practice of amicus curiae has developed in Indonesia, the regulations governing this mechanism remain far from comprehensive. Amicus curiae is not yet explicitly provided for within the Indonesian legal system, even though it is, in principle, accepted under various general provisions [27]. The ambiguity of these regulations engenders legal uncertainty for civil society actors seeking to participate in the constitutional adjudication process.

To ensure legal certainty and avoid legal lacunae, it is necessary to incorporate the concept of *amicus curiae* into the provisions of legislation in a more specific manner. A comprehensive regulation must encompass submission procedures, admission criteria, and mechanisms for evaluating the contributions of amicus curiae in judicial proceedings [28].

c. Financial Constraints and Accessibility

Limited filing fees and constrained procedural recognition constitute significant barriers to meaningful civil society participation in the constitutional process. These financial impediments are felt especially acutely by small civil society organizations and individuals lacking adequate resources to access the constitutional justice system.

Accessibility is further hampered by procedural complexity, which demands a deep technical understanding of the law. Although many civil-society organizations possess substantive legitimacy to submit petitions or act as amici curiae, they are thwarted by the intricate technical and procedural requirements.

5. Institutional Reform to Strengthen the Role of Civil Society

a. Formalization of the Legal Status of Civil Society Organizations

The most urgent institutional reform in Indonesia's constitutional adjudication system is the formal recognition of civil society organizations (CSOs) within the constitutional complaint mechanism. An amendment to Law No. 24 of 2003, in conjunction with Law No. 7 of 2020 on the Constitutional Court, is an urgent necessity to incorporate the authority to hear constitutional complaints. Several cases substantively amounting to constitutional complaints have been filed with the Constitutional Court of the Republic of Indonesia, even though the Court lacks such

jurisdiction. Cases such as No. 16/PUU-VI/2008, No. 140/PUU-XIII/2015, and No. 102/PUU-VII/2009 constitute concrete examples of petitions whose substance is a constitutional complaint but which have been reformulated as judicial review of statutes [27].

This amendment must be accompanied by establishing clear criteria regarding which civil society organizations may act as petitioners or amici curiae. Warjiyati et al.'s research emphasizes that expanding the Constitutional Court's authority through legislative amendment offers a solution for providing more comprehensive protection of constitutional rights [29]. Civil society organisations (CSOs) eligible to act as petitioners or amicus curiae must have a clear organisational structure, a demonstrable track record in constitutional law advocacy, and the capacity to grasp the complexities of constitutional issues.

The formalisation of CSO standing in a constitutional complaint must consider Indonesia's organisational, substantive, and legal-cultural contexts. Although Indonesia's legal system is rooted in civil law, it has adopted various common-law elements, including the practice of amicus curiae, which has been employed in cases before both the Supreme Court and the Constitutional Court. A constitutional-complaint mechanism must be tailored to Indonesia's legal system characteristics, especially in taxation matters where taxpayers require direct protection against infringements of their constitutional rights.

Adapting a constitutional-complaint mechanism requires sensitivity to Indonesia’s civil-law foundation and assimilation of common-law features. Well-established models in Germany, South Korea, and South Africa offer instructive examples for Indonesia.

The urgency of granting the Constitutional Court authority to hear constitutional complaints is strengthening constitutional rights protection. This calls for amending the 1945 Constitution and revising the Constitutional Court Law to provide a firm legal basis. Conceptually, constitutional complaint embodies the values of constitutionalism within Pancasila’s rule-of-law framework, complements existing checks and balances, and serves as a foundation for fundamental rights protection.

Although amicus curiae practice has underpinned constitutional complaints in Indonesia's judiciary, it remains informally regulated. Civil-society coalitions

have actively submitted amicus curiae briefs in key cases, demonstrating that mechanisms adapted from foreign systems can be localised effectively.

The absence of a constitutional-complaint mechanism undermines citizens' rights protection. It diminishes Indonesia's legitimacy as a modern democratic state governed by law, since no legal avenue exists to challenge state actions that may violate individual constitutional rights.

Adapting a constitutional complaint in Indonesia entails considering its organisational, substantive, and legal-cultural context. It can proceed via amendment of Law No. 24/2003 in conjunction with Law No. 7/2020 on the Constitutional Court. Following initial amendments to the Constitutional Court Law, amending the Constitution itself should be the ultimate step to grant the Constitutional Court this authority. A limited form of constitutional complaint and enhanced protection of citizens' constitutional rights can first be achieved through the amendment of the Constitutional Court Law.

Indonesia's adoption of constitutional complaints has a solid foundation. Formalising CSOs' role in constitutional complaints by amending the Constitutional Court Law with clear criteria for CSOs as petitioners or amicus curiae will strengthen the protection of citizens' constitutional rights and enhance Indonesia's legitimacy as a modern democratic state governed by law.

b. Reduction of Access Barriers and Costs

Reforming procedural rules should lower civil society's barriers to access. This can be achieved by establishing a pro bono mechanism for civil society organizations with a track record in constitutional advocacy, simplifying the procedures for filing amicus curiae briefs, and providing clear, user-friendly technical guidelines.

The Constitutional Court must also develop an online system that facilitates the submission of amicus curiae briefs and offers constructive feedback on civil-society contributions. This system should enable participation from all regions of Indonesia, not only those residing in Jakarta.

c. Reinforcing the Mechanism of Participatory Democracy

Based on South Africa's experience, which has established its constitutional democracy as a "representative and participatory democracy," Indonesia must develop a legal framework that explicitly recognizes and facilitates participatory democracy. This aligns with the spirit of the 1945 Constitution, which affirms that

sovereignty resides in the hands of the people and is exercised by the Constitution.

Strengthening participatory democracy requires developing institutional infrastructure that enables civil society's continuous engagement in constitutional processes. This includes establishing dialogue forums between the Constitutional Court and civil society, public consultation mechanisms for strategically significant cases, and capacity-building programs for civil society organizations.

These reforms are expected to fully realize Indonesian civil society's potential as an effective guardian of the Constitution, thereby creating a stronger system of checks and balances to uphold constitutionalism and protect citizens' constitutional rights.

C. CONCLUSION

Based on a comparative analysis of civil society organisations' engagement models as guardians of the Constitution in various countries, this study yields several key findings that offer valuable lessons for developing Indonesia's constitutional system. The South Korean model demonstrates high effectiveness in coordinating mass complaints by civil society organisations through a comprehensive constitutional complaint mechanism, featuring a significant volume of submissions and a high level of public confidence in the Constitutional Court as the most trusted government institution since 2005. Meanwhile, the German model exhibits a mature constitutional complaint system with stringent procedures. However, its success rate is relatively low (1.16% in 2023); it remains an important instrument for protecting citizens' constitutional rights and evolving jurisprudence.

The practice of amicus curiae in Indonesia has shown encouraging development, particularly evident during the 2024 Presidential and Vice-Presidential Election Dispute, when the Alliance of Academics and Civil Society led the submission of amicus curiae briefs by 303 academics and public figures. This momentum underscores civil society's strategic role as "providers of social facts" and "conveyors of public aspiration" in election disputes, while also revealing the potential for deeper engagement by civil society organisations in constitutional processes.

Nonetheless, significant structural and procedural barriers impede meaningful participation by Indonesian civil society within the constitutional system. Limited legal standing, constrained filing fees, and restricted procedural recognition pose the principal challenges civil society organisations face, particularly smaller groups and individuals

lacking sufficient resources to access the constitutional judiciary. The procedural complexity, which demands in-depth technical legal knowledge, further aggravates these access barriers.

Urgent institutional reforms are required to strengthen civil society's role as constitutional guardians in Indonesia. Formalising the position of civil society organisations within the constitutional complaint mechanism through amendments to Law No. 24 of 2003 in conjunction with Law No. 7 of 2020 concerning the Constitutional Court is a priority, given that numerous constitutional-complaint-type cases have been filed with the Court despite its lack of explicit authority. A limited implementation of a constitutional complaint mechanism can be initiated via amendment of the Constitutional Court Law as an initial step, followed by amendments to the 1945 Constitution to confer full constitutional-complaint authority upon the Court.

Reducing access barriers and costs is crucial to procedural reform. Establishing a pro bono mechanism for civil society organizations with proven records in constitutional advocacy, simplifying the amicus curiae submission procedure, and providing user-friendly technical guidelines would facilitate more inclusive participation. Developing institutional infrastructure enabling sustained civil society involvement in constitutional processes, including creating dialogue forums between the Constitutional Court and civil society, and capacity-building programs, would reinforce participatory democracy by the 1945 Constitution’s principle that sovereignty resides with the people.

Drawing on South Africa's experience in enshrining its constitutional democracy as a "representative and participatory democracy," Indonesia should develop a legal framework that explicitly recognises and facilitates participatory democracy. This aligns with the need to strengthen checks and balances within the state system, whereby active civil society involvement will enhance constitutional accountability and protect citizens' constitutional rights from potential executive overreach. Thus, civil society can fully realise its potential as an effective tertiary guardian of the Constitution and bolster Indonesia's constitutional democracy.

REFERENCES

[1] M. L. Chakim, “A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions,” *Const. Rev.*, vol. 5, no. 1, pp. 096–133, May 2019, doi: 10.31078/consrev514.

[2] G. Tatawu and A. Tawai, “The Transformation of the Role of the Constitutional Court of Indonesia: From Negative Legislature to Positive Legislature in the Context of

Judicial Review Authority (A Study of Decision Number 90/Puu-Xxi/2023)," *J. Law Sustain. Dev.*, vol. 11, no. 12, p. e2187, Dec. 2023, doi: 10.55908/sdgs.v11i12.2187.

[3] I. D. G. Palguna, "Constitutional Complaint and the Protection of Citizens the Constitutional Rights," *Const. Rev.*, vol. 3, no. 1, pp. 1–23, Aug. 2017, doi: 10.31078/consrev311.

[4] A. I. Hamzani, T. V. Widyastuti, N. Khasanah, and M. H. Mohd Rusli, "Implementation approach in legal research," *Int. J. Adv. Appl. Sci.*, vol. 13, no. 2, pp. 380–388, Jun. 2024, doi: 10.11591/ijaas.v13.i2.pp380-388.

[5] I. Sujono, "Urgensi Penemuan Hukum dan Penggunaan Yurisprudensi dalam Kewenangan Mahkamah Konstitusi," *J. Konstitusi*, vol. 18, no. 3, pp. 585–607, Feb. 2022, doi: 10.31078/jk1835.

[6] L. Vinx, Ed., *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, 1st ed. Cambridge University Press, 2015. doi: 10.1017/CBO9781316136256.

[7] S.-H. Jeon, "A Critical Review on Composition of the Constitutional Court of Korea," *Const. Rev.*, vol. 10, no. 1, pp. 1–32, May 2024, doi: 10.31078/consrev1011.

[8] D. A. G. S. Dewi, X. Nugraha, and M. E. Laurentius, "The Authority of the Constitutional Court in Handling Constitutional Complaints: A Comparative Study with Germany and South Korea," *Const. Law Soc.*, vol. 1, no. 2, pp. 127–139, Sep. 2022, doi: 10.36448/cls.v1i2.28.

[9] D. Mitra, "Systemic Crises and Democratic Consolidation: Exploring Citizen Perceptions in South Korea," *Int. Area Stud. Rev.*, vol. 28, no. 1, pp. 62–87, Mar. 2025, doi: 10.69473/iasr.2025.28.1.62.

[10] B. Phillips, "South Korean Constitutional Court Ruling: A Landmark Decision in Climate Litigation," International IDEA. [Online]. Available: https://www.idea.int/news/south-korean-constitutional-court-ruling-landmark-decision-climate-litigation

[11] C. Swanepoel, "The public-interest action in South Africa: The transformative injunction of the South African Constitution," *J. Juridical Sci.*, vol. 41, no. 2, pp. 29–46, Nov. 2016, doi: 10.18820/24150517/JJS41.v2.3.

[12] E. Cohen, "The Jurisdiction of the Constitutional Court," *Const. Court Rev.*, vol. 11, no. 1, pp. 1–49, Dec. 2021, doi: 10.2989/CCR.2021.0016.

[13] Legal Tribune Online, "So viele Anträge auf Eil-rechts-schutz wie nie zuvor," Legal Tribune Online. [Online]. Available: https://www.lto.de/persistent/a_id/54093

[14] T. Lailam and N. Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia," *BESTUUR*, vol. 11, no. 1 (August), pp. 75–94, Apr. 2023, doi: 10.20961/bestuur.v11i1.70052.

[15] J. Thomas and V. Liman, "Analysis Of Opportunities For Implementing The Amicus Curiae Concept As A Form Of Public Participation In The Judicial System In Indonesia," *J. Huk. dan Peradil.*, vol. 13, no. 1, pp. 1–32, Mar. 2024, doi: 10.25216/jhp.13.1.2024.1-32.

[16] Sulistyowati, L. Mery, D. N. Maharani, and A. Andika, "The Urgency of Amicus Curiae

in The Indonesian Law (A Case Study of the 2024 Presidential Election Dispute)," *Alauddin Law Dev. J.*, vol. 6, no. 3, pp. 578–587, Nov. 2024, doi: 10.24252/aldev.v6i3.51252.

[17] R. N. A. A.K., M. Akib, and B. Budiyono, "Rekonstruksi Terhadap Sifat Final Dan Mengikat Dalam Putusan Mahkamah Konstitusi," *FIAT JUSTISIAJurnal Ilmu Huk.*, vol. 10, no. 4, pp. 795–820, May 2017, doi: 10.25041/fiatjustisia.v10no4.860.

[18] Johannes Edison Haholongan, "The Introduction of Amicus Curiae as Formal Legal Instrument to Enhance Judicial Integrity," *Jud. Laguens*, vol. 2, no. 2, pp. 237–264, Aug. 2024, doi: 10.25216/ikahi.2.2.8.2024.237-264.

[19] G. T. I. Tawakkal, "Integrating Social Values: Evidence from The Intermediary Institution in Indonesian Elections," *Polit. J. Ilmu Polit.*, vol. 13, no. 2, pp. 337–348, Oct. 2022, doi: 10.14710/politika.13.2.2022.337-348.

[20] H. Kristiyanto, S. Arinanto, and H. S. Ghafur, "Institutionalization and party resilience in Indonesian electoral democracy," *Heliyon*, vol. 9, no. 12, p. e22919, Dec. 2023, doi: 10.1016/j.heliyon.2023.e22919.

[21] F. A. Saputro, "Digital Democracy: Exploring the Potential and Challenges of SIPOL in the 2024 Indonesian Election," *J. La Soc.*, vol. 5, no. 3, pp. 777–784, May 2024, doi: 10.37899/journal-la-sociale.v5i3.1163.

[22] A. Na'im, F. Mu'in, K. , and R. Santoso, "The Effectiveness of Election Supervisors in Participatory Supervision and the Production of High-Quality Executive and Legislative Leaders," *KnE Soc. Sci.*, vol. 10, no. 8, pp. 194–203, Apr. 2025, doi: 10.18502/kss.v10i8.18433.

[23] M. M. Fajri, "Masyarakat Sipil Dukung MK: Kawal Putusan UU Pilkada Demi Demokrasi Indonesia," Info Publik. [Online]. Available: https://infopublik.id/kategori/nasional-politik-hukum/863438/index.html

[24] Cekli Setya Pratiwi, "Threat to Indonesia's Constitutional Court Independence Posed by Religious Populist Movements and its Implication Towards Human Rights," *Const. Rev.*, vol. 10, no. 2, pp. 307–339, Dec. 2024, doi: 10.31078/consrev1022.

[25] Idul Rishan, "Constitutional Court Regression in Post- Democratic Transition: A Comparison of Court Packing in Hungary, Poland, and Indonesia," *Const. Rev.*, vol. 10, no. 2, pp. 451–473, Dec. 2024, doi: 10.31078/consrev1026.

[26] G. Tatawu and A. Tawai, "The Transformation of the Role of the Constitutional Court of Indonesia: From Negative Legislature to Positive Legislature in the Context of Judicial Review Authority (A Study of Decision Number 90/Puu-Xxi/2023)," *J. Law Sustain. Dev.*, vol. 11, no. 12, pp. 1–17, Dec. 2023, doi: 10.55908/sdgs.v11i12.2187.

[27] A. Awanisa, Y. Yusdianto, and S. Khoiriah, "The Position of Constitutional Complaint in the Constitutional Court of the Republic of Indonesia," *Pancasila Law Rev.*, vol. 2, no. 1, pp. 61–78, Apr. 2021, doi: 10.25041/plr.v2i1.2308.

[28] M. S. Bin-Armia, M. S. Armia, F. F. Rifqy, H. Tengku-Armia, and C. R. Mustika, "From Constitutional-Court To Court Of Cartel: A Comparative Study Of Indonesia And Other Countries," *PETITA J. Kaji. ILMU Huk. DAN SYARIAH*, vol. 9, no. 2, pp. 457–479, Sep. 2024, doi: 10.22373/petita.v9i2.437.

[29] S. Warjiyati, K. M. Ibrahim, S. Salam, and U. Faruq, "Complaint Authority for

Constitutional Complaint by Indonesia's Constitutional Court," *J. IUS Kaji. Huk. dan Keadilan*, vol. 10, no. 2, pp. 303–315, Aug. 2022, doi: 10.29303/ius.v10i2.1070.