

## An Alternative Model for Constitutional Question Adjudication in Indonesia: A Comparative Study of Ten Constitutional Court Jurisdictions

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### ABSTRACT

Indonesia's constitutional review system entrusts the Constitutional Court with the authority to review statutes against the 1945 Constitution, yet it does not provide a procedural channel through which ordinary judges may refer constitutional doubts arising in pending cases. This doctrinal and comparative legal study formulates an alternative model of constitutional question adjudication for Indonesia by examining ten constitutional-court jurisdictions: Austria, Italy, Germany, South Africa, South Korea, Hungary, Croatia, Romania, the Czech Republic, and the Russian Federation. The study uses statutory, conceptual, case-based, and comparative approaches and analyses primary legal materials, constitutional-court legislation, judicial decisions, and relevant scholarship on centralized constitutional review and concrete norm control. The findings show that constitutional question mechanisms share several core features: they arise from concrete litigation, are normally initiated by judges, require the challenged norm to be decisive for the pending case, usually suspend the underlying proceedings, and produce decisions with binding force beyond the individual dispute. At the same time, the jurisdictions differ in their referral filters, admissibility thresholds, procedural timelines, and remedial effects. Building on these comparative findings, this article proposes a semi-mandatory judicial referral model for Indonesia. The model requires constitutional amendment to Article 24C of the 1945 Constitution, preliminary screening by the Supreme Court, strict admissibility criteria, a stay of proceedings, expedited review by the Constitutional Court, and final and binding decisions with erga omnes and limited retroactive effects. The proposed model preserves judicial independence, reduces the risk of docket congestion, and strengthens preventive protection of constitutional rights in concrete adjudication.

### Keywords:

constitutional question; concrete review; constitutional court; judicial referral; constitutional rights; Indonesia

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### INTRODUCTION

Constitutional review is a central mechanism through which modern constitutional democracies maintain constitutional supremacy, restrain legislative power, and protect fundamental rights. In the *Kelsenian* model, constitutional review is centralized in a specialized constitutional court rather than dispersed among all ordinary courts (Kelsen, 1942; Garlicki, 2007). This design seeks to ensure authoritative and uniform constitutional interpretation while separating the adjudication of ordinary disputes from the final determination of constitutional validity. As constitutional courts have expanded globally, constitutional adjudication has become not merely an institutional arrangement but also an essential component of rights protection and rule-of-law governance (Cappelletti, 1989; Stone Sweet, 2000).

Indonesia adopted a centralized constitutional-review model after the constitutional amendments that established the Constitutional Court. Article 24C paragraph (1) of the 1945 Constitution authorizes the Constitutional Court to adjudicate at the first and final level, with final decisions, in reviewing statutes against the

Constitution. This authority has enabled the Court to play a significant role in shaping constitutional governance, protecting constitutional rights, and correcting unconstitutional statutes (Butt & Lindsey, 2018; Isra, 2024; Roux, 2018). Nevertheless, Indonesia's current statutory-review procedure remains predominantly abstract and applicant-driven. Constitutional review is initiated through a petition by parties claiming impairment of constitutional rights; it is not initiated by a judge who encounters a constitutional doubt while deciding a concrete case.

This procedural gap creates a difficult dilemma for ordinary judges. A judge may be required to apply a statutory provision that is formally valid but constitutionally doubtful, while no procedural mechanism allows the judge to suspend the case and ask the Constitutional Court to determine the validity of that provision. As a result, litigants may be sanctioned, convicted, or otherwise affected by a norm that is later held unconstitutional. Constitutional Court Decision No. 013-022/PUU-IV/2006, which invalidated provisions of the Indonesian Criminal Code concerning presidential defamation, illustrates the problem: constitutional correction occurred only after the provisions had already been used in concrete proceedings. The issue is therefore not merely doctrinal but remedial and institutional: constitutional review may come too late to prevent the application of unconstitutional norms.

Many constitutional democracies respond to this problem through a constitutional question or concrete review mechanism. Under this mechanism, an ordinary court refers a question concerning the constitutionality of a statutory provision to the constitutional court when the answer is decisive for the pending case. The mechanism connects constitutional justice with ordinary adjudication, enables preventive protection before an unconstitutional norm is applied, and permits constitutional courts to resolve constitutional issues arising within concrete legal disputes (Garlicki, 2007; Pivoda, 2023; Venice Commission, 2011).

Previous Indonesian scholarship has largely justified the need for *constitutional question* authority as an extension of constitutional review or as an instrument of constitutional-rights protection (Chalid & Yaqin, 2019; Collins & Faiz, 2018; Hamidi & Lutfi, 2010; Nugraha et al., 2019). These studies are important, but much of the existing discussion remains at the level of normative desirability. Less attention has been given to the operational design of *constitutional question* adjudication across jurisdictions and to how comparative procedural experience can be translated into a workable Indonesian model.

This article addresses that gap by asking two research questions. First, how do *constitutional question* mechanisms operate in selected constitutional-court jurisdictions? Second, what alternative model of *constitutional question* adjudication can be designed for Indonesia without disrupting the existing division of judicial authority between the Supreme Court and the Constitutional Court? The novelty of this article lies in its focus on adjudicatory design: referral authority, admissibility, filtering, stay of proceedings, decisional timelines, legal effects, and inter-court dialogue.

## **Literature Review and Conceptual Framework**

### **1. Centralized Constitutional Review and Concrete Norm Control**

The centralized model of constitutional review emerged from the idea that constitutional validity should be determined by a specialized constitutional organ with exclusive authority to annul legislation. Kelsen's theory treats the constitutional court as a *negative legislator* whose role is to remove unconstitutional norms from the legal order through a juridical procedure (Kelsen, 1942). The model differs from diffuse review,

where ordinary courts may refuse to apply unconstitutional law in individual cases. Centralized review prioritizes uniformity, legal certainty, and institutional specialization, but it can create distance between constitutional adjudication and ordinary litigation (Garlicki, 2007; Stone Sweet, 2000).

Concrete norm control, known in several jurisdictions as *constitutional question*, *incidental review*, *preliminary reference*, or *judicial initiative*, responds to that distance. The ordinary judge remains responsible for deciding the concrete dispute, but the constitutional court determines the constitutionality of the statute that is decisive for the case. The mechanism therefore preserves the exclusivity of constitutional review while enabling constitutional scrutiny to arise from real litigation. It also reduces hypothetical review because the constitutional issue must be relevant to a pending case (Cappelletti, 1989; Venice Commission, 2011).

## **2. Constitutional Question, Constitutional Complaint, and Judicial Referral**

A *constitutional question* differs from a *constitutional complaint*. A *constitutional complaint* is typically filed directly by an individual alleging that a public authority, including a court, has violated a constitutional right. A *constitutional question*, by contrast, is referred by a judge in an ongoing proceeding because the constitutionality of the applicable norm is decisive for resolving that proceeding. Although both mechanisms may protect fundamental rights, they differ in access structure, filtering, and docket-management consequences (Hahm, 2012; Jeon, 2019).

For Indonesia, this distinction is important. Direct *constitutional complaint* could widen access to constitutional justice, but it may also substantially increase the Constitutional Court's caseload. A *constitutional question* mechanism provides a narrower route because referral depends on judicial assessment of relevance, necessity, and constitutional seriousness. The judge functions as an institutional filter, ensuring that constitutional adjudication is connected to a concrete dispute and is not used merely as a delaying tactic or as an appeal against ordinary judicial reasoning.

## **3. Indonesian Debates on Constitutional Question Authority**

Indonesian scholarship has identified *constitutional question* authority as a possible solution to the limitations of abstract statutory review. Chalid and Yaqin (2019) argue that institutionalizing *constitutional question* authority would strengthen the Constitutional Court's review function. Collins and Faiz (2018) emphasize its function in protecting citizens' constitutional rights. Nugraha et al. (2019) frame *constitutional question* as a *concrete-review* model that can prevent the application of unconstitutional norms. Lailam (2023) further highlights the German model of concrete judicial review as a possible comparative reference for Indonesia.

The present article builds on these contributions but develops the discussion further by constructing a comparative operational model. The focus is not only whether Indonesia should adopt *constitutional question* authority, but how such authority should be structured: who may refer, whether a referral should be direct or screened, what admissibility requirements must apply, how the pending case should be suspended, what time limit should govern the Constitutional Court, and what legal effects should follow from the decision.

## METHOD

This study employs normative legal research using statutory, conceptual, case-based, and comparative approaches. The statutory approach is used to examine constitutional provisions and constitutional-court statutes that regulate judicial referral or concrete norm control. The conceptual approach is used to clarify the relationship between constitutional review, *constitutional question*, concrete review, and constitutional rights protection. The case-based approach is used to examine the implications of Indonesian Constitutional Court Decision No. 013-022/PUU-IV/2006 as an example of delayed constitutional correction in concrete adjudication.

The comparative approach examines ten jurisdictions that operate constitutional courts or constitutional-court-like institutions and formally recognize a mechanism through which constitutional issues may arise from pending litigation: Austria, Italy, Germany, South Africa, South Korea, Hungary, Croatia, Romania, the Czech Republic, and the Russian Federation. These jurisdictions were selected because they represent different constitutional traditions, institutional trajectories, and procedural designs while sharing a common commitment to centralized or specialized constitutional adjudication.

The legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include constitutions, constitutional court statutes, organic laws on constitutional adjudication, and constitutional-court decisions. Secondary materials include books, journal articles, comparative constitutional-law scholarship, and institutional reports. Tertiary materials include legal dictionaries and encyclopedias used only to support conceptual clarification.

Data were collected through library research and document analysis. The materials were classified according to six analytical criteria: legal basis, referring actor, admissibility requirements, stay of proceedings, decision-making period or procedural urgency, and legal effect. The analysis proceeded descriptively and comparatively. The comparative findings were then used to formulate an alternative model for Indonesia that is normatively coherent with Article 24C of the 1945 Constitution, the division of judicial authority between the Constitutional Court and the Supreme Court, and the need to protect constitutional rights in concrete proceedings.

## RESULTS AND DISCUSSION

### 1. Legal Bases of Constitutional Question Mechanisms in Ten Jurisdictions

The comparative materials show that *constitutional question* mechanisms are generally grounded in two layers of legal authority: constitutional provisions that establish the constitutional court and define its jurisdiction, and organic legislation that regulates procedure. This dual legal basis is important because *constitutional question* adjudication affects both constitutional review and ordinary judicial proceedings. It must therefore be grounded not only in general constitutional authority but also in detailed procedural rules.

**Table 1. Legal bases of constitutional question or concrete review procedures**

No.	Jurisdiction	Principal legal basis	Relevant procedural idea
1	Austria	Federal Constitutional Law (B-VG), especially provisions on review of laws; Constitutional Court Act 1953	Judicial referral to the Constitutional Court within centralized review
2	Italy	Constitution of the Italian Republic, Arts. 134-137; Constitutional Law No. 1 of 1948; Law No. 87 of 1953	Incidental review arising from ordinary proceedings

No.	Jurisdiction	Principal legal basis	Relevant procedural idea
3	Germany	Basic Law, Art. 100; Federal Constitutional Court Act, especially provisions on concrete judicial review	Konkrete Normenkontrolle when a court considers a decisive statute unconstitutional
4	South Africa	Constitution of the Republic of South Africa, 1996, ss. 167 and 172; Constitutional Court Complementary Act 13 of 1995	Confirmation and constitutional determination of invalidity in concrete matters
5	South Korea	Constitution of the Republic of Korea, Art. 111; Constitutional Court Act, Art. 41	Ordinary-court request for adjudication on constitutionality of statutes
6	Hungary	Fundamental Law of Hungary, Art. 24; Act CLI of 2011 on the Constitutional Court, sec. 25	Judicial initiative for norm control in concrete cases
7	Croatia	Constitution of the Republic of Croatia; Constitutional Act on the Constitutional Court, Art. 37	Court stays proceedings and requests constitutional review
8	Romania	Constitution of Romania, Art. 146(d); Law No. 47/1992 on the Constitutional Court, Art. 29	Exception of unconstitutionality raised before courts or arbitration bodies
9	Czech Republic	Constitution of the Czech Republic, Arts. 87 and 95(2); Act No. 182/1993 Coll. on the Constitutional Court	Court submits the issue to the Constitutional Court when applicable law conflicts with constitutional order
10	Russian Federation	Constitution of the Russian Federation, Art. 125(4); Federal Constitutional Law No. 1-FKZ on the Constitutional Court	Court request concerning a law applied or subject to application in a concrete case

Table 1 confirms that *constitutional question* adjudication is not an accidental procedural technique. It is usually embedded in the constitutional architecture and then operationalized through legislation. The constitution provides legitimacy for constitutional review, while the organic statute supplies procedural certainty. This arrangement is particularly important because ordinary judges must be authorized to suspend proceedings and refer constitutional doubts without being accused of delaying justice or exceeding their adjudicatory role.

The jurisdictions also reflect the influence of the European or *Kelsenian* model of constitutional adjudication. Austria, Italy, Germany, Hungary, Croatia, Romania, the Czech Republic, and Russia developed forms of centralized constitutional review in which a constitutional court has final authority over the validity of legal norms. South Korea, although outside Europe and operating under a presidential system, has also adopted a constitutional-court model that includes court-initiated review of statutes. South Africa differs institutionally because constitutional questions may be decided within a superior-court system, but confirmation by the Constitutional Court ensures centralized constitutional authority over declarations of invalidity (Rautenbach, 2013).

## 2. Comparative Procedural Patterns

The ten jurisdictions show both convergence and divergence. Their shared logic is *concrete relevance*: a constitutional issue must arise from a pending case and the challenged norm must be necessary or decisive for the court's decision. Their procedural variations concern whether referral is mandatory or discretionary, whether a filtering institution intervenes before the constitutional court, whether proceedings are automatically stayed, and what remedial effects follow from the constitutional court's decision.

**Table 2. Comparative procedural design of constitutional question adjudication**

Analytical criterion	Common pattern	Observed variations	Implication for Indonesia
Trigger	A constitutional issue arises in a pending concrete case.	Some systems require the judge to be convinced of unconstitutionality; others allow referral where serious doubt exists.	The Indonesian model should require a concrete case and a serious constitutional doubt.
Referring actor	Ordinary judges are the primary institutional gatekeepers.	Parties may request referral, but the judge decides whether the matter is referred.	Judges under the Supreme Court should be the formal referring actors.
Admissibility	The challenged norm must be relevant and decisive for the case.	Some systems exclude issues already decided by the constitutional court or issues that are abstract, hypothetical, or merely interpretive.	Admissibility should include relevance, decisiveness, non-repetition, and reasoned constitutional argument.
Filtering	Referral quality is controlled before constitutional adjudication.	Some systems allow direct referral; others use ordinary-court or supreme-court screening.	A Supreme Court screening chamber can reduce frivolous referrals and docket congestion.
Stay of proceedings	The underlying case is usually suspended while constitutional review is pending.	Urgent procedural steps may continue in some jurisdictions, but the final judgment is withheld.	A stay should apply after registration, with the suspension period excluded from case-completion deadlines.
Decision effects	Constitutional court decisions are final and binding.	Effects may be erga omnes, prospective, retroactive for the triggering case, or accompanied by suspended invalidity.	A final, binding, erga omnes decision with limited retroactive effect for the pending case is preferable.

Austria provides the foundational example of centralized constitutional adjudication. The Austrian model demonstrates that ordinary adjudication and constitutional review can be linked without allowing ordinary courts to annul statutes independently. The constitutional court remains the specialized body that determines validity, while ordinary courts identify constitutional doubts arising in concrete cases. This structural relationship influenced the development of incidental review in Italy and concrete judicial review in Germany.

Italy's *incidental-review* mechanism is particularly important because it shows how constitutional justice can be triggered by ordinary proceedings. A judge who considers a *constitutional question* relevant and not manifestly unfounded suspends the proceeding and refers the issue to the Constitutional Court. This model ensures that constitutional review is neither purely abstract nor dependent solely on the initiative of citizens. It is embedded in ordinary adjudication while preserving the Constitutional Court's exclusive authority (Tega, 2021).

Germany's *konkrete Normenkontrolle* is often regarded as one of the most rigorous forms of judicial referral. Article 100 of the Basic Law requires a court to obtain a decision from the Federal Constitutional Court if the court considers a statute decisive for the case to be unconstitutional. This model is valuable because it links constitutional adjudication to judicial duty: ordinary judges must respect statutory law, but they also must not base judgments on norms they regard as unconstitutional (Kommers & Miller, 2012; Lailam, 2023).

South Korea offers an especially relevant comparison for Indonesia because it operates within a presidential system and has a Constitutional Court with powers similar

to statute review. Under Article 41 of the Constitutional Court Act, an ordinary court may request adjudication on the constitutionality of a statute where constitutionality is a precondition for judgment; parties may also move the court to make such a request. The proceedings are generally suspended until the Constitutional Court decides the issue. This shows that *constitutional question* adjudication is not limited to parliamentary systems and can be accommodated in presidential constitutional design (Hahm, 2012; Jeon, 2019).

Hungary, Croatia, Romania, the Czech Republic, and Russia show how *constitutional question* mechanisms can serve legal transformation and democratic consolidation. Their procedures differ, but they share the principle that a judge should not be forced to apply a norm that is decisive for a case and is plausibly unconstitutional. The Romanian exception of unconstitutionality and the Croatian stay-and-refer mechanism demonstrate that judicial referral can operate as an institutional bridge between ordinary courts and the constitutional court. The Czech and Russian models similarly formalize judicial access to constitutional adjudication when the applicable law conflicts with constitutional norms.

South Africa provides a distinct model in which constitutional invalidity declared by a superior court concerning legislation generally requires confirmation by the Constitutional Court before acquiring force. Although this is not identical to the Continental European *constitutional question*, it serves a similar systemic function: it prevents the decentralized production of final constitutional invalidity and ensures that the highest constitutional court maintains authoritative control over constitutional validity (Rautenbach, 2013).

### **3. Indonesia's Constitutional-Review Gap in Concrete Proceedings**

Indonesia's Constitutional Court has exclusive authority to review statutes against the Constitution, but existing procedure does not permit ordinary judges to submit *constitutional questions* arising in pending cases. This creates a structural separation between constitutional review and the daily application of statutory law. The Constitutional Court may eventually invalidate a statute, but ordinary courts may already have applied that statute to individuals before constitutional correction occurs.

This separation weakens preventive rights protection. In an applicant-driven system, constitutional review depends on litigants' legal awareness, access to counsel, resources, and willingness to initiate proceedings. Many litigants may not recognize the constitutional dimension of their case. Others may lack capacity to file a petition. Consequently, a norm that is constitutionally problematic may continue to structure judicial outcomes merely because no qualified petitioner brings the issue before the Constitutional Court.

The current framework also places ordinary judges in a difficult position. Judges are bound by valid statutes, but they are also expected to render judgments consistent with constitutional values. Without a referral mechanism, the judge's constitutional concern has no institutional channel. The judge cannot annul the statute; nor can the judge obtain authoritative constitutional clarification before deciding the case. This gap undermines constitutional supremacy because it allows formally valid but constitutionally doubtful norms to continue operating in concrete adjudication.

Decision No. 013-022/PUU-IV/2006 illustrates the problem of delayed constitutional correction. The Constitutional Court invalidated provisions concerning presidential defamation, but the ruling could not fully undo the legal consequences of proceedings already concluded under those provisions. A *constitutional question*

mechanism would not eliminate all remedial difficulties, but it would enable judges to prevent the use of a constitutionally doubtful provision before final judgment is rendered.

#### **4. Proposed Alternative Model for Indonesia**

Based on the comparative findings, this article proposes a *semi-mandatory judicial referral model*. The model is designed to strengthen constitutional rights protection without transforming the Constitutional Court into a general appellate body and without subordinating the Supreme Court to the Constitutional Court. Its core components are constitutional foundation, judicial referral, Supreme Court screening, strict admissibility, stay of proceedings, expedited Constitutional Court review, and calibrated legal effects.

##### **a. Constitutional Foundation**

The *constitutional question* mechanism should be introduced through amendment to Article 24C of the 1945 Constitution. At present, Article 24C regulates the Constitutional Court's powers limitatively. Adding *constitutional question* authority only through statute or judicial interpretation would create legitimacy problems and possible institutional conflict. Constitutional amendment would provide a clear constitutional mandate for the Constitutional Court, ordinary judges, and the Supreme Court. It would also justify the temporary suspension of ordinary proceedings when constitutional validity is genuinely decisive for the case.

##### **b. Referring Authority and Supreme Court Screening**

The authority to initiate a *constitutional question* should belong to judges adjudicating concrete cases within the judicial hierarchy of the Supreme Court. The parties may request the judge to refer a *constitutional question*, but the formal referral should be made by the judge because the judge is institutionally responsible for determining whether the challenged norm is relevant and decisive for the case. This design prevents the mechanism from becoming a direct *constitutional complaint* disguised as judicial referral.

Referrals should not be transmitted directly to the Constitutional Court. A screening mechanism within the Supreme Court should verify whether the *constitutional question* satisfies the admissibility requirements. Screening should be limited to procedural and relevance assessment; it should not decide the constitutionality of the norm. This filter preserves the Supreme Court's role in supervising ordinary adjudication and helps prevent excessive case accumulation at the Constitutional Court.

##### **c. Admissibility Requirements**

The proposed model should include four admissibility requirements. First, the challenged norm must be applicable in a pending concrete case. Second, the norm must be decisive, meaning that the judge cannot properly resolve the case without determining whether the norm is constitutionally valid. Third, the referring judge must provide a reasoned constitutional argument explaining the conflict between the statutory provision and the Constitution. Fourth, the issue should not substantially duplicate a constitutional issue already decided by the Constitutional Court, unless there are new constitutional circumstances, changed legal context, or materially different arguments.

These requirements are necessary to protect the mechanism from abuse. Without relevance and decisiveness, *constitutional question* adjudication could become a speculative abstract review. Without reasoned argument, referrals could become a tactic to delay proceedings. Without a non-repetition rule, the Constitutional Court could be burdened by repeated review of issues already settled.

#### **d. Stay of Proceedings and Time Limits**

Once a *constitutional question* is accepted by the Supreme Court screening chamber and registered before the Constitutional Court, the underlying case should be stayed. The stay is essential because the Constitutional Court's answer determines whether the norm may be used as the basis for judgment. However, to protect the parties' right to timely adjudication, the stay should not be open-ended. The suspension period should be excluded from ordinary case-completion deadlines so that the referring judge is not penalized for using a constitutionally authorized referral procedure.

The Constitutional Court should decide *constitutional question* cases within a maximum of forty-five working days from registration. This proposed time limit balances constitutional protection and legal certainty. It is especially important in criminal cases, detention cases, family-law matters, and administrative disputes where delay can produce serious consequences. If the Constitutional Court fails to decide within the prescribed period, the referring judge should be allowed to continue adjudication based on his or her legal conviction, while still respecting any later constitutional ruling for future cases.

#### **e. Legal Effects of Constitutional Court Decisions**

Decisions in constitutional question cases should be final and binding. They should have *erga omnes* effect for the future application of the challenged norm, because constitutional validity concerns the legal order as a whole and not merely the parties to the dispute. At the same time, the decision should have limited retroactive effect for the pending case that triggered the referral. This ensures fairness to the parties whose case generated the constitutional issue and prevents the referring process from becoming merely academic.

Where the Constitutional Court declares a norm unconstitutional, the referring judge should resolve the pending case without applying that norm. Where the Court declares the norm *conditionally constitutional*, the referring judge should apply the norm only in the interpretation approved by the Court. Where the Court rejects the constitutional question, the referring judge may continue proceedings and apply the norm, subject to ordinary legal interpretation and the facts of the case.

#### **f. Constitutional Dialogue Between the Constitutional Court and the Supreme Court**

The proposed model should not be understood as placing the Supreme Court in a subordinate position to the Constitutional Court. The two courts perform different constitutional functions. The Constitutional Court determines the validity of legal norms against the Constitution, while the Supreme Court and courts under its hierarchy adjudicate concrete disputes and ensure uniform application of ordinary law. Constitutional question adjudication would create a structured dialogue between these institutions rather than hierarchical domination.

Such dialogue requires harmonization of the Constitutional Court Law, Judicial Power Law, Supreme Court regulations, Constitutional Court procedural regulations, and case-management rules. These instruments should regulate referral format, required reasoning, suspension of proceedings, screening standards, electronic transmission of files, participation of parties, time limits, and the legal consequences of decisions. Without detailed procedural harmonization, constitutional amendment alone would not guarantee effective implementation.

#### 4. Practical Implications

The proposed mechanism has three practical implications. First, it strengthens preventive constitutional-rights protection by allowing constitutional review before an allegedly unconstitutional norm is applied in a final judgment. Second, it improves institutional effectiveness by using judges and Supreme Court screening as filters before cases reach the Constitutional Court. Third, it reinforces constitutional supremacy within ordinary adjudication by making judges active participants in identifying constitutional defects while preserving the Constitutional Court's exclusive authority over constitutional validity.

The model also avoids the risks associated with an unrestricted *constitutional complaint*. Direct *constitutional complaint* may be valuable in some systems, but for Indonesia it could generate a large volume of applications and transform the Constitutional Court into a quasi-appellate tribunal. Judicial referral is narrower, more disciplined, and more compatible with the existing separation between constitutional review and ordinary judicial review.

#### CONCLUSION

This article demonstrates that *constitutional question* adjudication is a significant mechanism for connecting constitutional review with concrete judicial proceedings. Comparative analysis of Austria, Italy, Germany, South Africa, South Korea, Hungary, Croatia, Romania, the Czech Republic, and the Russian Federation shows that *constitutional question* mechanisms share a common principle: constitutional review should be available when a statutory norm is decisive for a pending case and its constitutionality is seriously in doubt. The mechanisms differ in procedural details, but they generally involve judicial referral, admissibility control, suspension of proceedings, and final constitutional-court decisions with binding legal effects.

Indonesia's existing constitutional-review system has not yet provided an adequate mechanism for preventing the application of constitutionally doubtful statutes in concrete cases. The absence of judicial referral places ordinary judges in a difficult position and makes constitutional-rights protection dependent on applicant-initiated review. This article therefore proposes a semi-mandatory *constitutional question* model for Indonesia. The model should be grounded in an amendment to Article 24C of the 1945 Constitution and implemented through statutory and procedural reform. It should authorize judges to initiate referral, require Supreme Court screening, impose strict admissibility criteria, stay the underlying proceedings, require expedited Constitutional Court review, and produce final and binding decisions with *erga omnes* and limited retroactive effects.

The proposed model offers a middle path between maintaining the existing centralized constitutional-review system and improving preventive rights protection in ordinary adjudication. It does not convert the Constitutional Court into a general appellate court, nor does it authorize ordinary courts to annul statutes independently. Instead, it creates a structured constitutional dialogue between the Supreme Court and the Constitutional Court. Future research should examine the institutional readiness of Indonesian courts, projected docket impact, procedural costs, digital case-management infrastructure, and the training required for judges to formulate constitutionally rigorous referral questions.

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