

Inconsistency In Constitutional Interpretation In The Judicial Review of The Anti-Corruption Law In Indonesia

Oktoriusman Halawa^{1*}, Tomson Situmeang¹

¹Faculty of Law, Kristen University of Indonesia, Jakarta, Indonesia

*Corresponding Author Email: oktohalawa.net@gmail.com

Article History: Received: April 17, 2026; Accepted: June 12, 2026

ABSTRACT

This study aims to analyze the dynamics of constitutional interpretation in the judicial review of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, as well as to examine the obstacles and solutions in limiting state power in Indonesia. This research employs a normative legal method using statutory, case, and conceptual approaches. Legal materials are collected through library research and analyzed qualitatively using legal interpretation methods. The results show that the dynamics of constitutional interpretation in Case Number 142/PUU-XXII/2024 reflect a tension between a formalistic approach emphasizing legal certainty and a substantive approach oriented toward the effectiveness of anti-corruption efforts. The petition primarily concerns the application of norms rather than their constitutionality. Furthermore, the limitation of state power in Indonesia faces several challenges, including unclear institutional authority, inconsistent constitutional interpretation, political influence in law-making, and weak legal culture and integrity. From the perspectives of Gustav Radbruch and Carl J. Friedrich, a balance between legal certainty, justice, and utility, as well as the strengthening of constitutional mechanisms, is essential to ensure effective limitation of state power within a rule of law framework.

Keywords: Constitutional Interpretation, Judicial Review, Anti-Corruption Law, Limitation of Power, Rule of Law.

1. INTRODUCTION

The Constitution serves as the fundamental foundation of state governance, functioning as the supreme legal norm as well as a guideline for regulating the relationship between the state and its citizens. Within Indonesia's constitutional system, the Constitution is not merely understood as a formal legal document but also as an instrument that determines the direction of the exercise of state power. This is in line with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the "1945 Constitution"), which affirms that Indonesia is a state governed by the rule of law, requiring all actions of state authorities to be based on constitutional principles. (Rahardjo, 2006)

Within the framework of a state governed by the rule of law, the Constitution plays a strategic role as an instrument for limiting and controlling governmental power through mechanisms of law-making and judicial review. One concrete manifestation of this mechanism is the judicial review of statutes against the 1945 Constitution by the Constitutional Court, which is

Copyright (c) 2026 Author(s)



entrusted with safeguarding constitutional supremacy. Through this authority, the Constitution functions not only as a static norm but also as a dynamic norm that remains open to interpretation in accordance with societal developments and evolving legal needs. (Sidharta, 2000)

Theoretically, constitutional interpretation cannot be separated from various disciplinary perspectives. From a legal perspective, the Constitution is understood as the fundamental norm binding the entire legal system. From a political perspective, it is regarded as the product of power relations and compromises among political actors. Meanwhile, from a sociological perspective, the Constitution is viewed as a reflection of the values that live and develop within society, commonly referred to as the living constitution. These differing perspectives demonstrate that the Constitution possesses complex dimensions and cannot be understood from a single viewpoint. (Darmadi, 2011)

Nevertheless, in Indonesian constitutional practice, the dynamics of constitutional interpretation frequently give rise to debate, particularly in the context of judicial review. One recent phenomenon that merits examination is the petition for judicial review of Articles 2 and 3 of the Anti-Corruption Law (hereinafter referred to as the “Anti-Corruption Law”) submitted by a former corruption convict in 2025. This initiative has generated controversy because, on the one hand, judicial review constitutes a constitutional right of every citizen; on the other hand, it may affect the effectiveness of anti-corruption efforts, which represent an important public interest. (Riyan Auliyanda Safrizal, 2025)

This phenomenon reflects a tension between individual interests and broader societal interests within the constitutional framework. From a legal perspective, judicial review constitutes a legitimate mechanism in a state governed by the rule of law. However, from political and sociological perspectives, such a measure may be perceived as having the potential to weaken the state’s commitment to combating corruption, which has long remained a serious problem in Indonesia. Accordingly, the dynamics of constitutional interpretation in this context are not merely normative in nature but are also influenced by power relations and social realities. (Hartanti, 2005)

These circumstances reveal a gap between the ideal conception of the Constitution as an instrument for achieving justice and the realities of constitutional practice, which are often shaped by competing interests. From the perspective of the rule of law, this indicates that the implementation of constitutionalism has not yet been fully realized in an optimal manner. Furthermore, the effectiveness of the anti-corruption system largely depends on how constitutional provisions are interpreted and applied in practice. (Legislature, 2007)

Based on the foregoing discussion, a comprehensive analysis is required regarding the dynamics of constitutional interpretation in the judicial review of the Anti-Corruption Law in



Indonesia, particularly in relation to the principles of the rule of law and the effectiveness of anti-corruption efforts. Accordingly, the research questions addressed in this study are: (1) How have constitutional interpretations evolved in the judicial review of Articles 2 and 3 of the Anti-Corruption Law in Indonesia? and (2) What impact has such judicial review had on the implementation of the rule of law and the effectiveness of the anti-corruption system in Indonesia?

2. RESEARCH METHOD

This study employs a normative legal research method, which conceptualizes law as a system of norms examined through statutory regulations, legal principles, and legal doctrines relevant to the issues under investigation. The research focuses on the dynamics of constitutional interpretation in the judicial review of the Anti-Corruption Law, particularly as reflected in the decisions of the Constitutional Court. The approaches adopted in this research include the statutory approach, case approach, and conceptual approach. The statutory approach is conducted by examining various laws and regulations related to the research issue, including the 1945 Constitution of the Republic of Indonesia, the Law on the Constitutional Court and its amendments, the Law on Judicial Power, and the Law on the Eradication of Corruption Crimes. (Marzuki, 2022).

The case approach is applied through an analysis of Constitutional Court decisions concerning the judicial review of Articles 2 and 3 of the Anti-Corruption Law, which serve as concrete manifestations of the dynamics of constitutional interpretation in practice. Meanwhile, the conceptual approach is utilized to examine fundamental concepts such as constitutionalism, the rule of law, judicial review, and the theory of the living constitution within the framework of constitutional law. (Mamudji, 2021)

The legal materials employed in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and Constitutional Court decisions relevant to the subject matter of the research. Secondary legal materials comprise legal literature, scholarly journals, previous research findings, and expert opinions concerning constitutional interpretation and the eradication of corruption crimes. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources used to clarify legal terms and concepts. The collection of legal materials is conducted through library research by identifying, examining, and analyzing relevant legal sources. Subsequently, the legal materials are analyzed qualitatively through methods of legal interpretation, namely grammatical, systematic, and teleological interpretation. The analysis is carried out using a descriptive-analytical method to examine the



dynamics of constitutional interpretation in Constitutional Court decisions and their implications for the rule of law and the effectiveness of anti-corruption efforts in Indonesia. (Efendi, 2022)

3. RESULT DAN DISCUSSION

The Dynamics of Constitutional Interpretation in The Judicial Review of Articles 2 And 3 of The Anti-Corruption Law in Indonesia

The dynamics of constitutional interpretation in the judicial review of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law have gained concrete relevance in Case Number 142/PUU-XXII/2024, which is currently being examined by the Constitutional Court. The petition was submitted by Syahril Japarin, Kukuh Kertasafari, and Nur Alam, individuals who had previously been prosecuted and convicted in corruption cases. In essence, the petitioners requested the Constitutional Court to declare Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law unconstitutional and therefore no longer legally binding. Their principal argument was that the formulations contained in these provisions, particularly the phrases “may cause losses to state finances” and “abuse of authority,” are overly broad, ambiguous, and open to multiple interpretations, thereby failing to satisfy the principle of legal certainty (*lex certa*) in criminal law. Consequently, the petitioners urged the Court to adopt a stricter interpretation or even invalidate the provisions entirely.

The petition was fundamentally based on the petitioners’ personal experiences of being prosecuted under these provisions. As such, the arguments advanced were largely casuistic in nature and focused on the legal consequences experienced by the petitioners rather than on an abstract constitutional assessment of the challenged norms. In this context, there appears to be a tendency to position the Constitutional Court as a forum for correcting judicial decisions rather than as an institution responsible for reviewing the constitutionality of legal norms. This reflects a shift from constitutional review toward application review, which doctrinally falls outside the Constitutional Court’s jurisdiction. (Ali, 2010)

Upon closer examination, Article 2 paragraph (1) and Article 3 constitute the core provisions of Indonesia’s anti-corruption legal framework. These provisions were deliberately drafted in broad terms to address the diverse and evolving forms of corruption. For instance, the phrase “may cause losses to state finances” in Article 2 paragraph (1) encompasses not only actual losses but also potential losses resulting from unlawful conduct. Similarly, the phrase “abuse of authority” in Article 3 is intended to capture various forms of misconduct in the exercise of official powers and positions.



The breadth of these provisions is often criticized as creating legal uncertainty. However, from a broader perspective, such flexibility is necessary to address corruption as a complex and continuously evolving crime. Corruption is no longer committed through simple schemes but increasingly involves sophisticated methods, including concealed abuses of authority, policy manipulation, and corrupt practices in strategic sectors such as natural resources. Therefore, imposing excessively rigid limitations on these provisions may undermine the effectiveness of law enforcement. (Fadjar, 2006)

In relation to Case Number 142/PUU-XXII/2024, the dynamics of constitutional interpretation can be observed in the tension between formalistic and substantive approaches. The formalistic approach adopted by the petitioners emphasizes that criminal law provisions must be formulated clearly and precisely to avoid multiple interpretations. This approach is rooted in the principle of *nullum crimen sine lege certa*. However, it does not fully account for the fact that extraordinary crimes such as corruption require a degree of normative flexibility to ensure that the law remains responsive to evolving criminal practices.

By contrast, the substantive approach that has generally been adopted by the Constitutional Court places significant emphasis on the objectives underlying legislative enactments. In this regard, the Anti-Corruption Law is intended not only to provide legal certainty but also to ensure the effectiveness of anti-corruption efforts as a matter of public interest. Accordingly, constitutional interpretation is directed not merely toward the textual meaning of legal provisions but also toward their broader purposes and functions within the legal system. Empirical considerations further strengthen the argument for maintaining the validity of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. Data indicate that between 2015 and 2023, thousands of corruption cases were adjudicated based on these provisions, demonstrating their effectiveness in law enforcement practice. (Hamzah, 2001)

Should the Constitutional Court grant the petition in the present case, the implications would extend beyond the amendment or invalidation of legal norms and could affect the stability of the legal system as a whole. Such implications include the possibility of extraordinary legal remedies, such as judicial review petitions by convicted corruption offenders based on the alteration or annulment of the relevant provisions. This situation could generate new forms of legal uncertainty and place additional burdens on the judicial system. Furthermore, it may weaken public confidence in the state's commitment to combating corruption.

The *amicus curiae* submissions presented by civil society organizations also provide an important perspective in this case. These submissions emphasize that the issue raised by the



petitioners concerns the application of legal norms rather than their constitutionality. They further argue that Article 2 paragraph (1) and Article 3 remain relevant and necessary for addressing the complexity of corruption offenses, including those that have extensive impacts on society and the environment. Accordingly, weakening or invalidating these provisions would impede anti-corruption efforts. (Ardiansyah, 2018)

The dynamics of constitutional interpretation in this case must also be viewed in light of the Constitutional Court's consistency in previous decisions. In several earlier rulings, the Court maintained the validity of Articles 2 and 3 of the Anti-Corruption Law and rejected petitions that could potentially weaken anti-corruption measures. Such consistency is essential for preserving legal certainty and preventing inconsistencies in constitutional interpretation.

To deepen the analysis, these dynamics may be examined through Gustav Radbruch's theory of legal certainty. According to Radbruch, law must embody three fundamental values: legal certainty, justice, and expediency, all of which should be balanced. In the present case, the petitioners primarily emphasize legal certainty while overlooking considerations of justice and expediency. In contrast, the continued validity of Article 2 paragraph (1) and Article 3 reflects a balance among these three values. Legal certainty is maintained through the consistent application of these provisions by the courts. At the same time, justice and expediency are reflected in the provisions' capacity to hold corrupt actors accountable and protect the public interest. Therefore, an approach that focuses exclusively on legal certainty in a narrow sense is inconsistent with Radbruch's conception of a balanced legal order. (Radbruch, 1950)

In conclusion, the inconsistency and dynamics of constitutional interpretation in the judicial review of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law in Case Number 142/PUU-XXII/2024 reveal an ongoing tension between formalistic and substantive approaches to legal interpretation. Nevertheless, from the perspective of Gustav Radbruch's theory, an interpretation that preserves the validity of these provisions better achieves a balance between legal certainty, justice, and expediency, while also ensuring the effectiveness of anti-corruption efforts as the primary objective of the Anti-Corruption Law.

Challenges And Remedial Measures In Limiting State Power In Indonesia

The limitation of state power constitutes a fundamental principle of the rule of law, aimed at preventing the abuse of power. Within Indonesia's constitutional system, such limitations are implemented through constitutional mechanisms, including the separation of powers, the system of checks and balances, and the judicial review of statutes by the Constitutional Court. Nevertheless,



in practice, the implementation of these principles continues to face various challenges that affect their effectiveness. (Mahrus Ali, 2020)

First, there remains a lack of clarity regarding the boundaries of authority among state institutions. In practice, there is a tendency toward the expansion or shifting of powers between state institutions, particularly in the context of judicial review. As reflected in Case Number 142/PUU-XXII/2024, attempts have been made to bring issues concerning the application of legal norms into the realm of constitutional review. This illustrates the blurred distinction between the Constitutional Court's authority to review the constitutionality of legal norms (constitutional review) and the authority of other courts to assess the application of legal norms (application review). Such circumstances have the potential to disrupt the balance of powers and weaken the principle of checks and balances.

Second, there is an absence of consistent standards for constitutional interpretation. Although the Constitutional Court possesses broad authority to interpret the Constitution, no uniform interpretative framework has been consistently applied in practice. In certain decisions, the Court adopts a progressive approach, whereas in others it tends to employ a more restrictive interpretation. This inconsistency may create legal uncertainty and allow divergent interpretations of the same constitutional norm, thereby weakening the function of constitutional limitations on state power.

Third, legal politics continue to influence both the legislative process and judicial review. As products of political processes, statutes are often shaped by particular interests. This may affect the quality of legislative norms and create opportunities for judicial review petitions motivated by individual or political interests. In the context of the Anti-Corruption Law, for example, it cannot be ignored that certain individuals may seek to weaken anti-corruption provisions through constitutional mechanisms. This demonstrates that the limitation of state power faces not only normative challenges but also political ones. (Hari Purwadi, 2010)

Fourth, the integrity and independence of law enforcement institutions remain inadequate. The effectiveness of limitations on state power depends heavily on the integrity of the institutions responsible for enforcing them. Although supervisory mechanisms formally exist, they may be ineffective in the absence of strong institutional integrity. In the context of anti-corruption efforts, weak integrity further exacerbates existing problems and indicates that mechanisms for limiting state power have not yet functioned optimally.

Fifth, legal culture within society remains relatively weak. The effectiveness of limiting state power is determined not only by legal norms and institutions but also by public legal



awareness. A weak legal culture diminishes social control over state authorities, making abuses of power more difficult to prevent. Under such circumstances, law cannot function effectively as an instrument for controlling governmental power. (Aris, 2018)

In light of these challenges, comprehensive remedial measures are required. First, clearer boundaries of authority among state institutions must be established by reaffirming the Constitutional Court's role as a reviewer of legal norms rather than their application. Second, more consistent standards of constitutional interpretation should be developed to enhance legal certainty. Third, legislative processes should be reformed to become more transparent and participatory, thereby producing higher-quality legislation. Fourth, the integrity and independence of judicial institutions must be strengthened through effective oversight mechanisms. Fifth, legal culture should be improved through public education and greater civic participation in monitoring governmental power. (Suhariyanto, 2016)

To strengthen this analysis, the limitation of state power may be examined through Carl J. Friedrich's theory of constitutionalism. According to Friedrich, the essence of constitutionalism lies in limiting governmental power through law in order to prevent arbitrariness and protect the rights of citizens. From this perspective, a constitution is not merely a normative document but also an effective mechanism for controlling political power. Normatively, the principle of limited government in Indonesia has been adequately regulated through the 1945 Constitution and its implementing legislation. However, in practice, its implementation remains suboptimal due to unclear institutional authority, inconsistent constitutional interpretation, and the influence of legal politics, thereby reducing its effectiveness in preventing abuses of power.

From the perspective of Carl J. Friedrich's theory, the limitation of state power in Indonesia has not yet fully realized the ideal principles of constitutionalism, as a significant gap remains between constitutional norms and their practical implementation. Therefore, improvements are required in institutional, normative, and cultural dimensions to ensure the effective operation of constitutional limitations on governmental power. (Arief, 2005)

In conclusion, the principal challenges to limiting state power in Indonesia include unclear institutional authority, inconsistent constitutional interpretation, the influence of legal politics, weak institutional integrity, and an underdeveloped legal culture. Addressing these challenges requires comprehensive measures, including institutional strengthening, consistency in constitutional interpretation, legislative reform, enhanced integrity mechanisms, and the promotion of legal culture. Such efforts are essential to achieving an effective system of limited government within a democratic state governed by the rule of law.



4. CONCLUSION

The inconsistency and evolving constitutional interpretation in the judicial review of Articles 2 and 3 of the Anti-Corruption Law in Case Number 142/PUU-XXII/2024 demonstrate the tension between legal certainty and the effectiveness of corruption eradication. The petitioner's arguments primarily concern the application of legal norms rather than their constitutionality. From the perspective of Gustav Radbruch's theory, an interpretation that maintains the validity of these provisions better achieves a balance between legal certainty, justice, and expediency.

The challenges in limiting state power include unclear authority, inconsistent interpretation, the influence of legal politics, as well as weak integrity and legal culture. Therefore, institutional strengthening, consistency in constitutional interpretation, and legal reform are necessary. From the perspective of Carl J. Friedrich's theory, these measures are essential to achieving an effective limitation of state power.

REFERENCES

- Ali, M. (2010). The Constitutional Court and Progressive Legal Interpretation. *Jurnal Konstitusi*, 85–86.
- Ardiansyah, I. (2018). The Constitutional Court's Interpretation of Criminal Conspiracy by Corruptors (Study of Decision Number 21/PUU-XIV/2016). *Jurnal Hukum Respublica*, 230.
- Arief, M. d. (2005). *Criminal Theories and Policy*. Bandung: Alumni.
- Aris, I. (2018). The Position of the Corruption Eradication Commission (KPK) in the Constitutional System from the Perspective of the Theory of The New Separation of Power. *Jurnal Jurisprudentie*, 109.
- Darmadi, N. S. (2011). The Position and Authority of the Constitutional Court in the Indonesian Constitutional Legal System. *Jurnal Hukum*, 670.
- Efendi, D. O. (2022). A Conceptual Approach in Normative Legal Research as a Scientific Method. *Journal of Law and Justice*, 187, 191.
- Fadjar, A. M. (2006). *Constitutional Law and the Constitutional Court*. Jakarta: Konstitusi Press.
- Hamzah, A. (2001). *Anthology of Criminal Law and Criminal Procedure*. Jakarta: Ghalia Indonesia.
- Hari Purwadi, A. G. (2010). Restitution of Regional Financial Losses Due to Corruption. *Yustisia Journal*, 27.
- Hartanti, E. (2005). *Corruption Crimes*. Jakarta: Sinar Grafika.



- Legislature, M. D. (2007). *Constitutional Court: Towards Positive Legislature?* Jakarta: Konstitusi Press.
- Mahrus Ali, D. S. (2020). *Corruption Offenses*. Jakarta: Sinar Grafika.
- Mamudji, S. S. (2021). *Normative Legal Research: A Brief Overview*. Jakarta: Rajawali Pers.
- Marzuki, P. M. (2022). *Legal Research*. Jakarta: Kencana Prenada Media Group.
- Radbruch, G. (1950). *Legal Philosophy*. Heidelberg: C.F. Müller Verlag.
- Rahardjo, S. (2006). *Legal Science*. Bandung: PT Citra Aditya Bakti.
- Riyan Auliyanda Safrizal, F. M. (2025). Changes in the Nature of Offenses in Articles 2 and 3 of the Corruption Law Following Constitutional Court Decision Number 25/PUU-XIV/2016. *Aliansi: Jurnal Hukum*, 191.
- Sidharta, B. A. (2000). *Reflections on the Structure of Legal Science: A Study of the Foundations and Scientific Nature of Legal Science as a Foundation for the Development of Indonesian National Legal Science*. Bandung: Mandar Maju.
- Suhariyanto, B. (2016). Restorative Justice in the Criminalization of Corrupt Corporations to Optimize Restitution of State Losses. *Jurnal RechtsVinding*, 431–432.

