

# The Authority Of The Indonesia Constitutional Court In Revi Ew Of Law Against Basic Law

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## **Abstract.**

*The Constitutional Court of the Republic of Indonesia is a State Institution as a product of the Third Amendment to the 1945 Constitution of the Republic of Indonesia. The Third Amendment stipulates that the Constitutional Court of the Republic of Indonesia must have been established on August 17, 2003. Article 24C paragraph (1) Constitution of the Republic of Indonesia year 1945 stipulates that The Constitutional Court has four powers and one obligation. First review: a .to review the law against the constitution, b. resolve disputes between state institutions whose authority is granted by the Constitution, c. dissolve a political party d. resolve disputes over election results. Meanwhile, one obligation of the Constitutional Court is to decide on the opinion of the DPR that the President is based on the opinion of the DPR regarding alleged violations of the law by the president and vice president according to the Constitution. But this research just discussed the first authority, namely to review the law to Basic Law. This research is a normative legal research using various legal norms as an analysis material. Conclusions are drawn using legal interpretation.*

**Keywords:** Authority, Constitutional Court and Republic Indonesia.

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## **I. INTRODUCTION**

Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that the Constitutional Court has the authority to try at the first and final levels whose decisions are final to review laws against the Constitution, to decide disputes over the authority of state institutions whose powers are granted by the Constitution, decide on the dissolution of political parties and decide disputes about the results of general elections. Furthermore, Article 24C paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the Constitutional Court is obliged to give a decision on the opinion of the People's Representative Council (DPR) regarding alleged violations by the President and/or Vice President according to the Constitution.

From the provisions of Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia above, it can be concluded that the Constitutional Court has four authority and one obligation:

- a. Reviewing laws against the Constitution;
- b. Deciding disputes over the authority of state institutions whose powers are granted by the Constitution;
- c. Deciding the dissolution of political parties;
- d. Deciding disputes about the results of general elections; and
- e. Delivering decisions on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the Constitution.

From the provisions of Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia above, Law Number 24 year 2003 concerning the Constitutional Court was promulgated. In its development, Law Number 24 year 2003 concerning the Constitutional Court was amended by Law Number 8 year 2011 concerning Amendments to Law Number 24 year 2003 concerning the Constitutional Court. Furthermore, this law was also amended again by Law Number 4 year 2014 concerning Stipulation of Government Regulations in Lieu of Law Number 1 year 2013 concerning the Second Amendment to Law Number 24 year 2003 concerning the Constitutional Court. Finally, Law Number 24 year 2003 was amended by Law Number 7 year 2020 concerning the Third Amendment to Law Number 24 year 2003 concerning the Constitutional Court. This study will examine the dynamics of the existence of the Constitutional Court in reviewing laws against the Constitution as the implementation of the authority of the Constitutional Court for nearly 20 years.

## II. METHODS

The method used in this study is a normative legal research method. Various laws and regulations that are in accordance with the subject of this research, will be used as primary legal material. While books, literature, dissertations, research results will become secondary legal material. Dictionaries, encyclopedias and the like, will be used as tertiary legal materials. The method of collecting legal materials is done by selecting articles and opinions that are in accordance with the subject of research. Articles and opinions that are in accordance with the subject of research are recorded with a card system. The results of the analysis are taken together by relying on the research subject to be verified. The conclusion will answer the questions raised in this study.

## III. RESEARCH RESULTS AND DISCUSSION

As stated at the beginning of this article, the Constitutional Court based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Court The results of the analysis are taken jointly by relying on the research subject to be verified. The conclusion will answer the questions raised in this study. As stated at the beginning of this article, the Constitutional Court based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has four powers and one obligation. The following discussion will describe the existence of the Constitutional Court for nearly 20 years. The first authority of the Constitutional Court is to examine laws against the Constitution. Law Number 24 year 2003 concerning the Constitutional Court does not provide clear procedural law substance in the judicial process of cases examining laws against the Constitution which is the authority of the Constitutional Court. Therefore, the Constitutional Court stipulated Constitutional Court Regulation Number 06/PMK/2005 concerning Guidelines for Procedures in Cases Reviewing the Law.

Article 3 Number 6/PMK/2005 stipulates that those who can become applicants in cases of reviewing laws against the Constitution are:

- a. Individual Indonesian citizens or groups of people who have the same interests;
- b. The customary law community unit as long as it is still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia regulated in the law;
- c. Public legal entity or private legal entity, or;
- d. State institutions.

Reviewing the law against the Constitution submitted by the applicant includes formal Review and material Review. Formal review is a review of the law relating to the process of forming the law and other matters that are not included in the material review as referred to in Article 4 paragraph (2). Meanwhile, material review is a review of laws relating to material content in paragraphs, articles, and/or parts of laws that are considered contrary to the 1945 Constitution.

The application is submitted in writing in Indonesian by the Applicant or his attorney in 12 (twelve) copies containing:

- a. identity, including:
  - (1) Name;
  - (2) Place date of birth/age;
  - (3) Religion;
  - (4) Citizenship
  - (5) Complete Address;
  - (6) Telephone/facsimile/mobile phone/e-mail number (if any)
- b. A description of the matter that forms the basis of the application which includes:
  - (1) the authority of the Constitutional Court as referred to in Article 4;
  - (2) the legal standing of the Petitioner which contains a clear description of the Petitioner's opinion regarding the constitutional rights and/or authorities of the Petitioner who was harmed by the enactment of the Law being petitioned for review;
  - (3) the reasons for the request for testing as referred to in Article 4, are described in a clear and detailed manner.

- c. The matters that are requested to be decided in the application for formal review as referred to in Article 4 paragraph (2), namely:
  - (1) to grant the Petitioner's request;
  - (2) states that the formation of the said law does not comply with the provisions for the formation of a law based on the 1945 Constitution;
  - (3) states that the law does not have binding legal force.
- d. Matters requested to be decided in the application for material review as referred to in Article 4 paragraph (3), i.e
  - a. to grant the Petitioner's request
  - b. states that the material contained in the paragraphs, articles, and/or parts of the said law is contrary to the 1945 Constitution;
  - c. states that the material contained in the paragraphs, articles, and/or parts of the Law in question does not have binding legal force.
- e. The application is signed by the Petitioner or his attorney;

Apart from being submitted in written form as referred to above, applications are also submitted in digital format which are stored electronically in storage media in the form of floppy disks, compact disks or something similar.

The procedure for reviewing laws against the Constitution begins with filing an application to the Constitutional Court through the Registrar's Office. The process of checking the administrative completeness of the application is open in nature which can be held through a consultation forum by the prospective Applicant with the Registrar. The Registrar's Officer must check the completeness of evidence supporting the application at least in the form of:

- a. Applicant's proof of identity:
  - (1) photocopy of identity in the form of KTP in the event that the Applicant is an individual Indonesian citizen,
  - (2) evidence of the existence of indigenous peoples according to the Law in the event that the Petitioner is a customary law community,
  - (3) deed of establishment and ratification of a legal entity, both public and private, in the event that the Applicant is a legal entity,
  - (4) statutory regulations for the establishment of the relevant state institution in the case of the state institution concerned.
- b. Proof of letter or writing relating to the reasons for the application;
- c. List of potential experts and/or witnesses accompanied by a brief statement regarding the matters to be explained in relation to the reasons for the application, as well as a statement of willingness to attend the trial, in the event that the Petitioner intends to present experts and/or witnesses;
- d. List of other evidence which may be in the form of information stored in or sent via electronic media, if deemed necessary.

If the application file is considered complete, the application file is declared received by the Registrar's Office by providing the Deed of Receipt of Case Files to the Applicant. If the application is incomplete, the Registrar of the Court will notify the Petitioner of the completeness of the application that must be fulfilled, and the Petitioner must have completed it no later than 7 (seven) working days after receiving the Deed of Notification of Incomplete Files. If the completeness of the application is not fulfilled, the Registrar issues a deed stating that the application is not registered in the BRPK and is notified to the Applicant accompanied by the return of the application file. Applications that are complete and meet the requirements are recorded in the BRPK and given a case number. The Registrar provides a deed as proof of registration of the application. The Constitutional Court submits a copy of the request to the DPR and the President by means of a letter signed by the Registrar for identification, within a period of no later than 7 (seven) working days since the request is recorded in the BRPK. The Constitutional Court notifies the Supreme Court through a letter signed by the chairman, which contains a request for review of the law in question and notifies the Supreme Court to stop reviewing the laws and regulations under the law being

reviewed within a period of no later than 7 (seven) working days since the application is recorded in the BRPK. Submission of a copy of the request and notification above was submitted by the Summoner as evidenced by the minutes of submission. In the event that the application has been recorded in the BRPK and is withdrawn by the Applicant, the Registrar shall issue the Deed of Cancellation of Registration of the application that has been submitted by the Applicant and notified to the Applicant accompanied by the return of the application file. The Registrar submits the case files that have been registered to the Chief Justice of the Constitutional Court to determine the composition of the Panel of Judges examining the case, after the Registrar first determines a Substitute Registrar.

The Chairperson of the Panel of Judges determines the day of the first hearing within a period of no later than 14 (fourteen) working days from the date the application is recorded in the BRPK. The date for the trial was notified to the Petitioner and announced to the public. Announcements are made by posting them on a notice board specifically made for this purpose and on the website of the Constitutional Court ([www.mahkamahkonstitusi.go.id](http://www.mahkamahkonstitusi.go.id)), as well as by submitting them to print and electronic media. In the preliminary examination, it is carried out in a trial open to the public which is conducted by a Panel of Judges which is composed of at least three constitutional judges. Preliminary examination can be carried out in a plenary session attended by at least 7 (seven) Constitutional Justices. In the preliminary examination, the Judge examines the completeness and clarity of the application material which includes the authority of the Constitutional Court, legal standing. In the preliminary examination, the Judge is obliged to give advice to the Applicant and/or his attorney to complete and/or correct the application within a period of no later than 14 (fourteen) days. The advice of constitutional judges covers matters relating to the orderly implementation of trials. In the event that the Judge is of the opinion that the application is complete and clear, and/or has been corrected in accordance with the advice in the panel session, the Registrar shall submit a copy of the said application to the President, the DPR and the Supreme Court. In the event that a preliminary examination has been carried out by a Panel of Judges, the Panel concerned will report the results of the examination and provide a recommendation to the Plenary Meeting of Judges Deliberations for further proceedings.

The panel report also includes a proposal to merge trial examinations into several cases in terms of:

- a. have the same principal application;
- b. has a connection with the application material or;
- c. consideration of the Petitioner's request;

Examination of the merger of cases can be carried out after obtaining a Decree from the Chief Justice of the Constitutional Court. Examination of the trial was carried out in a plenary session which was open to the public. Trial examination can be carried out by a panel of judges in certain circumstances decided by a judges' deliberative meeting. The trial examination includes:

- a. examination of the principal application;
- b. examination of written evidence;
- c. listen to the statement of the President/Government;
- d. listen to the testimony of the DPR and/or DPD;
- e. listen to witness statements;
- f. listen to expert testimony;
- g. listen to the statement of the Related Party;
- h. examination of a series of data, statements, actions, circumstances, and/or events that are in accordance with other evidence that can be used as a guide;
- i. examination of other evidence in the form of information spoken, sent, received, or stored electronically with optical devices or something similar to that.

Trial examination can be carried out by teleconference. After the trial examination is declared complete, the parties are given the opportunity to convey their final conclusions orally and/or in writing no later than 7 (seven) working days from the last trial day, unless otherwise specified in the trial. Related Parties in question are parties with direct or indirect interest in the subject matter of the application. Related Parties with direct interest are parties whose rights and/or authorities are affected by the subject matter of the application. Related Parties may be granted the same rights as the Petitioner in court in the event that the

information and evidence submitted is not sufficiently represented in the statement and evidence submitted by the President/Government, DPR, and/or DPD. Related Parties with indirect interest are:

- a. a party whose statement, due to their position, main task and function, needs to be heard; or
- b. parties whose statements need to be heard as ad informandum, namely parties whose rights and/or authorities are not directly affected by the subject matter of the application but because of their high concern for the said application.

The Related Party must submit an application to the Court through the Registrar, which, if approved, is determined by a Decree of the Chief Justice, a copy of which shall be submitted to the person concerned. In the event that the application of the Related Party is not approved, a written notification shall be delivered to the person concerned by the Registrar upon the order of the Chief Justice. If deemed necessary, the trial examination can be followed by a local examination carried out by an appointed Constitutional Justice accompanied by a Registrar and/or Alternate Registrar and may also be accompanied by the Petitioner, President/Government, DPR, DPD, and Related Parties whose results will be presented at the trial. (2) Local inspection aims to obtain clues. All costs incurred during the local inspection shall be borne by each party. In the event that the Petitioner argues that there is an alleged criminal act in the formulation of the law being petitioned for review, the Constitutional Court may temporarily suspend the examination of the application or postpone the decision; In the event that the arguments regarding the alleged act are accompanied by evidence, the Constitutional Court may declare a postponement of the examination and notify the competent authority to follow up on the alleged criminal act filed by the Petitioner. In the event that an alleged criminal act has been legally processed by an authorized official, for the purposes of examination and decision-making, the Constitutional Court may request information from the competent authorities conducting the investigation and/or prosecution.

Termination of the process of examining an application or postponement of a decision shall be stipulated by a Decree of the Constitutional Court pronounced in a session open to the public. In the event that the Petitioner submits a request for withdrawal, the Plenary Meeting of the Judges Deliberative Council or the Panel of Judges concerned through the Plenary Meeting of the Judges Deliberations provides a recommendation to the Constitutional Court to issue a Decree of the Chief Justice of the Constitutional Court to issue a Decision on Withdrawal which is pronounced in a hearing open to the public, by ordering the Registrar to record in the BRPK, a copy of which is submitted to the Applicant. Proof is borne by the applicant. When notifying filed by the Petitioner. In the event that an alleged criminal act has been legally processed by an authorized official, for the purposes of examination and decision-making, the Constitutional Court may request information from the competent authorities conducting the investigation and/or prosecution. Termination of the process of examining an application or postponement of a decision shall be stipulated by a Decree of the Constitutional Court pronounced in a session open to the public. In the event that the Petitioner submits a request for withdrawal, the Plenary Meeting of the Judges Deliberation or the Panel of Judges concerned through the Plenary Meeting of the Judges Deliberations provides a recommendation to the Constitutional Court to issue the Decree of the Chief Justice of the Constitutional Court. The Chief Justice of the Constitutional Court issued a Withdrawal Decree which was pronounced in a session open to the public, by ordering the Registrar to record it in the BRPK, a copy of which was submitted to the Petitioner.

Types of evidence that can be submitted for examination at trial are:

- a. letters or writings that must be accounted for legally obtained;
- b. testimony of witnesses under oath regarding facts that have been seen, heard, and experienced by themselves;
- c. expert testimony under oath according to their expertise;
- d. statement from the Petitioner, President/Government, DPR, and/or DPD, as well as information from directly related parties;
- e. clues obtained from a series of data, statements, actions, circumstances, and/or events that are in accordance with other evidence; and/or

- f. other evidence in the form of information spoken, sent, received or stored electronically with optical devices or something similar to that.

Documentary or written evidence as referred to in letter a in the form of quotations, copies or photocopies of statutory regulations, state administrative decisions and/or court decisions, the original texts must be obtained from the official institution that issued them.

The Judge Deliberative Meeting (RPH) is held in secret and chaired by the Chief Justice of the Constitutional Court. In the event that the Chief Justice of the Constitutional Court is unable to lead, the Plenary Meeting shall be chaired by the Deputy Chief Justice of the Constitutional Court. In the event that the Chief Justice of the Constitutional Court and the Deputy Chief Justice of the Constitutional Court are unable to attend at the same time, the Plenary Meeting shall be presided over by an Interim Chief who is elected from and by Members of the Court. The RPH quorum to make decisions is at least 7 (seven) Constitutional Justices, assisted by the Registrar, and other sworn officers. Abattoirs that are not allowed to make decisions can be made without being bound by a quorum. RPH hears, discusses, and/or makes decisions regarding:

- a. panel report on preliminary examination;
- b. panel report on trial examination;
- c. panel recommendation regarding the follow-up of the results of the examination of the application;
- d. legal opinion of the Constitutional Justices;
- e. the results of the examination of the plenary session and the legal opinions of the Constitutional Justices;
- f. Constitutional Justices drafting decisions;
- g. draft final decision;
- h. the appointment of a Constitutional Justice to serve as final reader of the draft decision;
- i. distribution of tasks for reading decisions in plenary sessions.
- j. Panel report follow-up can be in the form of:
  - (1) discussion regarding the draft decision to be taken regarding the authority of the Court and the legal standing of the Petitioner;
  - (2) whether or not a further examination is necessary or a decision can be made immediately;
  - (3) the implementation of follow-up examinations is carried out by the plenary or panel.

Decisions are taken in the RPH attended by at least 7 (seven) Constitutional Justices and read/spoken in a plenary session open to the public attended by at least 7 (seven) Constitutional Justices. In the context of making a decision, each Constitutional Justice is obliged to submit written considerations or opinions on the application. Decisions as far as possible are taken by deliberation to reach a consensus. In the event that unanimous consensus is not reached, the meeting is adjourned until the next deliberative meeting. After serious efforts, it turned out that unanimous consensus could not be reached, the decision was taken by majority vote. In the event that the RPH is unable to make a decision with a majority vote, the final vote of the Head of the RPH determines. The opinions of the Constitutional Court Judges who differ on the decision are contained in the decision, unless the judge concerned does not wish.

The Court's decision regarding the judicial review contains:

- a. the head of the decision which reads: "For Justice Based On The One Almighty God";
- b. applicant's identity;
- c. summary of the application that has been corrected;
- d. consideration of the facts revealed in the trial;
- e. legal considerations which form the basis of the decision;
- f. verdict;
- g. different opinion from the Constitutional Justices; and
- h. day and date of decision, name and signature of the Constitutional Justice, and the Registrar.

Decision of the Constitutional Court:

- a. "Declaring the Petitioner's application unacceptable", in the event that the application does not meet the requirements;
- b. "Granted the Petitioner's request";

"Declares that the material contained in the paragraphs, articles, and/or parts of the law referred to is contrary to the 1945 Constitution";

"Declares that the material contained in the paragraphs, articles, and/or parts of the law in question does not have binding legal force", in the event that the application is reasoned

c. "Granted the Petitioner's request";

"Declaring that the formation of the said law does not comply with the provisions for the formation of a law based on the 1945 Constitution";

"Declaring that the Law has no binding legal force", in the case of a grounded application as referred to in Article 56 paragraph (4) and Article 57 paragraph (2) of Law Number 24 year 2003;

d. "Declaring that the Petitioner's application is rejected", in the event that the Law being petitioned for review is not contrary to the 1945 Constitution, both in terms of its formation and material in part or in whole.

The dynamics of testing laws against the Constitution is very interesting to study. This is proven by the fact that the number of decisions on reviewing laws against the Constitution by the Constitutional Court has been shown to be in first place with a total of 1573 cases (46%). This is shown in the following table:

No.	Case	Mount	Prosentase	Description
1.	PUU	1573	46%	
2.	SKLN	29	1%	
3.	PHPU	676	20%	
4	PHPKADA	1136	33%	
	TOTAL	3414	100%	

Source: ICC website

The dynamics of review a law against the Constitution also touches on the procedural law for review a law against the Constitution. Number 2 of 2021 concerning Procedures in Cases Reviewing the Law. PMK Number 2 of 2021 is more detailed than the previous PMK. There are 15 stages in the handling of cases testing laws against the Constitution. The author is of the opinion that the 15 stages were obtained from experience during the 20 years of the existence of the Constitutional Court. Secondly, the object of the request for review of the law against the Constitution has developed into laws and government regulations in lieu of laws (perppu). He added that the Perppu as the object of requesting a law review against the Constitution is debatable, bearing in mind that the 1945 Constitution of the Republic of Indonesia does not give the Constitutional Court the authority to review Perppu.

Third, the Constitutional Court makes it easier technically to submit requests for review of laws against the Constitution. The test request can be done offline or on-line. This means that justice seekers can reduce costs in submitting requests for review of laws against the Constitution.

The application submitted by the applicant and/or their attorney must contain:

- a. Name of applicant and/or attorney, occupation, nationality, home/office address, e-mail address;
- b. A clear description of:
  - a. The authority of the MK, which contains an explanation regarding the authority of the MK in adjudicating PUU cases as stipulated in the laws and regulations and the object of the application.
  - b. Ppemooon's legal position;
  - c. Reasons for application
- c. Petitem, which contains the matters that are requested to be decided in the formal application.
- d. Petitem, which contains the things requested to be decided in the application for material review

The Petitioner proved the arguments for the petition in court. The evidence in the PUU case is in the form of:

- a. Letter or writing
- b. Statement of the parties;
- c. Expert statement
- d. Witness Statement;
- e. other party's statement;
- f. Other evidence.

The Constitutional Court's decision contains:

- a. The head of the decision reads: For Justice Based On The One Almighty God
- b. Name of institution: Constitutional Court Of The Republic Of Indonesia
- c. party identity;
- d. Request and/or statement of the parties
- e. Consideration of the facts revealed in court
- f. Legal considerations that form the basis of the decision;
- g. Conclusion
- h. Amar verdict Different reasons (if any)
- i. Dissenting opinion (if any)
- j. Day and date of decision making, day and date of pronouncement of decision, name and signature of judge, name and signature of Substitute Registrar

Loading conditions:

- a. The Head of the Decree reads: "For Justice Based On God Almighty
- b. Name of Institution: Constitutional Court
- c. Considering Considerations:
  - 1) Party identity
  - 2) The subject matter
  - 3) Legal considerations and/or opinion of the Constitutional Court which form the basis of the decision, as well as conclusions.
- d. Amar decree
- e. Day and date of decision making, day and date of pronouncement of decision, name and signature of judge, name and signature of Substitute Registrar.

Ruling on formal examination:

- a. In the event that the application does not comply with the formal requirements for filing an application, among others, as referred to in Article 4, Article 9 paragraph (2), Article 10, Article 11 and/or Article 12 the verdict, "Declaring the Petitioner's Application unacceptable
- b. In the event that the subject matter of the petitioner's application is groundless according to law, the verdict states "rejecting the petition of the applicant".
- c. In the event that the principal of the petition is grounded according to law, the verdict reads:
  1. Grant the request of the applicant
  2. Declare that the formation of the said law or perppu does not comply with the provisions for the formation of laws according to the 1945 Constitution, and the law or perppu a quo does not have binding force.
  3. Order the publication of the decision in the State Gazette of the Republic of Indonesia.

Injunctions for judicial review:

The Petitioner proved the arguments for the petition in court. The evidence in the PUU case is in the form of:

- a. Letters or writing
- b. Statement of the parties;
- c. Expert statements
- d. Witness Statements;
- e. the other party's statement;
- f. Other evidence.

The Constitutional Court's decision contains:

- a. The head of the decision reads: For Justice Based On The One Almighty God
- b. Name of institution: Constitutional Court Of The Republic Of Indonesia
- c. party identity;
- d. Requests and/or statements of the parties
- e. Consideration of the facts revealed in court

- f. Legal considerations that form the basis of the decision;
  - g. Conclusion
  - h. Amar verdict Different reasons (if any)
  - i. Dissenting opinion (if any)
  - j. Day and date of decision making, day and date of pronouncement of decision, name and signature of judge, name and signature of Substitute Registrar
- Loading conditions:
- a. The Head of the Decree reads: “For Justice Based On God Almighty
  - b. Name of Institution: Constitutional Court
  - c. Considering Considerations:
    - (1). Party identity
    - (2). The subject matter
    - (3). Legal considerations and/or opinions of the Constitutional Court which form the basis of the decision, as well as conclusions.

#### IV. CONCLUSION AND RECOMENDATION

From 20 years has provided a clear understanding of the review of laws against the Constitution. This can be proven by the number of requests for judicial review as many as 1573 cases or 46% of all cases submitted to the Constitutional Court. This means that people's understanding of the constitution is better. From the conclusions above, the writer can recommend that the people are aware of their rights to the constitution. Therefore, the state must be more selective in selecting constitutional judges.

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