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## A comparison of constitutional adjudication institutions in Malaysia and Indonesia (Article)

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### Abstract

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The tyranny of majority against the minority is prevented or minimised by constitutional safeguards enforced primarily by the court. This is one of the reasons why Malaysia and Indonesia adopted the doctrine of constitutional supremacy when they achieved independence in 1957 and in 1945 respectively. This paper compares constitutional adjudication as one of the mechanisms of constitutional democracy in both countries. In spite of their geographical proximity and having similar cultural and historical heritages, the two countries have fundamentally different constitutions. Malaysia follows the common law model where superior courts adjudicate constitutional issues while Indonesia has adopted Kelsenian model by establishing a separate new court, namely the Constitutional Court. This is a qualitative research that examines the role and power of constitutional adjudication institutions of both countries. The development and experiences of the institutions in both countries not only shed light on constitutional democracy of the two countries, but also influences the process of democratic consolidation in the region. © Universiti Putra Malaysia Press.

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### References (22)

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- 1 Asshiddiqie, J. (2009) *Creating A Constitutional Court for A New Democracy*. Cited 4 times. Seminar Paper held by Melbourne Law School, March 11th

- 2 Brewer-Carías, A.R., Bolívar, S., Bur, D.F. (1989) *Judicial Review in Comparative Law*. Cited 41 times. Cambridge

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- 3 Comella, V.F.  
The European model of constitutional review of legislation: Toward decentralisation?  
(2004) *International Journal of Constitutional Law*, 2 (3), p. 461. Cited 14 times.
- 
- 4 Fallon, R.H.  
(2004) *The Dynamic Constitution: An Introduction to American Constitutional Law*. Cited 7 times.  
Cambridge, UK: Cambridge University Press
- 
- 5 Gamper, A.  
The justifiability and persuasiveness of constitutional comparison in constitutional adjudication  
(2009) *Online International Journal of Constitutional Law*, 3 (3), p. 154.
- 
- 6 Hewart, L.  
(1929) *The New Despotism*. Cited 91 times.  
London: Ernest Benn Ltd
- 
- 7 Indrayana, D.  
(2008) *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-Making in Transition*. Cited 30 times.  
Indonesian Law 12 of 2011 on Legislation Making. ). Jakarta: Kompas Book Publishing
- 
- 8 Konstitusi, M.  
(2010) *The Profile of The Constitutional Court of The Republic of Indonesia*  
Secretariat-General and Registry Office of the Constitutional Court
- 
- 9 Konstitusi, M.  
(2010) *Hukum Acara Mahkamah Konstitusi, Penerbit Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi*
- 
- 10 Law, M.  
The Government of Malaysia  
(1968) *Government of The State of Kelantan*, p. 129.  
Journal. 1. v
- 
- 11 (1976) *Malayan Law Journal*, p. 112.  
2, Ah Thian v. Govt. of Malaysia
- 
- 12 (1977) *Malayan Law Journal*, p. 187.  
2, Loh Kooi Choon V Govt. of Malaysia
- 
- 13 (2002) *Malayan Law Journal*, 2, p. 413.  
Sivarasa Rasiah v Badan Peguam Malaysia & Anor
-

□ 14 (2005) *TR Lampoh AK Dana & Ors V Government of Sarawak*, 371, p. 390.  
Malayan Law Journal. 6

---

□ 15 *Malaysian Court of Judicature Act*

---

□ 16 Pompe, S.  
(2005) *The Indonesian Supreme Court: A Study of Institutional Collapse*. Cited 67 times.  
Ithaca, NY: Cornell Southeast Asia Program

---

□ 17 Rosenfeld, M.  
Constitutional adjudication in Europe and the United States: Paradoxes and contrast. (4)  
(2004) *International Journal of Constitutional Law*, 2 (2), pp. 633-667. Cited 31 times.

---

□ 18 Stone, A.  
Democratic objections to structural judicial review and the judicial role in constitutional law  
  
(2010) *University of Toronto Law Journal*, 60 (1), pp. 109-135. Cited 4 times.  
doi: 10.3138/utlj.60.1.109  
  
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---

□ 19 Sweet, A.S.  
(2000) *Governing with Judges: Constitutional Politics in Europe*. Cited 514 times.  
New York: Oxford University Press

---

□ 20 Tremblay, L.B.  
The legitimacy of judicial review: The limits of dialogue between courts and legislatures ([Open Access](#))  
  
(2005) *International Journal of Constitutional Law*, 3 (4), pp. 617-648. Cited 38 times.  
doi: 10.1093/icon/moi042  
  
[View at Publisher](#)

---

□ 21 Troper, M.  
The logic of justification of judicial review  
(2003) *International Journal of Constitutional Law*, 1 (1), pp. 99-121. Cited 12 times.

---

□ 22 Woolf, L., Jowell, J., Le Sueur, A.  
(2007) *De Smith's Judicial Review*. Cited 25 times.  
(London, England: Sweet and Maxwell)

---

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