

CONSTITUTIONALISM:

RULE OF LAW AND HUMAN RIGHTS PROTECTION IN THE PHILIPPINES¹

KONSTITUSIONALISME: RULE OF LAW DAN PERLINDUNGAN HAK ASASI MANUSIA DI FILIPINA

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ABSTRACT

This paper examines the implementation of the principle of constitutionalism in the Philippines based on the 1987 Constitution, focusing on two key dimensions of the Rule of Law Index: constraints on government powers and the protection of human rights. Although the Philippine Constitution normatively provides a comprehensive framework for the rule of law and guarantees fundamental rights, its implementation continues to face serious challenges. The country's average Rule of Law Index score over the past decade reflects weak accountability, limited judicial independence, and inadequate protection for vulnerable groups. This study employs a normative juridical method with constitutional and conceptual approaches, and recommends strengthening oversight institutions, reforming the judicial system, enhancing civil society participation, and fostering a culture of legal ethics as strategic steps to reinforce the rule of law substantively.

Keywords: Constitutionalism, Rule of Law, Human Rights, Philippines.

ABSTRAK

Makalah ini membahas implementasi prinsip konstitusionalisme di Filipina berdasarkan Konstitusi 1987, dengan fokus pada dua dimensi utama dalam *Rule of Law Index*, yaitu pembatasan kekuasaan pemerintah dan perlindungan hak asasi manusia. Meskipun secara normatif konstitusi Filipina telah mengatur secara komprehensif prinsip negara hukum dan jaminan hak-hak dasar warga negara, pelaksanaannya masih menghadapi tantangan serius. Skor rata-rata Filipina dalam *Rule of Law Index* selama satu dekade terakhir menunjukkan lemahnya akuntabilitas, independensi lembaga peradilan, serta perlindungan terhadap kelompok rentan. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan konstitusional dan konseptual, serta menyarankan penguatan lembaga pengawasan, reformasi sistem peradilan, peningkatan partisipasi

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masyarakat sipil, dan pembudayaan etika hukum sebagai langkah strategis untuk memperkuat negara hukum secara substantif.

Kata Kunci: Konstitusionalisme, Negara Hukum, Hak Asasi Manusia, Filipina, Rule of Law Index.

A. INTRODUCTION

Constitutionalism is the idea that power must be limited by laws in the form of a constitution, or State of law, that protects human rights, and there is a separation of powers (Ruffer, 2015). Constitutionalism has been adopted by many modern countries, and adapted to the diverse cultures of each country (Dippel, 2019). World Justice

Project Defining the State of Law is a legal system, institutions, norms, and community commitments to realize Accountability, Just Law, Open Government, and Accessible and Impartial Justice. Rule of Law Index in 2023, East Asia and Pacific countries are shown in Table 1 (Bukovnik et al., 2022).

Table 1 Rule of Law Index in 2023 East Asia and Pacific Countries

Regional Rank	Country/Jurisdiction	Overall Score ^a	Annual % Change in Overall Score ^a	5-Year % Change in Overall Score ^a	Global Rank	Change in Global Rank ^b	Regional Rank	Country/Jurisdiction	Overall Score ^a	Annual % Change in Overall Score ^a	5-Year % Change in Overall Score ^a	Global Rank	Change in Global Rank ^b
1/15	New Zealand	0.83	-0.2%	-0.4%	8	1 ▼	9/15	Indonesia	0.53	0.2%	2.6%	66	0
2/15	Australia	0.80	0.5%	-1.3%	13	0	10/15	Thailand	0.49	-1.0%	-3.0%	82	0
3/15	Japan	0.79	0.0%	-0.2%	14	2 ▲	11/15	Vietnam	0.49	-0.6%	-2.9%	87	1 ▼
4/15	Singapore	0.78	-0.1%	-2.6%	17	0	12/15	China	0.47	-0.9%	-6.7%	97	0
5/15	Korea, Rep.	0.74	0.5%	2.0%	19	0	13/15	Philippines	0.46	-1.5%	-2.0%	100	1 ▼
6/15	Hong Kong SAR, China	0.73	-0.2%	-6.0%	23	1 ▼	14/15	Myanmar	0.35	-3.7%	-17.2%	135	1 ▼
7/15	Malaysia	0.57	0.8%	6.1%	55	1 ▲	15/15	Cambodia	0.31	-0.1%	-3.5%	141	0
8/15	Mongolia	0.53	-0.6%	-2.0%	64	0							

Description: 0-1, where 1 indicates the highest compliance.

Based on Table 1, it is known that the highest Rule of Law Index in the Pacific is New Zealand, Asia is Japan, and Southeast Asia is Malaysia. Indonesia is ninth and sixty-sixth in the world, and the Philippines is thirteenth and one hundred in the world. The Rule of Law Index is calculated using 8 factors: Constraints on Government Powers, Absence of Corruption, Open

Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice, consisting of 44 sub-factors. This research focuses on two factors related to the State of law and human rights, namely Constraints on Government Powers and Fundamental Rights covering fourteen sub-factors.

Constitution Net The history of the Philippine constitution began in 1898 when there was a revolution against Spain that culminated in the first Philippine declaration of independence on June 12, 1898, in Kawit, Cavite, followed by the Congress of Malolos on September 15, approving the Constitution of Malolos on January 20, 1899. After the Treaty of Paris in 1898, the Philippines came under the rule of the United States. The Jones Act of 1916 approved a transition that resulted in a new constitution in 1935. However, the Japanese occupation of 1941 resulted in a new constitution passed in 1943. On July 4, 1946, the Philippines declared independence and had its constitution. In 1953-1965, Presidents Ramon Magsaysay, Carlos Garcia, and Diosdado Macapagal succeeded in stabilizing the country, carrying out domestic reforms, and building international relations. Ferdinand Marcos was elected President in 1965 and declared martial law in 1972 at the end of his second term. The 1973 constitution replaced the presidential system with a parliamentary system, allowing Marcos to remain in power and rule in a manipulative manner until the lifting of martial law in 1981. However, his power continued through fraudulent elections that triggered the "People Power" Revolution in 1986, forcing him to flee, and Corazon Aquino became President. In 1987, a new constitution was passed on February 2, establishing a representative democracy with three branches of government: the Executive, Legislative, and Judiciary, as well as three independent constitutional

commissions. The constitution guarantees civil and political rights and free and fair elections, giving new hope to the Filipino people after years of political repression (J.W., 1913).

The legal, political, social, cultural, and economic history of the Philippines has similarities with Indonesia, once colonized, in this case, Spain and the United States, which affects the constitution and legal system, multicultural, there is a septic movement (Tadem, 2014), high levels of corruption, and the war on drugs (Iglesias & Ordenes, 2019). The Philippines experienced tyrannical rule under Ferdinand Marcos, which led to the erosion and deconsolidation of democracy (Boquet, 2017). Then, it triggered a revolution where the people demanded political change and the enforcement of democracy, but until now, the quality of constitutionalism has been low due to the dominance of oligarchs (Kuhonta & Truong, 2020).

The decline in the application of the concept of the rule of law and the protection of human rights began in 1972 when President Ferdinand Marcos declared martial law, ruled authoritarily, ignored civil rights, and silenced the media (Robie & Abcede, 2015). Marcos used the military as the main tool in exercising executive power, ignoring the rule of law, and weakening judicial and legislative power (Gatmaytan, 2020). Marcos' reasons for imposing martial law were the eradication of drugs, separatist movements, the subversion of

communism, and criminality becoming one enemy of the State. Martial law was supported by institutions in civil society, including the Catholic Church, academics, filmmakers, and many drug-related nonprofits, but the impact of his rule was authoritarianism (Lasco & Yu, 2023). The reason is positive, but the implementation has a negative impact over time.

Marcos committed human rights violations, silencing press freedom in the form of newspapers, television, and (Forbes, 2015). Nearly a thousand victims of human rights abuses have sued Marcos in international courts in the United States, but their demands are considered contrary to the country's policy of economic growth (Davidson, 2017). In the 2016 Philippine presidential election, the people voted for Rodrigo Duterte with a narrow victory over Ferdinand Marcos' son, meaning that even though he did not win, Marcos' son had the support of the people, especially young people who did not experience and did not have education about human rights violations during martial law (Abuso, 2019). In the 2022 Presidential Election, Ferdinand Marcos, Jr. was finally elected President of the Philippines (Oh, 2023); he promised closer military ties with the United States and a fight against an increasingly coercive China (Crabtree & Laksmana, 2023). Currently, the political dynasty of Ferdinand Marcos is back in power, which raises concerns that there will be violations of the State of law, democracy, and human rights (Tan, 2024).

This study will analyze the implementation of constitutionalism, including the State of Law and the Protection of Human Rights in the Philippines, using two factors, namely Constraints on Government Powers, which consists of six sub-factors, and Fundamental Rights, which consists of eight sub-factors, to be evaluated and concluded to take lessons as to why the Philippines' Rule of Law Index is low.

B. Research Methods

This is a doctrinal research to analyze the implementation of constitutionalism in the form of the principle of the rule of law and the protection of Human Rights in the Philippines, using a constitutional and conceptual approach. The data is secondary data in the form of primary legal sources in constitutions and secondary legal sources in the form of the State of law and Human Rights concept, which are collected using literature studies (Irwansyah, 2020).

C. Results and Discussion

a. Implementation of the State of Law Based on Factor Constraints on Government Powers in the Philippines

The concept of the State of law in the 1987 Constitution of the Philippines is regulated in Article II: Declaration of Principles and State Policies Principles, which is contained in Section 28. The Constitution of the Philippines states that the Philippines is a democratic republic, sovereignty is in the hands of the people, and all government authority comes

from the people. The State rejects war as a tool of national policy and adopts generally accepted principles of international law as part of national law, adhering to the policy of peace, equality, justice, freedom, cooperation, and friendship with all nations. Civilian authority has always been higher than the military, and the Armed Forces of the Philippines are tasked with protecting the people and the country to safeguard the country's sovereignty and territory. The government's main task is to serve and protect the people; the government can call the people to defend the country and provide military or civilian services based on the law. The maintenance of peace and order, the protection of life, liberty and property, and general welfare are essential elements for the realization of democracy. The State also emphasizes the importance of separation between church and State.

In addition, the Philippines' foreign policy is independent by considering national sovereignty, territorial unity, national interests, and the right to self-determination in its international relations, as well as implementing a policy of freedom from nuclear weapons. The State will promote a just and dynamic social order to ensure the prosperity and independence of the nation, as well as eradicate poverty through adequate social services, opening up fields, improving standards and a better quality of life. The State will prioritize education, science and technology, arts, culture, and sports to foster patriotism and nationalism,

accelerate social progress, and develop human resources. The State asserts the workforce as a major socio-economic force, protects workers' rights, and promotes their well-being. The country will develop an independent, independent, and effective national economy carried out by Filipinos and encourage private enterprises to invest. The State also recognizes the rights of indigenous cultural communities, encourages non-governmental organizations that promote the nation's welfare, and ensures local government autonomy. The State guarantees equal access to public service opportunities, prohibits political dynasties, and maintains honesty and integrity in public service by implementing a transparent policy on all public interest transactions. Factor and Sub-Factor Constraints on the Government Powers Rule of Law Index in the Philippines in 2013-2023 are shown in Table 2 (Bukovnik et al., 2022).

Table 2 Factor and Sub-Factor Constraints on Government Powers Rule of Law Index in the Philippines in 2013-2023

Factor & Sub-Factor	2013	2014	2015	2016	2018	2019	2020	2021	2022	2023	Average
1. The legislature effectively limits government powers	0.76	0.72	0.69	0.67	0.61	0.58	0.55	0.53	0.55	0.54	0.62
2. The judiciary effectively limits government powers	0.54	0.60	0.68	0.59	0.58	0.52	0.53	0.49	0.50	0.50	0.55
3. Government powers are effectively limited by independent auditing and review	0.51	0.56	0.58	0.52	0.53	0.53	0.47	0.49	0.47	0.46	0.51
4. Government officials are sanctioned for misconduct	0.43	0.47	0.52	0.49	0.43	0.42	0.41	0.37	0.37	0.37	0.43
5. Government powers are subject to non-governmental checks	0.69	0.66	0.67	0.63	0.57	0.56	0.53	0.49	0.51	0.50	0.58
6. The transition of power is subject to the law	0.46	0.54	0.55	0.65	0.57	0.55	0.53	0.51	0.50	0.47	0.53
Factor Constraints on Government Powers	0.56	0.59	0.61	0.59	0.55	0.53	0.50	0.48	0.48	0.47	0.54

Based on Table 2, it is known that the Factor Constraints on Government Powers in the Philippines were highest in 2014 and then continued to decline until 2021; in 2022, it rose again but decreased in 2023; the data shows that on average, the quality of the rule of law in the Philippines in the last decade tends to be low: 0.54. The sub-factors that tend to be high are The legislature effectively limits government powers: 0.62 and Government powers are subject to non-government checks: 0.58, while the sub-factors that tend to be low are Government officials are sanctioned for misconduct: 0.43 and Government

powers are effectively limited by independent auditing and review: 0.51.

Sub-Factor Factor Constraints on Government Powers are as follows: First, the legislature effectively limits government powers. After the tyrannical authoritarian regime of 1987, the Philippine constitution was amended to restore the separation of powers and create an independent judiciary and a bicameral Congress system so that governance and rulemaking could be carried out democratically (Pangalangan, 2014). In order to eliminate political dynasties and improve the quality of democracy, the President's term of office was changed to six years and could not be

re-elected, as well as the strengthening of political parties (Mendoza et al., 2020). The 1987 Philippine Constitution provides for legislative power to limit government powers, the power to make laws by Congress consisting of the Senate and the House of Representatives, unless such power is vested in the people by referendum, as intended Article VI, Section 1, 2) the authority to investigate the implementation of the law, as intended Article VI, Section 21, 3) the authority to regulate the process of planning, approving and supervising the state budget, as intended Article VI, Section 24-29, 4) the authority to approve the appointment of the President by the Senate and Parliament, as intended Article VII, Section 16, and 5) the authority of parliament to file an impeachment motion to be decided by the Senate, as referred to Article XI, Section 2-3.

Second, Government powers are effectively limited by the judiciary Constraints on Government Powers in the Philippines. The judicial power in the Philippines initially received intervention from the executive power (J.W., 1913); the 1987 Constitution Amendment strengthens judicial independence in deciding cases (Chopra, 2021), expanding judicial power to conduct judicial review of government laws and policies, in order to protect democracy from past abuses of power (Gatmaytan, 2020). The judicial power in the 1987 Philippine constitution is regulated in Article VIII of the Judicial Department, which consists of 16 sections. The main provisions of the judicial power in the 1987 Philippine constitution are as

follows. The Supreme Court and lower courts hold judicial power by the law. The judicial power includes the actual dispute resolution and assessment of the abuse of government authority. Congress has the power to determine, determine, and divide the jurisdiction of the various courts, without removing the authority of the Supreme Court, and there should be no laws to influence judicial power that threatens the term of office of its members.

The judicial power has fiscal autonomy; the legislature must not reduce the budget for the judicial power under the previous year, and once approved, it will be automatically allocated. The Supreme Court consists of a Chief Justice and fourteen Supreme Court Justices, each vacancy filled within ninety days; in deciding cases, the constitutionality of the law is decided by the Supreme Court by a majority vote of the members, and the doctrine or principle of law established by the court can only be changed by the court above it. The Supreme Court has the power to adjudicate cases involving ambassadors, review cases of constitutionality and legality of taxes, determine the jurisdiction of the courts, temporarily assign judges of lower courts, order changes in the venue of trials, issue regulations on constitutional rights, court procedures, and be responsible for the appointment of judicial officers. The Supreme Court has administrative oversight over all courts and employees within it. Qualifications to become Justices and Supreme Court Justices must be native Filipino citizens and meet certain age and experience requirements, qualifications established by Congress

and must possess competence, integrity, proportion, and independence. The salaries of the Chief Justice of the Supreme Court, Supreme Court Justices, and judges of lower courts are determined by law and may not be reduced during their term of office. Judges and Supreme Court Justices may not be appointed to institutions that perform quasi-judicial or administrative functions.

The establishment of the Judicial and Bar Council is carried out by the Chief Justice of the Supreme Court as the chairman with members of the Minister of Justice, representatives of Congress, representatives of professional associations, legal academics, retired Supreme Court Justices, and representatives of the private sector appointed by the President for a four-year term. The President appoints members of the Supreme Court and judges of lower courts from a list of at least three candidates prepared by the Judicial and Bar Council, without the need for confirmation, within ninety days of submission.

The decision of the Supreme Court or the court under it is decided by deliberation before the case is assigned to a Member to prepare an opinion; in the Court Decision, the judge of the member who disagrees with the opinion must convey the reason. The decision of the Supreme Court or the Court must clearly and firmly explain the facts and the law on which it is based. Every case filed must be decided within twenty-four months for the Supreme Court, twelve months for the High Court, and three months for any other lower court. A case is

considered ready to be decided when all the final documents are submitted. Once that deadline expires, the court must decide without further delay. The Supreme Court is obliged to submit an annual report on judicial operations and activities to the President and Congress within thirty days of the opening of each regular session of Congress. Although the 1987 Constitution grants significant authority to the judiciary, international evaluations show that the rule of law, judicial independence, and access to justice remain major issues facing the judiciary in the Philippines (Loewen, 2018).

Third, Government powers are effectively limited by independent auditing and review Constraints on Government Powers in the Philippines. Public sector accountability is public officials' responsibility for their decisions, policies, and spending, including electoral activities, parliamentary oversight, courts, government auditors, and ombudsmen (Masood-your-Rehman & Batool, 2014). Government performance audits are important to account for the performance and implementation of modern democracy (Dubnick & Frederickson, 2014), as the holder of state sovereignty. Provisions in the 1987 Philippine constitution on limiting government powers by audit bodies are regulated in Article XI, Accountability of Public Officers, consisting of 18 Sections. The main provisions for restricting public office in the 1987 Philippine constitution are as follows. Public positions are a mandate from the community. Public officials and employees must always be responsible

to the community, serve with full responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and live a simple life. The President, Vice President, Members of the Supreme Court, Members of the Constitutional Court, and the Ombudsman may be removed from office through impeachment for constitutional violations, treason, bribery, corruption, other serious crimes, or betrayal of public trust, while the provisions of the law may remove other public officials, but not through impeachment. Parliament has the authority to propose impeachment with the support of at least one-third of its members, the Senate, which hears and decides the impeachment case with a majority of two-thirds of its members, and the impeachment decision in the form of dismissal and disqualification from public office. Public officials and employees must be loyal to the State and the Constitution, and anyone who attempts to change his or her citizenship or become an immigrant of another country during his or her term of office will be dealt with by the law. During their term of office, the President, Vice President, members of the Cabinet, Congress, the Supreme Court, the Constitutional Commission, and the Ombudsman, as well as the companies they control, are prohibited from accepting loans or other financial facilities from banks or government-owned financial institutions. Public officials or employees must report their assets under oath, specifically for the President, Vice President, members of the Cabinet, Congress, Supreme Court, Constitutional Commission, and military officials with the rank of

general, and must be disclosed to the public by applicable regulations.

An independent Ombudsman Office known as Tanodbayan was established; in addition to the central Ombudsman, deputies for the Luzon, Visayas, and Mindanao regions were also formed, as well as for the military. The Ombudsman appoints ombudsman officials and employees based on the law. The requirements members of the Ombudsman must be a native Filipino citizen, at least 40 years old, have integrity, be independent, not nominated in a previous election, have experience as a judge or practice law in the Philippines for at least ten years. The President appoints members of the Ombudsman and his Deputy from a list of at least six candidates compiled by the Judicial Council without needing confirmation, and all vacancies must be filled within three months. The rank of members of the Ombudsman and his Deputy is equivalent to that of the Chairman and Members of the Constitutional Court, receiving the same salary, and such salary cannot be reduced during their term of office for seven years without being re-appointed. The Ombudsman and his Deputy protect the people who must immediately follow up on complaints against government officials or employees, including State-Owned Enterprises, and inform the complainant of the actions taken and the results. The object of the complaint to the Ombudsman is a negligent, illegal, unfair, or inefficient government action. The Ombudsman is authorized to order the acceleration of duties or stop the abuse of authority, recommend disciplinary action,

request copies of documents related to the use of public funds, request assistance and information from government agencies, publish the results of investigations, determine the causes of inefficiency and corruption and provide recommendations, and establish procedural rules by the law. The Ombudsman has fiscal autonomy, and the approved annual budget will be released automatically and regularly.

The Anti-Corruption Court was established as Sandiganbayan to exercise its authority per the current or future applicable law. Sandiganbayan, a special court under the Supreme Court of the Philippines, has played an important role in the eradication of corruption, especially through the handling of the Estrada looting case that triggered the impeachment and punishment process for the sitting president (Panganiban, 2020). At the local level, efforts to eradicate corruption have shown significant changes, such as the defeat of political dynasties in Siquijor Province, thanks to the activities of the People's Power Volunteers for Reform (Hara, 2019). The prevalence of corruption in the Philippines indicates the ineffectiveness of anti-corruption agencies, so it is recommended to establish a new Philippine Anti-Corruption Agency with adequate authority, budget, personnel, and independence to enforce anti-corruption laws impartially (Quah, 2020).

The State's right to recover property illegally acquired by an official or public servant or its assign is not impeded by expiration, negligence,

or estoppel. This provision is because recovering assets from corruption-based crimes, especially bribery and corruption, presents a major challenge (Rübenstahl, 2015). Countries that are victims of major corruption often have difficulty recovering assets looted and stored abroad due to the involvement of public officials, so there are calls for alternative mechanisms in which other countries recover assets on behalf of victim countries (Igbinedion, 2018). The global complexity and use of mechanisms to conceal assets underscore the importance of effective international legal cooperation in combating corruption and recovering illegally transferred assets (Paluma et al., 2022). The implementation of estoppel is constrained by the absence of a firm procedural law, resulting in legal uncertainty and a lack of unity in law enforcement (Krupchan et al., 2022). In addition, the application of the estoppel concept in the recovery of illegally acquired property by public officials in the Philippines requires international cooperation (Zemskov & Prasolov, 2021) by the principles of mutual trust and stability of the international community (Pan, 2017), if the destination country does not have legal cooperation, it is necessary to make an alternative solution (Igbinedion, 2018).

Fourth, Government officials are sanctioned for misconduct. Constraints on Government Powers in the Philippines. The Philippines faces challenges in tackling corruption and abuses of government officials, with legal and ethical implications in sanctions, the role of power limitations to increase accountability and

transparency, and the influence of historical and cultural factors in its development compared to other countries' approaches (Gonzales, 2021). Anti-corruption efforts in the Philippines are hampered by outdated laws, lack of compliance, and selective law enforcement in a system with weak institutions and oligarchic control, although under President Benigno Aquino III there is political will to handle high-level corruption cases, but faces problems with operational capacity and a weak system of anti-corruption institutions (E. V. C. Batalla, 2015). In addition, the government has difficulty adapting its law enforcement efforts and business culture to match global anti-corruption standards (Mondez & Cruz, 2024) to encourage accountability and transparency, particularly major foreign-funded infrastructure projects (E. V. C. Batalla, 2020).

Kelima, Government powers are subject to non-governmental checks. Constraints on Government Powers in the Philippines. The Philippine Constitution does not specifically regulate non-government, but it is mentioned in Article X, Section 14, which stipulates that the President will establish a regional development council consisting of local officials, heads of regional departments, and representatives of non-governmental organizations to strengthen the autonomy and accelerate economic and social growth in the region. Non-governmental organizations in the Philippines are involved in a variety of government programs (Christopher Go & Brummer, 2024), generally top-down initiated and funded by a central

government or international agency (Ona & Concepcion, 2018), but the existing regulations are still restrictive, so there is no guarantee of the sustainability of the program (Fransen & Dupuy, 2024).

The findings of this study on the implementation of the principle of constraints on government powers in the 1987 Constitution of the Philippines indicate that, although the constitutional framework normatively provides a comprehensive regulation of the rule of law, its practical effectiveness continues to face serious challenges. The Philippines' average score in the Rule of Law Index for the dimension of Constraints on Government Powers has only reached 0.54 over the past decade, reflecting weak accountability and the limited effectiveness of oversight institutions in restraining state power.

This condition reveals a significant gap between the ideal constitutional design and the institutional reality, which is often confronted with political interference, limited institutional capacity, and a deeply entrenched oligarchic culture. The lowest-scoring sub-factors include the effectiveness of sanctions against misconduct by public officials and the limited capacity of independent audit institutions to perform their oversight functions optimally.

Based on the analysis of the implementation of the principle of constraints on government powers in the Philippine constitutional system, several important lessons can be drawn for Indonesia in its efforts to strengthen the rule of law substantively. Although the Philippine Constitution explicitly

regulates mechanisms for limiting power through the legislature, judiciary, independent audit bodies, and civil society participation, the effectiveness of these mechanisms remains constrained in practice. Therefore, Indonesia should consider the following strategic measures:

First, Indonesia must strengthen the capacity and independence of oversight institutions such as the Audit Board of the Republic of Indonesia (BPK), the Corruption Eradication Commission (KPK), and the Ombudsman of the Republic of Indonesia. This strengthening should include institutional, budgetary, and human resource aspects and guarantees of non-intervention by political actors. These institutions must be endowed with sufficient authority to conduct audits, investigations, and enforcement actions against abuses of power effectively and sustainably.

Second, reforming the selection and appointment mechanisms for judges and judicial officials is essential to ensure the independence of the judiciary. Indonesia may consider establishing a body similar to the Judicial and Bar Council, tasked with selecting candidates for the Supreme Court and other high judicial offices in a transparent, accountable, and merit-based manner. This is crucial to prevent executive dominance in judicial processes and safeguard the judiciary's integrity.

Third, the system of sanctions for misconduct by public officials must be reinforced. Revisions to laws governing administrative and criminal sanctions—such as the Civil Service and Anti-Corruption Law—are

necessary to ensure deterrent effects. In addition, legal protection for whistleblowers must be guaranteed to encourage public reporting of misconduct without fear of retaliation.

Fourth, civil society participation in government oversight must be more broadly facilitated. The government should create legal and inclusive participatory spaces for civil society organizations in the planning, implementation, and evaluation of public policies. Fiscal and regulatory support for credible NGOs is also critical for strengthening social control over state power.

Fifth, developing a legal culture and public ethics must be a long-term agenda. Anti-corruption education and public ethics should be integrated into the national education curriculum and civil service training programs. Furthermore, implementing digital transparency systems in public services and procurement processes can serve as vital instruments to prevent corruption and enhance public trust in state institutions.

By implementing these recommendations, Indonesia is expected to strengthen the rule of law normatively, functionally, and substantively. The Philippine experience demonstrates that sound legal norms must be accompanied by institutional effectiveness and a supportive legal culture to ensure that the principle of constraints on government powers is genuinely realized in constitutional practice.

b. Protection of Human Rights in the Philippines

The Protection of Human Rights in the 1987 Constitution of the Philippines is regulated in Article III: Bill of Rights consists of 22 Sections. The Philippine Constitution guarantees several basic rights and freedoms of every citizen. Everyone has the right to live freely, and property cannot be confiscated without a fair legal process and equality before the law; search and confiscation can only be carried out based on a judge's warrant with clear reasons. Freedom of communication and correspondence is protected, except by court order. Freedom of speech, expression, press, and the right to assemble and petition the government must not be restricted. The State also grants citizens the right to

practice religion without discrimination, no religious requirements for civil or political rights, Freedom of residence and travel, with restrictions only on legal grounds. The public has the right to information on matters of public concern, the right to association and assembly, and the right to private property cannot be taken for the public interest without fair compensation. A detrimental law cannot alter a valid contract to the parties. Everyone has the right to access the courts and adequate legal aid. Factor and Sub-Factor Fundamental Rights Rule of Law Index in the Philippines in 2013-2023 is shown in Table 3 (Bukovnik et al., 2022). Table 3 Factors and Sub-Factors of Fundamental Rights in the Philippines in 2013-2023

Factor & Sub-Factor	2013	2014	2015	2016	2018	2019	2020	2021	2022	2023	Average
1. Equal treatment and absence of discrimination	0.57	0.56	0.52	0.54	0.47	0.43	0.43	0.42	0.44	0.45	0.48
2. The right to life and security of the person is effectively guaranteed	0.39	0.32	0.35	0.34	0.20	0.21	0.18	0.17	0.18	0.18	0.25
3. Due process of the law and rights of the accused	0.40	0.38	0.36	0.32	0.26	0.31	0.31	0.27	0.29	0.27	0.32
4. Freedom of opinion and expression is effectively guaranteed	0.69	0.66	0.67	0.63	0.57	0.56	0.53	0.49	0.51	0.50	0.58
5. Freedom of belief and religion is effectively guaranteed	0.64	0.64	0.66	0.64	0.60	0.63	0.64	0.62	0.59	0.58	0.63
6. Freedom from arbitrary interference with privacy is	0.45	0.39	0.40	0.41	0.30	0.31	0.27	0.25	0.23	0.22	0.32

Factor & Sub-Factor	2013	2014	2015	2016	2018	2019	2020	2021	2022	2023	Average
effectively guaranteed											
7. Freedom of assembly and association is effectively guaranteed	0.77	0.68	0.71	0.65	0.56	0.57	0.53	0.49	0.50	0.49	0.60
8. Fundamental labor rights are effectively guaranteed	0.64	0.49	0.44	0.43	0.41	0.37	0.43	0.44	0.46	0.48	0.46
Factor Fundamental Rights	0.57	0.52	0.52	0.49	0.42	0.42	0.41	0.39	0.40	0.40	0.45

Table 4 shows that Fundamental Rights in the Philippines in 2013-2023 were highest in 2013 and continued to decline until 2021, when 2022-2023 rose again. The data shows that, on average, the Philippines' Rule of Law Index in the last decade tends to be low: 0.45. The sub-factors that tend to be high are freedom of belief and religion is effectively guaranteed: 0.63 and freedom of assembly and association is effectively guaranteed: 0.60, while the sub-factors that tend to be low are The right to life and security of the person is effectively guaranteed: 0.25 and Due process of the law and rights of the accused and The right to life and security of the person is effectively guaranteed with the same value: 0.32.

Sub-Factor Factor Constraints on Government Powers are as follows: First, Equal treatment and absence of discrimination. The International Human Rights System emphasizes equal treatment and non-discrimination and prohibits direct and indirect discrimination (Mégret, 2017), including minority protection (Henrard, 2014). The Philippines has a large migrant population and policies to protect the rights of migrant

workers, but there are concerns about the consistency of such policies with international standards regarding women's rights and discrimination (Encinas-Franco, 2016).

Second, the person's right to life and security is effectively guaranteed. In the Philippines, the right to life and security is guaranteed as a Fundamental Right by the constitution (Legaspi-Medina, 2019), which protects the well-being of individuals for holistic development, including physical, intellectual, ethical, and spiritual growth, and guarantees respect, equality, and Freedom for all (Tripathi et al., 2023). The Declaration of Human Rights universally recognizes and supports the right to security, but the Philippines still faces challenges in effectively protecting these rights, especially for marginalized groups (Bayati & Rezaee, 2014). Third, Due process of the law and rights of the accused. The principle of due process in the Philippine constitution considers the protection of the rights of the accused (Matvieieva et al., 2022), carried out through independent, fast, and fair (Rosales, 2022), and protected

from abuse of criminal law and injustice (Qayum & Ahmad, 2022), by national and international law by emphasizing the importance of legal mechanisms (Jalili et al., 2015).

Fourth, freedom of opinion and expression is effectively guaranteed. Protecting Freedom of opinion and expression is the foundation of modern constitutional democracy and is essential for the exchange of ideas, political considerations, and public consensus (Donado, 2019), which is a prerequisite for a democratic society and the effective implementation of Human Rights (Sardo, 2020). The 1987 Constitution protects press freedom in the Philippines, but inconsistent media laws have led to a low ranking in the Press Freedom Index. International media organizations support the Philippine press in the face of attacks on press freedom, which local media appreciates (Khan, 2022). Fifth, freedom of belief and religion is effectively guaranteed. Since 1899, the Philippines has protected religious freedom with historical and socio-cultural considerations in mind (J. S. Cornelio, 2013) and applied the doctrine of separation of Church and State. (Sagut, 2022). The 1987 Philippine Constitution provides for the separation of Church and State to maintain a temporal and spiritual balance for the common good (E. V. Batalla & Baring, 2019), but Christianity is the majority religion that can color the law (J. Cornelio & Dagle, 2019).

Sixth, freedom from arbitrary interference with privacy is effectively guaranteed. To increase surveillance and data collection in the digital age which raises concerns about potential

abuse of power by governments and private entities (Juyal, 2023), the Philippines has issued the Data Privacy Act of 2012 to protect personal data to ensure the privacy rights of communications are overseen by an independent National Privacy Commission (Pitogo, 2019b). The law imposes legal sanctions on organizations that violate data protection, emphasizing the importance of compliance and the right to privacy (Pitogo, 2019a). Seventh, freedom of assembly and association is effectively guaranteed. Legal protections for Freedom of association and assembly in the Philippines are enshrined in the constitution, taking into account history, culture, recognition of the rights of indigenous peoples, and the International Labor Organization (Doyle, 2020), United States government (Hutchison, 2016) and Free and Prior Informed Consent that indigenous peoples have the right to approve or reject actions that affect them, especially those relating to their traditional lands, territories and natural resources (Doyle, 2020).

Eighth, Fundamental labor rights are effectively guaranteed. The International Labour Organization sets global labor standards that include Freedom of association, collective bargaining, the elimination of child labor, forced labor, and discrimination, as well as technical cooperation that strengthens laws and practices related to wages, social security, and occupational safety (Tapiola, 2020). The Philippines has amended its labor laws to improve productivity and social welfare

through the flexibility of industrial relations, collective bargaining, and voluntary dispute resolution while loosening restrictions on the right to organize and adapt to the flexibility of the global labor market (Sale & Sale, 2014). The Philippines has also enacted the Domestic Workers Act Number 10361 of 2012 to recognize and protect the rights of domestic workers (Asuncion, 2014). The strength of the labor movement in the Philippines declined due to the proliferation of contract work systems and the growth of the informal economy, which created legal, economic, and political challenges for trade unions (Asa, 2024). In addition, it is necessary to change the economy that tends to be neoliberal (Ofreneo, 2013), and legal tools to protect informal workers (Serrano, 2018).

The analysis of the protection of human rights under the 1987 Constitution of the Philippines reveals a significant discrepancy between constitutional guarantees and their practical implementation. Although the Constitution enshrines a comprehensive Bill of Rights—including the right to life, freedom of expression, religion, association, and due process—the Philippines has consistently scored low in the Rule of Law Index, particularly in the dimension of Fundamental Rights, with an average score of only 0.45 over the past decade. This indicates persistent structural and institutional weaknesses in ensuring the effective realization of human rights.

The lowest-performing sub-factors include the right to life and personal security (0.25) and due

process and the rights of the accused (0.32), reflecting systemic issues such as extrajudicial killings, arbitrary detention, and limited access to justice. These shortcomings are exacerbated by weak law enforcement, politicization of the judiciary, and inadequate protection for vulnerable groups, including minorities, migrant workers, and informal laborers. While certain rights—such as freedom of religion and association—are better protected, the overall human rights environment remains fragile and uneven.

For Indonesia, the Philippine experience offers valuable insights into the challenges of translating constitutional commitments into effective human rights protections. Despite having a similarly comprehensive constitutional framework, Indonesia must remain vigilant to ensure that formal guarantees are matched by institutional capacity and political will. Based on this comparative analysis, several strategic recommendations are proposed: First, Indonesia should strengthen the enforcement of human rights by enhancing legal frameworks and institutional mandates. This includes revising laws related to criminal procedure, anti-torture, and protection of vulnerable groups to ensure alignment with international human rights standards. The National Human Rights Commission (Komnas HAM) must be empowered with greater investigative authority and enforcement capacity.

Second, the right to life and personal security must be safeguarded through strict accountability mechanisms for law enforcement

agencies. Independent oversight bodies should be granted the authority to investigate allegations of abuse, and the judiciary must be protected from political interference to ensure impartial adjudication of human rights violations. Third, access to justice must be expanded, particularly for marginalized communities. This entails increasing the availability of legal aid, simplifying judicial procedures, and ensuring that the rights of the accused are upheld throughout the criminal justice process. Special attention should be given to pre-trial detention practices and prison conditions.

Fourth, Indonesia should promote a culture of human rights through education and public awareness. Human rights education should be integrated into school curricula and civil service training programs to foster a rights-based approach in governance and public service delivery. Fifth, protecting labor rights, especially for informal and contract workers, must be prioritized. Legal reforms should address the precarious nature of informal employment and ensure that all workers enjoy the right to organize, bargain collectively, and access social protection. The government should also ratify and implement relevant ILO conventions to strengthen labor standards.

Sixth, civil society organizations must be supported as key actors in human rights advocacy and monitoring. The state should ensure an enabling environment for NGOs, including legal recognition, access to funding, and protection from harassment or criminalization. By

adopting these measures, Indonesia can move beyond formal constitutionalism toward a substantive realization of human rights. The Philippine case underscores the importance of institutional integrity, legal coherence, and civic engagement in building a democratic state that genuinely respects and protects the dignity of all its citizens.

D. Conclusion

Implementing constitutionalism in the Philippines under the 1987 Constitution reflects a strong normative commitment to the rule of law and human rights; however, persistent institutional weaknesses have hindered its effective realization. Despite constitutional guarantees of limited government power and fundamental rights, the country's low Rule of Law Index scores over the past decade highlight challenges such as weak accountability, political interference, and inadequate protection for vulnerable groups. While reforms have been initiated, significant gaps remain between legal ideals and practical enforcement. Strengthening oversight institutions, judicial independence, human rights enforcement, and civic participation is essential to bridging this gap and ensuring that constitutionalism functions as a legal framework and a lived democratic practice.

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