Refining Political Insurance: The Indonesian Context

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Abstract: While the establishment of Indonesia's Constitutional Court is traditionally viewed as an altruistic milestone for institutionalizing democracy and constitutionalism, this narrative remains unsatisfactory when scrutinized through a political science lens. This article challenges this classical understanding by asking: what were the underlying strategic rationales of political elites in empowering a judicial body to check their own power? Adopting a normative approach combined with a historical analysis of the Court's formation, this study evaluates the applicability of "political insurance" and "preserving hegemony" theories within the Indonesian context. The analysis reveals that while the notion of "preserving hegemony" is insufficient, the "political insurance" theory provides a stronger explanatory framework, albeit with a necessary caveat. Unlike the standard theory where weakened incumbent elites seek judicial protection, the Indonesian scenario illustrates that new prevailing elites, legitimized by democratic elections, instigated this empowerment. Consequently, this article argues for a refinement of the political insurance concept to include "coverage insurance" that may be utilized by any political actor during the unpredictable phases of democratic transition. Ultimately, the pragmatic objectives of these actors shaped the Court's institutional framework, manifesting a distinct form of the judicialization of politics.

Keywords: Constitutional Court; Indonesia; Political Insurance; Political Elites; Constitutional Bargaining

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A. Introduction

Many legal scholars have posited theories justifying the empowerment of Constitutional Courts to check political institutions, notably through Tom Ginsburg's "political insu-

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rance"[1] or Ran Hirschl's "preserving hegemony"[2] models. However, Indonesian practices offer a distinct interpretation of these concepts. While these theories typically posit that weakened incumbent political elites strategically empower the Constitutional Court to safeguard their security or political influence from democratic rivalries,[3] the Indonesian experience demonstrates a different pattern: the mandate to create the Court following the 2001 constitutional amendment process illustrates how nascent political elites, compelled by power struggles after democratic elections, engaged in deliberate constitutional design. Through the Third Constitutional Amendment, these elites formalized their strategic maneuvering by explicitly vesting the Court with the authority to adjudicate impeachment proceedings, thereby rendering the process more procedurally complex to preserve their power.

This article aims to explore the theoretical concepts of Ginsburg and Hirschl and examine their relevance to the historical creation of the Constitutional Court in Indonesia. It will elucidate how political practices and other events preceding the establishment of the Constitutional Court in Indonesia shaped the divergent expressions of these two theories in practice. Additionally, it will examine the most pertinent theory of the circumstances leading to the establishment of the Constitutional Court and elucidate its influence on the Court's institutional design.

This article will also present a contrasting viewpoint on the establishment of the Constitutional Court in Indonesia, often portrayed within an altruistic narrative as a "triumph" of constitutional democracy resulting from the constitutional reform between 1999 and 2002. This article contends that the altruistic narrative does not sufficiently explain the tendency of dominant political elites to "tie their own hands" with a Constitutional Court. Empirical evidence indicates that forums for constitutional change in various countries are frequently influenced by competing political interests, encompassing both long-term battles over ideology and short-term objectives related to the consolidation or preservation of elite power.[4] In the Indonesian context, such "competing political interests" are manifested in the tripartite appointment mechanism for constitutional justices stipulated in Article 24C (3) of the 1945 Constitution. This framework empowers the legislative, executive, and judicial branches to each propose three justices, a division of power intended to preclude any single branch from dominating the Court. Consequently, this design is more indicative of transactional and accommodative politics rather than a primary commitment to ensuring the Court's institutional independence.

1 Tom Ginsburg, in a comparative analysis, examined South Korea, Mongolia, and Taiwan. *Tom Ginsburg*, Judicial Review in New Democracies: Constitutional Courts in Asian Cases, Cambridge 2003, p. 23.

2 Ran Hirschl, in a comparative analysis, examined Canada, South Africa, New Zealand, and Israel. *Ran Hirschl*, Towards Juristocracy: The Origin and Consequences of the New Constitutionalism, Cambridge MA and London 2004, p. 4.

3 Ibid., See also *Ginsburg*, note 1.

4 *Ginsburg,* note 1, p. 23.

This article will consist of three sections. The initial section will delineate the political circumstances that precipitated the formation of the Constitutional Court in Indonesia, explicitly focusing on the constitutional reform processes and amendment debates. This contextual analysis is essential for elucidating the rationale behind the skepticism regarding the altruistic narrative of the Constitutional Court's establishment and for presenting an alternative viewpoint on the strategic motivations of Indonesia's political elite in instituting a balancing authority through the Constitutional Court.

The second section will succinctly delineate the principal concepts of political insurance and hegemony preservation theories and examine them within the framework of the founding of the Constitutional Court in Indonesia. This section will argue that the establishment of the Constitutional Court in Indonesia aligns more closely with the theory of political insurance than with the theory of hegemony preservation, though it exhibits a unique manifestation pattern.

The concluding section will delineate the impact of political insurance on the institutional framework of Indonesia's Constitutional Court, which possesses the authority to perform judicial reviews as well as other powers that can be interpreted as a means of enhancing the Court's role in political matters, commonly referred to as the judicialization of politics.[5]

B. The Foundational Moment: Indonesia's Constitutional Catalyst

It is essential to delineate the notable political occurrences that transpired before and during 2001 to understand the internal circumstances that led to the establishment of the Constitutional Court through the third amendment of the 1945 Constitution in that year. The principal event is the downfall of Soeharto.[6] Following the economic crisis that impacted Indonesia in 1997, a series of student protests demanding Soeharto's resignation began. The intensification of protests provoked harsh measures from Soeharto's dictatorship, evidenced by the kidnapping of pro-democracy activists and the disproportionate use of force to quell student demonstrations, leading to fatalities.[7] Soeharto's repressive actions provoked public

5 Bjorn Dressel contends that judicialization of politics is not merely an expansion of "judge made law", but rather the broad incorporation of judicial processes into political and social life. This includes social actors employing the courts for their interests, political institutions adjusting to judicial actions, and the state constructing legitimacy through the rule of law. *Bjorn Dressel* (ed.), Judicialization of Politics in Asia, London 2012, p. 4.

6 Serving as the Republic of Indonesia's second president from 1967 to 1998, Soeharto established a 32-year authoritarian rule. His power, maintained through military-bureaucratic infrastructure, ceased due to mass public pressure during the "Reform" movement. *Marcus Mietzner*, Authoritarian elections, state capacity, and performance legitimacy: Phases of Regime Consolidation and Decline in Suharto's Indonesia, International Political Science Review 39 (2018), p. 87.

7 Kontras, Kasus Penculikan Dan Penghilangan Paksa Aktivis 1997-1998: Siapa Bertanggungjawab, https://www.kontras.org/backup/buletin/indo/kontras_OK_dng_RevHal4.pdf (last accessed on 13 Desember 2024). Wiranto, the former Commander of the Indonesian National Armed Forces (*Ten-*

outrage, leading to widespread riots and conflicts, during which over 1000 individuals were killed, around 400 ethnic Chinese women and girls were raped, and shops and homes belonging predominantly to Chinese Indonesians were looted and destroyed.[8]

When Soeharto stepped down, Habibie, who serves as Vice President, replaced Soeharto as President. This action was seen as a sign of the political elite's lack of seriousness in responding to demands for reform and democratization, causing waves of demonstrations and unrest to persist, with a high potential for disintegration. Subsequently, to reduce tensions following Soeharto's resignation, the political elite-initiated amendments to the 1945 Constitution, demonstrating their genuine commitment to constitutional reform.[9]

The subsequent event was the impeachment of President Abdurrahman Wahid in 2001. Jimly Asshiddiqie, the first chief justice of the Indonesian Constitutional Court, stated that the impeachment of Abdurrahman Wahid, who came into office in 1999, catalyzed the Constitutional Court in Indonesia.[10] The impeachment of Abdurrahman Wahid transpired because of at least three factors: *Initially*, changes in the constitutional framework. During Abdurrahman Wahid's presidency, amendments to the 1945 Constitution curtailed presidential authority while simultaneously enhancing legislative supervision.[11] Most notably, the Second Amendment in 2000 introduced Article 20A, which granted the House of Representatives (*Dewan Perwakilan Rakyat,* DPR) the rights of interpellation and inquiry (*hak angket*). These constitutional mechanisms allowed the DPR to formally investigate the President and issue censure memorandums, ultimately leading to the Special Session of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat,* MPR) that revoked his mandate.

Second, the aspect of a fragile coalition. After Soeharto's resignation in 1998, Indonesia promptly initiated preparations for democratic elections. As a result, President Habibie enacted Law Number 2 of 1999 regarding General Elections.[12] This legislation significantly transformed Indonesia's political landscape by permitting all citizens to form political parties, a practice that was prohibited during Soeharto's regime. This legislation enabled the

tara Nasional Indonesia, TNI) in 1998, claimed in this report that the kidnapping of pro-democracy activists was executed and orchestrated by General Prabowo Subianto, now the Indonesian President.

8 *Himawan Eunike Mutiara / Annie Pohlman / Winfred Louis*, Revisiting the May 1998 Riots in Indonesia: Civilians and Their Untold Memories, Journal of Current Southeast Asian Affairs 41 (2022), pp. 242-243.

9 *Jakob Tobing*, The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum. A Socio-Legal Study, Doctoral Thesis Leiden University 2023, p. 165.

10 *Susi Dwi Harijanti / Tim Lindsey*, Indonesia: General Elections Test the Amended Constitution and the New Constitutional Court, International Journal of Constitutional Law 4 (2006), p. 147.

11 *Rosa Ristawati*, Modelling Executive Powers in the Indonesian Constitution: A Comparative Study of Constitutions*,* Doctoral Thesis Maastricht University 2017*,* p. 15.

12 Habibie, the serving Vice President during the Soeharto regime, assumed the Presidency following the latter's resignation.

active involvement of 48 political parties in the inaugural general election after President Soeharto's resignation.[13]

The first general election after the collapse of the Soeharto regime resulted in fragmentation among political parties within the DPR, leading to no single party obtaining a majority. The Indonesian Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan*, PDIP), led by Megawati Soekarnoputri and acknowledged as the main opposition to Soeharto, emerged victorious in the election by securing 154 out of 462 seats in the DPR, representing the highest seat count in the DPR.[14] The Golkar Party, linked to Soeharto, has successfully achieved the second position with 120 seats and is anticipated to nominate Habibie as its presidential candidate.[15] During this period, the President was elected by the MPR, which is primarily composed of members from the DPR, rather than by the general populace.[16] The absence of a single party commanding a majority in the MPR, coupled with the indirect presidential election mechanism, gave rise to significant constitutional implications: specifically, the necessity for political parties to build coalitions to secure the presidency. This dynamic meant that a party lacking a parliamentary majority could still capture the executive leadership, provided it could mobilize a coalition whose combined seat count surpassed that of the legislative election's plurality winner.

The political and constitutional context during that period positioned Megawati and Habibie as the most viable candidates for the presidency. To hinder Habibie and Megawati from securing victory in the presidential election within the MPR, Amien Rais, leader of the National Mandate Party (*Partai Amanat Nasional*, PAN), formed a central axis coalition of five Islamic parties including the National Awakening Party (*Partai Kebangkitan Bangsa*, PKB), the United Development Party (*Partai Persatuan Pembangunan*, PPP), the Justice Party (*Partai Keadilan*, PK), and the Crescent Moon and Star Party (*Partai Bulan Bintang*, PBB), to secure the presidency for Abdurrahman Wahid, a politician linked to the PKB.[17] As a result, the central axis secured 163 seats, surpassing the PDIP, which obtained only 154 seats, and successfully secured Abdurrahman Wahid's election as president. However, although it consisted of Islamic parties, the central axis coalition exhibited a pragmatic and fragile quality. The main aim was to impede the leading presidential

13 See General Election Commission, Pemilihan Umum Tahun 1999, https://www.kpu.go.id/page/read/11/pemilu-1999 (last accessed on 4 May 2025).

14 Ibid.

15 Ibid.

16 The original 1945 Constitution, Article 6(2), reads: "The President and Vice-President shall be elected by the People's Consultative Assembly by a majority vote."

17 PKB failed to achieve significant electoral success, obtaining a comparatively small number of 51 seats in the DPR. See General Election Commission, note 13. See also *Verelladevanka, Widya Lestari*, Poros Tengah: Latar Belakang, Tujuan, Hasil, dan Akibat, 7 March 2022, Kompas, https://www.kompas.com/stori/read/2022/03/07/100000079/poros-tengah-latar-belakang-tujuan-hasil-dan-akibat#, (last accessed on 4 May 2025).

contenders of that time: Habibie, linked to the Soeharto administration, and Megawati Soekarnoputri, the head of PDIP and a female candidate.[18]

Third, Abdurrahman Wahid's confrontational behavior often led to complications both with the opposition and among his own supporters at the central axis.[19] As a result, the emergence of two financial scandals involving his close associates prompted the opposition to call a Special Session of the MPR, which ultimately led to the removal of Abdurrahman Wahid from the presidency and his subsequent replacement by Megawati.[20]

During Megawati's administration, she and the PDIP voiced concern about the possibility of events similar to those faced by Abdurrahman Wahid, which affected governmental stability.[21] Consequently, PDIP proposed a mechanism to avert the recurrence of the Abdurrahman Wahid crisis by establishing a more stringent impeachment process and integrating a Constitutional Court into this framework.[22] Megawati and PDIP's concern is apparent in the third amendment to the 1945 Constitution, which stipulates that impeachment can no longer be executed solely for political motives but only in instances of legal transgressions by the president. Additionally, it includes provisions that underpin the formation of the Constitutional Court, which possesses the authority to adjudicate alleged legal infractions by the president in impeachment proceedings.[23]

C. Two Logics of the Establishment of Constitutional Court: Insurance vs. Hegemony

I. Competing Frameworks for Judicial Politics

Certain legal scholars have attempted to identify and analyze the factors that facilitate the formation of Constitutional Courts. Dixon and Ginsburg, who examined the establishment of constitutional courts in East Asia, argued that these courts' creation in countries undergoing democratic transitions served as "political insurance" for the incumbent elites, preparing them for future political uncertainties, including the risk of losing post-transition elections.[24] Political insurance refers to the notion that incumbent elites may employ con-

18 The central axis's formation was significantly influenced by gender, given that women were considered ineligible for the Presidential office during that period. See *Aryo Putranto*, Napak Tilas Poros Tengah Yang Usung Gus Dur di Pemilihan Presiden 1999, Kompas, 24 July 2022, https://nasional.kompas.com/read/2022/07/24/10000081/napak-tilas-poros-tengah-yang-usung-gus-dur-di-pemilihan-presiden-1999?page=all, (last accessed on 4 May 2025).

19 *Ristawati*, note 11, pp. 149–150.

20 Ibid.

21 *Blair King*, Empowering the Presidency: Interests and Perceptions in Indonesia's Constitutional Reforms, 1999-2002, Doctoral Thesis of The Ohio State University 2004, p. 116.

22 *Stefanus Hendrianto*, Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes: Comparative Constitutionalism in Muslim Majority States, New York 2018, p. 45.

23 See Article 7A and 7B of the 1945 Constitution

24 *Rosalind Dixon* / *Tom Ginsburg*, The Forms and Limits of Constitutions as Political Insurance, International Journal of Constitutional Law 15 (2017), p. 989.

stitutions, particularly constitutional judicial review, as a protective measure against the potential loss of office and influence in impending democratic elections.[25] Fundamentally, this perspective offers an alternative framework to explain the necessity of an independent judiciary within the constitutional architecture, moving beyond the traditional moral or normative understanding. The political insurance theory conceptualizes judicial independence as the outcome of a deliberate political strategy in institutional design, one intended to create a reliable mechanism for upholding constitutional norms during democratic transitions, even amidst the volatility of power turnovers.

Ginsburg elucidates the rationale for the reigning political elite's pursuit of "insurance" during a democratic transition. He contends that in nations experiencing the emergence of democracy, the incumbent elites may be apprehensive about the implications of constitutionalization.[26] This process is intended to restrict and allocate authority to avoid the concentration of power in a singular actor or institution. Moreover, as argued by Dixon and Ginsburg, the incumbent elites are concerned that the anti-democratic actions they previously enacted may provoke retribution from the newly elected ruling elites emerging from the democratic process. Consequently, their "insurance" can manifest in several forms, such as establishing independent agencies or augmenting judicial power to prevent political exclusion or the persecution of previous leaders, which may also arise from coups or popular uprisings.[27]

Dixon and Ginsburg delineate three categories of political risk that political actors endeavor to "insure" by institutionalizing judicial review within courts:[28]

1. the risk of losing or shrinking political power, especially the potential erosion of a strong political position;
2. the risk of declining political influence in the development of public policy;
3. the potential of individual persecution as retribution by the new rulers or the political elite against members of the former political elite.

In light of the three aforementioned risks, Dixon and Ginsburg elucidate that two insurance models are often institutionalized: *first*, is power and personal protection insurance.

25 Ibid.

26 Constitutionalization is the process of formulating norms, regulating institutional forms, mechanisms, and interactions into a constitution, thereby rendering these incorporated mechanisms justiciable (enforceable by courts). This process is applicable to various themes, including the constitutionalization of politics, democracy, or individual rights. See *Tom Ginsburg / Mila Versteeg*, The Constitutionalization of Democracy, Journal of Democracy 34 (2023), pp. 36-37. *Pawel Laidler / Dariusz Stolicki / Łukasz Jakubiak / Jacek Sokołowski (eds.)*, Constitutionalization of Politics in Comparative Perspectives, New York 2025, p. 2. See also *Ran Hirschl*, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolution, Law and Social Inquiry 25 (2000), pp. 192-193.

27 *Dixon / Ginsburg*, note 24, p. 993.

28 Ibid., pp. 995–996.

They observe that in unstable democratic settings, authorities tend to manipulate electoral procedures to the degree that repressive tactics are utilized to marginalize and exclude rival groups. This manipulation, including electoral fraud, frequently relies on corrupt patron-client relationships. Incumbent elites perceive this repressive dynamic as a threat that emerging dominant elites may wield against them, particularly by exploiting criminal law to suppress the former and eliminate them from the competitive arena.[29]

Secondly, policy insurance. During the democratic transition, the incumbent elites typically express concerns regarding their potential erosion of power or defeat in legislative contests, as well as the loss of authority over the bureaucracy, local governance, or the courts. Consequently, they perceive a need for safeguards to challenge policy decisions made by newly emerging political elites, particularly those related to social democracy, market regulation, secularism, and religious law.[30] Therefore, to establish both models of insurance, incumbent elites typically delegate authority to the judiciary to conduct judicial reviews, safeguard human rights, and guarantee the democratic conduct of elections while preventing fraud.

In line with Ginsburg and Dixon, Hirschl proposed the "preserving hegemony" thesis, asserting that the institutionalization of judicial review and the enhancement of the judiciary arise from the incumbent political elite's awareness in a democratic regime of the potential for future resistance.[31] Hirschl posits that preserving hegemony, constitutionalization, and judicial review provide a cohesive framework that mitigates the diminishing power of dominant political entities.[32] During periods of weakening, incumbent elites attempt to entrench policies, values, or ideologies they consider significant within the Constitution, supplemented by the establishment of a constitutional court to safeguard these elements. This action will render future political figures incapable of readily altering the policies, beliefs, or ideologies enshrined in the Constitution.[33] This strategy seeks to compel the new dominant political elite to adhere to constitutional mandates. Furthermore, if the new elite fails to comply, the diminished political elite, now a minority, can challenge this noncompliance through judicial review in court.

Political insurance and the preservation of hegemony are conceptual frameworks derived from analyzing nations undergoing a constitutional moment, which leads to changes

29 Ibid., p. 995.

30 Ibid., p. 996.

31 Hirschl developed his theory based on a comparative analysis of political competition in four jurisdictions: Israel, Canada, New Zealand, and South Africa. See *Hirschl*, note 2, p. 4. See also *Ran Hirschl*, Preserving Hegemony? Assessing the Political Origins of the EU Constitution, International Journal of Constitutional Law 3 (2005), p. 281.

32 Constitutionalization, as conceptualized by Hirschl, involves the entrenchment of norms within a written constitution to achieve the dual goals of power limitation and the protection of human rights. Ibid., p. 269.

33 *Hirschl,* note 31, p. 282.

in the political landscape and constitutional amendments.[34] Both ideas suggest that weakened incumbent elites have strategically maneuvered to mitigate potential future political losses, given the uncertainties surrounding the fight for power dominance in the democratic era. This suspicion is grounded in actual evidence indicating that the creation of constitutions is consistently influenced by the immediate interests of political elites, rather than reflecting the long-term interests of the general populace.[35] Consequently, these two theories fundamentally view judicial review and constitutional courts as political entities serving the interests of the incumbent elite, while explaining why a Constitutional Court generally possesses additional powers with significant political implications. These two arguments form the basis for the intersection of these ideas.

Despite sharing the same argumentative ground, these two theories display substantial variations that influence their conceptualization of the Constitutional Court's institutional character. Ginsburg, through their political insurance theory, interprets judicial review and constitutional courts as mechanisms created by incumbent elites in authoritarian regimes to prevent retaliatory measures from newly dominant political elites following democratic elections. The greater the potential erosion of the incumbent elite's authority in an authoritarian government, the more likely it is to confer substantial independence to the court.[36] Ginsburg contend that an autonomous court will evolve into an institution less vulnerable to the sway of emerging dominant elites, thereby enhancing its capacity to safeguard the interests of incumbent political leaders equitably.[37] Despite its beginnings as a politically pragmatic movement, this theory offers an optimistic view of the role of constitutional courts in democratic consolidation due to Ginsburg's belief in the high potential of an independent judiciary.

Conversely, Hirschl, through his theory of hegemony preservation, posits that judicial review and constitutional courts emerge from elite struggles for influence and authority inside the democratic sphere.[38] Hirschl posits that the implementation of judicial review or the establishment of a Constitutional Court does not necessarily need to follow the collapse of authoritarian governments or concerns regarding the transition to democracy. He posits that democracy inherently contains uncertainty about the persistence of elite dominant positions. It is because democracy necessitates a contestation of ideas that facilitate regular

34 A constitutional moment is a catalytic condition marked by widespread public discussion of constitutional questions, which subsequently initiates constitutional change. *Bruce Ackerman*, We the People, Volume 3: The Civil Revolution, Cambridge MA; London 2014, p. 45.

35 Ginsburg rejects the notion that judicial review exclusively serves the broader societal interest, arguing instead that it results from an intersection of societal and elite political interests. See *Ginsburg,* note 1, p. 23.

36 Ibid., pp. 26-27.

37 Ginsburg argues that the character of constitutional court decisions is not static, such as consistently favoring a single group, but is continuously negotiated through dialogue with other branches of state power. Ibid., p. 30.

38 *Hirschl,* note 2, p. 99.

shifts in dominance, exemplified by elections, a phenomenon Hirschl refers to as electoral uncertainty.[39]

In the face of uncertainty, weakened incumbent elites will entrench their interests within the constitution, designating the constitutional court as the protector of such interests. Hirschl expresses skepticism over the constitutional court's potential to evolve into an autonomous institution. He asserts that, empirically, constitutional courts typically render decisions that safeguard the interests of the elites that constitute them for two reasons. *First*, constitutional court judges typically align with the political ideologies of the elites who appointed them.[40] This predicament reflects the procedure for appointing judges, which is unlikely to be devoid of the interests of the incumbent elites.[41] *Secondly*, institutionally, the constitutional court remains reliant on political entities, particularly over budgetary allocations and the enforcement of judicial rulings.[42] Hirschl posits that these two factors will lead the court to demonstrate "restraint" in rendering decisions that may provoke conflict with political institutions. Consequently, Hirschl contends that the existence of a constitutional court will not favorably influence the consolidation of democracy.[43]

In sum, the two theories mentioned above outline the rationale behind the establishment of a constitutional court. The political insurance thesis posits that a court is created by weakening incumbent elites during democratic transitions to safeguard their power, policy interests, and personal safety against future electoral loss. Thus, it views independent courts as an optimistic safeguard for democratization. Conversely, the preserving hegemony model argues that courts are empowered to maintain the dominant ideas and influence of the founding political actors, even in stable democracies, and see the constitutional process as a power struggle. Consequently, this theory holds a pessimistic view, expecting the institution to remain partisan and lack true independence, ultimately serving the interests of the political elites who shaped its creation.

II. Indonesia's Case: Testing Insurance Against Hegemony

However, the Constitutional Court of Indonesia was established with insufficient representation of the aforementioned theories. Hirschl's idea of hegemony preservation is predominantly observed in consolidated democracies, such as Canada, South Africa, and Israel. This model requires two conditions: a stable democracy and the efforts of incumbent elites to maintain existing policies, values, or ideologies enshrined in the constitution, driven by their fear of potential future power diminishment. The establishment of the

39 Ibid., p. 41.

40 Ibid., p. 99.

41 *Adam Bonica / Maya Sen*, The Judicial Tug of War: How Lawyers, Politicians, and Ideological Incentives Shape the American Judiciary, Cambridge 2021, p. 27.

42 *Hirschl,* note 2, pp. 211-212.

43 Ibid., p. 218.

Constitutional Court in Indonesia failed to meet these two prerequisites. Upon its establishment in 2001, Indonesia's democratic state was not ideal, having recently emerged from Soeharto's authoritarian government and still striving to identify a suitable governance model for constitutional democracy. The notion of constitutional democracy, along with the diverse mechanisms and institutions effectively incorporated into the 1945 Constitution, did not originate from the awareness of contemporary political leaders within the legislative institution. Instead, it arose from the demands of the civil society movement to prevent the resurgence of authoritarianism.[44]

The transitional period to democracy during the establishment of the Constitutional Court in Indonesia is especially relevant when examined through Ginsburg's concept of political insurance. In his dissertation, Simon Butt gives an argument comparable to this one. He claimed that the considerable political uncertainty surrounding the 1945 Constitution amendment from 1999 to 2002 created a political environment favorable to establishing a constitutional court as a form of political insurance. Nevertheless, Simon Butt declines to claim that the political insurance theory sufficiently explains the establishment of Constitutional Courts in Indonesia, citing three deficiencies:

1. The political insurance theory necessitates that political elites comprehend the notion and ramifications of judicial review. This requirement is unmet in Indonesia because the political elites lack sufficient comprehension of judicial review and its ramifications, which stems from the absence of this institution in the Indonesian constitutional framework. While the Supreme Court possesses judicial review jurisdiction, this power is not designed to evaluate legislation, but rather to examine subordinate rules. The application of judicial review has been rare owing to the New Order regime's stringent control over the judiciary.[45]
2. The notion of political insurance necessitates the presence of competent judges within the state to safeguard the political interests of the incumbent elites. Delegating autonomous authority to institutions with inept judges may jeopardize the political interests of the incumbent elites. Butt argues that the circumstances in Indonesia at the time of the constitutional court's establishment did not fulfil these criteria. He asserted that the initial cohort of constitutional judges comprised "second-class" legal experts.

44 Denny Indrayana observes that initially, the MPR was uncertain about the direction of the 1945 Constitutional changes. This uncertainty led to the formulation of five guiding principles for the amendment: retaining the preamble, the unitary state, and the presidential system; formalizing the democratic rule of law (from the Elucidation) within the articles; and prioritizing amendment over new drafting. The MPR then appointed a Constitutional Commission of academics to conduct studies and identify necessary institutional changes. *Denny Indrayana*, In Search For A Democratic Constitution: Indonesian Constitutional Reform 1999 – 2002, Jurnal Media Hukum 17 (2010), p. 117.

45 *Simon Butt*, Judicial Review in Indonesia: Between Civil Law And Accountability? A Study of Constitutional Court Decisions 2003-2005, Doctoral Thesis of The Department of Law, University of Melbourne 2006, p. 44.

This claim arises from their lack of judicial experience, the absence of constitutional justices with academic credentials from leading state universities in Indonesia, and their limited scientific publications.[46]

3. Political insurance theory requires incumbent elites to comprehend and prepare for anticipated political losses due to the uncertainties inherent in the political landscape. Simon Butt asserts that, prior to June 2004, there were no decisions from the Constitutional Court that might be construed as beneficial to the political elites who created it. In the 465 cases concerning the execution of the 2004 general election, no decisions from the Constitutional Court advantageous to the founding political elites were noted, illustrating the court's significant autonomy.[47]

Simon Butt's three arguments are arguably reductive, in evaluating the understanding of Indonesian political elites and legal scholars regarding judicial review. They also indicate that his interpretation tends to underspecify the assurance that Indonesian political elites seek through the creation of the Constitutional Court. Three principal arguments can be articulated to counter Butt's assertions as follows: *First,* the political elite in Indonesia possesses a thorough comprehension of judicial review. The political elites of Indonesia have participated in discussions regarding judicial review since the establishment of the 1945 Constitution, within the Investigating Committee for Preparatory Work of Independence (*Badan Penyelidik Usaha Persiapan Kemerdekaan,* BPUPK) in 1945.[48] This discourse continued despite the limitations enforced by the authoritarian governments of Soekarno and Soeharto, ultimately leading to the formal acknowledgment of judicial review jurisdiction by the Supreme Court, albeit semantically, through Law No. 14 of 1970.[49]

The insufficiency of judicial review authority in the Supreme Court does not justify the claim that Indonesian political elites or intellectuals lack understanding of the concept and ramifications of judicial review. Conversely, the political elite, especially advocates of the authoritarian regime, understand the ramifications of judicial oversight, which could

46 Ibid., p. 45.

47 Among the cases examined by Simon Butt is the 2004 election dispute involving presidential candidate Wiranto (of the Golkar Party, a powerful faction when the Court was established). In this specific instance, the Constitutional Court dismissed Wiranto's petition. Ibid., p. 48.

48 BPUPK, known in Japanese as *Dokuritsu Junbi Chōsakai*, was a committee formed by the Japanese Occupation Army Government in the Dutch East Indies to formulate the constitution of independent Indonesia. The institution's establishment manifested Japan's promise to grant Indonesia independence in exchange for Indonesian assistance against the Allies in World War II. *Sutrisno Kutoyo*, Prof. H. Muhammad Yamin, S.H, Jakarta 1981, p. 71.

49 Judicial review by the Supreme Court is considered semantic because it involves reviewing subordinate regulations against existing laws, rather than assessing laws against the Constitution. Consequently, it lacks the ability to function as a political power-balancing mechanism. See Article 26 of Law Number 14 of 1970 Regarding the Basic Provisions of the Judiciary.

limit their power, and hence typically avoid it.[50] Similarly, when the third amendment to the 1945 Constitution addressed the establishment of a constitutional court. Political elites discussed where the power to review legislation should reside: in the MPR, which stands for popular sovereignty, or in the judiciary, either by establishing a constitutional court that is equal to the Supreme Court or by creating a specialized chamber under its jurisdiction.[51] A substantial discussion on this issue seems unlikely unless Indonesia's political elite understands the concept and implications of judicial review, particularly its impact on the branches of political power.

Secondly, while not all constitutional judges from the inaugural generation of the Constitutional Court were scholars affiliated with the top-tier public universities identified by Simon Butt, evaluating their expertise solely based on their teaching institutions appears to be an insufficient metric for assessment.[52] For example, Judge Laica Marzuki, although not affiliated with a prestigious public university, is clearly a constitutional law expert, having served as a Supreme Court Justice from 2000 to 2003, which underscores Marzuki's legal expertise.[53]

Assessing expertise through scientific publications may yield inaccurate conclusions, particularly because the Soeharto regime-imposed restrictions on academic freedom, including within the field of constitutional law. At that time, the Indonesian higher education system did not recognize scientific publications as a measure of expertise.[54] Academics from prominent public universities in Indonesia are given civil servant status. This status led to an increase in administrative responsibilities and the potential assignment to bureaucratic roles within government institutions beyond higher education.

Third, among 465 cases concerning the implementation of the 2004 general election, Butt identified no rulings that favored the political elite responsible for establishing the constitutional court.[55] This finding refutes the assertion that the constitutional court serves as a political safeguard for the elites who established it. A more nuanced reading of Ginsburg's theory might suggest a different conclusion than the one offered by Butt. The very absence of Constitutional Court decisions favoring the establishing elites in the 2004 election actually manifests the political insurance theory's tenets. This theory demands the constitutional court to be an insurance mechanism present in the form of an independent institution, particularly concerning the conduct of general elections to prevent manipulation, as was historically characteristic of the authoritarian era.[56] Consequently, the

50 *Sebastiaan Pompe*, The Indonesian Supreme Court: A Study of Institutional Collapse, New York 2005, pp. 78-79.

51 *Tobing*, note 9, p. 282.

52 Based on an interview with Prof. Bagir Manan (former Chief Justice, Indonesian Supreme Court), August 18, 2025.

53 Ibid.

54 Ibid.

55 *Butt,* note 45, p. 48.

56 See *Ginsburg,* note 1, p. 30. See also *Dixon* / *Ginsburg,* note 24, p. 995.

lack of Constitutional Court rulings that benefited its establishing political elites during the general election further reflects the close alignment of the court's establishment practice in Indonesia with the political insurance theory.

III. Refining Insurance: Indonesia's Empirical Contribution

Ginsburg's theory posits that the creation of the constitutional court is undertaken by "weakened" incumbent elites to avert further political losses during the democratic era. The assumption is not evident in the context of the establishment of the Constitutional Court in Indonesia. The elites of the Golkar Party and the Faction of Indonesian National Military Forces and Indonesian Police (*Fraksi Tentara Nasional Indonesia/Kepolisian Republik Indonesia*, F-TNI/Polri) within the MPR, who wielded power during Soeharto's regime and confronted potential political losses in the democratic era, consistently resisted the formation of the Constitutional Court.[57]

The Golkar Party and the F-TNI/Polri were two significant factions within the MPR that former President Soeharto utilized to sustain his authoritarian regime for more than 32 years.[58] Despite Soeharto's resignation in 1998, these factions retained considerable influence in 1999. In the 1999 general election, the Golkar Party obtained 120 seats, positioning it as the second-largest party following the PDIP, which achieved 154 seats. The F-TNI/Polri appointed by the President retained 38 seats during this period. The Golkar Party and F-TNI/Polri collectively held 158 seats, thereby providing "Soeharto's era political machines" with more seats than the PDIP, despite the latter's electoral success.

However, the rejection was executed not solely by the Golkar Party and the F-TNI/Polri, but also by the majority of MPR members, including the victorious party in the 1999 general election, the PDIP led by Megawati, which originated as an opposition movement against Soeharto's authoritarian regime.[59] The majority of MPR members seek to preserve the existing framework, wherein judicial review is conducted exclusively by the Supreme Court and applies only to administrative regulations that are subordinate to laws. This group opposes the concept of judicial review and the establishment of a Constitutional Court, arguing that Indonesia ought to maintain parliamentary supremacy.[60]

The shift in the stance of most MPR members on establishing the Constitutional Court occurred after the dismissal of President Abdurrahman Wahid in 2001. Megawati

57 *Hendrianto,* note 22, p. 50.

58 Soeharto effectively secured his political strength in the MPR by leveraging the support of F-Golkar and F-TNI/Polri, augmented by his control over the chamber's non-elected seats. These seats included Functional Group Representatives (representing community interests) appointed by him, and Regional Representatives elected by the Provincial Regional Representative Council (*Dewan Perwakilan Rakyat Daerah Tingkat I, DPRD I*), who functioned as an extension of the executive's local authority. See *Tobing,* note 9, p. 90.

59 *Hendrianto,* note 22, p. 46.

60 *Tobing,* note 9, p. 284.

Soekarnoputri, who succeeded Abdurrahman Wahid in the presidency, expressed apprehension about the possibility of a similar outcome.[61] Thus, Megawati sought to modify the procedure for presidential dismissal in the 1945 Constitution, substituting it with a more stringent mechanism. This interest is embedded in a comprehensive academic framework aimed at purifying the presidential system, where the president may only be removed from office during their term for legal violations, not for political reasons alone.[62]

In light of that story, the President's dismissal procedure was established with strict and restrictive conditions applicable only to treason against the state, corruption, bribery, other serious crimes, misdemeanors, or if it can be proven that the President or Vice President is no longer qualified.[63] As an expression of the rule of law, the MPR also included the Constitutional Court's engagement in the procedural side to decide on claims of legal infractions by the President.[64]

However, even if the Constitutional Court finds that the President or Vice President has committed legal violations, it cannot sanction them. The 1945 Constitution grants the MPR the power to administer such punishment. Consequently, the Constitutional Court's ruling must be presented to the DPR, which will commence the trial process in the MPR to determine whether the President or Vice President should be removed from office during their term. Thus, the Constitutional Court may find the President and/or the Vice President guilty of a legal breach, but the MPR may not remove them from office.[65] Political decisions in the MPR can override Constitutional Court decisions. The design of this impeachment procedure shows that, although the Constitutional Court serves as a judicial forum, impeachment remains a political process.[66] Thus, although the Constitutional Court's involvement in this matter can be interpreted as a manifestation of the idea of the rule of law, the final decision resting with the MPR also shows that the Constitutional Court's involvement, in this case, is merely to complicate the process of presidential dismissal as a form of political insurance.

Under this impeachment process, no President has been referred by the DPR to the Constitutional Court for purported legal infractions. Indeed, allegations of legal violations or corruption scandals involving the President or the President's family have occurred multiple times. For instance, such allegations include the alleged gratification involving President Susilo Bambang Yudhoyono's family,[67] or the scandal of the misuse of the

61 *Hendrianto,* note 22, p. 48.

62 *Indrayana,* note 44, p. 117.

63 Article 7A of the 1945 Constitution.

64 Article 7B of the 1945 Constitution.

65 *Bertus De Villiers / Saldi Isra / Pan Mohamad Faiz*, Courts and Diversity: Twenty Years of the Constitutional Court of Indonesia, Leiden 2024, p. 83.

66 *Pan Mohamad Faiz / Muhammad Erfa Redhani*, Analisis Perbandingan Peran Kamar Kedua Parlemen Dan Kekuasaan Kehakiman Dalam Proses Pemberhentian Presiden, Jurnal Konstitusi 15 (2018), p. 254.

67 *Simon Butt,* The Constitutional Court and Democracy in Indonesia, Leiden 2015, p. 105.

social assistance fund by President Joko Widodo to favor Prabowo Subianto's candidacy in 2024 presidential election.[68] However, in those cases, no political party initiated the impeachment process.

Further, reinforcing the notion that the establishment of the Constitutional Court constituted a form of political insurance is that the provision concerning the Constitutional Court's role in the impeachment mechanism resembles a blank cheque, as the relevant articles about the institutional design and the authority of the Constitutional Court itself were not discussed or approved during the drafting of the impeachment article.[69] The discourse on the institutional design and authority of the Constitutional Court was undertaken following the approval of the impeachment provision.

Thus, the establishment of the Constitutional Court in Indonesia was primarily motivated by the desire to ensure that Megawati could fulfill her presidential term without the risk of dismissal by the MPR, rather than by the intention to institutionalize judicial review. Consequently, the political insurance associated with the establishment of the Constitutional Court in Indonesia exhibits a distinct pattern compared to Ginsburg's argument. In Indonesia, political insurance was not instigated by incumbent elites prior to the democratic era; instead, it was shaped by those who emerged from elections during the democratic transition. Thus, Ginsburg's concept of political insurance manifests in Indonesia with unique characteristics and subtleties.

D. Beyond Review: Political Insurance and Indonesia's Expansive Mandate

The Constitutional Court was established not only to provide Megawati with political security for her presidency until the end of her term, but also to incorporate additional political safeguards within its jurisdiction. Several political actors within the MPR have effectively integrated alternative forms of political insurance, which consequently shaped the institutional design of the Constitutional Court. These forms include "policy insurance" via judicial review, which notably offered personal protection for the military faction against retroactive human rights laws, and "institutional insurance" for nascent democratic elites, secured through the Court's specific authorities to adjudicate political party dissolutions and election disputes.

On 8 November 2001, the MPR reached a consensus on the design of the Constitutional Court, which received approval from all factions within the MPR. The Constitutional Court's institutional framework comprises:[70]

68 See dissenting opinion from Judge Saldi Isra, Judge Eni Nurbaningsih, and Judge Arief Hidayat, in The Constitutional Court Decision Number 2/PHPU.PRES-XXII/2024, dated 17th April 2024.

69 *Hendrianto,* note 22, p. 49.

70 Mahkamah Konstitusi Republik Indonesia, Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Jakarta 2010, pp. 588-589. See also *Tobing,* note 9, p. 298. The institutional framework for Indonesia's Constitutional Court is explicitly delineated in Article 24C of the 1945 Constitution.

1. The judicial power is exercised by the Supreme Court and the judicial bodies under it, which include general courts, religious courts, military courts, and administrative courts, as well as a Constitutional Court;
2. The Constitutional Court must be granted the authority as the first and final court whose decisions are final and binding to reviewing laws against the Constitution, resolve disputes over the authority of state institutions granted by the Constitution, decide on the dissolution of political parties, and resolve disputes over election results;
3. The Constitutional Court is obligated to provide an opinion at the request of the DPR regarding alleged constitutional violations committed by the President and/or Vice President as regulated in the Constitution;
4. The Constitutional Court has nine constitutional judges appointed by the President, with three proposed by the President, three by the Supreme Court, and three by the DPR;
5. The Chief Justice and Deputy Chief Justice of the Constitutional Court are elected by and from among the constitutional judges;
6. To be able to become a constitutional judge, every person must have a statesmanlike attitude who has a command of the Constitution, understand the constitution and state administration, be a person of integrity and impeccable character, and not currently hold a position as a state official;[71]
7. The appointment and dismissal, as well as the requirements to become a constitutional judge, will be further regulated by law.

The authority responsible for adjudicating laws against the constitution indicates that this represents a policy insurance mechanism proposed by political elites following democratic elections. This power will ensure that all legislation aligns with the values and programs articulated in the Constitution, reflecting the principle of constitutional supremacy. However, the existence of the judicial review authority also signifies personal insurance for the old political elite (Soeharto regime loyalists), including the military group in the MPR at the time. This faction initially opposed the establishment of a Constitutional Court. Subsequently, this position shifted when the military faction reportedly influenced the MPR leaders to incorporate provisions on human rights guarantees, particularly the right against prosecution under retroactive laws, as a non-derogable right. This aspiration was later approved for incorporation into Article 28I of the 1945 Constitution. This provision is deemed essential to safeguard the judicial process for military personnel accused of human

71 A statesmanlike attitude is characterized by a respected and experienced political or government figure who demonstrates wisdom in state management and prioritizes the public interest above personal or factional concerns. *Saldi Isra*, Upaya Menyelamatkan Mahkamah Konstitusi, 3 February 2017, https://www.saldiisra.web.id/index.php/tulisan/artikel-koran/11-artikelkompas/629-upaya-menyelamatkan-mk.html (last accessed on 6 May 2025).

rights violations during Soeharto's authoritarian regime, by enhancing the protection of these rights through the establishment of judicial review in the Constitutional Court.[72]

Meanwhile, the existence of political insurance for new political elites arising from democratic general elections manifest in two additional authorities of the Constitutional Court. *First*, the authority to adjudicate on the dissolution of political parties. Indonesia has a history of dissolving political parties without judicial scrutiny. Soekarno disbanded the Indonesian Socialist Party (*Partai Sosialis Indonesia*, PSI) and the Masyumi Party,[73] whereas Soeharto consolidated religious parties into the United Development Party (*Partai Persatuan Pembangunan*, PPP) and nationalist parties into the Indonesian Democratic Party (*Partai Demokrasi Indonesia*, PDI).[74] This history indicates a violation of the constitutional guarantee of freedom of association and assembly, which has been in place since the adoption of the first version of the 1945 Constitution. The involvement of the Constitutional Court is expected to complicate the dissolution of political parties, primarily to protect the political interests of the elite and to uphold the rights of freedom of association and assembly for all individuals.[75]

Second is the authority to resolve disputes regarding election outcomes. Soeharto's authoritarian regime did not conduct elections democratically. Soeharto employed multiple military-bureaucratic apparatuses to strengthen Golkar as his political machine to secure electoral victories and maintain the presidency for 32 years.[76] Consequently, although there were three participants in general elections (PPP, Golkar, and PDI), Golkar consistently secured victory.[77] This situation prompted the establishment of guaranteed principles for organizing democratic general elections, as outlined in Article 22E of the 1945 Constitution, and the empowerment of the Constitutional Court in adjudicating disputes regarding general election outcomes.[78]

72 Tim Lindsey and Simon Butt, however, contend that there is insufficient evidence to substantiate this claim, see *Butt,* note 44, p. 49.

73 See Presidential Decree No. 200 Year 1960 Regarding the Dissolution of Masyumi Party, and Presidential Decree No. 201 Year 1960 Regarding the Dissolution of Indonesian Sosialis Party. See https://peraturan.bpk.go.id/Details/150794/keppres-no-200-tahun-1960, and https://jdih.setkab.go.id/PUUdoc/11564/Keppres2011960.htm (last accessed on 1 December 2024).

74 *Andreas Ufen*, Party Presidentialization in Post-Suharto Indonesia, Contemporary Politics 24 (2018), p. 2.

75 See Article 28 of the 1945 Constitution: "Freedom of association and assembly, expressing thoughts verbally, in writing, and so on is determined by law."

76 *Mietzner,* note 7.

77 Although Golkar served as the primary electoral vehicle in general elections, it was not legally defined as a political party during this period. The Soeharto administration capitalized on this status by barring civil servants from party membership and requiring them both to join and cast their vote for Golkar, see Ibid, pp. 86-87.

78 Article 22E(1) of the 1945 Constitution states that elections must be conducted based on the principles of direct, general, free, secret, honest, and fair, held every five years.

Meanwhile, the 1945 Constitution restricts the Constitutional Court's jurisdiction to disputes regarding election results.[79] The word "result" implies a restricted grammatical interpretation, confining the Constitutional Court's authority to the quantitative assessment of errors in vote tallying by election officials. Consequently, this clause designates the Constitutional Court as the "Calculator Court".[80] The Constitutional Court addressed its limited authority in resolving electoral disputes through Decision Number 41/PHPU.D-VI/2008, which pertained to the regional head election results in East Java Province. The Constitutional Court ruled that a recount of the voting results will never alter the election outcome if there is a structured, systematic, and massive violation of democratic principles, as fraud can occur both before and during the vote-counting process. Therefore, the Constitutional Court asserted its jurisdiction to evaluate the procedure or quality of election administration, provided that such evaluation influences the final vote tally.[81] Following the decision, the Constitutional Court can review the election process.[82]

The aforementioned case illustrates the evolution of the Constitutional Court's authority, which transpires through its own rulings. This case, while necessitating additional evidence, implies that the Constitutional Court aligns with the interests of the political elite who established it, who were apprehensive about electoral manipulation reminiscent of the authoritarian era. The Constitutional Court's expansion of authority, as illustrated above, suggests a distinct agenda in shaping Indonesia's constitutional framework, indicating its independence in operation. Nonetheless, beyond that, the theory of political insurance can elucidate the reasons behind the Constitutional Court's significant authority concerning political issues (or what may be termed the judicialization of politics), in addition to its primary role in conducting judicial review.

E. Conclusion

While the establishment of constitutional courts is often hailed as a triumph of democratic principles and the rule of law during democratic transitions, this article demonstrates that the creation of Indonesia's Constitutional Court was driven primarily by pragmatic political calculations rather than altruistic or idealistic motives. The Indonesian experience reveals a more nuanced implementation of the "political insurance" theory. Contrary to the traditional framework where political insurance is established by incumbent elites from the authoritarian era to shield themselves from future retaliation, the Indonesian case exhibits a divergent pattern: this "insurance" was instigated by newly emerged political elites,

79 See Article 24C(1) of the 1945 Constitution.

80 *Harry Setya Nugraha*, Redesain Kewenangan Mahkamah Konstitusi Dalam Penyelesaian Sengketa Perselisihan Hasil Pemilihan Umum Presiden Dan Wakil Presiden Di Indonesia, Jurnal Hukum Ius Quia Iustum 22 (2015), p. 422.

81 See The Constitutional Court Decision No. 41/PHPU.D-VI/2008.

82 See The Constitutional Court Decision No. 2/PHPU.PRES-XXII/2024.

legitimized by democratic elections, as a strategy to navigate the political uncertainties inherent in a democratic transition.

Empirically, the institutional design of Indonesia's Constitutional Court represents a synthesis of the "political insurance" and "hegemonic preservation" theories. The "political insurance" element is evident in the Court's authority to adjudicate election result disputes and political party dissolutions, mechanisms that enable elites to contest political outcomes within the judicial realm. Meanwhile, the convergence of "political insurance" and "hegemonic preservation" is manifested in the stringent constitutionalization of presidential impeachment procedures. By mandating the Court's involvement to increase the procedural complexity of impeachment, this design explicitly aimed to prevent a recurrence of the political maneuvers that led to the dismissal of President Abdurrahman Wahid. This theoretical amalgamation underscores that the constitutional design was driven more by pragmatic motives to entrench power than by a commitment to safeguarding abstract constitutional values.

Ultimately, this study offers a critical assessment of the judicialization of politics in transitional democracies. While the Court has successfully functioned as a mechanism for democratic consolidation by resolving high-stakes disputes, its genesis as a product of elite negotiation creates inherent vulnerabilities regarding judicial independence. Specifically, Indonesia's tripartite appointment mechanism, while preventing the dominance of a single branch, underscores the transactional foundations of the Court's independence. Consequently, while the Constitutional Court stands as a guardian of the constitution, its institutional trajectory remains continuously shaped by the tension between its mandate for legal impartiality and the pragmatic political origins of its formation.