

**UPHOLDING THE ERGA OMNES PRINCIPLE: THE ROLE OF
CONSTITUTIONAL COURT DECISIONS IN THE FORMATION
OF INDONESIA'S NEW PENAL CODE**

***MENEGUHKAN PRINSIP ERGA OMNES: PERAN PUTUSAN
MAHKAMAH KONSTITUSI DALAM PEMBENTUKAN KUHP BARU
INDONESIA***

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ABSTRACT

The erga omnes principle, denoting obligations owed universally rather than to specific parties, plays a crucial role in constitutional law and judicial review. In Indonesia, the Constitutional Court upholds this principle by ensuring its rulings have a binding effect on all legal actors and institutions. This paper examines how the Court's jurisprudence has shaped the new Indonesian Penal Code through landmark constitutional decisions. By analyzing key rulings that annulled provisions from the colonial-era Penal Code, this study explores the Court's influence on legislative reform and human rights protections. Utilizing normative legal research methods, including statute, case, and conceptual approaches, this study assesses how the Constitutional Court enforces the erga omnes principle through judicial review. The findings reveal that while several unconstitutional provisions from the old Penal Code were removed, some were reintroduced in the new code with modifications, often as complaint-based offenses to balance legal certainty with free expression. Despite these revisions, concerns persist regarding the potential misuse of reintroduced provisions to suppress dissent. This study underscores the Constitutional Court's role in safeguarding democracy by ensuring its decisions are universally applicable. However,

challenges remain in enforcing compliance with its rulings. As Indonesia continues its legal evolution, ongoing judicial oversight will be essential to uphold constitutional supremacy, human rights, and the rule of law.

Keywords : Erga Omnes; Constitutional Court; Penal Code; Legal Reform; Judicial Review

ABSTRAK

Prinsip erga omnes, yang menunjukkan kewajiban hukum yang berlaku secara universal dan tidak terbatas pada pihak tertentu, memainkan peran krusial dalam hukum konstitusi dan mekanisme pengujian yudisial. Di Indonesia, Mahkamah Konstitusi menegakkan prinsip ini dengan memastikan bahwa putusannya memiliki daya ikat terhadap seluruh aktor hukum dan institusi negara. Artikel ini mengkaji bagaimana yurisprudensi Mahkamah Konstitusi telah membentuk Kitab Undang-Undang Hukum Pidana (KUHP) 2023 melalui putusan-putusan penting dalam pengujian konstitusional. Dengan menganalisis putusan yang membatalkan sejumlah ketentuan dalam KUHP warisan kolonial, penelitian ini menyoroti peran Mahkamah Konstitusi dalam reformasi legislasi dan perlindungan hak asasi manusia. Melalui metode penelitian hukum normatif, yang meliputi pendekatan perundang-undangan, kasus, dan konseptual, penelitian ini mengevaluasi bagaimana Mahkamah Konstitusi menerapkan prinsip erga omnes dalam putusan pengujian undang-undang. Temuan penelitian menunjukkan bahwa meskipun beberapa ketentuan yang dianggap inkonstitusional telah dihapus, beberapa di antaranya diadopsi kembali dalam KUHP baru dengan modifikasi, terutama dalam bentuk delik aduan guna menyeimbangkan kepastian hukum dan kebebasan berekspresi. Namun, masih terdapat kekhawatiran terhadap potensi penyalahgunaan pasal-pasal yang diadopsi kembali untuk membatasi kritik. Penelitian ini menegaskan bahwa Mahkamah Konstitusi berperan penting dalam menjaga demokrasi dengan memastikan bahwa putusannya berlaku secara luas dan mengikat. Namun, tantangan tetap ada dalam penegakan kepatuhan terhadap putusan tersebut. Seiring dengan perkembangan hukum di Indonesia, pengawasan yudisial yang berkelanjutan akan menjadi kunci dalam menegakkan supremasi konstitusi, hak asasi manusia, dan negara hukum.

Kata Kunci : Erga Omnes; Mahkamah Konstitusi; KUHP Indonesia; Reformasi Hukum; Pengujian Undang-Undang

I. INTRODUCTION

The Constitutional Court of Indonesia was established following the constitutional amendments of 1999–2002, designed to strengthen democratic

governance, uphold human rights, and ensure checks and balances within the governmental system. The Court possesses the authority to review laws against the Constitution, resolve disputes between state institutions, political party dissolution adjudication, and election-related matters adjudication. Besides that the court also has an obligation to oversee presidential impeachment proceedings. Its rulings have binding and final authority, which means that once a law is declared unconstitutional, it ceases to have legal effect.

Given the extensive scope of its jurisdiction, the Constitutional Court has played a crucial role in interpreting legal provisions and ensuring their compliance with constitutional principles. Several landmark rulings have influenced the legislative landscape, particularly in the domain of criminal law. For instance, decisions concerning defamation laws, blasphemy provisions, and the death penalty have sparked national debates and legislative adjustments. The new Penal Code reflects many of these constitutional considerations, demonstrating how constitutional review mechanisms influence legal reforms.

The concept of *erga omnes*, a Latin phrase meaning "toward all," holds significant weight in the realm of international law and constitutional jurisprudence. This principle signifies obligations that a state or entity owes to the international community as a whole, transcending bilateral legal relationships and ensuring the protection of fundamental rights and norms universally recognized by all nations. In the Indonesian legal context, the *erga omnes* principle is particularly relevant in the functioning of the Constitutional Court of Indonesia Republic, whose decisions possess binding authority and serve as a cornerstone in shaping legal frameworks, including the recent formation of Indonesia's new Penal Code.

Indonesia's legal system has undergone substantial transformation over the past two decades, largely due to the democratization process initiated in the post-Suharto era. By the establishment of the Constitutional Court in 2003, Indonesia took a significant step toward ensuring constitutional supremacy, safeguarding fundamental rights, and providing constitutional review of Laws mechanisms to scrutinize legislative enactments. The Constitutional Court's decisions are binding not only on the parties involved in a case but also on all institutions and individuals within the jurisdiction of Indonesia, thus embodying the *erga omnes* principle. These decisions play a pivotal role in refining legal statutes, setting judicial precedents, and influencing the legislative process.

The Constitutional Court of Indonesia has emerged as a key institution in upholding the *erga omnes* principle, ensuring that its rulings have broad and lasting effects on the country's legal system. The *erga omnes* principle asserts that certain legal norms and obligations transcend individual cases and apply universally within a jurisdiction. In the Indonesian context, this

principle is embodied in the binding nature of Constitutional Court decisions, which extend beyond the immediate litigants and affect all Indonesian citizens. This ensures uniformity, predictability, and constitutional adherence in the legal system.

Through its constitutional review powers, the Court has influenced the formation of Indonesia's new Penal Code by reinforcing constitutional protections, refining legislative provisions, and guiding lawmakers in aligning statutory law with fundamental rights. As Indonesia moves forward with the implementation of its new Penal Code, continued judicial oversight and constitutional interpretation will remain essential in maintaining the balance between legal certainty, human rights, and democratic governance.

Understanding the role of the Constitutional Court in shaping Indonesia's legal landscape underscores the importance of judicial independence, constitutional accountability, and adherence to international legal principles. By upholding the *erga omnes* principle, Indonesia reinforces its commitment to the rule of law, ensuring that justice is not only served but universally upheld for all citizens.

The newly enacted Indonesian Penal Code, which replaces the colonial-era Penal Code that had been in place since Dutch colonial rule, marks a historic shift in the nation's legal landscape. While the drafting and enactment of the new Penal Code were primarily legislative endeavors, Constitutional Court rulings have significantly shaped its final form. The Court's jurisprudence has contributed to the protection of constitutional rights, the harmonization of legal norms, and the rectification of controversial provisions that may infringe upon fundamental liberties. By examining how Constitutional Court decisions have impacted the formulation of the new Penal Code, we can better understand the interplay between constitutional adjudication and legislative reform in Indonesia.

II. METHOD

This study employs normative legal research methods using a statute approach, case approach, and conceptual approach. The statutory approach is conducted by analyzing various laws and regulations related to the formation of the new Indonesian Penal Code (KUHP), particularly in relation to the *erga omnes* principle and the role of the Constitutional Court. Meanwhile, the case approach is applied by examining Constitutional Court rulings that are relevant to articles in both the *Wetboek van Strafrecht* (WvS) KUHP and the new KUHP, aiming to understand how these decisions impact Indonesia's criminal law system. The conceptual approach is used to explore the meaning and application of the *erga omnes* principle in both national and international law, as well as its significance in the Constitutional Court's authority.

The data for this research are obtained from primary legal sources, such as the 1945 Constitution of Indonesia, Law No. 1 of 1946 on the Indonesian Penal Code, Law No. 1 of 2023 on the Indonesian Penal Code, relevant Constitutional Court decisions, and related regulations. Additionally, this study refers to secondary legal sources, including books, journals, and legal scholars' opinions that support the analysis of the erga omnes principle and Constitutional Court decisions. Tertiary legal materials that provide guidance or explanations regarding primary legal sources are also utilized.

The data analysis technique is conducted qualitatively using a descriptive-analytical method, which involves interpreting and examining the interrelation between regulations, court decisions, and prevailing legal doctrines. The research findings will be analyzed using a normative juridical approach, focusing on legal provisions. Ultimately, this study aims to provide a deeper understanding of the erga omnes principle through Constitutional Court rulings and its contribution to the formulation of the new Indonesian Penal Code.

III. ANALYSIS AND DISCUSSION

The Constitutional Court of the Republic of Indonesia plays a vital role in upholding the principles of constitutional democracy. Established in 2003 through the third amendment to the 1945 Constitution, the Court was designed to ensure checks and balances in governance. Among its primary functions is the authority to conduct constitutional review of laws, ensuring their alignment with the constitutional framework. Therefore, before the analysis and discussion were further delved, there will be some elaboration as to the scope, function, and impact of the Constitutional Court in Indonesia concerning its constitutional review authority with a particular focus on its erga omnes principle. Those elaborations are as follows:

a. The Authority of the Constitutional Court on Judicial Review

The Constitutional Court derives its power from the 1945 Constitution, specifically under Article 24C, which grants the Court jurisdiction over the review of laws against the Constitution. Constitutional review is an essential mechanism in a constitutional democracy, ensuring that enacted laws do not violate fundamental rights and constitutional principles.¹ The Court has the power to declare laws, or specific provisions within them, unconstitutional, effectively annulling them.

The necessity for judicial review in Indonesia arose from past experiences where the legislature enacted laws that often conflicted with democratic

¹ Jimly. Asshiddiqie, "The Constitutional Law of Indonesia: A Comprehensive Overview," 2009, 751, <https://search.worldcat.org/title/428731482>.

principles and human rights.² Given Indonesia's history of authoritarianism under Suharto's New Order regime, the introduction of the Constitutional Court was intended to prevent the recurrence of undemocratic legal frameworks. This transition reflects the country's commitment to constitutional supremacy rather than legislative supremacy.

The judicial review process involves petitioners—individuals, groups, or institutions—challenging a law's constitutionality. The Court then assesses whether the law adheres to the principles enshrined in the Constitution, particularly regarding fundamental rights, state principles, and democratic values.³ If a law or specific provisions are found unconstitutional, they are rendered legally void.

b. The *Erga Omnes* Principle and Its Application

A critical aspect of the Constitutional Court's authority is the application of the *erga omnes* principle. This principle, meaning "towards all," ensures that the Court's decisions have a general binding effect on all parties, not just the litigants in a specific case. In the context of judicial review, when the Court declares a law unconstitutional, it ceases to have legal effect for everyone, reinforcing the supremacy of the Constitution.⁴

The principle of *erga omnes* in decisions of the Constitutional Court of Indonesia asserts that such rulings have binding force on all parties, not merely the litigants involved in a particular case. This means that every individual, state institution, and government body is obligated to comply with and implement Constitutional Court decisions. This principle is enshrined in Article 10(1) of Law No. 8 of 2011, which amends Law No. 24 of 2003 on the Constitutional Court. The provision stipulates that Constitutional Court decisions are final and binding upon their pronouncement, leaving no room for further legal remedies. This finality encompasses the legally binding force applicable to all parties (*erga omnes*).

The application of the *erga omnes* principle in Constitutional Court rulings aims to ensure that every general right or obligation is enforceable against all persons or entities. Thus, the decisions of the Constitutional Court are not limited to binding only the litigating parties but extend to all individuals and institutions related to the ruling. This characteristic distinguishes Constitutional Court decisions from those of general courts, which typically bind only the parties to a case. For instance, in Decision No. 34/PUU-XI/2013, which declared Article 268(3) of the Indonesian Criminal

² Simon Butt and Nicholas Parsons, "Judicial Review and the Supreme Court in Indonesia: A New Space for Law?," *Indonesia* 2014, no. 97 (April 1, 2014): 55-85, <https://doi.org/10.5728/INDONESIA.97.0055>.

³ Simon. Butt and Timothy. Lindsey, "Indonesian Law," 2018.

⁴ Nadirsyah Hosen, "Sharia and Constitutional Reform in Indonesia," *Sharia and Constitutional Reform in Indonesia*, 2007, 1-271, <https://doi.org/10.1355/9789812305701>.

Procedure Code (KUHAP) unconstitutional, the ruling did not merely apply to the petitioner but had legal implications for the entire Indonesian populace.⁵

Nevertheless, challenges persist in the implementation of the erga omnes principle. Some individuals and state institutions fail to respond appropriately to Constitutional Court decisions, revealing a deficiency in constitutional awareness and adherence among both the public and government entities. For instance, in the ruling that annulled the results of the Sabu Raijua Regency election due to a candidate's failure to meet citizenship requirements, difficulties arose in enforcing the decision.⁶

Moreover, in several cases, Constitutional Court rulings have not been adequately enforced by the relevant institutions. A notable example is the ruling that invalidated provisions regarding international-standard schools, which encountered various obstacles in its execution.⁷ These instances illustrate that, despite the erga omnes nature of Constitutional Court decisions, practical challenges persist in their enforcement.

Philosophically, Constitutional Court rulings should bind all parties, whether individuals or institutions. However, in practice, both public and state institutions often fail to react appropriately, suggesting that constitutional awareness and adherence among stakeholders remain insufficient.⁸ This underscores the need for enhanced education and dissemination of constitutional principles to ensure comprehensive compliance with Constitutional Court decisions.⁹

Hence to improve the effectiveness of the erga omnes principle, efforts must be made to increase constitutional awareness and understanding among the public and government institutions. Greater socialization of the importance of Constitutional Court decisions and their implications for governance and legal systems is imperative.¹⁰ Additionally, a robust

⁵ Fadzlan Budi and Sulisty Nugroho, "SIFAT KEBERLAKUAN ASAS ERGA OMNES DAN IMPLEMENTASI PUTUSAN MAHKAMAH KONSTITUSI," *Gorontalo Law Review* 2, no. 2 (October 30, 2019): 95–104, <https://doi.org/10.32662/GOLREV.V2I2.739>.

⁶ Edelweisia Cristiana et al., "Erga Omnes Dalam Putusan Mahkamah Konstitusi Menyelesaikan Perselisihan Hasil Pemilukada (Studi Terhadap Putusan MK Nomor 135/PHP.BUP-XIX/2021)," *Satya Dharma : Jurnal Ilmu Hukum* 5, no. 2 (December 31, 2022): 153–67, <https://doi.org/10.33363/SD.V5I2.907>.

⁷ Muchamad Lutfi Hakim and . Rasji, "PENERAPAN ASAS ERGA OMNES DALAM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 30/PUU-XVI/2018 DIKAITKAN DENGAN ASAS NEGATIVE LEGISLATOR," *Jurnal Hukum Adigama* 1, no. 2 (January 31, 2018): 800–824, <https://doi.org/10.24912/ADIGAMA.V1I2.2924>.

⁸ Ardiansyah Arbie, Toar Neman Palilingan, and Harly Stanly Muaja, "SIFAT FINAL DAN MENGIKAT PUTUSAN MAHKAMAH KONSTITUSI BERDASARKAN ASAS ERGA OMNES," *LEX PRIVATUM* 13, no. 1 (January 3, 2024), <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/54232>.

⁹ Arbie, Palilingan, and Muaja.

¹⁰ Tiara Rahmayanti Usman, "PENERAPAN ASAS ERGA OMNES DALAM PUTUSAN MAHKAMAH KONSTITUSI," *LEX PRIVATUM* 13, no. 4 (July 15, 2024), <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/56726>.

monitoring and enforcement mechanism must be established to ensure that all parties comply with Constitutional Court rulings.¹¹

In this context, the role of the Constitutional Court as the guardian of the Constitution is critical. The Court must ensure that its decisions are properly implemented and have a meaningful impact on legal enforcement and justice in Indonesia.¹² By doing so, the erga omnes principle in Constitutional Court rulings can be effectively realized, contributing to the development of the rule of law and democracy in Indonesia.¹³

Overall, the erga omnes principle in Constitutional Court decisions affirms that such rulings have binding legal force on all parties. However, various implementation challenges must be addressed. It is therefore essential for all stakeholders to collaborate in enhancing constitutional awareness and ensuring that all Constitutional Court rulings are effectively enforced.¹⁴

As such, the erga omnes principle in Constitutional Court decisions is not merely a legal concept but a vital instrument for upholding the rule of law and justice in Indonesia.¹⁵ Consequently, all parties must commit to respecting and implementing these decisions to achieve a fair and democratic legal system.¹⁶

The erga omnes principle in Constitutional Court decisions underscores the binding nature of such rulings on all parties. However, its implementation still faces numerous challenges that must be addressed through greater constitutional awareness and the strengthening of enforcement mechanisms.¹⁷ By doing so, this principle can function effectively and contribute positively to legal certainty, justice, and constitutional governance in Indonesia.¹⁸

This discussion also aligns with global legal principles, as the erga omnes doctrine is recognized in international law, denoting obligations that bind all

¹¹ Usman.

¹² “KEBERLAKUAN ASAS ERGA OMNES PADA PUTUSAN MAHKAMAH KONSTITUSI DALAM KEWENANGAN PENGUJIAN UNDANG-UNDANG (STUDI PUTUSAN NOMOR 34/PUU-XI/2013),” accessed February 11, 2025, <https://etd.repository.ugm.ac.id/penelitian/detail/103901>.

¹³ “KEBERLAKUAN ASAS ERGA OMNES PADA PUTUSAN MAHKAMAH KONSTITUSI DALAM KEWENANGAN PENGUJIAN UNDANG-UNDANG (STUDI PUTUSAN NOMOR 34/PUU-XI/2013).”

¹⁴ Hakim and ., “PENERAPAN ASAS ERGA OMNES DALAM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 30/PUU-XVI/2018 DIKAITKAN DENGAN ASAS NEGATIVE LEGISLATOR.”

¹⁵ Cristiana et al., “Erga Omnes Dalam Putusan Mahkamah Konstitusi Menyelesaikan Perselisihan Hasil Pemilihan Umum (Studi Terhadap Putusan MK Nomor 135/PHP.BUP-XIX/2021).”

¹⁶ Cristiana et al.

¹⁷ “ASAS ERGA OMNES DALAM PUTUSAN MAHKAMAH KONSTITUSI,” accessed February 11, 2025, <https://business-law.binus.ac.id/2017/10/31/asas-erga-omnes-dalam-putusan-mahkamah-konstitusi/>.

¹⁸ “ASAS ERGA OMNES DALAM PUTUSAN MAHKAMAH KONSTITUSI.”

states.¹⁹ However, its application in a national context, particularly concerning Constitutional Court rulings, presents unique characteristics and challenges that warrant further examination.²⁰

Thus, further studies on the implementation of the erga omnes principle in Constitutional Court decisions and its implications for Indonesia's legal system are crucial.²¹ This will facilitate a deeper understanding of the role and function of the Constitutional Court and how to ensure that its decisions are effectively enforced for the benefit of society.²²

The application of the erga omnes principle strengthens the rule of law and ensures uniformity in the legal system. It prevents a situation where unconstitutional laws remain enforceable for those who did not challenge them in court, thus maintaining legal certainty and consistency.²³ This principle is particularly crucial in Indonesia, where legal fragmentation has historically posed challenges to governance.

However, challenges remain in ensuring that the erga omnes effect of the Court's decisions is respected by all state institutions. In several instances, the Indonesian legislature has sought to bypass or ignore rulings made by the Constitutional Court, leading to institutional tensions. For example, in 2024, the Indonesian Parliament attempted to reverse a Constitutional Court decision regarding electoral qualifications, raising concerns about the enforceability of constitutional rulings.²⁴

Despite its significant role, the Constitutional Court has faced criticism regarding its decision-making process and implementation of rulings. Some scholars argue that the Court lacks effective enforcement mechanisms to ensure compliance with its decisions.²⁵ Unlike in other judicial systems where courts have mechanisms to directly enforce rulings, the Indonesian Constitutional Court relies on legislative and executive branches for implementation, which can lead to resistance or selective enforcement.

Additionally, the Court has faced challenges concerning judicial independence. The appointment process of Constitutional Court justices, which involves the President, the House of Representatives, and the Supreme Court, has raised concerns about political influence in judicial decision-

¹⁹ Arbie, Palilingan, and Muaja, "SIFAT FINAL DAN MENGIKAT PUTUSAN MAHKAMAH KONSTITUSI BERDASARKAN ASAS ERGA OMNES."

²⁰ Arbie, Palilingan, and Muaja.

²¹ Budi and Nugroho, "SIFAT KEBERLAKUAN ASAS ERGA OMNES DAN IMPLEMENTASI PUTUSAN MAHKAMAH KONSTITUSI."

²² Usman, "PENERAPAN ASAS ERGA OMNES DALAM PUTUSAN MAHKAMAH KONSTITUSI."

²³ Butt and Lindsey, "Indonesian Law."

²⁴ Mohammed Ali Zaal Al-Shabatat, "EXECUTION OF CONSTITUTIONAL COURT VERDICTS IN ACHIEVING A CONSTITUTIONAL RULE OF LAW IN INDONESIA," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 2 (2021): 1-6.

²⁵ Daniel Lev, *Legal Evolution and Political Authority in Indonesia*, *Legal Evolution and Political Authority in Indonesia*, 2021, <https://doi.org/10.1163/9789004478701>.

making.²⁶ There have been instances where the Court's rulings were perceived as being influenced by political considerations rather than purely legal reasoning.

Another challenge is the fluctuating level of public trust in the Court. Some controversial decisions, such as those involving electoral disputes, have led to public skepticism regarding the Court's impartiality.²⁷ Maintaining judicial integrity and transparency remains crucial for the Constitutional Court to uphold its legitimacy and authority effectively.

c. Comparative Perspectives on Constitutional Review

Comparing Indonesia's Constitutional Court with similar institutions in other jurisdictions provides valuable insights into its strengths and weaknesses. For instance, Germany's Federal Constitutional Court operates under a similar *erga omnes* principle, where its decisions are binding on all entities within the state.²⁸ However, Germany's system includes stronger mechanisms for enforcing compliance with constitutional rulings, ensuring greater adherence by state institutions.

In contrast, the United States Supreme Court, while having the authority to declare laws unconstitutional, does not always apply the *erga omnes* principle in the same manner. U.S. Supreme Court decisions set precedents but do not automatically invalidate laws for all parties unless further legislative or executive action is taken.²⁹ This distinction highlights the unique position of Indonesia's Constitutional Court in shaping national legal norms through its binding decisions.

d. Constitutional Court Decision's that Influenced the Formation of Indonesian New Penal Code

Based on an analysis of Constitutional Court decisions concerning the judicial review of the Indonesian Penal Code, which is a colonial legacy from the Dutch East Indies, at least seven Constitutional Court rulings have been identified that annulled several legal norms within the Penal Code. These rulings include:

1. Constitutional Court Decision No. 013-022/PUU-IV/2006;
2. Constitutional Court Decision No. 6/PUU-V/2007;
3. Constitutional Court Decision No. 1/PUU-XI/2013;
4. Constitutional Court Decision No. 31/PUU-XIII/2015;
5. Constitutional Court Decision No. 21/PUU-XIX/2021;

²⁶ Rudy, Ryzal Perdana, and Rudi Wijaya, "The Recognition of Customary Rights by Indonesian Constitutional Court," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (2021), <https://doi.org/10.36941/AJIS-2021-0086>.

²⁷ David A. Meier et al., "The Constitutional Jurisprudence of the Federal Republic of Germany," *German Studies Review* 23, no. 1 (2000), <https://doi.org/10.2307/1431483>.

²⁸ Meier et al.

²⁹ Geoffrey R. Stone et al., "Constitutional Law. 2019 Supplement," 2019, 190.

6. Constitutional Court Decision No. 118/PUU-XX/2022; and
7. Constitutional Court Decision No. 78/PUU-XXI/2023.

Below is a more detailed explanation of the constitutional review of legal norms within each Constitutional Court decision:

1. Constitutional Court Decision No. 013-022/PUU-IV/2006

This case focused on the judicial review of the constitutionality of Articles 134, 136bis, and 137 of the old Penal Code, which criminalized insults against the President and Vice President. The Court ruled that these provisions were unconstitutional, as they hindered freedom of expression. However, a similar provision was later reintroduced in the new Indonesian Penal Code, albeit with modifications. Under the new KUHP, the offenses against the dignity of the President and Vice President are regulated in Articles 218–220, but they are now categorized as complaint-based offenses, meaning prosecution can only proceed if the President or Vice President files a complaint. Additionally, the new provisions include exceptions for criticisms made in the public interest or self-defense.

2. Constitutional Court Decision No. 6/PUU-V/2007

This ruling annulled Articles 154 and 155 of the old Penal Code, which criminalized public expressions of hostility, hatred, or insults against the government. The Court found that these provisions had the potential to suppress free speech and dissent. In the new Penal Code, similar provisions were reintroduced in Articles 240 and 241, but with key changes. The old Penal Code classified these as ordinary offenses, allowing prosecution without a formal complaint, whereas the new Penal Code classifies them as complaint-based offenses, reducing the risk of misuse for silencing political criticism.

3. Constitutional Court Decision No. 1/PUU-XI/2013

This decision invalidated Article 335(1) of the old Penal Code, which criminalized "unpleasant acts". The Court ruled that the phrase was too vague and broad, potentially leading to arbitrary enforcement. Whereas in the new Penal Code, this provision has been replaced by Article 448, which specifically criminalizes acts of coercion involving violence or threats of violence. This revision ensures greater legal certainty and prevents abuse.

4. Constitutional Court Decision No. 31/PUU-XIII/2015

This ruling annulled the exception clause in Article 319 of the old Penal Code, which previously allowed certain defamatory cases to be prosecuted without a complaint from the victim. The new Penal Code aligns with this decision by ensuring that all related offenses require a formal complaint from the victim, as stipulated in Article 440.

5. Constitutional Court Decision No. 21/PUU-XIX/2021

This ruling annulled Article 293(2) of the old Penal Code, which limited the right to file complaints in cases of child sexual abuse to the victims themselves. The Court ruled that parents, guardians, or legal representatives should also be allowed to file complaints. Hence to comply with this ruling, the new Penal Code (Article 417) was adjusted to explicitly recognize the right of guardians and parents to initiate legal proceedings.

6. Constitutional Court Decision No. 118/PUU-XX/2022

This ruling addressed statute of limitations for forgery and currency destruction (Article 79 of the old Penal Code). The Court held that the statute of limitations should start not only when forged documents are used but also when the victims become aware of the forgery. While the new KUHP (Article 137) incorporates a similar provision, it has not fully adopted the Court's ruling, as it still only considers the moment the forged currency is used, rather than the broader interpretation mandated by the Court.

7. Constitutional Court Decision No. 78/PUU-XXI/2023

This ruling annulled Articles 14, 15, and 310(1) of the old Penal Code, which criminalized spreading false information and defamation. The Court found that these provisions posed serious threats to freedom of expression. While Article 310(1) was removed from the new Penal Code, the false information provisions (Articles 14 and 15 of the old KUHP) were reintroduced as Articles 263 and 264 in the new Penal Code, with modifications to narrow their scope and prevent misuse.

e. Problem Restatement

While the old provisions were annulled, many were reintroduced in the new Penal Code with modifications, such as changing them into complaint-based offenses or adding exceptions for public interest speech. The new Penal Code replaces broad terms like "hostility against the government" and "unpleasant acts" with more precise legal language to prevent arbitrary interpretation.

Despite these changes, some human rights advocates and legal scholars remain concerned that the new Penal Code still carries potential risks for restricting freedom of speech, depending on how the law is implemented by authorities. Future Constitutional Court reviews may still be necessary to ensure that the reintroduced provisions align with democratic principles and human rights norms.

This summary highlights the dynamic interaction between judicial review and legislative reform in Indonesia's evolving legal landscape. Although the new Penal Code integrates Constitutional Court decisions, ongoing legal

scrutiny will be essential to safeguard constitutional rights and democratic freedoms.

IV. CONCLUSION

The Constitutional Court of Indonesia plays a crucial role in safeguarding constitutionalism and democracy through its authority on judicial review. The erga omnes principle ensures that its decisions have a binding effect on all parties, reinforcing the supremacy of the Constitution. However, challenges such as institutional resistance, judicial independence concerns, and public trust issues remain obstacles to the full realization of its authority.

For instance, the unwillingness of the legislation maker to not fully comply with the Constitutional Court Decision based on case number 118/PUU-XX/2022 and 78/PUU-XXI/2023. Successfully reflect and proving the concern of institutional resistance in the application of erga omnes principle. Besides that, this condition also will arising the possibility for future judicial review that conducted against Article 137, Articles 263 and 264 of the new Penal Code.

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