

The Effectiveness of the Supreme Court as the Guardian of Legality in Reviewing Norms Under the Law

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Abstract: This article examines the role and effectiveness of the Supreme Court (MA) in reviewing the constitutionality of regulations under laws (the right to judicial review of the substance of laws/HUM), focusing on two landmark decisions from 2024 and the Supreme Court's overall performance data. Supreme Court Decision No. 12/P/HUM/2024, which reviewed Presidential Regulation No. 53 of 2023, and Decision No. 23/P/HUM/2024, which reviewed the age requirements for candidacy for regional head positions, are analyzed in depth from a constitutional law perspective. The study also highlights the Supreme Court's performance in 2024, during which it received 31,000 cases (a 13.72% increase from 2023), adjudicated 30,763 cases, and achieved a timely resolution rate of 96.52%. This integrated analysis aims to evaluate the extent to which the Supreme Court has effectively carried out its function of overseeing the constitutionality of laws and regulations as a check on power within the Indonesian legal system.

Keywords: right to judicial review; Supreme Court; legislation; Presidential Regulation No. 53/2023; regional head candidacy; 2024 judicial performance.

I. Introduction

Judicial review of legislation is a fundamental constitutional mechanism in a state governed by the rule of law. In Indonesia, the authority to review legal norms is divided between the two highest judicial institutions: the Constitutional Court (MK) has the authority to review laws against the 1945 Constitution, while the Supreme Court (MA) has the authority to review regulations below the level of law against laws. This division of authority is regulated in Article 24A(1) of the 1945 Constitution in conjunction with Article 31 of Law No. 14 of 1985 on the Supreme Court, as amended by Law No. 5 of 2004 and Law No. 3 of 2009.

The Supreme Court's authority in judicial review encompasses the review of various types of regulations subordinate to laws, ranging from Government Regulations (PP), Presidential Regulations (Perpres), Ministerial Regulations, to provincial and regency/municipal regulations (Perda). This very broad scope makes the Supreme Court the primary gatekeeper in ensuring the vertical consistency of Indonesia's legal hierarchy.

The year 2024 marked a significant milestone in the context of the Supreme Court's review of regulations. Two landmark decisions—Decision No. 12/P/HUM/2024, which reviewed Presidential Regulation No. 53 of 2023, and Decision No. 23/P/HUM/2024, which reviewed the age requirements for candidacy for regional head—have captured the attention of the academic community and legal practitioners. At the same time, the Supreme Court recorded an impressive performance: it received 31,000 cases throughout 2024, with a timely resolution rate of 96.52%.

This article aims to: first, examine the constitutional and normative framework of the Supreme Court's power of judicial review; second, conduct an in-depth analysis of the two landmark 2024 rulings; third, evaluate the Supreme Court's performance data quantitatively; and fourth, provide a comprehensive assessment of the Supreme Court's effectiveness in carrying out its function of overseeing legal norms.

II. The Constitutional Framework for the Supreme Court's Power of Judicial Review

A. Legal Basis and Scope of Authority

The Supreme Court's authority to review legislation under the law derives from several legal provisions that form an integrated system:

Article 24A, paragraph (1) of the 1945 Constitution	The Supreme Court has the authority to hear cases at the cassation level, to review regulations below the level of law against the law, and to exercise other powers granted by law.
Article 31 of the Supreme Court Law (Law No. 14 of 1985 as amended by Law No. 5 of 2004 and Law No. 3 of 2009)	The Supreme Court has the authority to review regulations below the level of law against the law. The Supreme Court declares regulations that conflict with the law to be invalid.
Article 9(2) of Law No. 12 of 2011	Regulations under a law that conflict with that law are declared invalid and unenforceable by a Supreme Court decision.
Supreme Court Regulation No. 1 of 2011	Regulates the procedural and technical aspects of the judicial review of regulations (HUM) at the Supreme Court.

B. Subject Matter, Petitioners, and Review Mechanism

1. Subject Matter of Review

The scope of review in the Supreme Court's substantive judicial review includes all regulations below the level of law—that is, regulations that are hierarchically subordinate to laws within the Indonesian legal system. Pursuant to Article 7 of Law No. 12 of 2011, the hierarchy of legal regulations that are potential subjects of the Supreme Court's judicial review includes: Government Regulations (PP), Presidential Regulations (Perpres), Provincial Regulations, and Regency/Municipal Regulations. The term “perda” in the title of this article is used in a broad sense to encompass all legal regulations subordinate to laws that are subject to review by the Supreme Court, including Presidential Regulations as in the two landmark decisions examined.

2. Legal Standing of the Petitioner

Petitioners in HUM cases before the Supreme Court must have legal standing, evidenced by a loss of rights resulting from the enforcement of the regulation under review. PERMA No. 1 of 2011 stipulates that petitioners may be: (i) individual Indonesian citizens; (ii) customary law communities; (iii) public or private legal entities; or (iv) state institutions. This legal standing requirement ensures that the judicial review is concrete in nature and not an *actio popularis*.

3. Mechanism and Time Limits

PERMA No. 1 of 2011 stipulates that the Supreme Court must render a decision on a HUM petition within 14 working days from the date the complete petition is received. This provision is one of the strictest in the Indonesian judicial system and reflects a commitment to prompt legal certainty in the review of legal norms. If the Supreme Court rules that the regulation under review conflicts with the law, the decision is *erga omnes*—generally applicable and binding on all parties, not just the parties to the case. The Supreme Court's decision must be published in the State Gazette within 30 days of being rendered.

C. Fundamental Differences Between the Supreme Court and the Constitutional Court in the Review of Legal Norms

Aspect	Supreme Court (HUM)	Constitutional Court
Constitutional Basis	Article 24A, paragraph (1) of the 1945 Constitution	Article 24C, paragraph (1) of the 1945 Constitution
Subject of Review	Regulations under a Law versus the Law	A law against the 1945 Constitution
Testing Standard	Laws	1945 Constitution

Procedural Law	PERMA No. 1 of 2011	Constitutional Court Law No. 24 of 2003
Nature of the decision	Erga omnes; published in the State Gazette	Final, binding, and directly enforceable
Decision deadline	14 business days	Not strictly limited

III. LANDMARK SUPREME COURT DECISIONS OF 2024

A. Decision No. 12/P/HUM/2024: Review of Presidential Regulation No. 53 of 2023

Supreme Court Decision No. 12/P/HUM/2024	
Subject of Review	Presidential Regulation No. 53 of 2023
Type of Case	Right to Judicial Review of the Substance (HUM)
Legal Basis	Relevant laws forming the basis for the authority of the Presidential Regulation
Nature of the Decision	Erga omnes—binding on all citizens and state officials
Significance	A landmark decision in the review of the 2024 Presidential Regulation

1. Context and Urgency of the Judicial Review of the Presidential Regulation

Presidential Regulation No. 53 of 2023 is a regulatory instrument issued under the authority of the President within the framework of executive power. The filing of a petition for judicial review of this Presidential Regulation with the Supreme Court reflects the growing legal awareness among the public and relevant institutions to utilize judicial channels in challenging executive regulatory policies deemed contrary to the law. The judicial review of a Presidential Regulation through the Supreme Court’s administrative division differs fundamentally from the review of laws at the Constitutional Court in terms of the standard of review: the Constitutional Court uses the 1945 Constitution as the standard of review, whereas the Supreme Court uses laws as the standard for the constitutionality of subordinate regulations. Consequently, a petitioner seeking to challenge a Presidential Regulation must be able to specifically identify which statutory provisions are violated by the contested provisions of the Presidential Regulation. Decision No. 12/P/HUM/2024 holds dual significance: first, as a landmark decision affirming the Supreme Court’s willingness to review executive policies even when they are of a strategic nature; second, as a procedural precedent regarding the standard of proof that petitioners must meet in HUM cases challenging Presidential Regulations.

2. Implications of the Decision for Executive–Judicial Relations

The Supreme Court’s decision to accept and rule on HUM’s petition against the Presidential Regulation has significant implications for the dynamics of executive–judicial relations. This reaffirms the principle that no executive regulation—no matter how high its position in the regulatory hierarchy under the law—is immune from judicial review. From a constitutional law perspective, this ruling also reinforces the ultra vires doctrine in administrative law: an implementing regulation cannot exceed the limits set by the underlying law. If this occurs, the Supreme Court has the authority and the obligation to declare it invalid.

B. Decision No. 23/P/HUM/2024: Age Requirements for Candidacy for Regional Head

Supreme Court Decision No. 23/P/HUM/2024	
Subject of Review	Regulations regarding age requirements for regional head candidacy
Constitutional Issue	The minimum age limit for candidacy for regional head in direct elections
Temporal Relevance	Arises in the context of preparations for the nationwide simultaneous regional elections
Relation to the Constitutional Court	Interfaces with the Constitutional Court’s authority to review the Regional Head Election Law

Impact	Has the potential to significantly alter the administrative requirements for regional head candidacy
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1. Historical Context: The Age Requirement Dispute and the 2024 Regional Head Elections

Decision No. 23/P/HUM/2024 was issued in a highly politically sensitive context: preparations for the nationwide simultaneous Regional Head Elections (Pilkada). The review of the age requirement for regional head candidacy reflects a deeper normative struggle over who has the authority to determine the qualification standards for prospective regional leaders. The issue of the minimum age requirement for regional head candidates has become one of the most controversial topics in Indonesian election law. Differing interpretations regarding when the age requirement must be met—whether at the time of registration, the nomination of candidates, the inauguration, or some other point in time—have significant practical implications for a candidate's eligibility.

2. The Overlap of Jurisdiction Between the Supreme Court and the Constitutional Court

One of the most intriguing aspects of Decision 23/P/HUM/2024 is its potential to overlap with the Constitutional Court's jurisdiction. If the age requirement for regional head candidacy is stipulated in a law, the review of that provision falls exclusively within the Constitutional Court's domain. However, if the requirement is stipulated in implementing regulations under the law, the Supreme Court has the authority to review it. This is what gives Decision 23/P/HUM/2024 its complex constitutional dimension: a single legal issue may follow different review pathways depending on the normative level at which it is formulated. This situation requires careful coordination and jurisprudential coherence between the Supreme Court and the Constitutional Court to prevent counterproductive conflicts in their rulings. It is in this context that Decision 23/P/HUM/2024 stands as an important landmark decision: it tests the limits of the Supreme Court's authority while affirming that even technical administrative requirements in implementing regulations can be subject to judicial review if deemed to conflict with the underlying law.

3. Implications for Electoral Democracy

This ruling has direct implications for the quality of electoral democracy at the local level. The proper and consistent application of age requirements is a crucial component of due process in the conduct of regional head elections, as it ensures that all candidates are treated equally based on clear and predictable rules. From a broader perspective, this ruling also reaffirms the principle that the conduct of direct regional head elections must meet measurable legal standards and must not be manipulated through arbitrary interpretations of technical administrative regulations.

IV. Performance of the Supreme Court in 2024

A. Statistics on Case Filings and Resolutions

Throughout 2024, the Supreme Court recorded outstanding performance in terms of both the number of cases received and the speed of their resolution. The following is a visualization of the Supreme Court's performance statistics for 2024 compared to the previous year:

31,000 Cases Received in 2024 ↑ 13.72% from 2023	27,252 Cases Received in 2023 <i>Comparison Year</i>	30,763 Cases Decided in 2024 <i>out of 31,000 cases</i>	96.52 Resolved on Time <i>29,261 cases < 3 months</i>
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The statistical data above reveals two very encouraging findings. First, the 13.72% increase in case intake reflects growing public trust in and access to the Supreme Court's judicial system. Second, the resolution rate of 99.24% (30,763 out of 31,000) and the on-time completion rate of 96.52% demonstrate the Supreme Court's robust institutional capacity to handle an ever-increasing caseload.

Cases Decided Out of Total Received: 99%

Resolved on Time (< 3 Months) 97%

Increase in Case Load (2023→2024) 14%

B. Comparative Analysis of Performance for 2023–2024

Performance Indicators	Year 2023	Year 2024	Change
Total Cases Received	27,252	31,000	↑ 13.72% (+3,748)
Total Cases Decided	N/A (comparative data)	30,763	
Cases Resolved on Time (< 3 months)	N/A	29,261 (96.52%)	
Cases Exceeding the Time Limit	N/A	1,502 (3.48%)	Very low
Resolution Rate	N/A	99.24%	Near perfect

C. The Context of HUM Cases within the Supreme Court’s Overall Performance

Constitutional Review (HUM) cases are one of the types of cases handled by the Supreme Court, in addition to cassation cases, case reviews (PK), and other cases. Out of a total caseload of 31,000 cases in 2024, HUM cases constitute a proportionally smaller portion but carry extremely high constitutional weight, as their rulings are erga omnes in nature and affect all citizens. The Supreme Court’s ability to resolve 96.52% of its cases within less than three months—including HUM cases, which substantively require in-depth legal research—is an achievement worthy of recognition. This demonstrates that the Supreme Court has built sufficient institutional capacity to keep pace with the case load that continues to grow year after year.

D. Challenges and Critical Observations

- Behind these impressive achievements, there are several critical observations that warrant attention:
1. Quality vs. speed: A high rate of timely resolution must always be balanced with a guarantee of the quality of legal reasoning. The pressure to resolve cases quickly must not come at the expense of the depth and rigor of legal analysis.
 2. Access to HUM Decisions: Not all Supreme Court HUM decisions are easily accessible to the public. Transparency must be enhanced through the systematic publication of decisions on the Supreme Court’s official website.
 3. Case backlog: Although 99.24% of cases were successfully adjudicated, there are still approximately 237 cases (0.76%) that remain unresolved. In the context of HUM rulings that have erga omnes effect, these remaining cases still require serious attention.
 4. Judicial resources: The 13.72% annual increase in caseload requires ongoing evaluation of the adequacy of the number and capacity of Supreme Court justices and judicial support staff.

V. Evaluation of the Effectiveness of the Constitutional Court in Reviewing Norms

A. Parameters of Effectiveness in Norm Review

The Supreme Court’s effectiveness in carrying out its function of judicial review can be evaluated through at least four main dimensions:

Dimension	Indicator	2024 Assessment
Accessibility	Ease with which petitioners can file a HUM petition	Good—no formal procedural barriers
Speed	Timeliness of case resolution	Very good—96.52% on time
Quality of Decisions	Depth of legal reasoning in landmark decisions	Well reflected in Decisions 12 & 23/HUM/2024
Normative Impact	Implementation of rulings by the government and state institutions	Further evaluation is needed
Transparency	Public access to HUM decisions	Needs to be improved

B. The Supreme Court's Role as Guardian of Legality

Two landmark 2024 rulings—No. 12/P/HUM/2024 and No. 23/P/HUM/2024—collectively demonstrate that the Supreme Court has increasingly solidified its position as the guardian of legality (the guardian of the validity of legal norms) at the level below that of statutes. Unlike the Constitutional Court, which serves as the guardian of constitutionality, the Supreme Court ensures that legal norms at the level of implementing regulations do not exceed the limits set by law. From a constitutional law perspective, the combination of the Constitutional Court as the guardian of constitutionality and the Supreme Court as the guardian of legality forms a comprehensive, multi-tiered system of legal review. Ideally, this system complements one another to create a coherent and constitutional legal ecosystem at all levels of the hierarchy of norms.

C. Challenges in Coordination Between the Supreme Court and the Constitutional Court

One structural challenge that has not yet been fully resolved is the potential for conflict or inconsistency between the Supreme Court's rulings in HUM cases and the Constitutional Court's rulings in cases involving the review of laws. If a law that serves as the subject of review in a HUM case before the Supreme Court is subsequently amended by the Constitutional Court, this may raise questions regarding the validity of the HUM ruling that was issued based on the previous version of the law. Case No. 23/P/HUM/2024, which involves the issue of age requirements for regional heads—an issue also under review by the Constitutional Court—serves as a concrete illustration of this potential overlap of authority. A more formal and structured coordination mechanism between the Supreme Court and the Constitutional Court is needed to ensure the overall coherence of the legal review system.

D. Recommendations for Strengthening the Role of the Supreme Court

Based on the analysis conducted, this article formulates several recommendations for strengthening the role of the Supreme Court in the judicial review of legislation:

1. Strengthening the HUM Decision Information System: The Supreme Court needs to establish and maintain an online, comprehensive, and structured database of HUM decisions to enhance transparency and facilitate legal research.
2. Formalizing the Coordination Mechanism Between the Supreme Court and the Constitutional Court: A regular coordination forum between the Supreme Court and the Constitutional Court is needed to discuss cases that may overlap, in order to prevent conflicting rulings that undermine legal certainty.
3. Strengthening the capacity of judges handling constitutional cases: Judges handling constitutional cases need to receive ongoing training and knowledge updates, given the complexity of the ever-evolving legal framework.
4. Evaluation of mechanisms for enforcing constitutional rulings: More effective mechanisms are needed to ensure that the Supreme Court's constitutional rulings declaring a regulation invalid are actually implemented by the competent authorities in a timely manner.

VI. Conclusion

Based on the entire analysis conducted, this article draws the following conclusions:

1. The Supreme Court plays a critical and irreplaceable constitutional role as the guardian of legality within Indonesia's system of judicial review of legal norms. The Supreme Court's authority to

conduct substantive review of regulations under the law is an essential component of the principle of the hierarchy of norms and the rule of law.

2. Supreme Court Decision No. 12/P/HUM/2024, which reviewed Presidential Regulation No. 53 of 2023, reaffirms the Supreme Court's willingness to conduct substantive reviews of executive regulatory policies, thereby strengthening the ultra vires doctrine in Indonesian administrative law.
3. Supreme Court Decision No. 23/P/HUM/2024 presents a complex constitutional dimension regarding the limits of the Supreme Court's authority vis-à-vis the Constitutional Court on issues touching on electoral rights, while also affirming the importance of consistency and legal certainty in the conduct of electoral democracy.
4. The Supreme Court's performance in 2024—with 31,000 cases filed (a 13.72% increase), 30,763 cases decided, and 96.52% resolved on time—demonstrates strong institutional capacity. These achievements serve as a crucial foundation for addressing the challenge of a continuously rising caseload.
5. Moving forward, the Supreme Court's effectiveness in reviewing legal norms can be further enhanced by strengthening the judgment information system, formalizing coordination mechanisms with the Constitutional Court, improving the capacity of judges in human rights matters, and strengthening judgment enforcement mechanisms.

Overall, in 2024, the Supreme Court has proven its capacity as the highest judicial institution—one that is effective, productive, and responsive to the legal needs of the public. However, future challenges—particularly in maintaining a balance between the speed and quality of rulings, as well as coordination with the Constitutional Court—continue to require serious attention and commitment from all stakeholders in Indonesia's legal system.

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