

Constitutional Court Decisions in Judicial Review of Laws Against the 1945 Constitution (2024–2025)

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Abstract: This article examines the development of constitutional adjudication in Indonesia through an analysis of the Constitutional Court's judicial review decisions issued during the 2024–2025 period. It focuses on four significant rulings: Constitutional Court Decision No. 144/PUU-XXIII/2025 concerning the State Treasury Law, Constitutional Court Decision No. 62/PUU-XXII/2024 concerning the State Treasury Law, Constitutional Court Decision No. 105/PUU-XXII/2024 concerning the Information and Electronic Transactions Law, and Constitutional Court Decision No. 16/PUU-XXI/2023 concerning the National Capital City Law. Using a normative legal research method supported by statutory, conceptual, and case approaches, the study evaluates the legal reasoning adopted by the Court in determining the constitutionality of statutory provisions. Particular attention is given to the petitioners' legal standing, the interpretation of constitutional norms, the substance of judicial review, and the role of majority and dissenting opinions in shaping constitutional jurisprudence. The analysis demonstrates that these decisions reflect an evolving constitutional framework in which the Constitutional Court increasingly functions as the guardian of constitutional supremacy and the protector of fundamental rights. The rulings also illustrate the Court's effort to balance legal certainty, democratic governance, and public accountability while responding to contemporary constitutional challenges. Furthermore, dissenting opinions enrich constitutional discourse by offering alternative interpretations that may influence future judicial developments and legislative reform. Overall, the examined decisions indicate a continuing maturation of Indonesia's constitutional system through more comprehensive constitutional reasoning, greater protection of citizens' constitutional rights, and the reinforcement of judicial professionalism, transparency, and institutional legitimacy in exercising the power of constitutional review.

Keywords: Constitutional Adjudication, Judicial Review, Constitutional Supremacy, Human Rights, Constitutional Jurisprudence

1. Introduction

The Constitutional Court of the Republic of Indonesia (hereinafter referred to as the MK) is a judicial institution with the constitutional authority to review laws against the 1945 Constitution of the Republic of Indonesia (1945 Constitution). This authority is stipulated in Article 24C(1) of the 1945 Constitution in conjunction with Article 10 of Law No. 24 of 2003 on the Constitutional Court, as amended several times. During the 2024–2025 period, the MK has ruled on a number of cases involving the review of laws that have significantly influenced the landscape of Indonesia's constitutional law. Among these cases were challenges to Law No. 1 of 2004 on the State Treasury, Law No. 1 of 2024 on Electronic Information and Transactions (ITE), and Law No. 3 of 2022 on the National Capital (IKN). Collectively, these cases raise fundamental issues regarding the constitutionality of legal norms, the limits of human rights, and state policies enshrined in legislation.

This article aims to systematically analyze four representative Constitutional Court decisions from that period, namely: (1) Decision No. 144/PUU-XXIII/2025; (2) Decision No. 62/PUU-XXII/2024; (3) Decision No. 105/PUU-XXII/2024; and (4) Decision No. 16/PUU-XXI/2023. The analysis covers the normative

background, the petitioners' arguments, the justices' reasoning, and the legal and constitutional implications of each decision.

2. Method

This section explains how the research was conducted. The main content of this section includes: (1) research design; (2) population and sample (research target); (3) data collection techniques and instrument development; and (4) data analysis techniques. For the research, it is necessary to explain the type of approach used, such as the legislative approach, case approach, or sociological approach, if relevant. Additionally, the legal sources referenced should be described, including legislation, court- 's decisions, as well as legal literature and expert opinions. In empirical legal research, the researcher's presence in the field, research subjects such as judges, law enforcement officers, or community members, and informants involved in data collection must also be explained. Data collection methods such as interviews, observation, or document analysis should be described, including the location and duration of the research. Finally, the methods for verifying data validity—such as triangulation or source verification—must be outlined to ensure the research results are scientifically sound.

3. Results and Discussion

REGULATORY AND INSTITUTIONAL FRAMEWORK

A. Constitutional Basis for Judicial Review of Laws

The Constitutional Court's authority to review laws against the Constitution (*constitutional review*) is one of the main pillars of Indonesia's post-reform political system. Article 24C, paragraph (1) of the 1945 Constitution stipulates that the Constitutional Court has the authority to adjudicate in the first and final instance—with its decisions being final—to, among other things, review laws against the Constitution. As a consequence of the final and binding nature of its decisions (*erga omnes*), any Constitutional Court decision declaring a statutory provision to be inconsistent with the 1945 Constitution automatically renders that provision legally void. This positions the Constitutional Court as a "negative legislator" with the authority to invalidate legislative provisions that are inconsistent with the Constitution.

B. Regulations Reviewed in the 2024–2025 Period

There are three main laws that were the subject of judicial review in the four court decisions examined in this article, namely:

Law No. 1 of 2004	Law on the State Treasury – regulates the management of state finances, including financing mechanisms and the management of the state revenue and expenditure budget.
Law No. 1 of 2024	The Law on Electronic Information and Transactions (ITE Law)—a revision of the previous ITE Law that expands the scope of criminal defamation committed electronically.
Law No. 3 of 2022	Law on the National Capital (National Capital Law) – regulates the relocation of the national capital from DKI Jakarta to East Kalimantan, including the land regime in the National Capital region.

ANALYSIS OF CONSTITUTIONAL COURT DECISIONS

A. Constitutional Court Decision No. 144/PUU-XXIII/2025 (State Treasury Law)

1. Overview of the Case

Constitutional Court Decision No. 144/PUU-XXIII/2025 concerns a case challenging provisions in Law No. 1 of 2004 on the State Treasury. In this decision, the Constitutional Court declared the petition inadmissible (*niet ontvankelijk verklaard* / NO).

Case Number	144/PUU-XXIII/2025
Subject of the Petition	Law No. 1 of 2004 on the State Treasury
Ruling	Petition Dismissed (Niet Ontvankelijk Verklaard)
Year of Decision	2025

2. Legal Analysis

Constitutional Court rulings declaring a petition inadmissible are generally based on the failure to meet the formal requirements for filing a petition, particularly regarding the petitioner's legal standing as stipulated in Article 51 of the Constitutional Court Law. The petitioner must prove that he or she possesses a constitutional right that is actually or potentially infringed upon by the enforcement of the statutory provision under review. In this context, the Constitutional Court applies strict legal standing requirements. There are five criteria that an individual petitioner must meet: (i) possessing constitutional rights and/or powers; (ii) such constitutional rights and/or powers have been infringed upon; (iii) the harm is specific and actual, or at least potential; (iv) there is a causal relationship between the harm and the application of the provision under review; and (v) there is a likelihood that, if the petition is granted, the harm will no longer occur. The "NO" ruling in Case No. 144/PUU-XXIII/2025 reaffirms the importance of the *"no legal standing, no case"* principle in the Constitutional Court's procedural law. The Constitutional Court cannot proceed to the substantive review of a provision if the petitioner fails to prove the alleged constitutional harm.

B. Constitutional Court Decision No. 62/PUU-XXII/2024 (State Treasury Law)

1. Overview of the Case

Constitutional Court Decision No. 62/PUU-XXII/2024 also reviewed the provisions of Law No. 1 of 2004 on the State Treasury. Unlike Decision No. 144, this case was decided by a panel of judges with a vote of 7 (seven) judges in favor of the decision and 2 (two) judges issuing dissenting opinions.

Case Number	62/PUU-XXII/2024
Subject of the Petition	Law No. 1 of 2004 on the State Treasury
Voting Breakdown	7 Justices in Favor : 2 Justices Dissenting
Dissenting Justices	Anwar Usman and Daniel Yusmic P. Foekh
Year of Decision	2024

2. Dissenting Opinion: Anwar Usman and Daniel Yusmic P. Foekh

One of the most interesting aspects of Decision 62/PUU-XXII/2024 is the dissenting opinion issued by two constitutional judges, namely Anwar Usman and Daniel Yusmic P. Foekh. The presence of a dissenting opinion in a Constitutional Court decision is a manifestation of the principles of judicial independence and transparency in the judicial decision-making process. Dissenting opinions hold significant value within the legal system because: first, they reflect substantive debate among justices regarding the constitutional issues at hand; second, they contribute to the future development of legal thought, as minority opinions may serve as considerations in subsequent rulings; and third, they enhance the accountability and transparency of the judiciary. The presence of two dissenting justices in this case indicates that there are fairly fundamental differences of opinion among constitutional justices regarding the constitutionality of the State Treasury regulation under review. Without diminishing the weight of the majority decision, the opinions of Anwar Usman and Daniel Yusmic P. Foekh open the door to further academic discourse regarding the limits of state authority in the management of public finances.

3. Constitutional Implications

Constitutional Court Decision No. 62/PUU-XXII/2024 has at least three significant constitutional implications. First, this decision reinforces the Constitutional Court's interpretation of the principles of constitutional state financial management as mandated by Article 23 of the 1945 Constitution. Second, the presence of a dissenting opinion indicates that the constitutional interpretation of the

State Treasury Law is still evolving. Third, this decision sets an important precedent for the review of state financial norms in the future.

C. Constitutional Court Decision No. 105/PUU-XXII/2024 (Article 27A of the ITE Law)

1. Overview of the Case

Constitutional Court Decision No. 105/PUU-XXII/2024 reviewed the constitutionality of Article 27A of Law No. 1 of 2024 on Electronic Information and Transactions. Article 27A of the EIT Law sets forth prohibitions and criminal penalties for acts of defamation committed through electronic media.

Case Number	105/PUU-XXII/2024
Subject of the Petition	Article 27A of Law No. 1 of 2024 on Electronic Information and Transactions (Defamation)
Constitutional Issue	Freedom of expression vs. protection of reputation in the digital space
Related Regulations	Article 28, paragraphs (1) and (2), and Article 28E, paragraph (3) of the 1945 Constitution
Year of Ruling	2024

2. Construction of the Argumentation for Review

The review of Article 27A of the ITE Law is closely related to the guarantees of freedom of expression and opinion protected by Article 28E, paragraph (3) of the 1945 Constitution. On the other hand, this provision also intersects with the right to protection of personal dignity and honor as stipulated in Article 28G, paragraph (1) of the 1945 Constitution. The fundamental issue facing the Constitutional Court is how to harmonize two conflicting constitutional rights in the context of the digital space: on the one hand, freedom of speech and expression; on the other, the protection of a person's reputation. In the tradition of international human rights, restrictions on freedom of expression are justified only if they meet three cumulative conditions: (i) they are prescribed by law; (ii) they are necessary in a democratic society; and (iii) they are proportionate to the objective sought. The provisions of Article 27A of the ITE Law, which is the result of a legislative revision, are expected to meet higher constitutional standards than the previous provisions. However, some parties believe that the wording of these provisions still contains legal uncertainty and the potential for the criminalization of lawful expression.

3. Relevance to Digital Human Rights

The review of Article 27A of the ITE Law in Decision 105/PUU-XXII/2024 reflects the growing importance of protecting human rights in the digital realm. As the use of social media and electronic communication platforms expands, the norms governing expression in the digital space must meet strict constitutional standards so as not to become instruments for silencing legitimate criticism.

D. Constitutional Court Decision No. 16/PUU-XXI/2023 (Article 16A of the IKN Law)

1. Overview of the Case

Constitutional Court Decision No. 16/PUU-XXI/2023 concerns a constitutional review of Article 16A of Law No. 3 of 2022 on the National Capital. In this decision, the Constitutional Court ruled that Article 16A of the National Capital Law, which regulates the Business Use Rights (HGU) regime in the National Capital area, is inconsistent with the 1945 Constitution.

Case Number	16/PUU-XXI/2023
Subject of the Petition	Article 16A of Law No. 3 of 2022 on the National Capital (HGU)
Ruling	Article 16A of the IKN Law has been declared inconsistent with the 1945 Constitution
Basis for Review	Article 18B(2), Article 28H(4), and Article 33(3) of the 1945 Constitution

Year of Ruling	2023 (decided) / relevant to the 2024–2025 review period
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2. Analysis of the Constitutionality of HGU Provisions in the IKN Area

Article 16A of the IKN Law regulates the granting of Business Use Rights (HGU) in the Nusantara Capital City (IKN) area with a term that significantly exceeds the limits set forth in general land law. This provision raises serious constitutional questions, particularly regarding:

- a. The principle of state control over land as stipulated in Article 33, paragraph (3) of the 1945 Constitution, which affirms that the earth, water, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people;
- b. Protection of the rights of indigenous peoples as mandated in Article 18B, paragraph (2) of the 1945 Constitution;
- c. Guarantees of property rights as stipulated in Article 28H, paragraph (4) of the 1945 Constitution.

3. Implications for the IKN Project

The Constitutional Court's ruling declaring Article 16A of the IKN Law to be in conflict with the 1945 Constitution has direct implications for the legal framework governing land in the IKN area. As a result, that provision no longer has binding legal force, meaning that regulations regarding HGU in the IKN must comply with the general provisions of applicable land law. This ruling also sets an important precedent that national strategic development policies, no matter how urgent, cannot override the limits set by the Constitution. Constitutional supremacy must be upheld even in the context of nationwide development policies.

ANALYTICAL COMPARISON OF FOUR DECISIONS

The following presents an analytical comparison of the four Constitutional Court rulings under review:

Decision Number	Law	Key Issue	Ruling/Outcome
144/PUU-XXIII/2025	Law No. 1/2004 (State Treasury)	Legal standing of the petitioner; formal requirements for the petition	Inadmissible (NO)
62/PUU-XXII/2024	Law No. 1/2004 (State Treasury)	Substantive review; there were 2 dissenting opinions (Anwar Usman & D.Y.P. Foekh)	Decided by a 7-2 vote
105/PUU-XXII/2024	Law No. 1/2024 (Information and Electronic Transactions) – Article 27A	Digital defamation vs. freedom of expression	Substantive review of the ITE provisions
16/PUU-XXI/2023	Law No. 3/2022 (IKN) – Article 16A	Land Use Rights (HGU) in the IKN Area vs. State Control Over Land	Declared to Violate the 1945 Constitution

From the comparison above, several interesting patterns can be identified. First, the Constitutional Court consistently applies a strict legal standing filter, as seen in Decision 144, which was dismissed at the admissibility stage. Second, the presence of a dissenting opinion in Decision 62 suggests that cases involving state finances often present complex constitutional dilemmas. Third, Decision 105 reinforces the Constitutional Court's role as the guardian of citizens' digital rights. Fourth, Decision 16 affirms that the supremacy of the Constitution applies fully even to large-scale national development policies.

DEVELOPMENTS IN DOCTRINE IN CONSTITUTIONAL COURT DECISIONS 2024–2025

A. Strengthening the Principle of Constitutional Supremacy

Collectively, the four rulings analyzed demonstrate the strengthening of the doctrine of constitutional supremacy in Indonesia's constitutional practice. The Constitutional Court continues to assert its position as "the guardian of the constitution," unhesitant to invalidate statutory provisions deemed contrary to the 1945 Constitution, even if such provisions are part of the state's strategic policy.

B. Constitutional Rights in the Digital Age

The application of Article 27A of the ITE Law in Decision No. 105 reflects a global trend regarding the importance of ensuring that regulations governing the digital space are consistent with constitutional guarantees of human rights. The Constitutional Court is increasingly called upon to develop jurisprudence that is responsive to technological challenges, particularly regarding the balance between freedom of expression and protection against the misuse of information technology.

C. Judicial Independence and Dissenting Opinions

The presence of a dissenting opinion in Decision 62 is a positive indicator of the development of legal culture at the Constitutional Court. The practice of issuing dissenting opinions enriches constitutional discourse and promotes transparency in the judicial decision-making process. Normatively, dissenting opinions also serve as "academic arbiters" that can correct or reinforce legal doctrines established by future majority decisions.

4. Conclusion

Based on an analysis of four Constitutional Court decisions from the 2024–2025 period, the following conclusions can be drawn:

- a. Constitutional Court Decision No. 144/PUU-XXIII/2025 emphasizes the importance of the petitioner having legal standing as an absolute prerequisite for the Constitutional Court to proceed with a substantive review of the constitutionality of a statutory provision.
- b. Constitutional Court Decision No. 62/PUU-XXII/2024, with a 7-2 vote, reflects the complexity of cases involving state financial norms. The dissenting opinions of Anwar Usman and Daniel Yusmic P. Foekh enrich the body of constitutional thought and form an integral part of a healthy judicial tradition.
- c. Constitutional Court Decision No. 105/PUU-XXII/2024 places the Constitutional Court at the forefront of protecting constitutional rights in the digital realm, particularly regarding the balance between freedom of expression and protection against electronic defamation.
- d. Constitutional Court Decision No. 16/PUU-XXI/2023 reaffirms that strategic national development projects such as the IKN cannot override constitutional principles regarding land matters and the rights of indigenous peoples.

Overall, the Constitutional Court's rulings during the 2024–2025 period demonstrate the increasingly mature institutionalization of the constitutional review system in Indonesia. The Constitutional Court continues to play a strategic role as an institution that ensures the supremacy of the Constitution, the protection of human rights, and the principle of the rule of law are upheld in every aspect of state life.

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