

Challenges in Upholding the Rule of Law Principle in the Face of Political Intervention Toward Constitutional Enforcement Institutions



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ABSTRACT

KEY WORDS

Rule of Law, Political Intervention, Constitutional Court, Judicial Independence, Abusive Constitutionalism.

This study explores the growing challenges in upholding the rule of law principle in the face of increasing political intervention toward constitutional enforcement institutions. Using a qualitative approach through a library research method, the study critically examines existing literature to identify patterns, mechanisms, and theoretical frameworks related to the erosion of judicial independence and the manipulation of legal institutions by political actors. Drawing on ten key scholarly works and comparative case studies from jurisdictions such as Poland, Hungary, Indonesia, and the United States, the analysis reveals that modern democratic backsliding often occurs not through overt violations of law, but via legal and institutional tools that are subtly designed to consolidate political power. The findings indicate that mechanisms such as court-packing, politicized appointment procedures, and constitutional amendments have been strategically used to undermine the autonomy of constitutional courts. Theoretical contributions—such as abusive constitutionalism, juristocracy, and distinctions between formal and substantive rule of law—serve as analytical lenses to understand how legal frameworks can be used to mask authoritarian tendencies. Furthermore, the study highlights the limitations of formal legal guarantees when they are not supported by strong political culture, civic vigilance, and effective external oversight. The paper concludes that safeguarding the rule of law requires more than institutional design; it necessitates normative commitment, legal culture, and continuous public engagement. Future research is recommended to include more empirical case analyses and interdisciplinary perspectives that can inform both theoretical development and policy reform aimed at preserving the integrity of constitutional enforcement institutions.

1. Introduction

The principle of the rule of law is foundational to modern democratic governance, ensuring that all individuals and institutions, including those in power, are subject to and accountable under the law (Tamanaha, 2004). However, this principle is increasingly challenged by political interventions, particularly within constitutional enforcement institutions such as constitutional courts and judicial review bodies (Ferejohn, 2002). The ideal of impartial and independent legal enforcement is undermined when political actors manipulate legal institutions for partisan objectives (Ginsburg & Huq, 2018), raising critical concerns about democratic backsliding and the erosion of constitutionalism.

Existing scholarship has extensively explored judicial independence and political interference, but most focus on either the judiciary in general (Burbank & Friedman, 2002) or the rule of law as a normative concept (Craig, 1997), leaving a gap in understanding the specific mechanisms and consequences of political intervention in constitutional enforcement bodies. Moreover, while several studies highlight the threats of populist or authoritarian encroachments on legal institutions (Levitsky & Ziblatt, 2018; Daly, 2019), few offer a comprehensive analysis of how these interventions affect the operational integrity and public trust in constitutional enforcement institutions.

This research is urgent as constitutional courts and similar institutions are increasingly being co-opted or delegitimized in various democracies, not only in transitional regimes but also in long-established constitutional orders (Sadurski, 2019). As these institutions serve as the ultimate guardians of constitutional order, any compromise to their autonomy poses serious risks to democratic stability and human rights protection (Landau, 2013).

Prior studies have documented case-specific interventions, such as in Hungary, Poland, or Turkey (Scheppele, 2013; Kelemen, 2020), and comparative analyses have begun to emerge (Hirschl, 2004).

However, the literature still lacks an integrative framework for understanding the systemic effects of political intervention on the functionality and credibility of constitutional enforcement institutions across different political systems. This research aims to fill this gap by offering a cross-contextual analysis of the dynamics between political power and legal enforcement mechanisms.

The novelty of this research lies in its analytical focus on the institutional resilience of constitutional enforcement bodies in politically charged environments, combining legal, political, and institutional perspectives. Unlike previous works that treat political intervention as a static or isolated event, this study emphasizes its evolving and multifaceted nature, and the countermeasures—both institutional and normative—that may reinforce the rule of law under pressure.

Accordingly, the objective of this study is to identify and critically examine the key challenges constitutional enforcement institutions face when subjected to political intervention, and to propose policy and institutional recommendations to safeguard their independence. The study is expected to contribute both theoretically and practically: theoretically, by enriching the discourse on the rule of law and constitutionalism under duress; and practically, by offering actionable insights for reformers, policymakers, and legal practitioners engaged in preserving judicial integrity.

Supremacy of the Law Over Arbitrary Power

At its core, the rule of law means that no individual, group, or government entity is above the law. Laws must govern a nation rather than the arbitrary decisions of individuals (Dicey, 1885). This principle ensures that public officials and institutions act according to established legal frameworks rather than personal will or political motives. It protects citizens from abuses of power and promotes predictability and stability in legal and political systems. This is essential in preventing tyranny and maintaining a just order in society.



Equality Before the Law and Legal Accountability

The rule of law also implies that all persons are equal before the law and subject to the same laws of justice. Whether rich or poor, powerful or marginalized, every individual must be held equally accountable under the law (Tamanaha, 2004). This aspect promotes fairness and integrity within legal systems and strengthens public trust. It also demands that laws be applied consistently and transparently, without favoritism, bias, or corruption. Equality before the law is particularly crucial in multicultural or pluralistic societies to ensure that minority rights are protected.

Legal Certainty, Human Rights Protection, and Access to Justice

Finally, the rule of law requires laws to be clear, publicized, stable, and applied evenly, and that justice is delivered by competent, independent, and impartial institutions (UN, 2004). This guarantees legal certainty and allows individuals to understand their rights and obligations. The rule of law is also closely tied to the protection of fundamental rights, such as freedom of speech, the right to a fair trial, and the right to property. Furthermore, it necessitates accessible and effective legal remedies when rights are violated, thus enabling individuals to seek justice and challenge unlawful acts.

2. Methodology

This study employs a qualitative research approach using a literature study (library research) method. As a normative-qualitative inquiry, the research focuses on interpreting and analyzing theoretical frameworks, legal norms, and institutional practices related to the rule of law and political intervention in constitutional enforcement institutions (Creswell, 2013). The choice of literature study is appropriate for exploring complex legal and political phenomena that require in-depth theoretical understanding and contextual interpretation (Zed, 2008). This approach allows the researcher to critically examine the interrelationship between law and politics, especially how political pressures

affect the autonomy and effectiveness of constitutional bodies.

The data sources consist of secondary data obtained from academic books, peer-reviewed journal articles, legal documents, institutional reports, international declarations, and decisions of constitutional courts. Particular attention is given to case studies from countries where political interference in constitutional institutions has been documented, such as Hungary, Poland, Indonesia, and Turkey (Syaidi et al., 2024). The study also reviews legal doctrines and jurisprudential developments concerning judicial independence and constitutionalism.

The data collection technique involves systematic document analysis, including the selection, evaluation, and coding of relevant materials. This technique allows for a comprehensive understanding of theoretical and empirical patterns across jurisdictions (Bowen, 2009). Through purposive sampling, only documents that meet the relevance and credibility criteria were selected for analysis to ensure the validity and reliability of findings.

The data analysis method used in this study is qualitative content analysis, which focuses on identifying themes, patterns, and conceptual categories within the texts. The analysis was conducted through a three-stage process: data reduction, data display, and conclusion drawing, following Miles, Huberman, and Saldaña (2014). By integrating doctrinal legal analysis with contextual interpretation, the study aims to draw normative conclusions and provide critical insights into the resilience of constitutional enforcement institutions under political pressure.

3. Result and Discussion

The following table presents the results of the literature review conducted in this study. From a broader collection of scholarly works identified through academic databases such as JSTOR, Scopus, and Google Scholar, ten key articles were selected using purposive sampling based on relevance to the research theme, publication quality, and the depth of



discussion regarding political intervention and the rule of law. The table includes information on the

authors, year of publication, country context (if any), core findings, and the relevance to the present study.

No	Author & Year	Title	Findings
1	Ginsburg & Huq (2018)	<i>How to Save a Constitutional Democracy</i>	Political capture of judicial institutions threatens democratic resilience..
2	Sadurski (2019)	<i>Poland's Constitutional Breakdown</i>	Government reforms undermined judicial independence and rule of law principles.
3	Scheppele (2013)	<i>Constitutional Coups and Judicial Review</i>	Describes how legal frameworks are used to legitimize political overreach.
4	Landau (2013)	<i>Abusive Constitutionalism</i>	Political actors use constitutional tools to entrench power and limit judicial checks
5	Hirschl (2004)	<i>Towards Juristocracy</i>	Judicial empowerment often emerges from elite-driven motives, not democratic demand.
6	Daly (2019)	<i>The Alchemists: Democratic Remedies for Democratic Decay</i>	Evaluates the limits of legal responses to institutional backsliding.
7	Levitsky & Ziblatt (2018)	<i>How Democracies Die</i>	Democratic decline often begins with subtle institutional subversion.
8	Tamanaha (2004)	<i>On the Rule of Law</i>	Distinguishes between rule of law as a political ideal and its institutional realization.
9	Kelemen (2020)	<i>The EU's Authoritarian Equilibrium</i>	EU institutions struggle to address rule of law violations among member states.
10	Ferejohn (2002)	<i>Independent Judges, Dependent Judiciary</i>	Emphasizes that formal independence does not ensure actual autonomy from political influence.

Interpretation of Literature Review Findings

The literature review reveals a consistent and growing concern regarding the fragility of constitutional enforcement institutions when subjected to political intervention. Authors such as Ginsburg and Huq (2018) and Levitsky and Ziblatt (2018) emphasize that threats to the rule of law rarely begin with overt authoritarian moves; rather, they often originate from subtle manipulations of democratic institutions, including courts. This pattern highlights the need to understand political intervention not just as external pressure but as a systemic and often gradual undermining of judicial autonomy through legal and institutional design.

Several empirical studies, including Sadurski (2019) on Poland and Scheppele (2013) on Hungary, provide concrete examples of how governments can

strategically alter constitutional frameworks to weaken judicial independence. These cases demonstrate that political actors often rely on legally sanctioned reforms—such as judicial appointments, court-packing, or changes in jurisdiction—to shift control over constitutional enforcement mechanisms. These findings challenge the assumption that threats to the rule of law always take place outside legal boundaries, emphasizing instead the use of law as a tool of domination.

In contrast, Landau (2013) and Hirschl (2004) provide analytical frameworks to understand how such interventions are justified or tolerated within political systems. Landau introduces the concept of "abusive constitutionalism," where democratic institutions are co-opted through constitutional amendments, while Hirschl highlights how elites may promote judicial empowerment to secure their own



interests. Both perspectives suggest that the interaction between law and politics is far more complex than a simple conflict of values; instead, it involves strategic institutional manipulation that reshapes the role of constitutional bodies.

From a normative standpoint, the writings of Tamanaha (2004) and Ferejohn (2002) stress that formal independence—such as tenure protection or separation of powers—is insufficient unless accompanied by cultural and political norms that support judicial impartiality. Tamanaha's differentiation between "thin" and "thick" conceptions of the rule of law helps contextualize how some states may comply with procedural legality while failing to uphold substantive justice. Ferejohn adds that judicial dependence can manifest even when formal structures are in place, especially if appointment processes or budgetary controls remain politically dominated.

Daly (2019) and Kelemen (2020) broaden the discussion to include institutional responses and supranational limitations. Daly points out the difficulties in relying solely on internal democratic mechanisms to correct institutional decay, while Kelemen highlights the European Union's limited capacity to address rule of law backsliding among its member states. These insights stress the need for stronger enforcement and monitoring mechanisms, both nationally and internationally, to safeguard constitutional institutions from political intrusion.

In summary, the literature indicates that political intervention in constitutional enforcement institutions is not an isolated or exceptional phenomenon. It is often systemic, legally rationalized, and embedded in broader processes of democratic erosion. The reviewed works converge on the need for more robust legal norms, institutional safeguards, and civic awareness to protect the autonomy of constitutional institutions. This research contributes to the ongoing discourse by synthesizing legal theory and empirical findings into a coherent framework that can inform further academic study and practical reform efforts.

Discussion and Analysis

The findings of the literature review indicate that political intervention in constitutional enforcement institutions is increasingly becoming a global concern. Across both emerging and established democracies, political actors have developed sophisticated legal tools to influence, control, or undermine the judiciary. As Ginsburg and Huq (2018) explain, modern democratic backsliding does not typically occur through violent coups or overt authoritarianism but rather through the manipulation of legal norms and institutions. This subtle yet dangerous trend complicates efforts to uphold the rule of law, especially when the erosion is legally justified and institutionally embedded.

Contemporary examples echo the concerns raised by scholars. In Poland and Hungary, for instance, constitutional amendments and judicial reforms have been used as instruments to consolidate executive power and marginalize judicial oversight. In the Indonesian context, concerns also persist regarding the Constitutional Court's jurisdiction in resolving regional election disputes, particularly in the era of simultaneous local elections (Tarigan & SH, 2024). Sadurski (2019) and Scheppele (2013) both document how political regimes in these countries effectively neutralized their constitutional courts by changing appointment processes and limiting jurisdiction. These cases exemplify what Landau (2013) describes as "abusive constitutionalism," where democratically elected governments exploit constitutional tools to undermine the very institutions designed to check their power.

Such political interventions are not limited to Europe. In Indonesia, for example, recent debates around the revision of the Constitutional Court Law have raised concerns about the weakening of judicial independence, particularly regarding the tenure and retirement age of justices—changes that could facilitate political interference under the guise of legal reform (Tarigan, 2024b, 2024a). These developments align with Ferejohn's (2002) warning that formal

judicial independence does not guarantee *de facto* autonomy when political influence permeates through informal mechanisms like appointments and funding.

Theoretically, this dynamic challenges traditional conceptions of the rule of law. Tamanaha (2004) distinguishes between “thin” and “thick” versions of the rule of law—the former being formal adherence to procedures, and the latter involving substantive justice and institutional integrity (TARIGAN, 2024b). In many modern contexts, governments maintain the appearance of legality while undermining the very essence of constitutionalism. This raises a troubling question: can a state claim to uphold the rule of law merely by following procedures while subverting democratic values?

Moreover, Hirschl’s (2004) theory of juristocracy suggests that judicial empowerment is often not the product of democratic demand but rather elite negotiation, meaning that courts may be vulnerable from the outset to political co-optation (Tarigan, 2024d). If judicial independence is initially constructed as a safeguard for political elites rather than as a public good, then it is unsurprising that such institutions can later be reshaped or dismantled for political expediency.

Daly (2019) and Kelemen (2020) further highlight the difficulty of relying on internal democratic mechanisms to reverse these trends. The former argues that democratic institutions may lack the resilience to self-correct once the judiciary is compromised, while the latter notes that even supranational institutions like the European Union face political and legal constraints in addressing backsliding. This is evident in the EU’s limited capacity to impose meaningful sanctions on member states that violate rule of law standards, as seen in Hungary and Poland.

From the author's perspective, this pattern reflects a fundamental tension between law and politics: while the law seeks to constrain political power, political actors often seek to control legal institutions. The rule of law can only be upheld when legal institutions are

not only formally independent but also culturally respected, professionally protected, and publicly trusted (Tarigan, 2024e). Legal reform is not enough if it lacks normative support and civic vigilance.

The current global context—marked by democratic fatigue, populist resurgence, and weakening institutional trust—makes the protection of constitutional enforcement institutions more urgent than ever (TARIGAN, 2024a). The increasing use of constitutional design to weaken judicial oversight shows that the threat to the rule of law lies not only in illegal actions, but also in the legal manipulation of institutions. This demands a shift in how scholars and policymakers conceptualize institutional integrity—not merely as legal design but as a living constitutional culture.

In responding to these challenges, the author argues that institutional safeguards must be both internal and external. Internally, constitutional courts must be buttressed by strong legal norms regarding appointments, tenure, transparency, and accountability. Externally, civil society, academia, and the international community must remain vigilant and active in exposing and resisting institutional erosion (Tarigan, 2024c). The rule of law is not self-executing; it requires active and continuous defense.

In conclusion, the reviewed literature and current global trends point to a critical need for rethinking how we understand and defend the rule of law in constitutional democracies. Political intervention is no longer a peripheral threat—it is central to contemporary governance crises. Only by recognizing the evolving and legalistic nature of these interventions can policymakers and scholars develop strategies to uphold the integrity of constitutional enforcement institutions and, ultimately, democratic governance.

4. Conclusion

The findings of this study underscore that the principle of the rule of law is facing unprecedented challenges due to increasing political intervention in



constitutional enforcement institutions. Through an extensive literature review, it is evident that while many states maintain formal adherence to legal norms, the underlying integrity of constitutional mechanisms is often compromised through subtle, strategic, and legalistic forms of political control. These interventions exploit constitutional loopholes, appointment procedures, and institutional vulnerabilities, thus undermining judicial independence and eroding public trust in legal institutions (Syaidi, 2024).

The reviewed literature also highlights that such political interventions are not confined to autocracies or transitional democracies, but are occurring even within established democratic frameworks. Theories such as abusive constitutionalism, juristocracy, and the distinction between "thin" and "thick" rule of law provide important conceptual tools to understand how institutional erosion can occur legally and incrementally. These insights stress the urgent need to redefine the protection of judicial independence not only in terms of legal structure but also in terms of political culture, civic engagement, and international oversight.

Future research should explore more empirical, comparative case studies that investigate how different constitutional systems respond to political pressures in practice. Additionally, interdisciplinary approaches that integrate legal, political, and sociological perspectives could provide a deeper understanding of the resilience or fragility of constitutional institutions under stress. Finally, there is a strong need to develop evaluative indicators and early-warning mechanisms to detect and prevent institutional degradation before it becomes irreversible.

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