

Controlling the Watchdog: Politics-Laws of Parliamentary Intervention on the Constitutional Court in Indonesia and Italy

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Abstract

Introduction: This article examines the problem of legislative encroachment as a subtle form of political intervention that threatens judicial independence in constitutional courts. The issue becomes crucial because constitutional courts function as guardians of the constitution and possess authority to invalidate parliamentary legislation. Indonesia and Italy provide relevant comparative cases due to their civil law tradition and parliamentary involvement in appointing constitutional judges.

Purposes of the Research: The purpose of this study is to analyze the forms and mechanisms of parliamentary intervention over constitutional court judges in Indonesia and Italy, both normatively and in practice. This research also aims to identify political-legal factors that encourage such interference. Furthermore, it seeks to formulate an ideal model of constitutional safeguards to limit parliamentary power while maintaining judicial accountability.

Methods of the Research: This study employs normative legal research with statutory and constitutional analysis. It uses comparative and conceptual approaches by comparing Indonesian and Italian constitutional court frameworks and examining concepts of judicial independence, legislative encroachment, and constitutional safeguards. Legal materials include primary constitutional norms, secondary scholarly works, and tertiary legal references.

Results Main Findings of the Research: The novelty of this study lies in the identification of two different patterns of legislative encroachment, 'active threats' (Indonesia) manifested through the politicization of selection and reactive legislative reforms, versus 'passive threats' (Italy) manifested through institutional deadlock and lottizzazione practices, which are influenced by political coalition configurations and procedural design of selection. The proposed safeguard model is not only normative, but also integrates the principles of bounded accountability and self-binding to address structural vulnerabilities. The conclusions of the main findings show that the legislative pattern of encroachment in Indonesia tends to be active (politicization of selection, reactive legislative modification), while in Italy it is passive (institutional impasse, lottizzazione), both of which are influenced by domestic political dynamics and procedural design.

Keywords: Legislative Encroachment; Judicial Independence; Constitutional Safeguards; Parliamentary Powers; Constitutional Court Judges.

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INTRODUCTION

Judicial independence is the main prerequisite for the establishment of a state of law and constitutional democracy.¹ This principle is affirmed in Principle 1 of the United Nations Basic

¹ Venkat Iyer, *Judicial Independence in Transitional Democracies*, ed. Nauman Reayat, Rhona K. M. Smith, and Moohyung Cho (London: Routledge, 2024), <https://doi.org/10.4324/9781003458296>.

Principles on the Independence of the Judiciary (1985) which states "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country." The formulation places the state as the main person in charge of ensuring that the judiciary is free from political pressure. In addition, the Bangalore Principles of Judicial Conduct (2002) affirms the principle of "Independence" as a fundamental value that must be attached to judges.² The independence of the judiciary in the context of constitutional democracy is a structural condition for state power to remain within the limits of the constitution.³ The Constitutional Court in the trias politica occupies a strategic position as the guardian of the constitution. This role makes the constitutional judiciary the controller of the balance of power between the legislative, executive, and judicial branches.⁴ The legitimacy of the constitutional court is not obtained through elections, but through the institutional independence and impartiality of its decisions.⁵ Therefore, any form of political pressure on constitutional judges has the potential to weaken the constitutional control function inherent in the institution.

Threats to judicial independence often arise through subtle institutional mechanisms, such as intervention in the recruitment and dismissal of constitutional judges by political power. In various legal systems, parliaments are given significant authority in appointments, oversight, and removal of constitutional judges.⁶ This authority inherently harbors potential tensions between the democratic legitimacy of the legislature and judicial independence. Parliamentary authority that is not limited by adequate constitutional safeguards has the potential to create legislative encroachment,⁷ that is, a situation in which the legislature exceeds the limits of its authority and intervenes in the judicial domain.⁸ This phenomenon is relevant to democratic backsliding, which is the deterioration of democracy through formal procedures that are used opportunistically.⁹ As a result, the judiciary lost its power as an institution that balances power and turned into an instrument of political interests.

In Indonesia, the Constitutional Court was established based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "The Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to test the law against the Constitution..." This provision affirms the role of the Constitutional Court

² Shivaraj S Huchhanavar, "Conceptualising Judicial Independence and Accountability from a Regulatory Perspective," *Oslo Law Review* 9, no. 2 (2023): 110–48, <https://doi.org/10.18261/olr.9.2.3>.

³ Zim Nwokora, "Constitutional Design for Dynamic Democracies: A Framework for Analysis," *International Journal of Constitutional Law* 20, no. 2 (2022): 580–610, <https://doi.org/10.1093/icon/moac030>.

⁴ Siti Fatia Nazela, "The Role of the Constitutional Court As A Guardian of the Balance of Power Between State Institutions," *Journal of Law, Politic and Humanities* 6, no. 3 (2026): 2080–90, <https://doi.org/10.38035/jlph.v6i3.3166>.

⁵ Idul Rishan, "Doubting the Impartiality: Constitutional Court Judges and Conflict of Interest," *Jurnal Jurisprudence* 12, no. 1 (2022): 92–105, <https://doi.org/10.23917/jurisprudence.v12i1.1058>.

⁶ Felix Dube, "Separation of Powers and the Institutional Supremacy of the Constitutional Court over Parliament and the Executive," in *Separation of Powers, the Judiciary and the Politics of Constitutional Adjudication*, ed. Sanele Sibanda (London: Routledge, 2022), 26, <https://doi.org/10.4324/9781003317586>.

⁷ Mikko Värntö, "Parliamentary Oversight of Emergency Measures and Policies: A Safeguard of Democracy during a Crisis?," *European Policy Analysis* 10, no. 1 (2024): 84–100, <https://doi.org/10.1002/epa2.1190>.

⁸ Ahmad Fauzan, Ayon Diniyanto, and Abdul Hamid, "Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court," *Journal of Law and Legal Reform* 3, no. 3 (2022): 403–30, <https://doi.org/10.15294/jllr.v3i3.58317>.

⁹ Zhaotian Luo and Adam Przeworski, "Democracy and Its Vulnerabilities: Dynamics of Democratic Backsliding," *Quarterly Journal of Political Science* 18, no. 1 (2023): 105–30, <https://doi.org/10.1561/100.00021112>.

as the guardian of constitutional supremacy. However, Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia also shows a contradiction by providing that "The Constitutional Court has nine members of the constitutional judges appointed by the President, who are nominated by three people each by the Supreme Court, three by the House of Representatives, and three people by the President." The formulation shows that the House of Representatives has a strong political space in determining the composition of constitutional judges. Tensions arise because parliament carries electoral legitimacy, while constitutional judges are required to keep their distance from short-term political interests.

The appointment of Adies Kadir as a Constitutional Court Judge shows that there is a tendency for legislative encroachment that is increasingly strong towards the independence of the judiciary. This case is considered problematic because the House of Representatives not only uses the authority to select constitutional judges, but also expands its control through Article 228A of the House of Representatives Regulation Number 1 of 2025 which provides space for binding evaluation after appointment.¹⁰ The appointment process, which was accompanied by the revocation of the previous plenary decision and the rapid replacement of candidates in the same session, shows the weak legal certainty and the dominance of political considerations in the institutional mechanism. In addition, Adies Kadir's status as the leader of the House of Representatives is active and party cadres reinforce concerns about potential conflicts of interest and politicization of supposedly independent institutions.

Meanwhile, in Italy the Corte Costituzionale was established under the Italian Constitution of 1948 and began operating in 1956.¹¹ The Corte Costituzionale consists of fifteen judges, with one-third elected by parliament in a joint session, one-third by the President, and one-third by the supreme court.¹² But in practice, the authority of the Italian parliament often triggers an institutional deadlock, that is, a political deadlock in the election of judges due to party polarization.¹³ This situation causes the vacancy of judges' seats for a long period of time and has an impact on the effectiveness of the institution.¹⁴ This institutional crisis not only undermines the effectiveness of the Corte Costituzionale as *controllore del potere legislativo*, but also shows how parliamentary political logic can be at odds with the need for judicial independence.¹⁵

Indonesia and Italy adhere to the civil law tradition and apply a separate constitutional court model. Both countries adopt a constitutional court model with a mixed appointment mechanism involving political branches of power, especially parliament, but show different dynamics in maintaining a balance between democratic legitimacy and judicial independence.

¹⁰ Baharuddin Riqiey and Muhammad Khatami, "Constitutionality of Recall Regulations for Officials Elected by the House of Representatives," *Media Iuris* 8, no. 2 (2025): 239–64, <https://doi.org/10.20473/mi.v8i2.70726>.

¹¹ Luigi Rullo, *Constitutional Review in Western Europe*, ed. Kálmán Pócsa (London: Routledge, 2024), <https://doi.org/10.4324/9781003399490>.

¹² Andrea Filippetti, Sandro Rondonella, and Fabrizio Tuzi, "The Italian Constitutional Court and Recentralization along the Pendulum of Regionalism," *Constitutional Political Economy* 36, no. 1 (2025): 95–121, <https://doi.org/10.1007/s10602-024-09445-0>.

¹³ Corrado Caruso and Pietro Faraguna, "Delegitimizing by Procrastinating," June 11, 2024, <https://doi.org/10.59704/b87d90da6b6bcfc2>.

¹⁴ Fortunato Musella and Luigi Rullo, "The Italian Constitutional Court under Stress. How to Respond to Political Inefficiency," *European Politics and Society* 25, no. 3 (2024): 484–500, <https://doi.org/10.1080/23745118.2023.2244388>.

¹⁵ Graziella Romeo, "The Court of Justice of the European Union as a Constitutional Court? A Re-Appraisal through the Lens of Institutional Balance," *Quaderni Costituzionali* 45, no. 3 (2025): 523–49, <https://doi.org/10.1439/118226/FORMAT/BIBTEX>.

Indonesia gives the House of Representatives the authority to help determine the composition of constitutional judges, but this authority has the potential to result in political influence and the phenomenon of democratic backsliding. Meanwhile, in Italy, the role of parliament has actually given rise to institutional deadlock due to political polarization that hinders the filling of judges' positions. The urgency of this research lies in the increasing tendency to weaken the independence of the constitutional judiciary through formal mechanisms that are procedurally legitimate, but substantively have the potential to erode the principles of the rule of law and separation of powers. The absence of a firm and agreed normative framework on the mapping of constitutional boundaries between parliamentary authority over the constitutional judiciary universally creates a doctrinal vacuum that has the potential to be exploited by opportunistic political forces. Therefore, this study is important to identify patterns of legitimate intervention in institutional design, as well as to formulate the limits of political authority necessary to maintain judicial independence in a constitutional democratic system.

Research on legislative intervention against the constitutional court has been conducted with various perspectives. Mochammad Arief Agus and Andi Muhammad Irvan Alamsyah in *the Indonesia Law Review* identified forms of legislative intervention through changes in the law, judge selection mechanisms, and term of office arrangements, and concluded that strengthening a transparent selection mechanism is one of the normative solutions.¹⁶ Meanwhile, Murti Ayu Hapsari in *the Constitutional Review* emphasizes the importance of expanding the authority of constitutional complaint as an instrument to strengthen judicial independence and activism in protecting the constitutional rights of citizens.¹⁷ Both studies make important contributions in mapping legislative-judicial relations and offering normative solutions in the Indonesian context. However, the limitation lies in the absence of an in-depth comparative analysis with the institutional model of other civil law countries such as Italy, and the lack of the use of a political-legal analysis approach to unravel the political factors that influence legal design. This study seeks to fill this gap by systematically comparing Indonesia and Italy and integrating normative and institutional analysis in one comprehensive framework.

The novelty of this study lies in the use of the political-legal analysis approach in the comparative framework of Indonesia-Italy to examine legislative encroachment on constitutional judges. In contrast to previous research that tends to be normative-dogmatic or focuses on one jurisdiction, this study combines the analysis of constitutional design, parliamentary political dynamics, and actual institutional practices in two democratic systems with different contexts. This study not only identifies forms of legislative intervention, but also maps contextual variables such as parliamentary fragmentation, political coalition patterns, and legal culture that affect the level of vulnerability of the constitutional judiciary. In addition, this study offers a formulation of a more operational and applicable constitutional safeguards

¹⁶ Mochammad Arief Agus and Andi Muhammad Irvan Alamsyah, "An Analytical Study On The Intervention Of The Legislature To The Constitutional Court In Indonesia Compared To Developed Countries," *Indonesia Law Review* 12, no. 3 (2022): 20–41, <https://scholarhub.ui.ac.id/ilrev/vol12/iss3/1>.

¹⁷ Murti Ayu Hapsari, "The Dimension of Judicial Activism of Incorporating Constitutional Complaint: An Overview on Judicial Independence," *Constitutional Review* 11, no. 2 (2025): 363–92, <https://doi.org/10.31078/consrev1124>.

model, rather than just a general recommendation on transparency or accountability. Thus, this study has a scientific contribution in the form of developing a new analytical framework that can be used as a model for evaluating the institutional design of constitutional courts in other civil law countries.

The purpose of this study is to analyze comparatively the form and mechanism of parliamentary legislative encroachment on the independence of judges of the Constitutional Court in Indonesia and the Corte Costituzionale in Italy, as well as to identify the political-legal factors that encourage the occurrence of these interventions. This analysis is directed to understand how normative design and political practices interact in influencing judicial independence. This research also aims to formulate an ideal design of constitutional safeguards to limit the authority of parliament over constitutional judges without ignoring the principle of democratic accountability. This formulation is carried out based on comparative findings and evaluation of the effectiveness of mechanisms that have been implemented in both countries. Thus, this study is expected to produce normative recommendations that are relevant for strengthening constitutional democracy.

METHODS OF THE RESEARCH

This research is a normative legal research that focuses on the analysis of legal arrangements and constitutional practices related to parliamentary authority over constitutional court judges and their implications for the independence of the constitutional courts in Indonesia and Italy. The research approach used is a comparative approach and a conceptual approach, by comparing the institutional design of the Constitutional Court of the Republic of Indonesia and the Italian Corte Costituzionale and examining the concepts of judicial independence, legislative encroachment, and constitutional safeguards in constitutional democracy. Primary legal materials include the Constitution of the Republic of Indonesia in 1945, Law Number 24 of 2003 concerning the Constitutional Court as amended, including Law Number 7 of 2020, and the 1948 Italian Constitution and regulations related to the Corte Costituzionale. Secondary legal materials include scientific journals, comparative constitutional law books, academic articles, and the results of previous research that discuss legislative intervention, democratic backsliding, and constitutional judicial independence. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources that help clarify constitutional terminology and concepts. Legal material processing techniques are carried out through inventory, selection, classification, and systematization of legal materials based on the comparative focus of Indonesia and Italy. The analysis technique uses qualitative analysis with deductive reasoning and comparative argumentation to draw conclusions about the pattern of legislative encroachment and formulate the ideal design of constitutional safeguards to ensure the independence of constitutional judges.

RESULTS AND DISCUSSION

A. The Form and Mechanism of Parliamentary Legislative Encroachment on the Independence of Constitutional Judges in the Indonesian and Italian Legal Systems

The regulation of parliamentary authority over constitutional judges is a crucial point in the design of constitutional democracy because it involves the relationship between political legitimacy and judicial independence.¹⁸ The principle of judicial independence requires that judges must be free from the influence of institutions that have an interest in the outcome of decisions.¹⁹ This is in line with the United Nations Basic Principles on the Independence of the Judiciary which places the guarantee of independence as a normative obligation of the state through the constitution and laws and regulations. The guarantee of independence in the context of the constitutional court becomes increasingly important because this institution has the authority to cancel parliamentary products. Therefore, the design of filling the position of judges involving parliament contains the risk of legislative encroachment if it is not limited by constitutional safeguards. In Indonesia, the normative framework of the authority of the House of Representatives over the Constitutional Court is derived from the 1945 Constitution of the Republic of Indonesia. Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the Constitutional Court has nine members of constitutional judges appointed by the President, who are nominated by three each by the Supreme Court, three by the House of Representatives, and three by the President. This provision explicitly gives the House of Representatives the authority to propose one-third of the composition of Constitutional Court judges.²⁰ Indonesia adheres to the model of constitutional judge selection that involves direct political power²¹ which at the same time becomes the normative foundation for the potential for legislative encroachment. This is due to the role of parliament which is not only the formation of laws, but also has the authority to determine who will test the law. The separation of powers theory put forward by Montesquieu emphasizes that powers must be separated so that there is no abuse of authority,²² However, the granting of the authority to

¹⁸ T.R.S. Allan, "Constitutionalism At Common Law: The Rule Of Law And Judicial Review," *The Cambridge Law Journal* 82, no. 2 (2023): 236–64, <https://doi.org/10.1017/S000819732300017X>.

¹⁹ Georg Vanberg, Benjamin Broman, and Christopher Ritter, "The Rise and Protection of Judicial Independence," in *Research Handbook on the Politics of Constitutional Law* (Cheltenham: Edward Elgar Publishing, 2023), 246–61, <https://doi.org/10.4337/9781839101649.00023>.

²⁰ Simon Butt and Prayekti Murharjanti, "What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia," *International Journal of Constitutional Law* 20, no. 1 (2022): 428–53, <https://doi.org/10.1093/icon/moac014>.

²¹ Achmad Taufan Soedirjo and Faisal Santiago, "Political Dynamics in the Selection of Judges of the Constitutional Court of Indonesia: A Critical Analysis of Integrity and Independence," *Journal of World Science* 3, no. 3 (2024): 428–39, <https://doi.org/10.58344/jws.v3i3.585>.

²² Sunny Nzie Agu, "Separation of Powers in Baron de Montesquieu: Philosophical Appraisal," *Indonesian Journal of Interdisciplinary Research in Science and Technology* 2, no. 1 (2024): 37–58, <https://doi.org/10.55927/marcopolo.v2i1.7101>.

select judges to the House of Representatives actually creates a tangent between the legislative and judicial branches. The principle of checks and balances, which is supposed to maintain balance, has the potential to turn into a political control mechanism if it is not equipped with adequate constitutional safeguards.

The Constitutional Court of the Republic of Indonesia further provides for the establishment of the Constitutional Court in Law Number 24 of 2003 concerning the Constitutional Court, which has undergone repeated changes, including through Law Number 8 of 2011, Law Number 4 of 2014, and Law Number 7 of 2020. Repeated changes to this law show a pattern of legislation that is responsive to political interests rather than the interests of strengthening institutional independence. Article 23 of Law Number 7 of 2020 regulates the mechanism for dismissing constitutional judges involving proposing institutions, including the House of Representatives in the dismissal process of dishonor. This provision has the potential to be a leverage instrument against judges if they issue a decision that is not desired by the majority of parliament.²³ Law Number 7 of 2020 also extends the term of office of constitutional judges to 15 years or up to the age of 70, as well as removing the provisions for periodic review that were previously regulated. The elimination of periodic evaluations also raises accountability issues because there is no corrective mechanism in the event of ethical deviations or abuse of authority.²⁴ This creates a dilemma between independence and accountability. In addition, the House of Representatives Regulation on the procedure for the selection of constitutional judges shows the dominance of the fit and proper test method which is political in nature and highly dependent on questions and subjective assessments of factions. Faction dominance and political bargaining in the selection process make the position of constitutional judge a political commodity that is traded among party elites.²⁵ The absence of measurable and objective competency standards in the House of Representatives Regulation on selection procedures

²³ Regita Mei Hijri Z. Abbas, Hendra Karianga, and Nam Rumkel, "Legality of Dismissal of Constitutional Court Judges During Their Term Of Office By The House of People's Representatives (DPR)," *JATISWARA* 40, no. 2 (2025): 135–59, <https://doi.org/10.29303/jtsw.v40i2.1196>.

²⁴ Citra Dewi Rahmah, Tunggul Anshari Setia Negara, and Ngesti Dwi Prasetyo, "Reforming Ethical Oversight Mechanisms for Constitutional Court Justices in Indonesia," *Legal Horizons* 25, no. 25 (2025): 86–96, <https://doi.org/10.54477/10.54477/LH.25192353.2025.2.pp.86-96>.

²⁵ Herlambang P Wiratraman, "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics," *Federal Law Review* 50, no. 3 (2022): 314–30, <https://doi.org/10.1177/0067205X221107404>.

further opens a gap for transactional political considerations. This politicization of selection creates the risk that judges are chosen not as guardians of the constitution, but as representatives of the interests of certain groups. This condition weakens the principle of independence as formulated in the Bangalore Principles of Judicial Conduct (2002) which emphasizes that independence must be free from direct or indirect influences. Thus, a fit and proper test that is not based on objective indicators has the potential to become an entrance to legislative encroachment in the recruitment stage.

The appointment of Adies Kadir is positioned as a clear example of how the House of Representatives not only dominates the selection process through fit and proper tests, but also expands its control through a binding post-appointment evaluation mechanism. The existence of Article 228A of the House of Representatives Regulation Number 1 of 2025 creates a structural threat because it allows the House of Representatives to maintain political influence over supposedly independent state officials,²⁶ including constitutional judges. This situation is even more problematic when the appointment of Adies Kadir is carried out through an unusual procedure, namely the revocation of the previous plenary decision that originally approved another candidate. This practice is not just a procedural issue, but reflects a pattern of institutional capture in which the judiciary can be used as an object of political interests of the parliamentary majority.²⁷ Adies Kadir's appointment reinforces concerns that the House of Representatives' dominance in the selection and evaluation of constitutional judges has the potential to shift the Constitutional Court from a constitutional guardian to an institution vulnerable to legislative political pressure.

Another significant form of legislative encroachment in Indonesia is the instrumentalization of legislative changes in response to the Constitutional Court's decisions that are considered detrimental to the interests of legislative and executive power. This pattern can be understood as ex post legislative override, which is a strategy to correct the impact of court decisions by

²⁶ Avany Mahmudah, Radian Salman, and Mohammad Syaiful Aris, "The Constitutionally Of The Dpr'ssupervisory Function Over Constitutional Court Justice And Independent Institution," *Qaumiyyah: Jurnal Hukum Tata Negara* 6, no. 2 (2025): 109–34, <https://doi.org/10.24239/qaumiyyah.v6i2.250>.

²⁷ Berk Esen, "Judicial Transformation in a Competitive Authoritarian Regime: Evidence from the Turkish Case," *Law & Policy* 47, no. 1 (2025): 1–22, <https://doi.org/10.1111/lapo.12250>.

changing the law that is the basis for the authority or procedures of the judiciary.²⁸ The Constitutional Court, in the context of judicial review, functions as a barrier to parliamentary majoritarianism. When parliament responds to a decision by changing the design of the Constitutional Court, the function of constitutional oversight risks losing its effectiveness. Therefore, repeated legislative changes can be read as a pattern of political dominance over counterbalancing institutions.

In contrast to Indonesia, Italy has a relatively established normative design but still retains room for parliamentary intervention. Article 135 of the 1948 Italian Constitution states that the Corte Costituzionale consists of 15 judges, with the composition of five judges elected by the parliament in a joint session (*parlamento in seduta comune*),²⁹ five are appointed by the President of the Republic, and five are elected by the Supreme Courts. This model is intended to maintain a balance of political influence and judicial professionalism. Constitutional Law Number 1 of 1948 and Law Number 87 of 1953 (Legge 11 March 1953, n. 87) further regulate the procedures for filling positions, the requirements for judges, the term of office, and the mechanism of dismissal. The regulation stipulates that the term of office of judges is nine years and cannot be extended (non renewable),³⁰ thus theoretically reducing the incentive of judges to seek political support for the sake of term extension. The normative design of Italy shows that there is an awareness of the importance of severing the structural relationship between judges and the political power of voters. However, the role of parliament as one of the actors in the election of constitutional judges creates a political dependence on the recruitment process.

One of the distinctive characteristics of Italy is the requirement of a supermajority in the election of judges by the parliament. The electoral procedure requires a two-thirds majority in the first three rounds and a three-fifths majority in the next round.³¹ This provision is basically

²⁸ Michael A. Catalano, "Ex Ante and Ex Post Control over Courts in the US States: Court Curbing and Political Party Influence," *Justice System Journal* 43, no. 4 (2022): 503–23, <https://doi.org/10.1080/0098261X.2022.2123287>.

²⁹ Matthew Goldammer, "Functional Equivalence Despite Formal Differences? Comparing Case Selection Mechanisms in the Supreme Court of the United States and the Constitutional Court of Italy," *California Western International Law Journal* 53, no. 1 (2022): 1–37, <https://scholarlycommons.law.cwsl.edu/cwilj/vol53/iss1/5>.

³⁰ Federica Casarosa, Mohor Fajdiga, and Madalina Moraru, *Freedom of Expression of Judges* (London: Routledge, 2024), <https://doi.org/10.4324/9781003470779>.

³¹ Simone Benvenuti, "The Italian System of Judicial Governance: An Arena of Confronting Informal Practices and the Push Towards Formalization," *German Law Journal* 24, no. 8 (2023): 1373–92, <https://doi.org/10.1017/glj.2023.67>.

a constitutional safeguard to prevent the dominance of one party. But in practice, this rule actually gives birth to an institutional deadlock when the parties are unable to reach consensus. In the 2008–2009 and 2014–2015 periods, Italy experienced a stalemate so that the judge's seat was left vacant for months.³² This vacuum has a direct impact on the effectiveness of the Corte Costituzionale in carrying out the function of testing the constitutionality of laws. Thus, legislative encroachment in Italy is more often in the form of passive weakening through political stagnation, rather than direct domination through legislation.

In addition to deadlocks, the practice of *lottizzazione* has become an important phenomenon in Italian politics that affects the election of constitutional judges. *Lottizzazione* is the practice of distributing strategic public positions based on negotiations between parties, so that the selection process turns into a political transaction.³³ Corte Costituzionale In practice, the position of judges is often treated as the "allotment" of certain coalitions or political blocs. The absence of a constitutional mechanism that expressly limits political considerations in the process of electing constitutional judges makes *lottizzazione* a practice that is normatively not prohibited but substantively threatens the independence of the court. In addition, there is also pressure on the Corte Costituzionale through the discourse of institutional reforms, such as changes in the number of judges or the electoral mechanism, which often arise after certain decisions are considered to hinder the parliamentary agenda.³⁴ This kind of pressure shows the pattern of threats of reform as an instrument of delegitimization. Therefore, Italy shows a systemic and cultural form of legislative encroachment through party dominance in filling positions.

A comparison of the pattern of legislative encroachment between Indonesia and Italy shows structural similarities as well as significant contextual differences. Both countries give parliaments an important role in the election of constitutional judges and in practice the process

³² Assaf Shlomo Bondy, Erez Maggor, and Arianna Tassinari, "Putting Wage Growth Back on the Table: Labour Incorporation, Political Exchange, and Wage-Boosting Policies in Advanced Peripheral Economies," *Competition & Change* 29, no. 3–4 (2025): 437–64, <https://doi.org/10.1177/10245294241226733>.

³³ Arnold I. Heidenheimer and Michael Lohnston, *Political Corruption*, ed. Michael Johnston (Routledge, 2017), <https://doi.org/10.4324/9781315126647>.

³⁴ Claudio Cozzi Fucile and Pietro Ferretti, "Shaping Reform: The Role of Experts in the Constitutional Revision Process. The Case of Italy," *Parliamentary Affairs*, August 11, 2025, 1–26, <https://doi.org/10.1093/pa/gsaf042>.

of electing constitutional judges becomes an arena of political competition dominated by elite negotiation. The Indonesian House of Representatives and the Italian parliament have the potential to form "compromise judges" whose independence is reduced from the start due to a selection process that is not purely merit-based. Indonesia has a pattern of parliamentary intervention that tends to show encroachment through aggressive regulatory changes and active control of legislation. On the other hand, Italy is more likely to experience encroachment through political deadlocks and delays in the election of judges, which results in prolonged seat vacancies and disrupts the effectiveness of the Corte Costituzionale. The pattern of intervention in the Indonesian parliament is closer to "majority domination" through a strong government coalition, while the Italian pattern is closer to "political fragmentation" that results in stagnation.

The political-legal factors that drive legislative intervention against the Constitutional Court in Indonesia are multidimensional, ranging from structural to cultural factors. The dominance of the majority coalition in parliament creates a strong tendency for legislative and executive power to control countervailing institutions,³⁵ including the Constitutional Court. Political pragmatism and a culture of patronage that is still deeply rooted in the Indonesian constitutional system make the position of constitutional judge potentially treated as the result of political compromise between elites,³⁶ not as a constitutional mandate that requires integrity and high capacity. The cultural heritage of the New Order's authoritarian law that places the judiciary as subordinate to executive power still affects power relations to this day.³⁷ The Constitutional Court's decision that has a direct impact on political interests, such as disputes over election results, parliamentary thresholds, and testing of strategic laws, make parliament encouraged to control the composition of judges as a form of ex ante control. The weak procedural safeguards in the selection of the House of Representatives, especially the absence of objective and transparent merit standards, further enlarge the space for politicization and

³⁵ Jan Hruška and Seán Hanley, "Are the Upper Chambers a Source of Democratic Resilience? Evidence from Elite Perceptions in the Czech Republic," *Democratization*, February 18, 2026, 1–22, <https://doi.org/10.1080/13510347.2026.2629580>.

³⁶ M. Iqbal Pratama, "Political Dynamics and Their Implications For the Constitutional Court," *Journal of Law, Politic and Humanities* 6, no. 3 (2026): 2100–2113, <https://doi.org/10.38035/jlph.v6i3.3165>.

³⁷ Wiratraman, "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics."

make legislative encroachment a practice that is difficult to prevent. In Italy, the factors driving legislative encroachment towards the Corte Costituzionale are strongly influenced by the characteristics of the parliamentary system and the high fragmentation of the party. The fragmentation of the party system and the instability of the coalition make the process of electing constitutional judges a long and complicated arena of negotiation,³⁸ where parties have to reach a consensus that is often difficult to achieve due to ideological differences. The logic of parliamentary compromise in a parliamentary democratic system makes strategic public offices, including constitutional judges, often the object of political negotiations and power-sharing between parties in coalitions. The high ideological polarization in Italian politics, especially after 2018, magnifies the tendency of parties to elect judges who represent the interests of their respective political blocs,³⁹ not independent and impartial judges. The voting threshold or high quorum regulated in the election procedure actually opens up a deadlock when no coalition is able to reach the required number.⁴⁰ The authority of the Corte Costituzionale in repealing the law on parliamentary products, creates an impetus for parliament to ensure that elected judges do not "threaten" the political agenda of the majority. This condition shows that legislative encroachment is not always in the form of active intervention, but can also take the form of paralysis of the parliamentary function itself, which actually harms the effectiveness of the constitutional judiciary.

Legislative encroachment towards the constitutional judiciary is rooted in a constitutional design that gives parliament a significant role in the election of judges, but develops differently according to the political and institutional context of each country. Indonesia shows a more active and dominant pattern of encroachment through parliamentary majority control in a strong governing coalition, where intervention is carried out through aggressive regulatory changes and the politicization of the systemic selection process. In contrast, Italy shows a pattern of encroachment that is passive but debilitating through political deadlock and

³⁸ Luigi Rullo, "The Judicialization of Territorial Politics in Italy," *Territory, Politics, Governance* 11, no. 5 (2023): 855–72, <https://doi.org/10.1080/21622671.2022.2060300>.

³⁹ Bogdan Iancu, "Quick Fix Solutions-Anticorruption as Core/Peripheral Modality of the 'Rule of Law,'" *Hague Journal on the Rule of Law* 16, no. 3 (2024): 611–42, <https://doi.org/10.1007/s40803-024-00220-9>.

⁴⁰ Michela Chessa and Vito Fragnelli, "The Italian Referendum: What Can We Get from Game Theory?," *Annals of Operations Research* 318, no. 2 (2022): 849–69, <https://doi.org/10.1007/s10479-022-04927-6>.

fragmentation, where the parliament is unable to exercise its selection authority, resulting in prolonged vacancies of judges. A major driving factor in both countries is the political interest in controlling institutions that function as legal examiners and policy correctors of the state. Thus, Indonesia and Italy need serious institutional reforms to limit the authority of parliament in the selection of constitutional judges, both through strengthening the role of independent selection commissions and through stricter constitutional arrangements on the prohibition of political intervention.

B. Desain Constitutional Safeguards Guna Menjamin Judicial Independence

The design of constitutional safeguards is a prerequisite to ensure that the constitutional court is able to carry out its function as a guardian of the constitution without the intervention of the political branch of power. A.V. Dicey's theory of the rule of law, the existence of an independent judiciary is the foundation to prevent the abuse of power by state institutions.⁴¹ Lon Fuller also emphasized that the law will not work morally and effectively if its enforcement institutions are subject to external pressure.⁴² The independence of the constitutional judiciary must be understood substantively, that is, free from direct or indirect influences. Threats to independence often present through institutional designs that open up parliamentary control over the selection, term of office, and dismissal of judges. Therefore, a comprehensive normative model is needed to build safeguards that are not only formal, but also have institutional durability.

International instruments also affirm the importance of institutional protection for judges. The United Nations Basic Principles on the Independence of the Judiciary (1985) Principle 1 states "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country." This norm demands a guarantee of independence through the constitution or legislation, so it should not be left entirely to the goodwill of political power. In addition, the Bangalore Principles of Judicial Conduct (2002) place the principle of "Independence" as a central value, which means judges must be free from external

⁴¹ Allan, "Constitutionalism At Common Law: The Rule Of Law And Judicial Review."

⁴² David Schneiderman, "Weber, Fuller, and Belief in the Legitimacy of Law," *Max Weber Studies* 24, no. 2 (2024): 183-216, <https://doi.org/10.1353/max.2024.a938237>.

influences in deciding cases. This provision reinforces the argument that the institutional design of the selection and supervision of judges should limit the space of political control. The involvement of parliament in the appointment of constitutional judges in the context of Indonesia and Italy is a form of legitimate authority, but it still risks becoming an instrument of legislative encroachment. Therefore, constitutional safeguards must be designed as a systemic prevention mechanism against parliamentary domination.

The first crucial safeguard is the establishment of the Independent Judicial Appointments Commission or an independent judge selection commission. This design is a concrete application of the theory of judicial independence because it moves the selection process from the political arena to the professional arena.⁴³ According to Montesquieu's doctrine of separation of powers, it is not enough to divide functions, but must also prevent one branch from dominating the other.⁴⁴ The principle of *nemo iudex in causa sua* strengthens this reason because parliament is a party whose legal products are tested by the constitutional court, so it should not have free control in choosing judges. The existence of an independent commission, parliament should only have the authority to confirm, not full selection. This step also mitigates the risk of hegemonic preservation, which is the tendency of political elites to place loyal people in order to protect long-term interests,⁴⁵ Therefore, the Independent Selection Commission serves as an initial bulwark against the politicization of the appointment of judges. An independent selection commission should be designed through constitutional arrangements so that it is not easily weakened through changes in ordinary laws. Its composition should ideally include legal academics, senior judges, and civil society figures who are elected transparently and not dominated by political parties. In the Indonesian context, this is important because Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia gives the House of Representatives the authority to nominate three constitutional judges. The provision states that "The Constitutional Court has nine members of constitutional judges... three by the House of Representatives." If the selection is still carried out by the House of Representatives without

⁴³ Brian C. Smith, *Judges and Democratization* (London: Routledge, 2022), <https://doi.org/10.4324/9781003334613>.

⁴⁴ Agu, "Separation of Powers in Baron de Montesquieu: Philosophical Appraisal."

⁴⁵ Ruslan Zaporozhchenko, "The End of Russian Hegemony in the Post-Soviet Space? War in Ukraine and Disintegration Processes in Eurasia," *Europe-Asia Studies* 76, no. 6 (2024): 851–72, <https://doi.org/10.1080/09668136.2024.2327561>.

independent screening, then the fit and proper test process has the potential to become a transactional mechanism. Meanwhile, in Italy, Article 135 of the 1948 Italian Constitution gives parliament the authority to elect five of the fifteen judges of the Corte Costituzionale. Thus, an independent commission can be a cross-system mechanism that reduces the dominance of parliament in both the presidential and parliamentary systems. This safeguard strengthens the independence of individual judges from the recruitment stage.

The second safeguard is the establishment of rigid and measurable qualification standards in the constitution. This step is an application of the pre-commitment theory that emphasizes that the constitution functions as a self-binding mechanism to prevent opportunistic actions by political actors.⁴⁶ In this design, the requirements for prospective judges must be clearly formulated, such as minimum experience, track record of integrity, constitutional law competence, and verifiable professional involvement.⁴⁷ Rigid criteria narrow the space for political considerations, so that parliament cannot choose candidates solely out of loyalty. In Indonesian practice, non-objective selection standards cause the fit and proper test to often depend on the configuration of factions. In Italy, despite certain professional requirements, the election process remains open to the practice of *lottizzazione* because there are no strongly institutionalized merit standards. Thus, the determination of rigid qualifications is a fundamental safeguard to lock meritocracy as the main principle of the selection of constitutional judges. The third safeguard is the application of the requirement of an effective cross-party supermajority in the judicial confirmation process. This mechanism is in line with Tom Ginsburg's insurance model of judicial review which views the constitutional court as an insurance mechanism for all political forces.⁴⁸ Supermajorities force parties to compromise so that no single political bloc can unilaterally control the court. Italy has implemented this mechanism through the requirement of two-thirds of the vote in the first three rounds and three-fifths of the vote in the next round. However, the Italian experience also shows that a

⁴⁶ Thomas Biebricher, "Democracy, Neoliberalism and James Buchanan," *The Journal of Australian Political Economy*, 2020, 37–60, <https://doi.org/https://search.informit.org/doi/10.3316/informit.664675369348962>.

⁴⁷ Vasyl Stratonov and Volodymyr Rybalko, "Interpretation of the Evaluative Concept of 'Integrity' as a Part of Judge Selection and Qualification Evaluation Practice," *Studia Iuridica Lublinensia* 33, no. 4 (2024): 73–85, <https://doi.org/10.17951/sil.2024.33.4.73-85>.

⁴⁸ Jay Krehbiel, "The Politics of Panel Systems: Political Insurance and the Organization of High Courts," *European Political Science* 21, no. 4 (2022): 522–36, <https://doi.org/10.1057/s41304-022-00379-5>.

supermajority without a mechanism to break the deadlock can lead to prolonged vacancies in the judiciary. Therefore, the ideal design should combine a supermajority with strict deadlines and alternative procedures if parliament fails to reach an agreement. In the Indonesian context, the application of a supermajority can minimize the dominance of fat coalitions that often monopolize the decisions of the House of Representatives. Thus, supermajorities should be understood as a safeguard to create consensus, not as a tool that slows down the work of institutions.

In addition to the selection mechanism, full transparency and public participation are meaningful safeguards that cannot be ignored. This principle is related to the rule of law because the process of appointing judges must be able to be supervised by the public so that it does not become a closed negotiation arena.⁴⁹ Transparency includes the disclosure of candidate documents, the track record of decisions or scientific works, as well as the selection commission's assessment report.⁵⁰ Public participation must be substantive, not symbolic, for example through civil society objections to candidates who have conflicts of interest.⁵¹ In the Indonesian context, the selection of Constitutional Court judges is often carried out in a short period of time with assessment standards that are not clearly published. In Italy, the practice of *lottizzazione* also occurs due to the lack of a mechanism for public accountability in elections by a joint session of parliament. Thus, transparency is a safeguard that strengthens the legitimacy of the constitutional court while preventing politicization that is difficult to detect. The open selection process also increases the political costs for parliament if it chooses problematic candidates. The next safeguard is the arrangement of a long, single, and non-renewable term of office for judges. This design aims to break the chain of dependence of judges on the proposing institution, because judges have no interest in pleasing parliament for the sake of term extension. Italy has implemented a nine-year term of office that cannot be extended through Law Number 87 of 1953. This model is able to strengthen the independence of

⁴⁹ Jolita Miliuvienė, "How to Avoid Constitutional Court-Packing in an Era of Democratic Backsliding: Reflections on the Appointment of Constitutional Judges," *Hungarian Journal of Legal Studies* 65, no. 2 (2024): 182–203, <https://doi.org/10.1556/2052.2024.00530>.

⁵⁰ Kurnia Pratiwi and Muhammad Yopan, "The Role of Accountability and Transparency in Advancing Meritocracy in the Selection of State Officials," *Golden Ratio of Law and Social Policy Review* 5, no. 1 (2025): 10–19, <https://doi.org/10.52970/grlspr.v5i1.1182>.

⁵¹ Alisa Moldavanova, Tamaki Onishi, and Stefan Toepler, "Civil Society and Democratization: The Role of Service-providing Organizations amid Closing Civic Spaces," *Public Administration and Development* 43, no. 1 (2023): 3–13, <https://doi.org/10.1002/pad.2005>.

individual judges, because judges are not bound by short-term political agendas. In the Indonesian context, Law Number 7 of 2020 extends the term of office to 15 years or the age of 70 years, but the design is not completely singular in practice because it still raises debates about accountability and evaluation. Long terms without an independent supervision design can create a risk of impunity. Therefore, the ideal model should combine a single term of office with an independent ethical mechanism, not political supervision. So that this safeguard maintains independence without eliminating ethical control.

Guaranteed remuneration that cannot be reduced during the term of office is a classic safeguard that affirms institutional independence. Hamilton in *The Federalist Papers* asserts that the power over the livelihood of judges is the power of their will, so judges' salaries and facilities should not be tools of political pressure.⁵² Remuneration protection prevents parliament from using budget mechanisms to force judges to be accommodating to the interests of the majority.⁵³ In the Indonesian context, although the remuneration of Constitutional Court judges is relatively stable, the absence of a firm constitutional clause still leaves room for the politicization of the budget in extreme scenarios. In Italy, the threat of reduced administrative and budgetary support has also been an issue in the tension between parliament and the Corte Costituzionale. Therefore, the salary protection clause should be placed at the constitutional level or at least constitutional law so that it is not easily changed. This financial protection strengthens institutional independence that goes beyond the personal independence of judges. An important safeguard is the periodization of staggered appointments. This mechanism aims to prevent the phenomenon of court-packing, which is the massive replacement of judges in one political period so that the court loses its neutrality.⁵⁴ The staggered appointment design ensures that no single political regime can replace the majority of the composition of the court at once. In Bruce Ackerman's theory, the constitutional court should function as a stable

⁵² Assefa Fiseha, "Constitutional Adjudication and Constitutional Governance," in *Federalism, Devolution and Cleavages in Africa* (Cham: Palgrave Macmillan, 2024), 321-95, https://doi.org/10.1007/978-3-031-50426-6_6.

⁵³ Florian Meinel, "The Merkel Court: Judicial Populism since the Lisbon Treaty," *European Constitutional Law Review* 19, no. 1 (2023): 111-40, <https://doi.org/10.1017/S1574019622000359>.

⁵⁴ David Kosař and Katarína Šipulová, "Comparative Court-Packing," *International Journal of Constitutional Law* 21, no. 1 (2023): 80-126, <https://doi.org/10.1093/icon/moad012>.

integrity branch and not subject to short-term political cycles.⁵⁵ Italy has relatively implemented a tenure mechanism that ensures that succession does not occur simultaneously, but parliamentary deadlocks can still disrupt the pattern of regeneration. Indonesia needs to clarify the design of this periodization so that the change of judges cannot be manipulated through reactive changes to the law. Thus, staggered appointments are structural safeguards that maintain the continuity of institutions and the stability of decisions. This model also reduces the potential for the dominance of a political coalition over the constitutional court.

The establishment of an Honorary Council of Independent Judges in the aspect of supervision and dismissal is a very important safeguard. This mechanism must follow the principle of bounded accountability, namely judges must be accountable to professional ethics, but must not be subordinated by political actors.⁵⁶ Ethics boards should ideally be made up of former constitutional judges, independent academics, and elements of civil society, and are elected through procedures that are not controlled by parliament.⁵⁷ In addition, the reason for dismissal must be formulated exhaustively, limited to serious ethical violations, criminal acts that have permanent legal force, or permanent incapacity.⁵⁸ Dismissal procedures must be subject to due process, such as proper notice, the right to self-defense, fact-based evidence, and an appeal mechanism to independent forums. In the Indonesian context, the design of oversight through the Honorary Assembly of the Constitutional Court must be ensured not to become a channel of political pressure, especially if elements of the proposing institution have dominant influence. Thus, accountability must run without creating judicial subordination.

The final decisive safeguard is the budgetary and administrative autonomy of the constitutional courts. Sunstein and Vermeule view constitutional safeguards not only as substantive rules, but also as administrative procedures that protect key institutions from abuse

⁵⁵ Shannon Roesler, "Constitutional Resilience," *Washington and Lee Law Review* 80, no. 4 (2023): 1523–1607, <https://scholarlycommons.law.wlu.edu/wlulr/vol80/iss4/5>.

⁵⁶ Barr Obisanya Tope Ayo and Ishmael Iwara, "'Political Will' as an Impediment to Accountability of Law Enforcement in Nigeria," in *Strengthening Systems Accountability for Enterprise Performance and Development Planning*, ed. Gbadebo O. A. Odularu (Cham: Springer International Publishing, 2022), 71–102, https://doi.org/10.1007/978-3-031-11779-4_5.

⁵⁷ Katarzyna Krzyżanowska, "Legal Mobilisation within the Populist Supreme Court in Poland," *International Journal of Law in Context* 20, no. 3 (2024): 324–45, <https://doi.org/10.1017/S1744552324000247>.

⁵⁸ Philippa M Collins, "Finding Fault in the Law of Unfair Dismissal: The Insubstantiality of Reasons for Dismissal," *Industrial Law Journal* 51, no. 3 (2022): 598–625, <https://doi.org/10.1093/indlaw/dwab018>.

of power.⁵⁹ The court must have the authority to manage human resources, organizational structures, and internal policies without the intervention of the parliament or the executive. In addition, the court's budget must be guaranteed so that it cannot be used as a tool of political pressure. In the Indonesian context, this need is important because the repeated revisions of the Constitutional Court Law show that parliament can use legislation as a tool of control. In Italy, the deadlock in the election of judges must be overcome with a deadlock mechanism, for example granting certain powers to the President of the Republic if the parliament fails to vote within the time limit. The design of safeguards must be a self-binding architecture that makes political actors bound to constitutional boundaries, so that the constitutional court remains a fair "arbitrator" in a constitutional democratic system.

CONCLUSION

Legislative encroachment on the constitutional judiciary in Indonesia and Italy is rooted in a constitutional design that gives parliament a significant role in filling the position of constitutional judges. In Indonesia, the House of Representatives is given the authority to propose one-third of the judges of the Constitutional Court, which in practice is strengthened through the selection of political fit and proper test. The pattern of intervention of the House of Representatives does not only occur in selection, but also through the instrumentalization of legislation such as the revision of laws in response to the Constitutional Court's decision (*ex post legislative override*) and potential pressure through the mechanism of supervision and dismissal. Meanwhile, Italy through the 1948 Constitution places the parliament as an elector of the five judges of the Corte Costituzionale with the threat of independence appearing more in the form of institutional deadlock due to the supermajority requirement and the practice of *lottizzazione* which makes the election of judges a political transaction. Thus, Indonesia tends to experience active and dominant encroachment through majority control, while Italy experiences passive but debilitating encroachment through political fragmentation and institutional stagnation. This study recommends strengthening constitutional safeguards in

⁵⁹ Henrique Ribeiro Cardoso and Mateus Levi Fontes Santos, "A Deferência Judicial Redimida," *Revista de Direito Administrativo* 282, no. 1 (2023): 139–72, <https://doi.org/10.12660/rda.v282.2023.88639>.

Indonesia and Italy as a self-binding mechanism to limit the space of parliamentary political control over constitutional judges. In Indonesia, reforms need to be directed at the establishment of independent selection commissions, the establishment of merit-based qualification standards, and the strengthening of ethical oversight through independent bodies so that accountability does not turn into political subordination. In addition, anti-circumvention arrangements are needed to limit the revision of the Constitutional Court Law that is reactive to certain decisions because this type of legislation pattern has the potential to become a tool of institutional pressure. In Italy, recommendations are focused on the establishment of a constitutional deadlock-breaking mechanism to prevent judicial vacancies, as well as the formalization of the prohibition on the practice of *lottizzazione* so that selection is not completely controlled by party transactions. Further research is suggested to develop more measurable comparative indicators to assess the level of legislative encroachment, including empirical studies of the relationship of court decisions to parliamentary voting patterns as well as comparative studies with countries that effectively implement independent selection commissions.

REFERENCES

- Agu, Sunny Nzie. "Separation of Powers in Baron de Montesquieu: Philosophical Appraisal." *Indonesian Journal of Interdisciplinary Research in Science and Technology* 2, no. 1 (2024): 37–58. <https://doi.org/10.55927/marcopolo.v2i1.7101>.
- Agus, Mochammad Arief, and Andi Muhammad Irvan Alamsyah. "An Analytical Study On The Intervention of The Legislature To The Constitutional Court In Indonesia Compared To Developed Countries." *Indonesia Law Review* 12, no. 3 (2022): 20–41. <https://scholarhub.ui.ac.id/ilrev/vol12/iss3/1>.
- Allan, T.R.S. "Constitutionalism At Common Law: The Rule Of Law And Judicial Review." *The Cambridge Law Journal* 82, no. 2 (2023): 236–64. <https://doi.org/10.1017/S000819732300017X>.
- Avany Mahmudah, Radian Salman, and Mohammad Syaiful Aris. "The Constitutionally Of The Dpr'ssupervisory Function Over Constitutional Court Justice And Independent Institution." *Qaumiyyah: Jurnal Hukum Tata Negara* 6, no. 2 (2025): 109–34. <https://doi.org/10.24239/qaumiyyah.v6i2.250>.
- Ayo, Barr Obisanya Tope, and Ishmael Iwara. "'Political Will' as an Impediment to Accountability of Law Enforcement in Nigeria." In *Strengthening Systems Accountability for Enterprise Performance and Development Planning*, edited by Gbadebo O. A. Odularu, 71–

102. Cham: Springer International Publishing, 2022. https://doi.org/10.1007/978-3-031-11779-4_5.

Benvenuti, Simone. "The Italian System of Judicial Governance: An Arena of Confronting Informal Practices and the Push Towards Formalization." *German Law Journal* 24, no. 8 (2023): 1373–92. <https://doi.org/10.1017/glj.2023.67>.

Biebricher, Thomas. "Democracy, Neoliberalism and James Buchanan." *The Journal of Australian Political Economy*, 2020, 37–60. <https://doi.org/https://search.informit.org/doi/10.3316/informit.664675369348962>.

Bondy, Assaf Shlomo, Erez Maggor, and Arianna Tassinari. "Putting Wage Growth Back on the Table: Labour Incorporation, Political Exchange, and Wage-Boosting Policies in Advanced Peripheral Economies." *Competition & Change* 29, no. 3–4 (2025): 437–64. <https://doi.org/10.1177/10245294241226733>.

Butt, Simon, and Prayekti Murharjanti. "What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia." *International Journal of Constitutional Law* 20, no. 1 (2022): 428–53. <https://doi.org/10.1093/icon/moac014>.

Cardoso, Henrique Ribeiro, and Mateus Levi Fontes Santos. "A Deferência Judicial Redimida." *Revista de Direito Administrativo* 282, no. 1 (2023): 139–72. <https://doi.org/10.12660/rda.v282.2023.88639>.

Caruso, Corrado, and Pietro Faraguna. "Delegitimizing by Procrastinating," June 11, 2024. <https://doi.org/10.59704/b87d90da6b6bcfc2>.

Casarosa, Federica, Mohor Fajdiga, and Madalina Moraru. *Freedom of Expression of Judges*. London: Routledge, 2024. <https://doi.org/10.4324/9781003470779>.

Catalano, Michael A. "Ex Ante and Ex Post Control over Courts in the US States: Court Curbing and Political Party Influence." *Justice System Journal* 43, no. 4 (2022): 503–23. <https://doi.org/10.1080/0098261X.2022.2123287>.

Chessa, Michela, and Vito Fragnelli. "The Italian Referendum: What Can We Get from Game Theory?" *Annals of Operations Research* 318, no. 2 (2022): 849–69. <https://doi.org/10.1007/s10479-022-04927-6>.

Collins, Philippa M. "Finding Fault in the Law of Unfair Dismissal: The Insubstantiality of Reasons for Dismissal." *Industrial Law Journal* 51, no. 3 (2022): 598–625. <https://doi.org/10.1093/indlaw/dwab018>.

Cozzi Fucile, Claudio, and Pietro Ferretti. "Shaping Reform: The Role of Experts in the Constitutional Revision Process. The Case of Italy." *Parliamentary Affairs*, August 11, 2025, 1–26. <https://doi.org/10.1093/pa/gsaf042>.

Dube, Felix. "Separation of Powers and the Institutional Supremacy of the Constitutional Court over Parliament and the Executive." In *Separation of Powers, the Judiciary and the Politics of Constitutional Adjudication*, edited by Sanele Sibanda, 26. London: Routledge, 2022. <https://doi.org/10.4324/9781003317586>.

- Esen, Berk. "Judicial Transformation in a Competitive Authoritarian Regime: Evidence from the Turkish Case." *Law & Policy* 47, no. 1 (2025): 1–22. <https://doi.org/10.1111/lapo.12250>.
- Fauzan, Ahmad, Ayon Diniyanto, and Abdul Hamid. "Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court." *Journal of Law and Legal Reform* 3, no. 3 (2022): 403–30. <https://doi.org/10.15294/jllr.v3i3.58317>.
- Filippetti, Andrea, Sandro Rondinella, and Fabrizio Tuzi. "The Italian Constitutional Court and Recentralization along the Pendulum of Regionalism." *Constitutional Political Economy* 36, no. 1 (2025): 95–121. <https://doi.org/10.1007/s10602-024-09445-0>.
- Fiseha, Assefa. "Constitutional Adjudication and Constitutional Governance." In *Federalism, Devolution and Cleavages in Africa*, 321–95. Cham: Palgrave Macmillan, 2024. https://doi.org/10.1007/978-3-031-50426-6_6.
- Goldammer, Matthew. "Functional Equivalence Despite Formal Differences? Comparing Case Selection Mechanisms in the Supreme Court of the United States and the Constitutional Court of Italy." *California Western International Law Journal* 53, no. 1 (2022): 1–37. <https://scholarlycommons.law.cwsl.edu/cwilj/vol53/iss1/5>.
- Heidenheimer, Arnold I., and Michael Johnston. *Political Corruption*. Edited by Michael Johnston. Routledge, 2017. <https://doi.org/10.4324/9781315126647>.
- Hruška, Jan, and Seán Hanley. "Are the Upper Chambers a Source of Democratic Resilience? Evidence from Elite Perceptions in the Czech Republic." *Democratization*, February 18, 2026, 1–22. <https://doi.org/10.1080/13510347.2026.2629580>.
- Huchhanavar, Shivaraj S. "Conceptualising Judicial Independence and Accountability from a Regulatory Perspective." *Oslo Law Review* 9, no. 2 (2023): 110–48. <https://doi.org/10.18261/olr.9.2.3>.
- Iancu, Bogdan. "Quick Fix Solutions-Anticorruption as Core/Peripheral Modality of the 'Rule of Law.'" *Hague Journal on the Rule of Law* 16, no. 3 (2024): 611–42. <https://doi.org/10.1007/s40803-024-00220-9>.
- Iyer, Venkat. *Judicial Independence in Transitional Democracies*. Edited by Nauman Reayat, Rhona K. M. Smith, and Moohyung Cho. London: Routledge, 2024. <https://doi.org/10.4324/9781003458296>.
- Kosař, David, and Katarína Šipulová. "Comparative Court-Packing." *International Journal of Constitutional Law* 21, no. 1 (2023): 80–126. <https://doi.org/10.1093/icon/moad012>.
- Krehbiel, Jay. "The Politics of Panel Systems: Political Insurance and the Organization of High Courts." *European Political Science* 21, no. 4 (2022): 522–36. <https://doi.org/10.1057/s41304-022-00379-5>.
- Krzyżanowska, Katarzyna. "Legal Mobilisation within the Populist Supreme Court in Poland." *International Journal of Law in Context* 20, no. 3 (2024): 324–45. <https://doi.org/10.1017/S1744552324000247>.

- Luo, Zhaotian, and Adam Przeworski. "Democracy and Its Vulnerabilities: Dynamics of Democratic Backsliding." *Quarterly Journal of Political Science* 18, no. 1 (2023): 105–30. <https://doi.org/10.1561/100.00021112>.
- M. Iqbal Pratama. "Political Dynamics and Their Implications For the Constitutional Court." *Journal of Law, Politic and Humanities* 6, no. 3 (2026): 2100–2113. <https://doi.org/10.38035/jlph.v6i3.3165>.
- Meinel, Florian. "The Merkel Court: Judicial Populism since the Lisbon Treaty." *European Constitutional Law Review* 19, no. 1 (2023): 111–40. <https://doi.org/10.1017/S1574019622000359>.
- Miliuvienė, Jolita. "How to Avoid Constitutional Court-Packing in an Era of Democratic Backsliding: Reflections on the Appointment of Constitutional Judges." *Hungarian Journal of Legal Studies* 65, no. 2 (2024): 182–203. <https://doi.org/10.1556/2052.2024.00530>.
- Moldavanova, Alisa, Tamaki Onishi, and Stefan Toepler. "Civil Society and Democratization: The Role of Service-providing Organizations amid Closing Civic Spaces." *Public Administration and Development* 43, no. 1 (2023): 3–13. <https://doi.org/10.1002/pad.2005>.
- Murti Ayu Hapsari. "The Dimension of Judicial Activism of Incorporating Constitutional Complaint: An Overview on Judicial Independence." *Constitutional Review* 11, no. 2 (2025): 363–92. <https://doi.org/10.31078/consrev1124>.
- Musella, Fortunato, and Luigi Rullo. "The Italian Constitutional Court under Stress. How to Respond to Political Inefficiency." *European Politics and Society* 25, no. 3 (2024): 484–500. <https://doi.org/10.1080/23745118.2023.2244388>.
- Nazela, Siti Fatia. "The Role of the Constitutional Court As A Guardian of the Balance of Power Between State Institutions." *Journal of Law, Politic and Humanities* 6, no. 3 (2026): 2080–90. <https://doi.org/10.38035/jlph.v6i3.3166>.
- Nwokora, Zim. "Constitutional Design for Dynamic Democracies: A Framework for Analysis." *International Journal of Constitutional Law* 20, no. 2 (2022): 580–610. <https://doi.org/10.1093/icon/moac030>.
- Pratiwi, Kurnia, and Muhammad Yopan. "The Role of Accountability and Transparency in Advancing Meritocracy in the Selection of State Officials." *Golden Ratio of Law and Social Policy Review* 5, no. 1 (July 1, 2025): 10–19. <https://doi.org/10.52970/grlspr.v5i1.1182>.
- Rahmah, Citra Dewi, Tunggul Anshari Setia Negara, and Ngesti Dwi Prasetyo. "Reforming Ethical Oversight Mechanisms for Constitutional Court Justices in Indonesia." *Legal Horizons* 25, no. 25 (2025): 86–96. <https://doi.org/10.54477/10.54477/LH.25192353.2025.2.pp.86-96>.
- Regita Mei Hijri Z. Abbas, Hendra Karianga, and Nam Rumkel. "Legality of Dismissal of Constitutional Court Judges During Their Term Of Office By The House of People's Representatives (DPR)." *JATISWARA* 40, no. 2 (2025): 135–59. <https://doi.org/10.29303/jtsw.v40i2.1196>.

- Riqiey, Baharuddin, and Muhammad Khatami. "Constitutionality of Recall Regulations for Officials Elected by the House of Representatives." *Media Iuris* 8, no. 2 (2025): 239–64. <https://doi.org/10.20473/mi.v8i2.70726>.
- Rishan, Idul. "Doubting the Impartiality: Constitutional Court Judges and Conflict of Interest." *Jurnal Jurisprudence* 12, no. 1 (2022): 92–105. <https://doi.org/10.23917/jurisprudence.v12i1.1058>.
- Roesler, Shannon. "Constitutional Resilience." *Washington and Lee Law Review* 80, no. 4 (2023): 1523–1607. <https://scholarlycommons.law.wlu.edu/wlulr/vol80/iss4/5>.
- Romeo, Graziella. "The Court of Justice of the European Union as a Constitutional Court? A Re-Appraisal through the Lens of Institutional Balance." *Quaderni Costituzionali* 45, no. 3 (2025): 523–49. <https://doi.org/10.1439/118226/FORMAT/BIBTEX>.
- Rullo, Luigi. *Constitutional Review in Western Europe*. Edited by Kálmán Pócza. London: Routledge, 2024. <https://doi.org/10.4324/9781003399490>.
- — —. "The Judicialization of Territorial Politics in Italy." *Territory, Politics, Governance* 11, no. 5 (2023): 855–72. <https://doi.org/10.1080/21622671.2022.2060300>.
- Schneiderman, David. "Weber, Fuller, and Belief in the Legitimacy of Law." *Max Weber Studies* 24, no. 2 (2024): 183–216. <https://doi.org/10.1353/max.2024.a938237>.
- Smith, Brian C. *Judges and Democratization*. London: Routledge, 2022. <https://doi.org/10.4324/9781003334613>.
- Stratonov, Vasyl, and Volodymyr Rybalko. "Interpretation of the Evaluative Concept of 'Integrity' as a Part of Judge Selection and Qualification Evaluation Practice." *Studia Iuridica Lublinensia* 33, no. 4 (2024): 73–85. <https://doi.org/10.17951/sil.2024.33.4.73-85>.
- Taufan Soedirjo, Achmad, and Faisal Santiago. "Political Dynamics in the Selection of Judges of the Constitutional Court of Indonesia: A Critical Analysis of Integrity and Independence." *Journal of World Science* 3, no. 3 (2024): 428–39. <https://doi.org/10.58344/jws.v3i3.585>.
- Vanberg, Georg, Benjamin Broman, and Christopher Ritter. "The Rise and Protection of Judicial Independence." In *Research Handbook on the Politics of Constitutional Law*, 246–61. Cheltenham: Edward Elgar Publishing, 2023. <https://doi.org/10.4337/9781839101649.00023>.
- Värrtö, Mikko. "Parliamentary Oversight of Emergency Measures and Policies: A Safeguard of Democracy during a Crisis?" *European Policy Analysis* 10, no. 1 (2024): 84–100. <https://doi.org/10.1002/epa2.1190>.
- Wiratraman, Herlambang P. "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics." *Federal Law Review* 50, no. 3 (2022): 314–30. <https://doi.org/10.1177/0067205X221107404>.

Zaporozhchenko, Ruslan. "The End of Russian Hegemony in the Post-Soviet Space? War in Ukraine and Disintegration Processes in Eurasia." *Europe-Asia Studies* 76, no. 6 (2024): 851-72. <https://doi.org/10.1080/09668136.2024.2327561>.

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