

The Role of Judicial Review by the Constitutional Court as Guardian of the World of Life: An Approach by Jürgen Habermas

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Abstract

The Constitutional Court plays a strategic role in Indonesia's constitutional system through its authority to conduct judicial review of laws. This authority is not only technical in nature, but also determines the quality of legal legitimacy and substantive democracy. This article aims to analyze the role of judicial review by the Constitutional Court as the guardian of the lifeworld using Jürgen Habermas' approach. This study uses a normative method with a legislative and conceptual approach. The results of the study show that in a legal formation dominated by instrumental rationality, the law has the potential to become detached from the values and social experiences of society, thereby colonizing the lifeworld. In this context, judicial review by the Constitutional Court functions as a corrective normative mechanism that reconnects law with communicative rationality and democratic legitimacy. This article argues that the Constitutional Court can act as the guardian of the lifeworld as long as judicial review is conducted openly and argumentatively.

KEYWORDS: *Constitutional Court; Judicial Review; Jurgen Habermas*

Introduction

The Constitutional Court plays an important role in Indonesia's constitutional system through its authority to conduct judicial review of laws.¹ This authority positions the MK not only as a tester of the constitutionality of norms, but also as an

¹ Mexsasai Indra Et Al., "Strength Of Constitutional Court Decisions In Judicial Review Of The 1945 Constitution In Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia," *Jurnal Konstitusi* 20, No. 2 (2023): 279–99, <https://doi.org/10.31078/jk2026>.

institution that influences the quality of democracy and legal legitimacy.² Therefore, judicial review cannot be understood merely as a technical legal process, but rather as a practice that has a direct impact on social life and the public debate space.³

In modern democratic countries, the formulation of laws and public policies is increasingly dominated by instrumental rationality, such as efficiency, stability of power, and short-term political interests.⁴ The dominance of such interests has the potential to distance the law from the experiences and needs of citizens.⁵ As a result, the law loses its democratic legitimacy and tends to function as an instrument of power rather than a means of justice.⁶

In this context, judicial review by the Constitutional Court is in a strategic position because it deals directly with legal products that arise from the political process.⁷ Jürgen Habermas reads this issue through the distinction between system and lifeworld. Lifeworld is a space where social values and norms are formed through communication and mutual understanding, while the system works through power and independent reason.⁸ According to Habermas, law lies between the two; it is part of the state system, but also requires legitimacy from the lifeworld of society.⁹

When the law is inseparable from the interests of certain political elites, the colonization of the lifeworld by the system weakens substantive democracy.¹⁰ In this

² Samuel Walangitan, “Independensi Mahkamah Konstitusi Di Tengah Tekanan Politik,” *Indonesia Of Journal Business Law* 4, No. 2 (2025): 45–56, <https://doi.org/10.47709/Ijbl.V4i2.6596>.

³ Indra Perwira, “Refleksi Fenomena Judicialization Of Politics Pada Politik Hukum Pembentukan Mahkamah Konstitusi Dan Putusan Mahkamah Konstitusi,” *Jurnal Konstitusi* 13, No. 1 (2016): 25, <https://doi.org/10.31078/Jk1312>.

⁴ Justin Cruickshank, “Democracy Versus The Domination Of Instrumental Rationality: Defending Dewey’s Argument For Democracy As An Ethical Way Of Life,” *Humanities* 3, No. 1 (2014): 19–41, <https://doi.org/10.3390/H3010019>.

⁵ Fadillah Fadillah And Leo Dwi Cahyono, “Dinamika Legislasi Indonesia Dalam Kerangka Demokrasi Deliberatif,” *Jurnal Kajian Sosial Dan Humaniora* 1, No. 4 (2025): 228–41, <https://doi.org/10.63082/Jksh.V1i4.28>.

⁶ Thoriq Ahmadi And Ziadul Fikri, “Illusion Of Public Participation And Democratic Erosion: The Case Of Tni Law Revision,” *Journal Of Constitutional And Governance Studies*, December 17, 2025, 112–37, <https://doi.org/10.20885/Jcgs.Vol2.Iss1.Art6>.

⁷ Johann Laux, “Judicial Power: How Constitutional Courts Affect Political Transformations,” *International Journal Of Constitutional Law* 17, No. 3 (2019): 1010–14, <https://doi.org/10.1093/icon/moz073>.

⁸ Gustaf Hariyanto, “Sistem Dan Dunia-Kehidupan Menurut Jurgen Habermas,” *Borneo Review* 1, No. 1 (2022): 1–13, <https://doi.org/10.52075/Br.V1i1.42>.

⁹ César Ortega-Esquembre, “De La Teoría Crítica De Habermas A La Teoría Discursiva Del Derecho Y La Democracia: Superando La Dicotomía ‘Sistema/Mundo De La Vida,’” *Endoxa*, No. 47 (June 2021), <https://doi.org/10.5944/Endoxa.47.2021.24293>.

¹⁰ Fadjar Sukma And Saparuli, “Menimbang Demokrasi Deliberatif Dalam Proses Pembentukan Hukum Yang Demokratis Di Indonesia,” *Iblam Law Review* 1, No. 3 (2021): 140–54, <https://doi.org/10.52249/Ilr.V1i3.30>.

situation, judicial review can serve as a corrective mechanism.¹¹ Insofar as the Constitutional Court's decisions are able to reconnect the law with the values and social experiences of citizens and open up space for justification that can be debated publicly.

Previous studies on the Constitutional Court in Indonesia have focused on formal authority and checks and balances.¹² Meanwhile, studies on judicial activism often view judicial review as a threat to representative democracy, while also considering it progressive when judicial activism is used to expand citizens' rights.¹³ On the other hand, Habermas's thinking is rarely used to directly analyze constitutional court practices. This indicates a gap in studies on the relationship between the Constitutional Court's judicial review and the protection of the lifeworld.

This article aims to analyze the role of judicial review by the Constitutional Court as guardian of the lifeworld using Jürgen Habermas' approach. The novelty of this research lies in the use of the concept of lifeworld to assess the extent to which the Constitutional Court is able to resist the dominance of instrumental reason and maintain its connection with the lifeworld. This article argues that the Constitutional Court can act as guardian of the lifeworld if it is conducted openly, argumentatively, and oriented towards democratic legitimacy.

Method

The type of legal research used in this study is normative. The research approach is the statute approach, which is carried out by “understanding and examining the laws related to the issue being studied.” In addition, another approach used is the conceptual approach, which is an approach that studies doctrines and views in legal science to find ideas, concepts, and legal principles that are relevant to the issue at hand.

The Functioning of the Lifeworld and the Problem of Colonization

Habermas posits that the lifeworld can be understood as a social realm where values, norms, collective identities, and communicative rationality are formed through everyday interactions that are relatively free from domination.¹⁴ In the lifeworld, people

¹¹ Nabitatus Sa'adah, “Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review,” *Administrative Law And Governance Journal* 2, No. 2 (2019): 235–47, <https://doi.org/10.14710/Alj.V2i2.235-247>.

¹² Hanif Fudin, “Aktualisasi Checks And Balances Lembaga Negara: Antara Majelis Permusyawaratan Rakyat Dan Mahkamah Konstitusi,” *Jurnal Konstitusi* 19, No. 1 (2022): 202, <https://doi.org/10.31078/Jk1919>.

¹³ Ni Luh Dewi Sundariwati, “Judicial Activism: Diantara Melindungi Supremasi Konstitusional Atau Transisi Menuju Juristocracy,” *Jurnal Konstitusi* 21, No. 3 (2024): 432–47, <https://doi.org/10.31078/Jk2135>.

¹⁴ Ali Shah Hassani, *International Journal Of Multicultural And Multireligious Understanding* 13, No. 2 (2026), <https://dx.doi.org/10.18415/Ijmmu.V13i2.7381>.

construct worldviews, interpret social experiences, and articulate collective aspirations through open and intersubjective communication.¹⁵

This concept refers to the everyday world that was first introduced in the phenomenological tradition to distinguish the natural and pre-theoretical attitudes of ordinary people from the theoretical perspective of science. The world of life is composed of shared meanings and understandings that form an open unity, but not a totality that can be understood at once. Like the metaphor of the horizon, the lifeworld is perspective-based, dynamic, and gradually changing, even though these changes can lead to comprehensive transformations. Language and communication are the main mediums of the lifeworld, so social meanings tend to be maintained to minimize conflict and misunderstanding.¹⁶

Habermas's assumption about the lifeworld is divided into two models, namely the inner periphery and the outer periphery. The inner periphery consists of semi-autonomous institutions such as universities, public insurance institutions, professional associations, and foundations. According to Habermas, these institutions have limited supervisory and policy-making functions, as well as the right to self-regulation. Meanwhile, the outer periphery is described through the terms customers and suppliers of communication and interests. Customers include groups involved in the implementation of public institution policies, private organizations, labor unions, and business associations, while suppliers are tasked with bringing social issues to the public sphere and the legal system. Through this mechanism, suppliers seek to influence the political process based on norms and the public interest, not just the interests of certain groups.¹⁷

The hope that the world of life as a social space remains vulnerable to colonization. The phenomenon of colonization of the world of life occurs when the rationality of systems that operate through money and power infiltrates the realm of social interaction, which should be governed by norms and communication.¹⁸ In this condition, the lifeworld as a place for the formation of values, collective identity, and consensus loses its autonomy because deliberative rationality is replaced by the logic of instrumental power. As a result, social practices, including the formation of laws and public policies, are detached from their communicative basis and tend to function as a means of domination.¹⁹

¹⁵ César Ortega-Esquembre, "De La Teoría Crítica De Habermas A La Teoría Discursiva Del Derecho Y La Democracia: Superando La Dicotomía 'Sistema/Mundo De La Vida,'" *Endoxa*, No. 47 (June 2021), <https://doi.org/10.5944/Endoxa.47.2021.24293>.

¹⁶ Ames Gordon Finlayson, *Habermas: A Very Short Introduction* (Oxford University Press, 2005).

¹⁷ William Rehg, *Between Facts And Norms: Contributions To A Discourse Theory Of Law And Democracy* (Mit Press, 1996).

¹⁸ "Jurgen Habermas And His Contribution To The Theory Of Deliberative Democracy," *American International Journal Of Social Science Research*, August 23, 2021, 36–47, <https://doi.org/10.46281/Aijssr.V7i1.1296>.

¹⁹ Marjan Ivkovic, "Habermas' Concept Of Systemic Colonization Of Lifeworld," *Sociologija* 52, No. 1 (2010): 1–22, <https://doi.org/10.2298/SOC1001001I>.

The problem then arises, referring to the division of the political system. The political system that Habermas refers to is the role of the executive,²⁰ legislative, and judicial branches, but what is most prominent is how the political system becomes an institution that is trusted in making policies.²¹ According to Roger Cobb, Jennie-Keith Ross, and Marc Howard Ross, there are three paths through which policies are formed when issues enter the political system. The inside access model places elites as initiators and decision makers without public involvement. The mobilization model also originates from elites, with public support mobilized from the top down. Meanwhile, the outside initiative model originates from civil society initiatives that push issues from the periphery to the center of power and is considered the most democratic because it opens up space for public participation and deliberation. In this context, Habermas considers the outside initiative model to be the most appropriate approach in interpreting the principle of deliberation.²²

In the context of top-down or bottom-up political systems as described above, Habermas then classifies these models based on the tension between instrumental logic and communicative logic. Instrumental logic refers to a way of thinking and acting that is oriented towards achieving goals effectively and efficiently. This rationality assesses actions based on the suitability of the means and the desired results. In instrumental logic, actions are understood as efforts to control objects, both natural and human, in order to achieve predetermined goals, so that they tend to be top-down in nature.²³

In contrast, communicative logic aims to achieve mutual understanding and agreement or consensus through language.²⁴ In this logic, social actions are not directed solely at technical success, but rather at a process of interaction that allows actors to rationally propose and test arguments. The relationships that are built are subject-subject in nature, where each party is assumed to have an equal position to speak, question, and agree on a claim. Communicative rationality is rooted in the real world, namely the space of daily interaction where values, norms, and social identities are formed and maintained so that the nature of decisions is bottom-up.²⁵

²⁰ Paulus Pati Lewar And Otto Gusti Ndegong Madung, “Demokrasi Sebagai Diskursus Dan Deliberasi Menurut Jürgen Habermas,” *Jurnal Ledalero* 21, No. 2 (2022): 150, <https://doi.org/10.31385/jl.v21i2.315.150-161>.

²¹ Joseph Abang Odok And Charles Berebon, *The Interplay Of Morality, Law, And Democratic Legitimacy In Habermas’s Political Philosophy*, 2, No. 1 (2024): 49–63.

²² William Rehg, *Between Facts And Norms: Contributions To A Discourse Theory Of Law And Democracy* (MIT Press, 1996).

²³ F. Budi. Hardiman, *Demokrasi Deliberatif: Menimbang “Negara Hukum” Dan “Ruang Publik” Dalam Teori Diskursus Jürgen Habermas*. (Kanisius, 2023).

²⁴ Ali Shah Hassani, “The Role Of Rationality In Public Policy Theories With Emphasis On Habermas’s Communicative Rationality,” *International Journal Of Multicultural And Multireligious Understanding* 13, No. 2 (2026), <https://dx.doi.org/10.18415/ijmmu.v13i2.7381>.

²⁵ Alexander Seran, *Teori Hukum Positif Dalam Perspektif Etika Diskursus Jürgen Habermas* (Universitas Atma Jaya, 2011).

In addition to the tension between communicative rationality and instrumental rationality that often shapes the dynamics of political systems, Habermas also identifies the problem of the colonization of the lifeworld by the system. This colonization occurs when political and structural mechanisms enter and control spaces of social communication, thereby limiting the capacity of individuals and groups to argue, discuss, and build consensus freely. Habermas understands this phenomenon as a severing of the relationship between the system and the lifeworld (*Entkoppelung*), namely when the system takes over functions that should be carried out through intersubjective mutual understanding communication. In response to social problems, Habermas proposes the idea of double rationalization, in which the development of system complexity is still recognized, but at the same time the lifeworld must be strengthened through free, reflective, and argumentative communication.²⁶ Thus, Habermas proposes two concrete actions: first, limits must be set to reduce the impact of the system on the lifeworld. Second, sensors must be built to increase the impact of the lifeworld on the system.²⁷

In principle, the author sees that Habermas' view of a top-down political system is always oriented towards instrumental logic and tends to ignore public participation in policy-making. This condition causes the lifeworld of society to be marginalized, where values, norms, and social consensus formed communicatively are displaced by the logic of systemic power, resulting in the colonization of the lifeworld.

Judicial Review by the Constitutional Court as Guardian of the World of Life

Historically, judicial review has its roots in the tradition of modern constitutionalism, which aims to limit state power through constitutional supremacy.²⁸ This concept first took on a clear institutional form in the practice of the United States Supreme Court through the *Marbury vs Madison* (1803) decision, which affirmed the court's authority to assess and declare laws that conflict with the constitution invalid.²⁹ This ruling laid the foundation that the constitution is the supreme law of the land, and that the judiciary serves as the primary guardian to prevent the political branches of

²⁶ Irfan Noor, "Identitas Agama, Ruang Publik Dan Post-Sekularisme: Perspektif Diskursus Jürgen Habermas," *Jurnal Ilmiah Ilmu Ushuluddin* 11, No. 1 (2016): 61, <https://doi.org/10.18592/jiu.v11i1.733>.

²⁷ Datu Hendrawan And Anastasia Jessica Adinda S., "Elemen-Elemen Demokrasi Dalam Pemikiran Jürgen Habermas," *Jurnal Filsafat Indonesia* 8, No. 2 (2025): 344–56, <https://doi.org/10.23887/jfi.v8i2.91412>.

²⁸ Indah Permatasari And I. Made Subawa, "History Of Judicial Review In Indonesia," *International Journal Of Multicultural And Multireligious Understanding* 11, No. 2 (2024): 541, <https://doi.org/10.18415/ijmmu.v11i2.5599>.

²⁹ Cholidin Nasir, "Judicial Review Di Amerika Serikat, Jerman, Dan Indonesia," *Jurnal Hukum Progresif* 8, No. 1 (2020): 67–80, <https://doi.org/10.14710/hp.8.1.67-80>.

government from acting arbitrarily.³⁰ Since then, judicial review has developed as an essential mechanism in democratic legal systems to guarantee the protection of constitutional rights and prevent the domination of other branches of government.³¹

In its development, the concept of judicial review was not only practiced in the American model, but also underwent differentiation through the Continental European model pioneered by Hans Kelsen with the establishment of the Constitutional Court in Austria in 1920. Unlike the decentralized American model, the Kelsenian model places judicial review authority centrally in a single specialized institution as a negative legislator.³² This model was then widely adopted by various countries, including Indonesia after the amendment of the 1945 Constitution with the establishment of the Constitutional Court.³³

Similarly, in Habermas' view, the testing of laws by the Court does not preclude the possibility of re-testing a policy even if it has been formally ratified.³⁴ The Constitutional Court occupies a strategic position in Indonesia's constitutional architecture through its authority to conduct judicial review of laws and public policies.³⁵ This function is very important in maintaining the balance between the legal-political system that operates with instrumental rationality and the lifeworld that is the source of legal legitimacy. Thus, from Habermas' perspective, the Constitutional Court, through judicial review, is not merely a formal institution, but a normative mechanism that protects the lifeworld from colonization by a system that has the potential to erode legal legitimacy and substantive democracy.

The main function of judicial review is to assess whether legal products remain in line with constitutional principles, including the fundamental rights of citizens.³⁶ Within Habermas' framework, it can be assessed that such a process is discursive, with the Constitutional Court assessing legal norms based on communicative rationality, normative argumentation, and public relevance, rather than merely compliance with

³⁰ Cholidin Nasir, "Judicial Review Di Amerika Serikat, Jerman, Dan Indonesia," *Jurnal Hukum Progresif* 8, No. 1 (2020): 67–80, <https://doi.org/10.14710/Hp.8.1.67-80>.

³¹ Danang Rahmat Suroño And Gunawan Widjaja, *The Role Of Judicial Review In The Indonesian Legal System: A Literature Review On Constitutional Protection And Legal Accountability*, 4, No. 3 (2025): 611–22.

³² Sara Lagi, "Hans Kelsen And The Austrian Constitutional Court (1918-1929)," *Co-Herencia* 9, No. 16 (2012): 273–95, <https://doi.org/10.17230/Co-Herencia.9.16.10>.

³³ Ahmad Ahmad And Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima Uud 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip The Guardian Of The Constitution," *Jurnal Konstitusi* 16, No. 4 (2020): 785, <https://doi.org/10.31078/Jk1646>.

³⁴ F Budi Hardiman, *Demokrasi Deliberatif, Menimbang Negara Hukum, Dan Ruang Publik Dalam Teori Diskursu Jürgen Habermas* (Kansius, 2021).

³⁵ Igam Arya Wada Et Al., "Ius Constituendum Kewenangan Judicial Preview Di Mahkamah Konstitusi Republik Indonesia," *Jurnal Kajian Konstitusi* 3, No. 1 (2023): 1, <https://doi.org/10.19184/J.Kk.V3i1.37917>.

³⁶ Safiâ€™™ Safiâ€™™, "Judicial Review Sebagai Sarana Perlindungan Hak-Hak Asasi Warga Negara," *Dih: Jurnal Ilmu Hukum* 11, No. 22 (2015): 170–81, <https://doi.org/10.30996/Dih.V11i22.2237>.

formal procedures or political interests. Thus, judicial review forces the system to consider the values, norms, and aspirations of society, so that the law retains its true normative legitimacy. An important example is the Constitutional Court's decision on several provisions in the Job Creation Law, which shows how judicial review can assess laws that are considered to potentially disregard the constitutional rights of citizens due to the lack of citizen participation in the law-making process.³⁷

In this context, we can critically examine how the Constitutional Court balances between the system and the lifeworld. The Constitutional Court's decision to overturn or adjust provisions that are not in line with constitutional principles strengthens the legitimacy of laws based on social values. This analysis shows that judicial review is not only a formal mechanism, but also an instrument for maintaining rational communication between communities. Furthermore, judicial review serves as a control over the dominance of political power that is instrumental in nature. The Constitutional Court's decision signals that the law must be in harmony with social values and constitutional rights, while limiting systemic policies that override public communication. In other words, the Constitutional Court acts as a mediator between the political system and the world of life, ensuring that the law remains socially relevant and democratically legitimate. Thus, judicial review, in Habermas' perspective, is an essential normative mechanism for maintaining a balance between systemic power and public legitimacy, as well as preserving substantive democracy oriented toward protecting the world of life.

Conclusion

This study concludes that judicial review by the Constitutional Court cannot be understood solely as a formal legal mechanism, but rather as a normative practice that directly influences legal legitimacy and the quality of substantive democracy. In the context of lawmaking dominated by instrumental rationality, such as efficiency, stability of power, and short-term political interests, the law has the potential to become detached from social reality and the normative needs of citizens. From Jurgen Habermas' perspective, this condition indicates the colonization of the lifeworld by the legal-political system. Through Habermas' communicative action theory approach, this study shows that law is in a mediating position between the system and the lifeworld, thus requiring legitimacy derived from communicative rationality. Within this framework, judicial review by the Constitutional Court functions as a corrective mechanism to reconnect law with the values, norms, and social aspirations of society. Thus, the Constitutional Court can act as the guardian of the lifeworld while maintaining a balance between system stability and democratic legitimacy.

³⁷ Safia[€]Tm Safia[€]Tm, "Judicial Review Sebagai Sarana Perlindungan Hak-Hak Asasi Warga Negara," *Dih: Jurnal Ilmu Hukum* 11, No. 22 (2015): 170–81, <https://doi.org/10.30996/Dih.V11i22.2237>.

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