

JUDICIAL INDEPENDENCE AND THE EFFECTIVENESS OF CONSTITUTIONAL COMPLAINT SYSTEMS

Thomas Sheku Marah*
Nusa Putra University
thomas.sheku_hk23@nusaputra.ac.id

Received: 10 June 2025 | Last Revised: 26 March 2026 | Accepted: 15 April 2026

Abstract

The focus of this study is to break down the link between judicial independence and the effectiveness of the system for receiving and adjudicating constitutional complaints through the lens of Indonesia, supported by case studies from Germany, South Korea, and Italy. The study applies a comparative doctrinal legal method to assess the impact of institutional independence, procedural frameworks, and public accessibility on the ability of the constitutional court to safeguard fundamental rights. The analysis highlights that judicial independence operates as both a normative safeguard and a functional condition that determines how effectively constitutional justice can be ensured. The findings show that jurisdictions with high judicial independence—such as Germany and South Korea—display greater procedural efficiency, higher admissibility rates, stronger compliance with rulings, and greater public trust in judicial institutions. Systems with lower judicial independence, such as Indonesia, face ongoing challenges, including slow procedures, inconsistent enforcement, and restricted access to constitutional remedies. The research demonstrates that a constitutional complaint system functions best when judicial institutions maintain complete independence

* Thomas Sheku Marah is a researcher at Nusa Putra University, Indonesia. His research primarily focuses on international law, human rights, global governance, humanitarian law, youth participation, and African governance and legal reform.



and operate with transparent systems that remain accountable to the public. The study further indicates that Indonesia needs to enhance its judicial system by establishing permanent positions for judges, implementing open selection methods, and providing independent funding for the Constitutional Court so it can operate a trustworthy constitutional complaint system.

Keywords: Access to justice; Civil society engagement; Constitutional complaint; Fundamental rights; Judicial independence

I. INTRODUCTION

1.1. Background

In modern constitutional democracies, the constitutional complaint system has become an integral part of these democracies. It gives citizens an opportunity to challenge laws, administrative acts, or policies that breach fundamental rights.¹ Unlike traditional judicial review, constitutional complaints are filed without an institutional or governmental ‘trigger.’ Individuals or groups are able to file complaints directly to constitutional courts.² This system is increasingly viewed as fundamental to the protection of rights. It has increasingly been viewed as an important guarantee against arbitrary state action.³

In democracies where constitutional complaint systems are fully developed, such as Germany, South Korea, or Italy, the systems have been instrumental in consolidating the rule of law, improving judicial accountability, and broadening access to justice.⁴ The Federal Constitutional Court of Germany has the most accessible and protective system. It permits the filing of complaints by any individual alleging that their constitutional rights have been breached.⁵ South Korea has systems of constitutional complaints embedded within the structure of the constitutional court. It has a special emphasis on the prompt protection

¹ Viviana di Capua, “The Protection of Fundamental Rights by the Constitutional Court in the Republic of Latvia: Perspectives, Opportunities and Limits of an Introduction of the Model in Italy,” *Journal of the University of Latvia. Law* 16 (October 2023): 195–211.

² Donald P. Kommers and Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd ed. (Durham: Duke University Press, 2012), 45.

³ Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1945), 120.

⁴ Tanto Lailam and Nita Andrianti, “Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia,” *BESTUUR* 11, no. 1 (August 2023): 75.

⁵ Kommers and Miller, *Constitutional Jurisprudence*, 2012.

of weak justice and the vulnerable.⁶ Italy has the most sophisticated system of constitutional complaints. It balances rights and procedural safeguards with institutional judicial discretion. On the other hand, the effectiveness of constitutional complaint systems hinges on judicial independence.⁷

An independent judiciary matters because it allows constitutional complaints to be processed free from undue political interference and administrative pressures.⁸ Independence means structural, functional, and administrative autonomy, coupled with financial self-sufficiency, and grants the judge the liberty to decide the case judiciously based on the law.⁹ If constitutional complaints are processed under the shadow of political interference, they will lose their value and serve the purpose of diminishing trust not only in the judiciary but in the entire social contract.¹⁰

In the legal literature, the philosophy of judicial independence and constitutional complaint mechanisms has been explored. Having control over judicial systems, it is argued, is not an act of a constitutional democracy, but a mechanism that puts the democracy ruling under the protective umbrella of human rights provisions, constituting a severe blow to its essence.¹¹ “Juristocracy. In a troubling world, a ‘juristocracy’ is emerging, where constitutional courts sit as the ultimate defenders of basic rights,” notes, stressing the need for lack of political control as structural independence keeps the wheels of stifled democracy turning.¹² No country that has only recently emerged out of the shell of years

⁶ M. Lutfi Chakim, “A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions,” *Constitutional Review* 5, no. 1 (2019): 96.

⁷ Carlo Azeglio Ciampi, “Intervento del Presidente della Repubblica Carlo Azeglio Ciampi in occasione della consegna delle medaglie d’oro ai benemeriti della cultura e dell’arte [Speech of the President of the Italian Republic Carlo Azeglio Ciampi on the Delivery of the Gold Medals for Culture and Arts Merit], May 5, 2003.

⁸ I Dewa Gede Palguna, “Constitutional Complaint and the Protection of Citizens’ Constitutional Rights,” *Constitutional Review* 3, no. 1 (2017): 1.

⁹ Samia Abdellaoui, “Between Reality and Aspiration: A Critical Review of the Principle of Judicial Independence Considering the Algerian Constitutional Amendment of 2020,” *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 3 (2024): 155–64.

¹⁰ Ágnes Czine, “Fundamental Rights Protection through Constitutional Complaints, with Special Respect to Its Effectiveness,” *Constitutional Review* 11, no. 2 (2025): 269–98.

¹¹ Czine, “Fundamental Rights Protection.”

¹² Ni Luh Dewi Sundariwati, “Judicial Activism: Diantara Melindungi Supremasi Konstitusional atau Transisi Menuju Juristocracy” [Judicial Activism: Between Protecting Constitutional Supremacy or Transitioning toward Juristocracy], *Jurnal Konstitusi* 21, no. 3 (2024): 432–47.

of autocratic rule can treat constitutional complaint mechanisms as secondary because it placed political independence on the judiciary.¹³

1.2. Problem Statement

The realization of constitutional courts has not led to equal effectiveness of constitutional complaint systems in regions where civil liberties are exercised.¹⁴ In places characterized by the absence of political interference and adequate judicial infrastructure, corruption persists in civil society and the legal system in conjunction.¹⁵ In Indonesia, the Constitutional Court focuses on the constitutional review of laws and other disputes among state organs.¹⁶ Nevertheless, the country has no viable system for the direct constitutional complaint of individuals, especially in cases of abuse by the administration.¹⁷ These cases reinforce the importance of understanding and reforming the relationship between judicial independence and constitutional complaint systems for improved access to justice and recognized rights frameworks.¹⁸

Moreover, the role of civil society in systemic constitutional complaint actions remains on the periphery, especially in the early stages of democracy.¹⁹ Government legal defenders, public campaigns, and reform advocacy all fall within the purview of civil society. When this input is absent, constitutional complaint systems remain complicated and cumbersome for the average person.²⁰

¹³ Melina Carla de Souza Britto and Claudia Maria Barbosa, "Disfuncionalidades do Modelo Institucional Liberal: Juristocracia e Backlash" [Dysfunctionalities of the Liberal Institutional Model: Juristocracy and Backlash], *Cuestiones Constitucionales* (April 2023): 131–50.

¹⁴ Maulana Amrullah, "Identifying Key Determinants of Civil Society Robustness in Southeast Asia," *JAS (Journal of ASEAN Studies)* 12, no. 1 (2024): 107–31.

¹⁵ Jorge Ernesto Roa Roa and Juan José Aristizábal López, "How Courts Defend Democracy: Challenging Authoritarianism and Advancing Social Transformation," *Revista de Direito Econômico e Socioambiental* 16, no. 3 (2025): 544.

¹⁶ Constitutional Court of the Republic of Indonesia, Decision No. 006/PUU-IV/2006 on the Judicial Review of Law No. 27 of 2004 on the Truth and Reconciliation Commission against the 1945 Constitution, December 7, 2006.

¹⁷ Satjipto Rahardjo, *Law and Justice in Indonesia: Constitutional Perspectives* (Jakarta: Rajawali Press, 2018), 101.

¹⁸ Rudy Rudy et al., "Implementation of Civil Rights against Vulnerable Groups in the Legal and Constitutional System in Indonesia," *Hasanuddin Law Review* 8, no. 3 (2023): 299.

¹⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), "Civil Society Space and the United Nations Human Rights System," accessed September 20, 2025.

²⁰ UN Peacemaker, "Global Lessons Learned: Judicial Independence and the Rule of Law," accessed September 20, 2025.

1.3. Research Objectives

The paper investigates how judicial independence shapes the effectiveness of constitutional complaint systems. It then evaluates the constitutional complaint structures in Germany, South Korea, and Italy as a basis for proposing reforms for Indonesia. The study also seeks to identify the factors that prevent constitutional complaint mechanisms from functioning optimally, while examining the role of non-governmental organizations in expanding access to justice. Finally, the research develops practical recommendations for establishing or improving constitutional complaint procedures in Indonesia through procedural and institutional reforms.²¹

1.4. Significance of the Study

The research carries significant value for multiple reasons. The research makes a valuable contribution to constitutional law studies through its examination of theoretical models and real-world constitutional complaint system implementations. The research demonstrates how judicial independence shapes human rights protection alongside dispute resolution and the maintenance of democratic governance.²² Through its analysis of different constitutional complaint models, the study generates evidence-based recommendations which benefit policymakers, legal practitioners, and civil society actors who work to strengthen constitutional complaint systems across Indonesia and similar jurisdictions. The research establishes the need for institutional and structural reforms to guarantee that constitutional courts operate independently while protecting fundamental rights.²³

²¹ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 90–95.

²² Office of the United Nations High Commissioner for Human Rights (OHCHR), "Complaints Procedures under Human Rights Treaties," accessed September 20, 2025.

²³ Mishella Romo Rivas and Raul Sanchez-Urribarri, "Studying Judicial Decision-Making beyond Western Democracies: Lessons from Latin America," in *Research Handbook on Judicial Politics* (Cheltenham, UK: Edward Elgar Publishing, 2024), 61–84.

II. METHODOLOGY

Within this study, a comparative doctrinal legal research methodology is employed. This methodology is quite common in scholarship related to the effectiveness of judicial mechanisms in comparative constitutional law.²⁴ It seeks to study the correlation between judicial independence and the functioning of constitutional complaint systems in a bifocal manner of access to justice and fundamental rights protection.²⁵ This methodology involves the integration of legal texts, decisions of constitutional courts, legal statutes, secondary research, and in-depth comparative analyses of frameworks and systems of varying judicial configurations. This integration makes it possible to ascertain specific patterns, challenges, and best practices in emerging democracies, like Indonesia.²⁶

Indonesia is included in this study not as a fully operational constitutional-complaint jurisdiction but as a reform-oriented and prescriptive case. Its current legal system allows researchers to study judicial independence principles for creating individual complaint mechanisms.²⁷ The research identifies necessary institutional and normative changes to fix current procedural and structural gaps through a comparison between Indonesia's review system and established systems in Germany, South Korea, and Italy.²⁸ The design maintains a balanced perspective for evidence-based, future-oriented analysis without presenting any biased or exaggerated conclusions.²⁹

German, South Korean, Italian, and Indonesian legal documents provide the research's focal secondary legal frameworks, including constitutions, constitutional statutes, and case law.³⁰ Followers typically concentrate on how the procedures

²⁴ Mila Versteeg, Tom Ginsburg, and David Landau, *Comparative Constitutional Law and Politics* (New York: Oxford University Press, 2025).

²⁵ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 112.

²⁶ Versteeg, Ginsburg, and Landau, *Comparative Constitutional Law and Politics*.

²⁷ Adies Kadir et al., "Judicial Power and Judges' Status in Indonesia's Constitutional Framework," *Jurnal Hukum [Journal of Law]* 41, no. 1 (2025): 195.

²⁸ Leonardo Parona, "Italy," in *Administrative Rulemaking and Planning in European Laws* (Oxford: Oxford University Press, 2025), 50–54.

²⁹ Simon Butt, "Constitutional Court Decisions on the Judicial Independence of Other Indonesian Courts," *Constitutional Review* 9, no. 2 (2023): 247.

³⁰ Iwan Satriawan et al., "An Evaluation of the Selection Mechanism of Constitutional Judges in Indonesia and South Korea," *PADJADJARAN Jurnal Ilmu Hukum [PADJADJARAN Journal of Law]* 10, no. 1 (2023): 122–147.

and the rules of the constitution are mapped onto different territories, how much independence the different jurisdictions can exercise, and how the different courts deal with violations of fundamental rights.³¹ For example, in Germany, the Federal Constitutional Court offers a commanding system of individual constitutional complaints where citizens can contest the actions of the state that violate their basic rights.³² Similarly, there is the Constitutional Complaint of South Korea, which approaches the constitutional complaint procedures system in a constitutional manner that fosters both speed and fairness in accessing the court for the entire population, including vulnerable people.³³ Italy is a more interesting case. It offers a balance between the formal procedural rules and judicial lawmaking to retain coherence and safeguard fundamental rights.³⁴ On the other hand, Indonesia has a constitutional court that carries out constitutional reviews; however, the court does not have a functioning system that allows individuals to directly make constitutional complaints. This is a clear example of not only the absence of justice but also rights denial.³⁵

This study incorporates unique pre-existing data alongside primary resources, including legal textbooks, journal articles, and case studies from global institutions such as the UN, UN OHCHR, and the Venice Commission.³⁶ These materials furnish vital conceptual knowledge on the independence and judicial review of a constitution, the judicial system, and the associated research on constitutional complaint mechanisms in multiple jurisdictions.³⁷ It is also important to document the activities of civil society organizations that attempt to enhance the use of constitutional complaints to advocate for changes and provide litigation support

³¹ Novendri Nggilu et al., "Judicial Review of Constitutional Amendments: Comparison between India, Germany, Colombia, and the Relevancy with Indonesia," *Lex Scientia Law Review* 8, no. 1 (2024): 261–298.

³² Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

³³ Fabian Duessel, "Direct Individual Access to Constitutional Justice in South Korea and Taiwan," in *Comparative Constitutional History* (Leiden: Brill, 2020), 245–276.

³⁴ Ciampi, "Intervento del Presidente della Repubblica Carlo Azeglio Ciampi" [Speech of the President of the Italian Republic Carlo Azeglio Ciampi].

³⁵ Tanto Lailam, Putri Anggia, and Irwansyah Irwansyah, "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court," *Jurnal Konstitusi* 19, no. 3 (2022): 693–719.

³⁶ Venice Commission, *Different Models for Protection of Constitutionality, Legality and Human Rights* (Strasbourg: Council of Europe, 2019), 22.

³⁷ Rahardjo, *Law and Justice in Indonesia*, 110.

to individuals, especially in jurisdictions where systemic and structural barriers exist to personal legal access to the courts.³⁸

This study is built around a systematic legal comparative approach focusing on multiple key facets. To begin with, it studies the judiciary's independence from structural, functional, financial, and administrative aspects, which serve to guarantee impartial adjudicators for constitutional complaints.³⁹ Next, the analysis studies the effectiveness of procedures, along with the decision-making of the complaints and the dismissing of complaints that may be done arbitrarily.⁴⁰ Third, the analysis examines the constitutional rights of the vulnerable and marginalized and the legal, financial, and administrative barriers that may exist to deny the exercise of constitutional rights.⁴¹ Fourth, the study looks at the role of civil society, in particular, the extent to which private entities participate in sponsoring, filing, and successful prosecution of constitutional complaints.⁴² Finally, the analysis examines the system of constitutional complaints and the fundamental rights guaranteed by the constitution, and the extent to which these rights are actually protected and whether the system enhances compliance with constitutional mandates.⁴³

Methods elaborate on the qualitative content analysis of judicial opinions and doctrinal writings – literature which is focused on answering questions regarding the caste and framework of the judiciary. The study analyzes legal reasoning, judicial interpretation, and also procedural documents to identify trends and gaps within the functioning systems of constitutional complaints.⁴⁴

³⁸ OHCHR. "Civil Society Space and the United Nations Human Rights System."

³⁹ Ágnes Váradi, "Access to Constitutional Complaint Procedures: A Real Chance?" *Hungarian Journal of Legal Studies* 61, no. 4 (2022): 372–385.

⁴⁰ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 130.

⁴¹ Amarru Mutfie Holish and Aulia Maharani, "Strengthening Constitutional Complaint Authority: Enhancing Citizens' Constitutional Rights Protection in Indonesia," *Journal of Law and Legal Reform* 4, no. 3 (2023): 347–364.

⁴² Simi Mehta, "Looking Beyond Constitutional Institutions During an Emergency: Exploring the Role of the Civil Society in Protecting Rights," in *Human Rights During the COVID-19 Pandemic* (Singapore: Springer Nature Singapore, 2024), 73–85.

⁴³ Gabriela Dobrovičová and Lukáš Tomaš, "The Authority of a Senate of the Constitutional Court of the Slovak Republic to Initiate Legal Compliance Proceedings Upon a Petition Filed by a Natural or Legal Person," *AUC IURIDICA* 71, no. 4 (2025): 237–255.

⁴⁴ Mirza Satria Buana, "Weak-Form Review and Judicial Independence: A Comparative Perspective," *Constitutional Review* 10, no. 2 (2024): 341–360.

Comparing Germany, South Korea, and Italy within the context of the current legal system in Indonesia yields specific evidence-based policy options to strengthen Indonesia's constitutional complaint system.⁴⁵ This approach provides insights into the interplay between judicial independence and the effectiveness of constitutional complaints, as it offers both analytical and pragmatic perspectives on the problems and possibilities of reform.⁴⁶

2.1. Indicators of Effectiveness

The research evaluates constitutional-complaint systems through four measurable indicators, which stem from comparative jurisprudence and international judicial assessment systems.⁴⁷ These four indicators include (1) decision timeliness, which measures the average time between filing and judgment; (2) compliance rate, which shows how well authorities follow or implement constitutional court decisions; (3) admissibility success rate, which measures the percentage of accepted complaints against rejected ones to show procedural fairness; and (4) accessibility and transparency, which assess how easily marginalized individuals can submit and track complaints. The evaluation indicators align with the World Justice Project Rule of Law Index (2023) and Venice Commission reports on constitutional justice.⁴⁸ Data and cases from Germany, Italy, and South Korea are evaluated through these dimensions to demonstrate how judicial independence affects system performance.⁴⁹

Thus, the methodology aims to be as thorough and interdisciplinary as possible, combining doctrinal and pragmatic assessments of judicial independence, procedural effectiveness, and the accessibility of the system to users.⁵⁰ By using a blend of primary and secondary resources, the study aims to understand the

⁴⁵ M. Lutfi Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

⁴⁶ Lailam and Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review," 75.

⁴⁷ Venice Commission, *Report on Constitutional Justice and the Rule of Law 2023* (Strasbourg: Council of Europe, 2023).

⁴⁸ World Justice Project, *Rule of Law Index 2023* (Washington, DC: World Justice Project, 2023).

⁴⁹ Elena Gentili, "A Comparative Overview of European Systems of Individual Constitutional Complaint," *Italian Journal of Public Law* 4, no. 1 (2012): 27–46.

⁵⁰ László Örkényi, "A New Method for an Objective Measurement of the Judicial Workload—the Application of a Prediction Model Based on an Algorithm Formed by Multiple Linear Regression in Court Administration," *International Journal for Court Administration* 13, no. 1 (2022).

constitutional complaint system in a more holistic way, within varying judicial systems and assessing the level of efficiency the system offers along with the independence and capability of the judiciary.⁵¹

III. COMPARATIVE MODELS OF CONSTITUTIONAL COMPLAINT

The constitutional complaint mechanism is recognized as an effective means of protecting rights and allows individuals to contest administrative and legal artifacts or actions of the state that might encroach on constitutional guarantees.⁵² Unlike Germany, Italy, and South Korea, Indonesia does not yet recognize an individual constitutional-complaint mechanism. Its inclusion in this study is therefore prescriptive, aimed at evaluating how principles of judicial independence can inform the design of a future system within its constitutional framework.⁵³ Germany has perhaps the most refined example of this through its Federal Constitutional Court, which allows any individual claiming a violation of ‘basic’ rights to file a constitutional complaint.⁵⁴ Procedural and substantive constitutional rights protection systems are both alive and well in Germany. Complaints are scrupulously considered, and to the extent that there is effective and efficient compliance, citizens are able to fully exercise their constitutional rights.⁵⁵ This has improved public faith in the courts and the rule of law that touch on individual rights because of the lack of bias in the legal decisions made.⁵⁶

Like Germany, South Korea also has a strong model with constitutional complaints incorporated into its Constitutional Court system.⁵⁷ The South Korean model focuses on timely and equitable access to fundamental rights complaint submission, including for disadvantaged groups. The model has gained South

⁵¹ Osayd Awawda, “Assessment of De Jure Judicial Independence of Constitutional Courts According to International Guidelines,” *Constitutional Review* 10, no. 1 (2024): 202.

⁵² Murti Ayu Hapsari, “The Dimension of Judicial Activism of Incorporating Constitutional Complaint: An Overview on Judicial Independence,” *Constitutional Review* 11, no. 2 (2025): 363–392.

⁵³ Holish and Maharani, “Strengthening Constitutional Complaint Authority,” 347–364.

⁵⁴ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 115.

⁵⁵ Lailam and Andrianti, “Legal Policy of Constitutional Complaints in Judicial Review,” 75.

⁵⁶ Rosa M. Navarrete and Pablo Castillo-Ortiz, “Constitutional Courts and Citizens’ Perceptions of Judicial Systems in Europe,” *Comparative European Politics* 18, no. 2 (2020): 128–150.

⁵⁷ Duessel, “Direct Individual Access,” 245–276.

Korea a positive public perception regarding the judiciary's independence and fundamental rights protection.⁵⁸ Comparative analysis shows South Korea's model has improved the protection of fundamental rights,⁵⁹ and public appreciation toward the judiciary has increased, with the perception of an independent and fair South Korean judiciary improving.⁶⁰

Italy has a different model, merging procedural formalism with a degree of judicial discretion. The Italian Constitutional Court focuses on reviewing legislation's constitutionality and has developed individual complaint mechanisms regarding administrative acts that violate rights.⁶¹ This demonstrates the role of judicial independence and procedural leniency that allows courts to adapt to changes in society and law while preserving institutional reputation.⁶² Italy's case serves to exemplify courts on the balance between procedural discipline and the attainment of real democratic justice.⁶³ Unlike the above-mentioned countries, Indonesia has not developed a functioning constitutional complaint mechanism.⁶⁴

Although the Constitutional Court of Indonesia has broad powers in law review and the resolution of disputes between the organs of the state, it has not formulated any lawful processes allowing for the submission of individual complaints regarding administrative and other governmental actions.⁶⁵ There is, however, a compelling argument to be made in favor of establishing a system of constitutional complaint in order to better defend basic rights, enhance the accountability of the judiciary, and encourage public support for the Constitutional Court.⁶⁶ There are positive aspects, such as individual direct access, procedural protections for certain at-risk populations, and judicial administrative complaint

⁵⁸ Duessel, "Direct Individual Access."

⁵⁹ Marie Seong-Hak Kim, "Travails of Judges: Courts and Constitutional Authoritarianism in South Korea," *American Journal of Comparative Law* 63, no. 3 (2015): 601–654.

⁶⁰ Suparto et al., "Enhancing External Oversight of Constitutional Judges: A Study on the Role of the Judicial Commission in Indonesia and South Korea," *Lex Scientia Law Review* 8, no. 1 (2024).

⁶¹ Ciampi, "Intervento del Presidente della Repubblica Carlo Azeglio Ciampi [Speech of the President of the Italian Republic Carlo Azeglio Ciampi]."

⁶² Ciampi, "Intervento del Presidente della Repubblica Carlo Azeglio Ciampi [Speech of the President of the Italian Republic Carlo Azeglio Ciampi]."

⁶³ Parona, "Italy."

⁶⁴ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 150.

⁶⁵ Constitutional Court of the Republic of Indonesia, Decision No. 006/PUU-IV/2006 (Jakarta: Constitutional Court of the Republic of Indonesia, 2006).

⁶⁶ Rahardjo, *Law and Justice in Indonesia*, 110.

adjudication safeguards that Indonesia can borrow from best practice comparative examinations of Germany, South Korea, and Italy.⁶⁷

The effectiveness of all constitutional complaint systems relies fundamentally on the independence of the judiciary. Courts that are structurally, functionally, financially, and administratively autonomous are far better able to adjudicate complaints without partiality, defend against politicization, and uphold the rule of law.⁶⁸ Jurisdictions that are better at upholding the independence of the judiciary tend to offer stronger enforcement of constitutional guarantees and public assurance in constitutional adjudication.⁶⁹ This, however, is not the case for jurisdictions that are weak in judicial independence; such jurisdictions tend to be mired in irrational delays, capricious dismissals, and ineffectual resolutions, thereby undermining access to justice and democratic legitimacy.⁷⁰

In regions where NGOs go beyond assisting litigants to advocating for policy shifts and creating awareness, the chances of success for, and the meaningful protection of rights resulting from, constitutional complaints are much higher.⁷¹ In Indonesia, the long-term involvement of civil society in legal reform and human rights advocacy makes its participation in any future constitutional complaint system likely to improve its access and effectiveness.⁷²

The juxtaposition of the four countries, i.e., Germany, South Korea, Italy, and Indonesia, reveals that the effectiveness of any constitutional complaint system hinges on the presence of robust judicial independence, well-crafted procedural safeguards, and the involvement of civic advocacy. Indonesia, similarly, stands to benefit from these lessons in attempting to implement a constitutional complaint system that safeguards fundamental rights, enhances access to justice, and fosters public confidence in the judiciary.⁷³

⁶⁷ Lailam and Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review," 75.

⁶⁸ Garrett N. vande Kamp, "The Conditioning Role of Judicial Independence in the Exercise of Judicial Review," *Journal of Law and Courts* 9, no. 2 (2021): 261–282.

⁶⁹ Awawda, "Assessment of De Jure Judicial Independence of Constitutional Courts," 202.

⁷⁰ Michael J. Nelson, "Judicial Independence," in *International Encyclopedia of the Social & Behavioral Sciences* (Amsterdam: Elsevier, 2015), 891–896.

⁷¹ OHCHR, "Civil Society Space and the United Nations Human Rights System."

⁷² United Nations General Assembly, A/HRC/49/80, accessed September 20, 2025.

⁷³ Venice Commission, *Different Models for Protection of Constitutionality, Legality and Human Rights*, 22.

IV. JUDICIAL INDEPENDENCE AND ITS ROLE IN CONSTITUTIONAL COMPLAINT EFFECTIVENESS

Independence of the judiciary is a key element of a constitutional democracy and a necessary condition for the functioning of a constitutional complaint system.⁷⁴ It is crucial for the judiciary's independence to decide cases on the basis of law and justice without considering any external factors of a political or administrative nature, or any private interests.⁷⁵ If judges do not enjoy independence, the constitutional complaint system will be a mere façade and not a genuine, substantial remedy for the protection of the rights of individuals whose fundamental rights have been infringed upon.⁷⁶

4.1. Judicial Independence as a Determinant of Effectiveness

Constitutional independence serves as a protective mechanism, ensuring the effectiveness of any constitutional complaint mechanism.⁷⁷ Political pressure is a reality that any adjudicator faces. Only a politically insulated system of complaints can meaningfully protect rights. For courts to achieve procedural efficiency, consistency of reasoning, and compliance with their rulings, they need structural, functional, and financial autonomy.⁷⁸ Courts need to be in complete control of their adjudicatory and operational discretion, meaning constitutional courts need a sign of complete confidence placed in them. Independence fosters confidence in judicial impartiality and effective complaint systems, reinforcing trust from the other side of the scale.⁷⁹ Compromised court independence contributes to public erosion of confidence in the rule of law.⁸⁰ The interdependence of constitutional courts and the independence of the judicial system is a defining relationship in any legal order.⁸¹ Independence from politics and dominance over

⁷⁴ Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

⁷⁵ Richard Albert and Stefan Bächtold, "Judicial Independence in Comparative Constitutional Courts: Global Lessons for Emerging Democracies," *International Journal of Constitutional Law* 21, no. 4 (2023): 895–920.

⁷⁶ Awawda, "Assessment of De Jure Judicial Independence of Constitutional Courts," 202.

⁷⁷ Czine, "Fundamental Rights Protection through Constitutional Complaints," 275.

⁷⁸ Buana, "Weak-Form Review and Judicial Independence: A Comparative Perspective," 341–360.

⁷⁹ Duessel, "Direct Individual Access to Constitutional Justice in South Korea and Taiwan," 245–276.

⁸⁰ Albert and Bächtold, "Judicial Independence in Comparative Constitutional Courts."

⁸¹ Baroness Hale Richmond, "The Independence of the Judiciary and Some of Its Enemies," *University of Toronto Law Journal* 73, no. Supplement 2 (2023): 140–151.

court systems foster complete autonomy. Accountability in functional complaint systems bolsters court confidence and legal public order.⁸²

Aspects of judicial independence include structural autonomy, functional autonomy, financial self-sufficiency, and administrative independence.⁸³ Structural independence refers to the physical location of courts and judges in such a way as to confer political protection, often accomplished through constitutional, inviolable tenure of judges, and guarantees.⁸⁴ Functional independence allows judges to make unrestricted and unbiased decisions without external counsel or direction from the government and other authorities.⁸⁵ The financial independence of courts is the appropriate level of self-sufficiency so that government discretionary funding is not the primary source of revenue, while administrative self-governance means the ability to manage internal order, people, and cases without external interference.⁸⁶

As the research shows, independence of the judiciary is a necessary condition for the effectiveness of a constitutional complaint system.⁸⁷ In Germany, for instance, the Federal Constitutional Court has been able to preserve its impartiality and credibility in the adjudication of individual complaints, which enables the courts to protect and guarantee constitutional rights effectively and in a sustained fashion.⁸⁸ Similarly, the Constitutional Court of South Korea has been able to deal with complaints in a responsive manner because there is public confidence in the judiciary, which is an outcome of the Court's institutional autonomy.⁸⁹ On the other hand, in jurisdictions that suffer from a lack of judicial independence,

⁸² Kim Lane Scheppele, "A Case for the Judicial Enforcement of Principles," in *Sustaining the Rule of Law* (Cheltenham, UK: Edward Elgar Publishing, 2025), 36–56.

⁸³ Lukáš Tomaš, "Správne Súdnictvo v Systéme Del'by Moci" [Administrative Judiciary in the System of Separation of Powers], *Právny Obzor* [Legal Horizon] 105, no. 6 (2022).

⁸⁴ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*.

⁸⁵ Rafael Bustos Gisbert, "Política, Independencia y Autogobierno Judicial: Cuatro Miradas," *Revista de Estudios Políticos*, no. 198 (December 2022): 93–120, <https://doi.org/10.18042/cepc/rep.198.04>.

⁸⁶ Jeremiah Osasume Okaisabor, "The Quest of Fiscal Autonomy for Judicial Independence: The Case of the Nigerian Judiciary and Its Challenges," *African Identities* 23, no. 3 (2025): 756–780.

⁸⁷ Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

⁸⁸ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*.

⁸⁹ Lailam and Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review," 75.

there is usually a more severe problem with the enforcement of constitutional rights, which in turn adds to the denial of access to justice and the rule of law.⁹⁰

Constitutional complaint effectiveness and judicial independence are demonstrated through the case of Italy.⁹¹ More than centuries of decent and neglect, the Italian Constitutional Court has been able to develop mechanisms to address individual complaints based on the autonomy of the Court, especially in cases where steps taken administratively may infringe or sweep away the constitutional guarantees.⁹² The more autonomous a judiciary is from politics, the more vigorous and effective the constitutional complaints resolution system will be.⁹³ In the case of the Italian judges, the discretion that is granted to the judges enables the courts to streamline and tailor steps to be taken in individual cases; to the degree procedural justice and rigidity dominate the system, the protection of rights also has to be speedy.⁹⁴

In Indonesia, the ceremonial and legal demarcation of judicial independence has no commensurate, proportional, or equal action in real life.⁹⁵ Concerns about political influences, lack of resources, and inefficient procedures are some of the many issues that the Constitutional Court faces despite holding extensive powers of constitutional review and state organ dispute resolution.⁹⁶ These issues raise questions about the practical steps that can be taken to guarantee the independence of judges in constitutional complaints. There must be an attitude of judicial propriety toward the allocation of resources for administrative and institutional purposes. This will, in turn, support the structural changes necessary to improve the constitutional complaint system in the country.⁹⁷

⁹⁰ Holish and Maharani, "Strengthening Constitutional Complaint Authority," 347–364.

⁹¹ Gentili, "A Comparative Overview of European Systems of Individual Constitutional Complaint."

⁹² Ciampi, "Intervento del Presidente della Repubblica Carlo Azeglio Ciampi [Speech of the President of the Italian Republic Carlo Azeglio Ciampi]."

⁹³ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 150.

⁹⁴ Holish and Maharani, "Strengthening Constitutional Complaint Authority," 347–364.

⁹⁵ Czine, "Fundamental Rights Protection," 275.

⁹⁶ Rahardjo, *Law and Justice in Indonesia*, 115.

⁹⁷ United Nations Development Programme (UNDP), *Rule of Law and Access to Justice: Global Review 2023* (New York: UNDP, 2023).

The constitutional complaint system is supported by other pillars like civil society, public education, and system honesty.⁹⁸ These factors all aid in access to the judicial system and guarantee that the decisions made are implemented.⁹⁹ These factors work to improve the relationship between society and the judiciary, wherein the public seeks active participation. A well-organized system is improved by active civil participation. The lack of constitutional independence violates the set procedures and relates to the weak protection of rights. These interconnections between judicial independence and constitutional complaints are essential and crucial to understand.¹⁰⁰

To summarize, the independence of the judiciary is crucial for the constitutional complaint system to function.¹⁰¹ In areas like Germany, South Korea, Italy, and possibly Indonesia, the primary defenses afforded to constitutional rights through hinge on access and the relative freedom of the judiciary to act.¹⁰² Constitutional complaint mechanisms that are both tangible and effective are the responsibility of the judiciary, civil society, and procedural safeguards, which should be provided in every case.¹⁰³

4.2. Bridging Theoretical Framework and Comparative Analysis

The above discussion provides judicial independence as the theoretical baseline for evaluating the effectiveness of constitutional-complaint systems.¹⁰⁴ Having outlined its normative and structural dimensions, the subsequent analysis applies this framework to selected jurisdictions to determine how degrees of independence shape practical outcomes.¹⁰⁵ The comparative section that follows examines Germany, South Korea, Italy, and Indonesia to evaluate whether structural, functional, and financial autonomy correlate with measurable indicators of effectiveness such as procedural timeliness, compliance, and accessibility. By

⁹⁸ Venice Commission, *Participation of Civil Society in Constitutional Review* (Strasbourg: Council of Europe, 2020).

⁹⁹ OHCHR, "Civil Society Space and the United Nations Human Rights System."

¹⁰⁰ United Nations General Assembly, A/HRC/49/80.

¹⁰¹ Buana, "Weak-Form Review and Judicial Independence."

¹⁰² Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

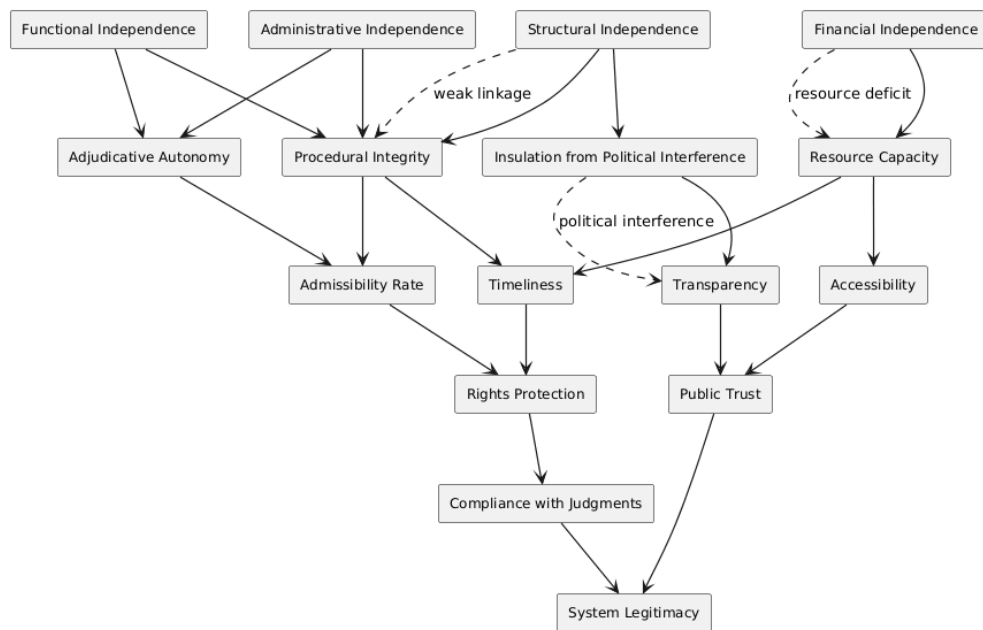
¹⁰³ Venice Commission, *Different Models for Protection of Constitutionality, Legality and Human Rights*, 35.

¹⁰⁴ Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

¹⁰⁵ Albert and Bächtold, "Judicial Independence in Comparative Constitutional Courts," 895–920.

translating theory into empirical observation, this approach demonstrates that judicial independence is not an abstract ideal but a working determinant of constitutional justice.¹⁰⁶ The transition from conceptual discussion to comparative evidence ensures analytical continuity and highlights how institutional design directly influences the performance of complaint mechanisms across diverse legal traditions.¹⁰⁷ The impact of judicial independence on constitutional complaint process is summarized in Figure 1 below.

Figure 1. Causal Model of Judicial Independence and Constitutional Complaint Effectiveness



Source: Author's own illustration, 2025

This diagram illustrates how judicial independence influences each stage of the constitutional complaint process, from filing to final decision. It highlights the potential outcomes when independence is strong versus when political influence interfere.

¹⁰⁶ Venice Commission, *Report on Constitutional Justice and the Rule of Law 2023*.

¹⁰⁷ World Justice Project, *Rule of Law Index 2023*.

V. CHALLENGES AND BARRIERS TO EFFECTIVE CONSTITUTIONAL COMPLAINT SYSTEMS

The potential effectiveness of constitutional complaint mechanisms particularly highlights other downfalls that lie within the systems. These issues seem to be partly structural and partly procedural within their political, social, and legal systems. Outlining the appropriations of the issues is vital for any proposed internal reforms that ensure the constitutional complaint systems function and achieve the desired outcomes.¹⁰⁸

The most significant of these issues is the lack of autonomous and impartial courts in the region. Though there is a lack of any privatized systems outlined in the constitution or any other legal documents that influence constitutional law, the practical exercise of judicial autonomy is heavily clouded by politics, policy, and the absence of peripheral shield systems.¹⁰⁹ Within the political environment, influence, whether open or covert, is the harshest tool within the judicial systems for arm-twisting that determines if enforcement of constitutional rights is exercised or ignored. Within the different legal zones jointly, there is overwhelming discord that suggests a lack of autonomy within the judicial systems.¹¹⁰

A significant constitutional complaint barrier defaults in procedural complexity. Although these restrictions are supposed to sustain procedural discipline, they also can pose serious challenges to the general populace, especially to those who are not legally educated and those who face difficulties in obtaining legal help.¹¹¹ For instance, in Indonesia, the absence of a functioning system of constitutional complaint with elaborated procedural norms to guide individual

¹⁰⁸ Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

¹⁰⁹ Bustos Gisbert, "*Política, Independencia y Autogobierno Judicial* [Politics, Independence, and Judicial Self-Government], 93–120.

¹¹⁰ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 153.

¹¹¹ Ramalina Ranaivo Mikea Manitra and Adya Paramita Prabandari, "Judicial Independence Under Political Pressure: The High Constitutional Court and Electoral Justice in Madagascar (2009–2023)," *Constitutional Review* 11, no. 2 (2025): 393–421.

complaints has hampered ease of access and public confidence in the judicial system.¹¹²

Despite the availability of constitutional complaint systems, the lack of resources can also pose a challenge. The courts need to be adequately funded, staffed, and equipped in the organization and administration of constitutional complaints. Under-resourced courts, which are understaffed and lacking in information technology, suffer chronic backlogs of unresolved cases and poor standards of decision-making. This, in turn, results in discouragement of the populace from making use of constitutional complaints and promotes the loss of confidence in the system as a whole.¹¹³ Germany and South Korea are examples of jurisdictions where the public complaint resolution system is adequately resourced, resulting in the timely resolution of complaints and enhanced public confidence in constitutional adjudication.¹¹⁴

A more general problem is the absence of public information and legal education. Even in jurisdictions that have more than adequate complaint systems, citizens lack information concerning their rights and the legal processes available to contest government action.

This also holds, to some extent, for the lack of attention to concerns of rural women, other marginalized women, and low-income women and teenagers.¹¹⁵ A well-designed constitutional grievance process does not simply involve legal and institutional arrangements. It also requires proactive initiatives to educate and empower the population, raise awareness of their rights, and facilitate access to counsel.¹¹⁶

The role of civil society is both a mitigating factor and a potential hindrance. While there are active civil society organizations that assist directly with case litigation, provide legal representation, and advocate for structural changes, there

¹¹² Rahardjo, *Law and Justice in Indonesia*, 123.

¹¹³ Palguna, "Constitutional Complaint and the Protection of Citizens' Constitutional Rights," 1.

¹¹⁴ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 157.

¹¹⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), "Access to Justice for Vulnerable Populations," accessed September 20, 2025.

¹¹⁶ United Nations General Assembly, A/HRC/49/80.

are also forms of reduced engagement, which are called political restrictions for NGOs.¹¹⁷ In such political contexts, where civil society is weak or politically restricted, the role of constitutional complaint systems is to provide civil participation and social justice to the marginalized and vulnerable. The Philippines is a case in point which illustrates that increasing civil society participation is central to ensuring that any future constitutional complaint systems are accessible and functional.¹¹⁸

Finally, there are also sociopolitical and cultural obstacles. In some cultures, where people are expected to respect and obey social grades of dominance or political authority, it may be difficult to claim constitutional rights and complain against actions of the state.¹¹⁹ Norms of social control and civility, as well as informal systems of social and political control, often make it difficult to complain and ensure that a court's decision is enforced. Comparative studies note that constitutional complaint systems are most effective when they are in a positive relation to the environment of the country that maintains the rule of law, democracy, and civil accountability.¹²⁰

A responsive approach is necessary to address these problems.¹²¹ They cross the borders of availability of legal aid and assistance, professional engagement of the judiciary, elimination of unnecessary and over-complex legal processes, promoting civic legal education, active nurturing of civil society, and particular care strategies to improve the constitutional complaint systems. Comparative studies from Germany, South Korea, and Italy restate that structural design is only a part of the plan; the real test is the working mechanisms of judicial independence, procedural simplification, and civic activism that demand the particular constitutional complaint systems be responsive to fundamental rights and access to justice.¹²²

¹¹⁷ Venice Commission, *Participation of Civil Society in Constitutional Review*, 17.

¹¹⁸ Rahardjo, *Law and Justice in Indonesia*, 125.

¹¹⁹ Manitra and Prabandari, "Judicial Independence Under Political Pressure," 393–421.

¹²⁰ Chakim, "A Comparative Perspective on Constitutional Complaint," 96.

¹²¹ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 160.

¹²² Duessel, "Direct Individual Access," 245–276.

Finally, the challenges to responsive constitutional complaint systems are many and dense: institutional, procedural, resource, societal, and cultural challenges. These challenges, which are necessary to address, ensure that constitutional complaint mechanisms serve the purposes of protecting the people, nurturing accountability in the judiciary, and building the confidence of the people in the law.¹²³

VI. PROSPECTS AND RECOMMENDATIONS FOR INDONESIA

Even though Indonesia's constitutional structure is designed to defend and promote fundamental rights and freedoms, the workings of constitutional complaints are a crucial blind spot in the complete enforcement of such freedoms. The absence of such constitutional complaints does not only defeat the purpose of democracy and the rule of law, but also leaves a deficiency in individual rights and liberties, weakens legal accountability, erodes the rule of law, and diminishes public confidence in the courts. Moreover, through the experiences of Germany, South Korea, and Italy, Indonesia would be able to put in place a system that is accessible, procedurally efficient, and able to guarantee the independence of the judiciary.¹²⁴

Indonesia's most important opportunity is direct access to constitutional complaint mechanisms. The capacity of citizens to directly challenge administrative acts or other state actions without going through intermediary steps is empowering. This also enhances the capacity of the state to give effective responses to violations of fundamental rights. Access to legal support lessens doubts about the judiciary, increases implementation of the law, and complements overall confidence in the system.¹²⁵ The approach of the Federal Constitutional Court of Germany is an example in a case where the court is fully accessible to citizens while still retaining judicial control without sacrificing the rigor of the court to the complainers.¹²⁶ South Korea is another similar example where the

¹²³ Holish and Aulia Maharani, "Strengthening Constitutional Complaint Authority," 347–364.

¹²⁴ Rahardjo, *Law and Justice in Indonesia*, 130.

¹²⁵ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 165.

¹²⁶ Kommers and Miller, 168.

judicial system provides targeted self-help to aid powerless litigants to maximize the mechanism for the defense of their fundamental freedoms. Fostering self-confidence and personal integrity among court members is vital.¹²⁷

The Constitutional Court of Indonesia is an example of the separation of powers where the judiciary is practically autonomous. In practice, however, the dominance of politics, the lack of freedom to act, and the scarcity of means and resources tend to compromise the impartiality of the court.¹²⁸ Ensuring functional, structural, as well as administrative independence is vital to allow judges to work unencumbered when deciding on constitutional complaints brought before the court. Focused almost exclusively on political matters, the diminishing of the constitution and constitutional complaints is most symptomatic in cross-national studies. In such cases, the system provides unilateral independence to the judges, and the court record strengthens popular belief in the judiciary, demonstrated in measures of responsiveness to constitutional claims, protection of constitutional rights, and, most fundamentally, the defense of public trust and confidence.¹²⁹

Procedural safeguards together with simplification form essential development areas. The procedures for constitutional complaints need precise definition with reasonable filing requirements and clear timelines alongside mechanisms that make participation possible for citizens who lack legal expertise. The simplification of procedures must preserve legal rigor while making the system accessible and equitable and efficient.¹³⁰ Through observation of the Italian approach procedural flexibility along with judicial discretion enables courts to achieve both legal standards and practical outcomes in constitutional complaint cases.¹³¹

The enhancement of Indonesia's future constitutional complaint system depends on public understanding alongside legal education efforts. People need proper knowledge about their legal entitlements as well as the complaint

¹²⁷ Duessel, "Direct Individual Access," 245–276.

¹²⁸ Awawda, "Assessment of De Jure Judicial Independence of Constitutional Courts," 202.

¹²⁹ Holish and Maharani, "Strengthening Constitutional Complaint Authority," 347–364.

¹³⁰ Kommers and Miller, *Constitutional Jurisprudence of the Federal Republic of Germany*, 170.

¹³¹ Ciampi, "Intervento del Presidente della Repubblica Carlo Azeglio Ciampi" [Speech of the President of the Italian Republic Carlo Azeglio Ciampi], May 5, 2003.

submission process and available judicial relief options. The combination of specialized outreach programs with educational efforts and civil society partnerships will enable citizens to take part in constitutional complaint processes while promoting widespread engagement.¹³² Civil society participation strengthens complaint mechanism access while establishing credibility and legitimacy for this process.¹³³

Indonesia stands to gain through the implementation of technological innovations together with administrative reforms which will back up constitutional complaint procedures. The implementation of digital platforms for complaint submission along with case tracking and judicial decision access will boost efficiency levels while making the system more transparent and accessible. The combination of innovative technology with sufficient staffing along with financial backing and institutional capacity development will lead to a modern complaint system that addresses citizen requirements.¹³⁴

In Conclusion, the outlook for establishing a constitutional complaint system in Indonesia appears promising. The establishment of a constitutional complaint system in Indonesia requires strategic reforms which include direct individual access as well as judicial independence strengthening and procedural simplification along with public education campaigns and civil society involvement and technology implementation to create an effective rights protection mechanism that builds judicial trust. Constitutional adjudication becomes an operational mechanism for defending rights and enhancing legal governance when these steps are implemented.¹³⁵ Figure 2 below illustrates the step-by-step process through which an individual can file a constitutional complaint in Indonesia, highlighting the decision points and potential outcomes of the procedure.”

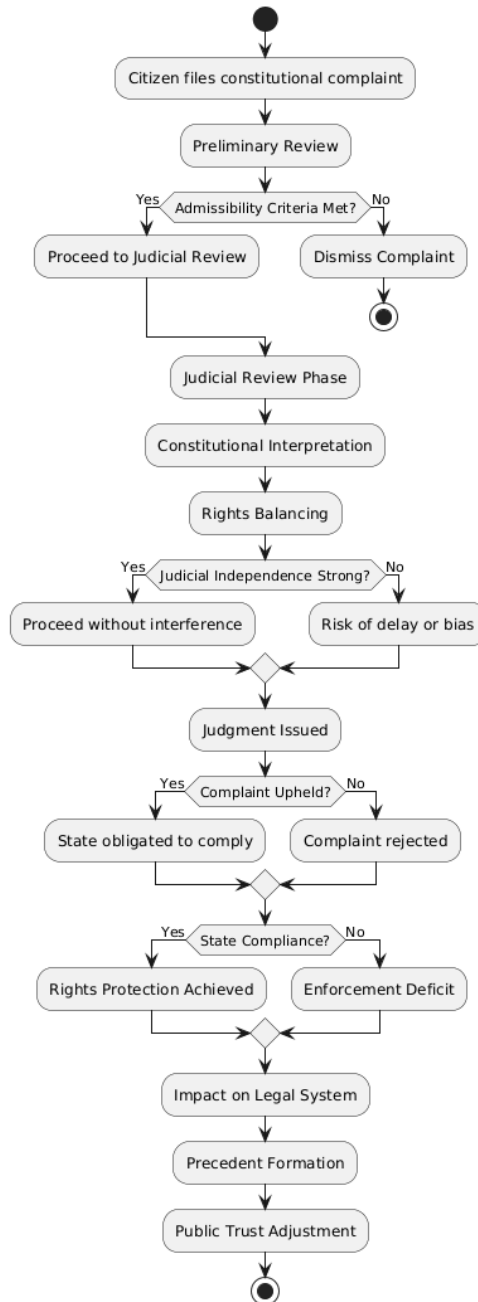
¹³² OHCHR, “Civil Society Space and the United Nations Human Rights System.”

¹³³ Venice Commission, *Participation of Civil Society in Constitutional Review*, 20

¹³⁴ United Nations General Assembly, A/HRC/49/80.

¹³⁵ Rahardjo, *Law and Justice in Indonesia*, 135.

Figure 2. Institutional Decision Tree of Constitutional Complaint Adjudication (Proposed Indonesian Model)



Source: Author's own illustration, 2025

This flowchart summarizes the constitutional complaint procedure, from filing by the citizen to the final decision by the Constitutional Court. It emphasizes procedural steps, decision points, and possible outcomes, facilitating understanding of the rights enforcement mechanism.

VII. Comparative Implications of Judicial Independence for Complaint Effectiveness

The level of judicial independence directly influences the functioning of constitutional complaint mechanisms.¹³⁶ Germany and South Korea have constitutional courts with structural and financial independence, which results in shorter decision-making periods, higher complaint admissibility rates, and stronger enforcement of their decisions.¹³⁷ These courts can ensure compliance, maintain constitutional consistency, and uphold public confidence as constitutional justice is effectively served.¹³⁸ On the other hand, Italy's fluctuating judicial independence due to political bargaining and Indonesia's informal constitutional complaint procedure lead to limited effectiveness in addressing rights violations.¹³⁹ This demonstrates the practical, rather than theoretical, significance of judicial independence.¹⁴⁰ Evidence shows that independence primarily strengthens the enforcement of judicial autonomy, as active complaint systems promote judicial accountability, transparency, and public legitimacy.

For Indonesia, adopting institutional reforms that guarantee tenure security, transparent appointments, and budgetary independence of the Constitutional Court is crucial to ensure that any future constitutional complaint mechanism functions as a genuine protector of fundamental rights rather than a symbolic institution.¹⁴¹ The comparative dimensions of independence and effectiveness across the selected jurisdictions are summarized in Table 1 below.¹⁴²

¹³⁶ Albert and Bächtold, "Judicial Independence in Comparative Constitutional Courts," 895–920.

¹³⁷ Bustos Gisbert, "Política, Independencia y Autogobierno Judicial" [Politics, Independence, and Judicial Self-Government], 93–120.

¹³⁸ World Justice Project, *Rule of Law Index 2023*.

¹³⁹ Gentili, "A Comparative Overview of European Systems of Individual Constitutional Complaint," 27–46.

¹⁴⁰ Venice Commission, *Report on Constitutional Justice and the Rule of Law 2023*.

¹⁴¹ Czine, "Fundamental Rights Protection through Constitutional Complaints," 275.

¹⁴² Czine, "Fundamental Rights Protection through Constitutional Complaints," 275.

Table 1. Relationship between Judicial Independence and Effectiveness of Constitutional Complaint Systems

Country	Judicial Independence Features	Effectiveness Indicators	Overall Assessment
Germany	Strong structural and financial autonomy; judges appointed by qualified parliamentary majority.	High timeliness, strong compliance, broad accessibility.	Highly effective and trusted system.
South Korea	Institutional autonomy; transparent appointment through balanced branches; independent case management.	Moderate-to-high compliance and procedural fairness.	Effective with strong public confidence.
Italy	Independence partly constrained by political appointments; fragmented administrative control.	Moderate timeliness and compliance; uneven accessibility.	Functionally effective but politically sensitive.
Indonesia	No individual complaint mechanism; partial judicial autonomy; limited enforcement capacity.	Low accessibility and procedural coverage.	Developing framework — requires reform to ensure effectiveness.

Source: Author's comparative analysis based on constitutional frameworks, Venice Commission (2023), and World Justice Project Rule of Law Index (2023).

VIII. CONCLUSION

Constitutional complaint systems represent an advanced legal mechanism that safeguard or protect fundamental rights and strengthen the rule of law across democratic nations. They help or provide citizens with direct access to

constitutional justice and ensure institutional accountability by allowing judicial scrutiny of state actions. The comparative analysis of Germany, South Korea, and Italy demonstrates or shows that the effectiveness of these systems is inseparable from the level of judicial independence, procedural accessibility, and also civic engagement supporting them.

Judicial independence emerges as the cornerstone or central element of an effective constitutional complaint mechanism. Courts that operate independently from political interference and have financial self-sufficiency, structural autonomy, and operate under transparent administrative systems achieve higher procedural efficiency, consistent reasoning, and strengthened public trust. The systems which operate under restricted independence and face procedural delays and political interference fail to deliver rights violation remedies. This damages public trust in constitutional governance.

The selection of Indonesia as a reform-oriented case study reveals multiple benefits and challenges at the same time. While it lacks a fully operational constitutional complaint framework, Indonesia can draw or learn valuable lessons from comparative jurisdictions. Institutional reforms ensuring tenure security, transparent judicial appointments, adequate funding, and technological innovation can help to strengthen judicial independence and accessibility. Civil society participation should be further institutionalized to improve awareness, inclusivity, and accountability.

The implementation of a constitutional complaint mechanism in Indonesia would become a concrete demonstration of justice and equity principles together with human rights protection. Through this mechanism citizens would gain direct access to defend their rights and hold public officials accountable and actively protect constitutional governance. Through its structural design alignment with judicial independence and societal engagement Indonesia can develop an effective and resilient constitutional complaint system which would establish itself as a regional democratic standard.

BIBLIOGRAPHY

- Abdellaoui, Samia. "Between Reality and Aspiration: A Critical Review of the Principle of Judicial Independence Considering the Algerian Constitutional Amendment of 2020." *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 3 (2024): 155–64.
- Albert, Richard, and Stefan Bächtold. "Judicial Independence in Comparative Constitutional Courts: Global Lessons for Emerging Democracies." *International Journal of Constitutional Law* 21, no. 4 (2023): 895–920.
- Amrullah, Maulana. "Identifying Key Determinants of Civil Society Robustness in Southeast Asia." *JAS (Journal of ASEAN Studies)* 12, no. 1 (2024): 107–31.
- Awawda, Osayd. "Assessment of De Jure Judicial Independence of Constitutional Courts According to International Guidelines." *Constitutional Review* 10, no. 1 (2024). <https://doi.org/10.31078/consrev1017>.
- Britto, Melina Carla de Souza, and Claudia Maria Barbosa. "Disfuncionalidades do Modelo Institucional Liberal: Juristocracia e Backlash [Dysfunctionalities of the Liberal Institutional Model: Juristocracy and Backlash]." *Cuestiones Constitucionales [Constitutional Questions]* (April 2023): 131–50.
- Buana, Mirza Satria. "Weak-Form Review and Judicial Independence: A Comparative Perspective." *Constitutional Review* 10, no. 2 (2024): 341–60.
- Butt, Simon. "Constitutional Court Decisions on the Judicial Independence of Other Indonesian Courts." *Constitutional Review* 9, no. 2 (2023). <https://doi.org/10.31078/consrev922>.
- Chakim, M. Lutfi. "A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions." *Constitutional Review* 5, no. 1 (2019).

- Ciampi, Carlo Azeglio. “*Intervento del Presidente della Repubblica Carlo Azeglio Ciampi in occasione della consegna delle medaglie d’oro ai benemeriti della cultura e dell’arte* [Speech of the President of the Italian Republic Carlo Azeglio Ciampi on the Delivery of the Gold Medals for Culture and Arts Merit].” May 5, 2003.
- Constitutional Court of the Republic of Indonesia. *Decision No. 006/PUU-IV/2006*. Jakarta: Constitutional Court of the Republic of Indonesia, 2006.
- Czine, Ágnes. “Fundamental Rights Protection through Constitutional Complaints, with Special Respect to Its Effectiveness.” *Constitutional Review* 11, no. 2 (2025): 269–98.
- Di Capua, Viviana. “The Protection of Fundamental Rights by the Constitutional Court in the Republic of Latvia: Perspectives, Opportunities and Limits of an Introduction of the Model in Italy.” *Journal of the University of Latvia. Law* 16 (October 2023): 195–211.
- Dobrovičová, Gabriela, and Lukáš Tomaš. “The Authority of a Senate of the Constitutional Court of the Slovak Republic to Initiate Legal Compliance Proceedings Upon a Petition Filed by a Natural or Legal Person.” *AUC IURIDICA* 71, no. 4 (2025): 237–55. <https://doi.org/10.14712/23366478.2025.681>.
- Duessel, Fabian. “Direct Individual Access to Constitutional Justice in South Korea and Taiwan.” In *Comparative Constitutional History*, 245–276. Leiden: Brill, 2020. https://doi.org/10.1163/9789004435315_011.
- Gentili, Elena. “A Comparative Overview of European Systems of Individual Constitutional Complaint.” *Italian Journal of Public Law* 4, no. 1 (2012): 27–46.
- Hapsari, Murti Ayu. “The Dimension of Judicial Activism of Incorporating Constitutional Complaint: An Overview on Judicial Independence.” *Constitutional Review* 11, no. 2 (2025): 363–92. <https://doi.org/10.31078/consrev1124>.

- Holish, Amarru Mutfie, and Aulia Maharani. "Strengthening Constitutional Complaint Authority: Enhancing Citizens' Constitutional Rights Protection in Indonesia." *Journal of Law and Legal Reform* 4, no. 3 (2023): 347-64. <https://doi.org/10.15294/jllr.v4i3.68129>.
- Kadir, Adies, Gunarto Gunarto, Suwarno Suwarno, and Md. Adnan Kabir. "Judicial Power and Judges' Status in Indonesia's Constitutional Framework." *Jurnal Hukum [Journal of Law]* 41, no. 1 (2025). <https://doi.org/10.26532/jh.v41i1.45197>.
- Kelsen, Hans. *General Theory of Law and State*. Cambridge: Harvard University Press, 1945.
- Kim, Marie Seong-Hak. "Travails of Judges: Courts and Constitutional Authoritarianism in South Korea." *American Journal of Comparative Law* 63, no. 3 (2015): 601-654. <https://doi.org/10.5131/AJCL.2015.0018>.
- Kommers, Donald P., and Russell A. Miller. *The Constitutional Jurisprudence of the Federal Republic of Germany*. 3rd ed. Durham: Duke University Press, 2012.
- Lailam, Tanto, and Nita Andrianti. "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia." *BESTUUR* 11, no. 1 (August 2023).
- Lailam, Tanto, Putri Anggia, and Irwansyah Irwansyah. "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court." *Jurnal Konstitusi* 19, no. 3 (2022): 693-719. <https://doi.org/10.31078/jk1939>.
- Manitra, Ramalina Ranaivo Mikea, and Adya Paramita Prabandari. "Judicial Independence Under Political Pressure: The High Constitutional Court and Electoral Justice in Madagascar (2009-2023)." *Constitutional Review* 11, no. 2 (2025): 393-421. <https://doi.org/10.31078/consrev1125>.
- Mehta, Simi. "Looking Beyond Constitutional Institutions During an Emergency: Exploring the Role of the Civil Society in Protecting Rights." In *Human Rights During the COVID-19 Pandemic*, 73-85. Singapore: Springer Nature Singapore, 2024. https://doi.org/10.1007/978-981-97-1480-3_5.

- Nelson, Michael J. "Judicial Independence." In *International Encyclopedia of the Social & Behavioral Sciences*, 891–896. Amsterdam: Elsevier, 2015. <https://doi.org/10.1016/B978-0-08-097086-8.93155-6>.
- Navarrete, Rosa M., and Pablo Castillo-Ortiz. "Constitutional Courts and Citizens' Perceptions of Judicial Systems in Europe." *Comparative European Politics* 18, no. 2 (2020): 128–50. <https://doi.org/10.1057/s41295-019-00154-9>.
- Nggilu, Novendri, Mohamad Rivaldi Moha, Muhammad Ridho Sinaga, and Adelia Rachmaniar. "Judicial Review of Constitutional Amendments: Comparison between India, Germany, Colombia, and the Relevancy with Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 261–298. <https://doi.org/10.15294/lslr.v8i1.1901>.
- Office of the United Nations High Commissioner for Human Rights (OHCHR). "Access to Justice for Vulnerable Populations." Accessed September 20, 2025. <https://www.ohchr.org/en/publications/access-to-justice-vulnerable-populations>.
- Office of the United Nations High Commissioner for Human Rights (OHCHR). "Civil Society Space and the United Nations Human Rights System." Accessed September 20, 2025. https://www.ohchr.org/sites/default/files/CS_space_UNHRSystem_Guide_o.pdf.
- Office of the United Nations High Commissioner for Human Rights (OHCHR). "Complaints Procedures under Human Rights Treaties." Accessed September 20, 2025. <https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/complaints-procedures-under-human-rights-treaties>.
- Okaisabor, Jeremiah Osasume. "The Quest of Fiscal Autonomy for Judicial Independence: The Case of the Nigerian Judiciary and Its Challenges." *African Identities* 23, no. 3 (2025): 756–80. <https://doi.org/10.1080/14725843.2024.2349613>.

- Örkényi, László. "A New Method for an Objective Measurement of the Judicial Workload—the Application of a Prediction Model Based on an Algorithm Formed by Multiple Linear Regression in Court Administration." *International Journal for Court Administration* 13, no. 1 (2022). <https://doi.org/10.36745/ijca.407>.
- Palguna, I Dewa Gede. "Constitutional Complaint and the Protection of Citizens' Constitutional Rights." *Constitutional Review* 3, no. 1 (2017).
- Parona, Leonardo. "Italy." In *Administrative Rulemaking and Planning in European Laws*, 50–54. Oxford: Oxford University Press, 2025. <https://doi.org/10.1093/oso/9780198867616.003.0008>.
- Rahardjo, Satjipto. *Law and Justice in Indonesia: Constitutional Perspectives*. Jakarta: Rajawali Press, 2018.
- Richmond, Baroness Hale. "The Independence of the Judiciary and Some of Its Enemies." *University of Toronto Law Journal* 73, no. Supplement 2 (2023): 140–151. <https://doi.org/10.3138/utlj-2023-0063>.
- Roa Roa, Jorge Ernesto, and Juan José Aristizábal López. "How Courts Defend Democracy: Challenging Authoritarianism and Advancing Social Transformation." *Revista de Direito Econômico e Socioambiental* 16, no. 3 (2025).
- Romo Rivas, Mishella, and Raul Sanchez-Urribarri. "Studying Judicial Decision-Making beyond Western Democracies: Lessons from Latin America." In *Research Handbook on Judicial Politics*, 61–84. Cheltenham, UK: Edward Elgar Publishing, 2024. <https://doi.org/10.4337/9781035309320.00013>.
- Rudy, Rudy, et al. "Implementation of Civil Rights against Vulnerable Groups in the Legal and Constitutional System in Indonesia." *Hasanuddin Law Review* 8, no. 3 (2023).

- Satriawan, Iwan, Seokmin Lee, Septi Nur Wijayanti, and Beni Hidayat. "An Evaluation of the Selection Mechanism of Constitutional Judges in Indonesia and South Korea." *PADJADJARAN Jurnal Ilmu Hukum* 10, no. 1 (2023): 122–147. <https://doi.org/10.22304/pjih.v10n1.a7>.
- Scheppele, Kim Lane. "A Case for the Judicial Enforcement of Principles." In *Sustaining the Rule of Law*, 36–56. Cheltenham, UK: Edward Elgar Publishing, 2025. <https://doi.org/10.4337/9781035345472.00006>.
- Sundariwati, Ni Luh Dewi. "Judicial Activism: Diantara Melindungi Supremasi Konstitusional Atau Transisi Menuju Juristocracy [Judicial Activism: Between Protecting Constitutional Supremacy and Transitioning toward Juristocracy]." *Jurnal Konstitusi* [Constitutional Journal] 21, no. 3 (2024): 432–47.
- Suparto, Hyeonsoo Kim, David Hardiago, and Rani Fadhila Syafrinaldi. "Enhancing External Oversight of Constitutional Judges: A Study on the Role of the Judicial Commission in Indonesia and South Korea." *Lex Scientia Law Review* 8, no. 1 (2024). <https://doi.org/10.15294/lslr.v8i1.14140>.
- Tomaš, Lukáš. "Správne Súdnicstvo v Systéme Delby Moci [Administrative Judiciary in the System of Separation of Powers]." *Právny Obzor* 105, no. 6 (2022). <https://doi.org/10.31577/pravnyobzor.2022.6.02>.
- UN Peacemaker. "Global Lessons Learned: Judicial Independence and the Rule of Law." Accessed September 20, 2025. <https://peacemaker.un.org/sites/default/files/document/files/2022/07/ifeslessonslearnedconstitutionalcourtsjudicialindependenceruleoflaw2004.pdf>.
- United Nations Development Programme (UNDP). *Rule of Law and Access to Justice: Global Review 2023*. New York: UNDP, 2023.
- United Nations General Assembly. *A/HRC/49/80*. Accessed September 20, 2025. <https://docs.un.org/en/A/HRC/49/80>.

- Vande Kamp, Garrett N. "The Conditioning Role of Judicial Independence in the Exercise of Judicial Review." *Journal of Law and Courts* 9, no. 2 (2021): 261–82. <https://doi.org/10.1086/713407>.
- Váradi, Ágnes. "Access to Constitutional Complaint Procedures: A Real Chance?" *Hungarian Journal of Legal Studies* 61, no. 4 (2022): 372–85. <https://doi.org/10.1556/2052.2021.00307>.
- Venice Commission. *Different Models for Protection of Constitutionality, Legality and Human Rights*. Strasbourg: Council of Europe, 2019.
- Venice Commission. *Participation of Civil Society in Constitutional Review*. Strasbourg: Council of Europe, 2020.
- Venice Commission. *Report on Constitutional Justice and the Rule of Law 2023*. Strasbourg: Council of Europe, 2023.
- Versteeg, Mila, Tom Ginsburg, and David Landau. *Comparative Constitutional Law and Politics*. New York: Oxford University Press, 2025. <https://doi.org/10.1093/os0/9780197760482.001.0001>.
- World Justice Project. *Rule of Law Index 2023*. Washington, DC: World Justice Project, 2023.