

The Critical Need to Formulate Procedural Norms for Constitutional Court Operations

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Abstract

Constitutional Court can initially operate with efficacy under the conditions that its jurisdiction is determined by its treatment of the procedural rules of its proper activity. The lack of a specific follow-up law has also resulted in gaps and inefficiencies in different jurisdictions, in delays of justice and even in doubt as to the validity of the judges. To this end, this paper conveys the acute need to codify procedural rules, which are specific to Constitutional Courts within the parameters of transparency, efficiency and consistency of constitutional adjudication. It cogitates with comparative models, makes the practical implications clear and recommends adoption of a formal procedural code as an emergency to the reinforcement of constitutional democracy and maintenance of the rule of law.

Keywords: *Constitutional Court, Procedural Law, Judicial Efficiency, Constitutional Justice, Legal Framework, Rule of Law, Constitutional Adjudication, Court Procedure Reform, Legal Certainty, Judicial Transparency.*

1.Introduction

Other requirements are a well-established procedural structure, which is a prerequisite to the functioning of any body involved in justice within a constitutional democracy and more so, a Constitutional Court. These courts are the custodians of the Constitution, and as such, they occupy a pivotal position in upholding supremacy of constitutional values, guaranteeing the rule of law, and the rights of the citizens. In the Indonesian case, the Constitutional Court has been given the responsibility to fill the gap and the institution was established in the post-reform period after the 1945 Constitution amendment. Its power and role are well defined both in the constitution and codified with statutory instruments but the framework of the law that oversees its internal workings which is more commonly known as the procedural law is a patchy and ad hoc affair(1). Legal gaps in terms of certainty, public confidence, and judicial integrity, have become huge because there has been a lack of a single codified procedural statute, and this has been developed by formal legislation. This gap is bridged today by several regulations which the constitutional court itself issued, called PMKs (Peraturan Mahkamah Konstitusi), as they have the functional quality they lack the juridical legitimacy and persistence which are needed to have a sound rule-of-law system.

The crux of the matter is in the design of legal system itself, its institutional nature. According to Article 24C of the Constitution of the year 1945, the presence of a procedural law dealing with the Constitutional Court is quite evident and clear. Enforcement of this article has however been irregular with the legislature playing the reforming card by giving the role of regulation to the Constitutional Court as opposed to enacting a comprehensive law. It is a paradox to have an institution whose mandate is to define the validity of laws to have been working under self-made regulations, but there is no definite control by the legislature. This brings into question many of the basic principles of democratic accountability, separation of all powers, and judicial administration uniformity. This is made worse by the fact that PMKs are often revised, annulled and replaced and this has led to instability in the regulation as well as confusion to those pursuing cases and to the practitioners.

The philosophical role of law is that law is an instrument of justice, certainty and order. The towering absence of a well-codified procedural law undermines all the three. Juridically speaking, PMKs are more or less colored with a heavy dose of consistency, as the formal principles of law would demand within the Indonesian context of the hierarchy of laws(2). The House of Representatives does not pass these rules and no formal process is involved in promulgation. Thus, they operate under the de facto authority in the Court but lack in legitimacy, in comparison with the laws created by parliament. Sociologically, this piecemeal process framework has not only affected the lawyers and judges but also the common people who want justice. One homogenous procedural legal framework would improve access to justice in that the process would be more predictable, transparent and homogenous.

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Other problems conditions that arise as a result of non-existence of procedural laws include the fact that the justice process is under manipulation. Some major ethical breaches of Constitutional Court judges like in the case of Akil Mochtar and Patrialis Akbar indicate how necessity gaps can be used by offenders to justify their personal or political outcome. Such accidents demonstrate how risky procedural ambiguity can be and emphasize the necessity of legal standards defined by a legitimate form of legislative power, that can become binding. This would reduce the possibility of any discretionary abuses and lay a tangible moral guide to judge behavior.

There are some other jurisdictions where Constitutional Courts offer examples around the world. An example can be seen in South Africa where the Constitutional Court uses a complex of procedural rules which have been codified in the Government Gazette. These rules give light on all issues including process of application, evidence admissibility, and amicus curiae rights. In a comparable manner, the Federal Constitutional Court of Germany operates on an entirely different codified law, i.e., the Federal Constitutional Court Act, which governs the proceedings in excruciating detail⁽³⁾. These transnational examples demonstrate how process clarity enhances institutional integrity and supports the confidence of the populace in constitutional judicial review.

Contrastingly, the use of PMKs in Indonesia has generated a situation whereby procedures of the Constitutional Court vary with respect to the nature of dispute to be handled by the Constitutional Court since lawsuit involves the election outcomes, party dissolution, or judicial review. Although partial immunity to some degree of procedural variation is the inevitable and necessary in order to account variable needs and demands, the extent that it is to be running must be within the domain of a stable legal structure that provides uniformity in terms of principles, schedule, evidence tests, and judicial rationale. These different strands would be harmonized and all these elements of advances in jurisprudence would be incorporated into a singular, authoritative source of reference in a codified law.

Regarding legal theory, the necessity of codification could be additionally supported by such well-known doctrine as a doctrine of legal positivism according to which valid law should be induced by the established law-making procedures. The theory of legal norms by Hans Kelsen posits that every legal rule should be based on a more superior norm which leads to the so called Grundnorm or fundamental norm. In this context, procedural rules which are elaborated by PMKs do not have a proper basis, unless they are specifically based on superior legislation. In addition, the Indonesian legal system follows a top to bottom concept of law and laws passed by the legislature override rules made by other bodies. Thus, in order to conform to its legal system, Indonesia needs to constitutionalize the procedure of its Constitutional Court, which requires the force of law carved by legislation rather than by executive or judicial decree.

The main result of codification of the procedural law of the Constitutional Court would not only address the juridical inconsistencies, but also would help to achieve legal harmonization, democratic accountability, and transparency of the court institution. It would create a uniformity of how cases were handled, outline what was to be considered as procedural rights and obligations, and minimize how judges were able to rediscover the need to interpret the essentials of the procedures⁽⁴⁾. On the civil rule of law, codification would also play educational and civic roles in being able to tell people on how they can turn to the Court and even make constitutional cases. This openness is crucial in a democracy that is still young (in a post-authoritarian period).

2.Methodology

While investigating the need to codify procedural law regarding the Constitutional Courts following the dilemma of the urgency of the matter, this paper utilizes the normative legal research methodology based on mere doctrinal study. One of the best applications of normative juridical research consists of topics about statutory law and legal principles, as well as subjects about doctrinal interpretations. Such an approach enables the researcher to consider laws as normative rules governing the question of what the law should be in terms of legal certainty, democratic accountability and good governance. Therefore, the work will primarily interact with legislations, statutory provisions, constitutional provisions and legislations of relevant practices of Constitutional Courts, both in Indonesia and in other jurisdictions.

Three approach methods were used in order to develop multi layered picture regarding the nature and breach of the Indonesian constitutional legal framework: the statutory approach, the conceptual approach and the comparative approach. All these provide a unique way of examining the system of procedures adopted by now and evaluating their fitness into the dynamics of democratic legal system.

1. Statutory Approach: Territories in Normative Landscape

As a study, this paper will lie in the statutory approach. This methodology entails how statutory guidelines relating to the Constitutional Court are read, carefully, and interpreted especially those rules embedded in Law No. 24 of 2003 on the Constitutional Court and its subsequent amendment- Law No. 8 of 2011 and Law No. 7 of 2020. In this strategy, there is also a reflection of applicable provisions of the Constitution of the Republic of Indonesia of 1945 such as Article 24C which constitutes jurisdiction of the Court as well as the substantiation of law of procedural regulation(5).

Alongside this, several PMKs (Peraturan Mahkamah Konstitusi), or Constitutional Court Regulations are also considered as part of the already existing but disjointed procedural framework. In this case, what is sought is determining the degree of completeness of the role played by PMKs in filling legislative gaps, their compatibility with the constitutional mandate, and the consistency (or inconsistency) with the hierarchy of laws as dictated and provided in Law Number 12 of 2011 on the Establishment of Laws and Regulations. This discussion would expose structural gaps as well as normative inconsistency thus enhancing the argument in support of codification by a legislature.

TABLE 1 Methods

Methodological Component	Description	Purpose in Study	Key Sources Used
1. Normative Juridical Method	Legal doctrinal approach focusing on laws as normative systems (what law <i>should</i> be).	Establishes the legal and constitutional necessity for a legislated procedural framework.	- 1945 Constitution- Law No. 24/2003 (and amendments)- Legal theory texts (e.g., Kelsen, Fuller)
2. Statutory (Legislative) Approach	Analysis of legal texts and legislative instruments.	Identifies the gaps and inconsistencies in existing regulations (e.g., PMKs vs. law).	- Law No. 12/2011- PMKs (e.g., PMK 4/2023, PMK 2/2021)- Court decisions
3. Conceptual Approach	Theoretical and philosophical examination of key legal principles.	Constructs the ideal framework of constitutional procedure based on justice, legality, and democracy.	- Pancasila ideology- Legal philosophy (rule of law, due process)- Kelsen's hierarchy of norms
4. Comparative Approach	Comparison with procedural frameworks in other constitutional democracies.	Benchmarks best practices and validates the need for codification.	- South Africa's Constitutional Court Rules- Germany's BVerfGG- U.S. and South Korean systems
5. Data Sources	Classification of primary, secondary, and tertiary legal materials.	Ensures reliability and comprehensiveness in legal research.	- Primary: Laws, constitution, court rulings- Secondary: Academic journals, legal commentaries- Tertiary: Encyclopedias, indexes
6. Analytical Technique	Qualitative legal analysis and doctrinal synthesis.	Triangulates statutory texts, theory, and practice to draw conclusions.	- Case law review- Logical-normative argumentation- Normative consistency testing

2. Conceptual Approach: How to Get the Theories and Practice to Match

As a supplementary means of discussing the statutory analysis, a conceptual approach is maintained to question the philosophical, juridical and theoretical aspects of the procedural law. This touches on evaluation of general notions which can underlie the rule of law, independence of the judiciary, due process, and legal certainty. I am quite reliant on legal theoreticians like Hans Kelsen (legal norm hierarchy), Lon Fuller (internal morality of law), Ronald Dworkin (rights based) adjudication), etc. to explain the conceptual scheme of a codified procedure statute. The conceptual approach also happens to be useful in determining what should encompass an ideal Constitutional Court procedural law (6). Aspects to be dealt with include the organization of applications, procedural time lines, rules of admissibility, evidence rules, judge ethics, party entitlements, limits of appeal not only in a practical view

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but also the normative need. This enables the research to present substantive contents of possible future statute that is theoretically consistent and practically viable.

3. Comparative Approach: Acquiring the Best Practices of the World

Learning the ways of other constitutional democrats is important so as to improve the domestic systems of these systems. Hence, a comparative law strategy is introduced to examine the procedural systems in South Africa, Germany, the United States, and the Republic of Korea. It is on this basis that the countries were selected because they have a developed constitutional court system and codified procedure law.

In South Africa, the Constitutional Court uses the Rules of the Constitutional Court (Government Gazette 25727, 2003), a document that contains detailed procedures on both the structure of the court and court procedures of how to apply, to who it should be joined, *amici curiae* and legal fees. In the same way, article 34 of the Bundesverfassungsgerichtsgesetz (Federal Constitutional Court Act) of Germany carefully specifies the procedural law of constitutional disagreements of various forms. The research uses comparisons to discover the main components of such systems procedures and models of legislation that can be applied into the Indonesian setting.

This comparative study does not propose an across-the-board adaptation but a contextual one. Sociopolitical compatibility and institutional preparedness must be addressed when it comes to legal transplants. Therefore, the comparative method has been undertaken in an attempt to not only benchmark Indonesia current practices but also to offer normative guidance when it comes to changing its legislation(7).

4. Sources of Law

The key primary legal sources in the study will be the official documents of the law, such as the Constitution of the Republic of Indonesia of 1945, the Law No. 24 of 2003 and its amendments, the Law No. 12 of 2011, the PMKs issued by the Constitutional Court, and other chosen judicial cases displaying the practices of the interpretation of the law and procedural anomalies. Analysis of these texts is conducted in order to determine whether the extant regulatory framework retains the tenets of legal certainty and democratic accountability.

The secondary materials comprise legal articles, legal commentary, research, and jurisprudential analysis of procedural justice, judicial design, and constitutional adjudication. These readings serve as material that provides a broader perspective to understand the situation in Indonesia with references to other studies and other experiences in other countries.

Tertiary circulations Primarily used by historians and purporting to connect the explanatory framework to background narrative are tertiary materials, e.g., encyclopedias of legal systems, historical treatments of the history of constitutional reform, textbooks of procedural law.

5. Technique and Framework of Analysis

The evidence provided by these different sources undergoes a qualitative analysis with the focus being on synthesizing doctrines, engaging in logical argument formation and normative criticism. A triangulation is used in the process of analysis because the statutes are analysed in parallel to the jurisprudence and juxtaposed to the standards of theoretical considerations (8). The uncertainties, the ambiguities, and the gaps are then declared, and the proposal of reforms is computed according to their feasibility, legitimacy, and effectiveness.

In addition, content analysis is then used to examination correspondence between rule of procedure in PMKs and legislative expectation. Analysis of the adequacy of the current procedural framework includes key indicators that include legal certainty, accessibility, enforceability and adaptability.

6. Research Objective Justification

The key purpose of such an approach to methodology is to give an informed articulation of the evidence supporting the case to pursue remodeling of fragmented procedural regulation in favor of a unified, coded, and legislatively established law. This approach of integrating theoretical stringency with conceptual precision and comparative analysis makes the approach multidimensional in its critique of the current course in Indonesia and provides actionable legal competence. It also makes sure that the proposed solutions are aligned with the constitutional values as well as international best practices.

3.Results

The findings of this research provide a two-dimensional and infallible need to have a formal and codified law that would regulate the procedural aspect of the Constitutional Court of Indonesia. The results are organized in three groups referring to three areas, and they are philosophical, juridical, and institutional, again fortifying that the use

of the regulations issued by the Court (PMKs) is not sufficient, legally dubious, and subject to abuse. An institution such as the Constitutional Court that is constitutionally mandated to act in a decisive role in protecting democratic norms, adjudicating constitutional disputes and reviewing legislation cannot just work on a procedural basis that is so shaky and it has been made by some other procedure other than under the formal legislative process. Rather, it calls for a robust, justifiable legal scaffold passed by Parliament, in order to complete the promise of the legal certainty, due process and judicial transparency.

1. Philosophical Discoveries

The philosophical ground in providing codification of Constitutional Court procedural law is drawn as a result of Indonesia own ideology of Pancasila and the principles of Constitutional ideologies of 1945 Constitution. Embracing such fundamental legal philosophy as justice, certainty, and equality before the law are not possible within a judicial system, whose set of procedural rules are fractured, fluid, and do not have legislative authority. Based on the Article 24C of the 1945 Constitution, it states that the Constitutional Court has been given a solemn statute in which it is charged with the mandate of being a Constitutional guardian. Not only does this position require substantive authority but also procedural transparency. The philosophical foundation of judicial legitimacy is due process of law that contains the aspects of fairness, accessibility and predictability in matters of law. The present reality is that, in various aspects of disputes (e.g., electoral disputes, judicial review, political party dissolution), various PMKs solve the various types of dispute and therefore the populace is left at an inconsistent and at many times a confusing regulation⁽⁹⁾. This variety in procedure, as much as it considers the case-specificities, jeopardizes the universality of constitutional justice.

Additionally, the philosophical definition of law in Indonesia requires that no law including the one that indicates the judicial procedures should not contradict the sovereignty of the people. Since PMKs are internal rules that are written by the same institution that is to be regulated by this rule, they circumvent this sovereignty. Hence, a codification of procedural law will mirror the philosophical perfect of participatory and democratic state of legislation and coincide with the ideas of *rechtsstaat* (rule of law), which is inherent to the Indonesian jurisprudence.

2. Juridical Findings

According to the juridical conclusion of this study, the contradictions between the PMKs that are made by the Constitutional Court and the hierarchy of laws in the Indonesian legal system are critically high. According to Law No. 12 of 2011 on the Establishment of Laws and Regulations there is definite legal hierarchy which starts with the Constitution, the laws (UU), government regulations (PP), Presidential Regulations (Perpres) and so on. The concept of PMKs is not used in this hierarchy. They are neither legislated nor ratified by the parliament and nor are promulgated in the State Gazette rendering concerns as regards to their legality and enforcement.

According to Article 24C(6), the procedural law should be covered by law. Nonetheless, it is an improper delegation of this exercise under the auspices of PMK delegated to the internal PMKs, which disregards this constitutional dispensation. Albeit, Article 86 of Law No. 24 of 2003 provides the Constitutional Court with the powers to regulate affairs in a manner that it can fulfill its mandate on accomplishing its functions, the Explanatory Note on this article explains that the regulation to be done by the Constitutional Court is not meant to replace formal legislation, but rather, to cover temporary procedural gaps. As such, PMKs are merely temporary supplements until a formal law on procedures is passed at the legislative level.

Moreover, several PMKs are consistent with the jurisdiction that ought to be passed into law like admissibility rules, legal standing definitions as well as deadlines on the presentation of evidence. This is essential issues that concern the rights of litigants and the validity of constitutional verdict. Thus, it is time to stop using PMKs as the procedural law of such an important judicial institution and risk judicial usurpation and elimination of checks and balances.

3. Institutional Findings

Institutionally, the results reveal that the use of PMKs have high risks of abuse of procedures, incongruency and manipulation. In the procedural system, weaknesses were unveiled due to two large ethical scandals by former Constitutional Court justices-Akil Mochtar and Patrialis Akbar. Such judges used the uncontrolled unknown areas of procedure (e.g., distribution of cases, consultative meetings) to extort and to generate favorable results themselves. These loopholes exist because there is no binding procedure code which has been legislated.

Also, the existing procedural outline is aluminum scattered among a variety of PMKs that deal with various varieties of cases. Although such specialization gives room to provide cases related details, this leads to a failure

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in harmonization. As an illustration, election dispute regulations are different when compared to constitution overviews, not only in their form but in their process. This does not only cause problems to the legal practitioners but it also has an impact on the comprehension of the general population on how the Constitutional Court operates, hence destroying the people trust(10).

The very number and complexity of the Court both in terms of judicial review applications (in excess of 11,000) as well as regional election dispute cases (in excess of 1,100) and general election challenges (in the hundreds) require a greater degree of systematization, uniformity, and transparency of procedures to be followed. A procedural law legislated would have homogeneous principles and practice in all category of cases, and still have room to give technical advice by PMKs where such is requisite.

TABLE 2 Results

Imperative Type	Key Findings	Implications
Legal (Juridical)	PMKs lack formal legislative status and violate Article 24C(6) of the Constitution.	Procedural law must be enacted by Parliament to ensure legality and hierarchy.
Philosophical	Justice and rule of law require clarity, equality, and legitimacy in procedures.	Fragmented rules conflict with Pancasila and the ideals of democratic governance.
Institutional	Internal regulations enable manipulation and procedural inconsistency.	Codification would reduce abuse, increase trust, and strengthen judicial integrity.

4. Comparative Validation: World Lessons

The findings also re-affirm that the international standard in Constitutional Courts of mature democracies is codification of procedural law. Such countries as South Africa, Germany, India, and South Korea have their own, legislated, definitions of statutes, according to which their Constitutional Court procedures work. Such frameworks guarantee clarity in decision making in that jurisdiction, the admissibility of the petitions, the submission of evidence, time schedules, appeals, as well as, the enforcement of decisions. As an illustration, the Federal Constitutional Court Act of Germany has all the procedural information that makes it accessible to the people and raises the rights of the parties involved in a case.

In South Africa, the constitutional court rules are updated and they are entrenched in formal juridical documents. These regulations are developed in a participatory manner, with the input of the citizens and consultation with the legal professionals and civil society. This collaborative approach reinforces the transparency of the judicial process, as well as legitimacy. In comparison, Linda says that the internal and non-legislated PMKs of Indonesia are unmatched to these best international practices.

5. Imminency of the Legislative Action

In sum, this evidence highlights how there is an immediate need to have the Indonesian legislature formalize Constitutional Court procedural law. The current jurisprudence, PMK practice, and the feedback of the population should be provided in this statute and touched into a single legal document. It ought to outline procedural guidelines in a clear and understandable language and capable of conforming to the constitutional or constitutional requirements as well as international best practices. Another thing about it is that its drafting should be a matter of public engagement, meaning that the law should have elements of democracy and meeting the demands of the justice-seeking citizens.

4. Discussion

The above results have shown a crisis and multi-dimensional need to develop a codified procedural law of a Constitutional Court of Indonesia. This discussion builds on those findings by putting them into the larger analytical picture, analyzing the outcome of procedural fragmentation, and suggesting a way forward, which is complete legislative reform. It cogitates on ideals of philosophy, constitutional injunction, comparative lessons and practical necessities of an emerging democracy. This discussion tries to justify this position at the fundamental level that a formal law on the procedures of the Constitutional Court is not only desirable, but necessary to achieve legal certainty, protection of given rights of citizens and the maintenance of legitimacy of the House.

1. The Danger of Procedural Fragmentation Remaining

As of now, Indonesia has a hodgepodge approach to the Constitutional Court, functioning in a variety of Peraturan Mahkamah Konstitusi (PMK) or inner court regulations, issued by the Court itself. Although these regulation do fit the gaps in immediate procedure, they are not actually laws according to national level of legal hierarchy. This sets a very dangerous precedent: the body which is supposed to uphold the constitution, is doing so under a set of rules which is neither within the legislative power nor democratically ratified. This system of self regulation therefore compromises the legitimacy that the Court is supposed to uphold.

This fragmentation has led to inconsistencies in different types of cases especially disputes in the electoral process, judicial aspects and challenges of the power of institutions. This inconsistency in the process impairs legal certainty and introduces inconsistency, as well as restricting understanding among people. Moreover, it is the prevalence of revision or repeal of PMKs that place litigants and practitioners in difficulties of keeping updated with various procedural requirements. This causes the possibilities of procedural errors, undelayed adjudication, and a loss of credibility of the Court in the eyes of the people.

2. The Illegitimacy of Procedure that is not Legislated

One of the principal problems addressed in the paper is the juridical validity of the unconventional procedures that lie outside the legal provision of the Constitutional Courts. The 1945 Constitution requires the procedural law of the Constitutional Court to be governed by legislation and not by internal court rules as was made clear under Article 24C(6) of the Constitution. Although Article 86 of Law No. 24 of 2003 empowers the Court to regulate any other requirements, its explanatory note makes it clear that the authority granted does not preclude it to substitute (but to supplement). According to the legal theory, especially those in positivist approaches, like the theory, Stufenbau developed by Hans Kelsen (a hierarchy of any legal norm), procedural law should have its legitimacy in a higher-order legal power, i.e., acts enacted by the legislature. This norm is violated by ongoing application of PMKs as the only foundation of procedure-making, and this ongoing habit has the danger of separating the chain of hierarchy of laws.

Additionally, without being subject to scrutiny by any legislation, PMKs become more susceptible to institutional capture and discretionary abuse. The case of the scandals by former justices such as Akil Mochtar shows that without a strong regulation there is corruption that can be practiced. An unambiguous procedural law (legislated) would give a breather, stipulate ethical norms, and seal the loopholes that are currently threatening judicial integrity.

3. Democratic Accountability and the Rule of Law

In a constitutional sense, democratic accountability principle requires that rules that govern the work of institutions serving people in public, and primarily institutions whose powers extend to areas that affect people at large, must be formulated through a process guided by exposure to the community, legal authority and openness. Such a law would be procedurally legislated in respects that not only reflect the will of Parliament but also the voice of the people, as may be effected through participatory law-making with e.g, public hearings, civil society, academic comment, the legal review.

Moreover, the rule of law as one of the guiding principles of the Indonesian justice system requires legal rules to be certain, promulgated publicly, stable and coherent with higher forms of rules. Many of these tenets are violated by current procedural regime. PMKs are not systematized and codified and they are not registered in the State Gazette and they do not enjoy the degree of scrutiny to which the laws are usually subject. In comparison, a procedural law that is enacted via a formal process of law making would be stable, enforceable and transparent, which would advance the rule of the law and leave no doubt that Indonesia had become a constitutional democracy.

4. The Comparative Jurisdictions Role

The comparative analysis in this study on constitutional court proceeding in places like Germany, South Africa and South Korea is insightful. All these nations have also discovered the need to put into legal texts how their constitutional courts operate internally. As an example, the Federal Constitutional Court Act of Germany spells out the process in detail, in each type of constitutional adjudication. In the same way the Rules of the Constitutional Court in South Africa are gazetted, comprehensive and participatory in the manner that they are updated.

These templates explain how form and functionality in legal regimes should be matched. The transparency of the processes should reflect the power of a court. The current practice whereby the Court is the both judge (in cases) and regulator (of its own rules) in Indonesia is inconsistent with this symmetry and contravenes this separation of powers doctrine. The legislature needs to reassert its institutional role in the determination of judicial procedure thus achieving institutional balance.

5. Conclusion

Constitutional Court (Indonesia) is one of the pillars of the Legal and democratic structure of a post-reform Indonesia. Being the custodian of the constitution, the custodian of the basic rights of the citizens and the one that decides on the important political and institutional controversies, its legitimacy is determined not just by the independence and the mandate of the institution but also by the clarity, consistency and the enforceability of its procedural rules. In this study, the legal insignificance of the current dependence on internal Constitutional Court Regulations (PMKs), their institutional fragility and even constitutional unsoundness has been illustrated in a comprehensive manner. It has also demonstrated that the gradual development of a codified procedural law, enacted by means of formal legislation is not just desirable but very necessary.

Philosophically speaking, there is no harm made to have a complete formulation of Constitutional Court Procedural law because it serves the ideology or ideology of the nation, which is based on the foundation of Pancasila which revolves around justice, the voice of law and democracy. It is principles of openness, accountability and application of codified system of laws that give judicial power legitimacy. The body that is going to decide on the constitutional dispute itself has got to have constitutional procedures. Fragmentation of procedures based on patchwork of PMKs is against such philosophical fundamentals and makes the litigants uncertain, thereby weakening the reputation of justice within the society.

Juridically speaking, the application of PMKs as the main procedural licenser goes against the letter and spirit of Article 24C(6) of the 1945 Constitution that the procedures of the Constitutional Court must be regulated by law. PMKs are not laws in the sense of the Indonesian order of legislation, despite its utilitarian nature of dealing with short-term administrative exigencies. They are not submitted to the Parliament and are not promulgated in the State Gazette, and lack the discussion and examination in public which laws are subjected to. They are unclear and lack legitimacy to have a body that has final power of constitutional interpretation. The further use of such instrument has the risk of establishment of a judiciary above the law which contradicts the ideas of democratic control and legal subordination.

Institutionally, lack of a Single procedural statute has led to procedural inconsistency, susceptibility to manipulation and procedural obscurity. This has more than once led to scandal, controversy and loss of confidence by the people in the judiciary. Litigants are faced with varying procedures in place depending with the nature of the dispute or the year of the regulation, or even depending with how judges may choose to interpret them since the regulation is not standardized. This is the legal uncertainty, which is opposite to the very idea of constitutional justice. It brings inequality, time wastages and inefficiencies to the adjudicatory process which is detrimental to the litigants and reduces the image of the judiciary. The above problem could be alleviated with a codified procedural law that, holding all categories of constitutional case on equal footing, would introduce a consistent rule, time, and ethical dimensions.

Various aspects of this work have also reflected on the urgency of reform when it comes to the comparative dimension of the research. In other established democracies (South Africa, Germany, and South Korea), the operations of their constitutional courts are described in detailed, codified legislation or rules having legislative force. These procedural laws do not only elucidate the method of working out constitutional justice but give rights and duties that need to be followed by litigants, the state as well as the judiciary. The models demonstrate that transparency and codification are not illusions of luxury; they are operational requirements in legal systems that want to be administered by the rule of law. Indonesia is a democratic country that is based on legal constitutionalism; it can not be an outlier in that regard.

A robust procedural statute would strengthen the principle of separation of powers by preventing the activities of the judiciary to overreach its mandate by designing its own rules that are binding to them without any supervision of the parliament. It would reintroduce checks and balances that are needed to have a constitutional government, and also safeguard the independence of the judiciary by making the internal operations of the judicial systems clear and the judicial system free of political pressures or abuses of discretion.

Also, institutional integrity of the judiciary would be fortified with a procedural law enforced by the legislature. Codification would allow the easy management of case-flow, less case backlog and facilitate more predictability. It would harmonize rules of evidence, formats of submissions and timelines to be used in hearings thus all litigants, irrespective of the nature of case or social background are equal before the Court. It would also outline the roles and responsibilities of judges, clerks, relating to the role of registrars making the working more efficient and accountable.

Notably, the procedural law in question should be transparently, participatory, and inclusive to be reached. Law-making process should allow the stakeholders (legal theorists, the practitioners, civil society groups, retired judges and the populace at large) to influence the process of law-making. This is not only a requirement of the Law No. 12 of 2011 but also democratic need. The potential legal technocracies or a strictly limited group of actors can pass on lawmaking on such fundamental issue. Without such trust in the decisions it makes, or the process through which it delights on making decisions, the Constitutional Court will lose its integrity. As Indonesia becomes a republic country that practices constitutional democracy, the country has to invest in other institutions that reflect its ideals regarding law. It is time now to move on to the comprehensive, legally adopted Constitutional Court Procedural Law and leave behind the time when regulations were fragmented, issued by courts. This law should integrate the other procedural components that are across the PMKs, court practices, and judicial decisions into one legal framework. The regulation of technical aspects can be always executed by additional court rules, however the basis should be put on the legal grounds.

Summing up, Constitutional Court process codification is the national priority of legal realization. It is the product of more serious adherence to rule of law, judgment authority and democratic governance. In the absence of this, Indonesia will be at risk of damaging its most influential constitutional organ. Having it, the Constitutional Court will have the chance to become all what it should be not only the institutional defender of the Constitution but also the institution of the just and transparent and trustworthy law.

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Conflicts of interest

The authors have no conflicts of interest to declare

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