

The Impact of Constitutional Court Decision No. 105/PUU-XXII/2024 on Restrictions on Defamation Lawsuits on the Public's Right to Oversee Power: An Institutional and Constitutional Analysis

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Abstract

This article examines the impact of Constitutional Court Decision No. 105/PUU-XXII/2024, which restricted criminal defamation claims by institutions under the Electronic Information and Transaction Law. The ruling asserts that only individual persons—not state bodies, corporations, professions, or institutional entities—may file criminal defamation reports. Employing a normative legal method with statutory and constitutional approaches, the study analyses the decision's implications for public oversight over governmental power, democratic deliberation, and institutional accountability. This paper argues that the decision strengthens citizens' freedom of expression and the informal mechanism of checks and balances, while also reducing the potential misuse of criminal defamation provisions to silence criticism. However, the effectiveness of the ruling depends on judicial interpretation, harmonisation with other legal frameworks, and the institutional internalisation of democratic norms. The research concludes that although the decision contributes to the protection of civil liberties, a more systematic enforcement strategy, judicial guidelines, and legal reform are required to prevent retaliatory litigation through non-criminal avenues. Furthermore, this study contributes to constitutional scholarship by positioning the decision as a landmark shift from state-centred reputational protection towards citizen-centred constitutional guarantees. It highlights the need for a coherent legal architecture that safeguards critical expression as an essential component of democratic control over power. By mapping doctrinal consequences and practical enforcement gaps, this article offers a framework for evaluating future court rulings and policy reforms related to defamation, digital rights, and state accountability in Indonesia. Thus, the decision not only redefines the boundaries of criminal defamation but also provides momentum for strengthening constitutional democracy through legal culture transformation, legislative harmonisation, and strategic judicial oversight.

1. Introduction

Criticism of state administrators is an intrinsic part of a healthy democracy. In modern constitutional systems, public oversight of power is exercised not only through formal institutions such as the legislature and state audit institutions, but also through informal mechanisms such as freedom of expression, freedom of the press, investigative journalism, and civil society expression. However, over the past two decades, defamation offences particularly in the context of the Electronic Information and Transactions Law (EIT Law) have often been perceived as a repressive tool to silence social criticism.

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This tendency is evident in the behaviour of political elites, corporations, state officials, and public institutions who use defamation offences to report citizens, journalists, activists, public figures, or academics when they express criticism or expose alleged violations of the law. This has given rise to the phenomenon of the chilling effect: the public is reluctant to voice their opinions for fear of being prosecuted.

Constitutional Court (MK) Decision Number 105/PUU-XXII/2024, which was read out on 29 April 2025, was born as a constitutional response to this problem. These ruling states that the term "other person" in the defamation provisions of the ITE Law must be interpreted as referring only to individuals, not institutions, companies, organisations, or positions. Thus, public institutions and corporations can no longer file defamation suits based on the ITE Law.

Normatively, this ruling brings about a paradigm shift in the protection of freedom of expression and the strengthening of public control over power. In the context of constitutional democracy theory, citizens are not only rights holders but also parties who have a responsibility to oversee the state as the holder of sovereignty. Therefore, criticism of the exercise of power is a form of political participation that is legitimate and guaranteed by the constitution.

However, this Constitutional Court ruling does not cover the entire legal regime of defamation outside the ITE Law, such as provisions in the Criminal Code or civil lawsuits regarding unlawful acts. This is where the empirical problem arises: the potential for public institutions to shift their silencing strategies to other legal domains remains open. In addition, the implementation of the ruling requires consistent interpretation by law enforcement officials, legislators, and the judiciary.

Academic studies so far have tended to view the Constitutional Court's ruling from a dogmatic perspective that is, assessing its compliance with the constitution without delving deeply into its institutional impact and the dynamics of the relationship between the public, state institutions, and law enforcement. Therefore, this study aims to fill this gap through the following key questions: how does the Constitutional Court's ruling impact the public's right to monitor power? How does it change institutional relations and the structure of democracy?

This research is theoretically important because it connects the doctrine of freedom of expression, the concept of checks and balances, and the institutional design of democracy. Practically, this research provides analysis for policymakers, legal academics, and advocates to encourage the substantive, rather than procedural, implementation of the ruling.

Using a legal-normative method, this article analyses the content of the Constitutional Court's ruling and its implications for the governance of power and public freedom. The results of the analysis show that although this ruling is a progressive step towards protecting the space for criticism, its success depends on legal harmonisation, the internalisation of democratic values, and consistent judicial mechanisms.

2. Method

This study uses a normative legal research method with prescriptive-analytical characteristics. The main approaches used include:

Statute Approach, by analysing Constitutional Court Decision Number 105/PUU-XXII/2024, the Electronic Information and Transaction Law and its amendments, the Criminal Code, and the 1945 Constitution of the Republic of Indonesia.

Conceptual Approach, to examine the concepts of freedom of expression, reputation protection, checks and balances, and the relationship between the state and citizens within the framework of constitutional democracy.

Constitutional and Human Rights Approach, to assess the conflict of interests between the right to freedom of expression and the protection of reputation from the perspective of human rights and the principle of proportionality.

The legal materials used consist of primary legal materials (Constitutional Court decisions, legislation, and official state documents) and secondary legal materials (legal textbooks, scientific journals, and relevant academic studies). The analysis was conducted using qualitative legal methods, assessing the normative implications of the decisions and potential problems in their implementation in constitutional practice.

3. Results and Discussion

3.1 Normative Implications of the Decision on the Protection of Constitutional Rights

Constitutional Court Decision Number 105/PUU-XXII/2024 has profound normative implications for the protection of freedom of expression as a constitutional right of citizens. By limiting the phrase "other people" to individuals, the Court consciously draws a constitutional line of between the interests of protecting personal dignity and institutional reputation. This restriction indicates that criminal law should not be extended beyond its primary purpose, which is to protect individuals from personal and direct attacks.

Dogmatically, this ruling corrects the tendency for criminal law to be misused as a defensive tool of power. State institutions, corporations, and public offices cannot be equated with individuals because they do not have the psychological dimension and personal dignity that humans have. Thus, the use of defamation offences to protect the image of institutions is contrary to the principle of personality in criminal law.

From a human rights perspective, the Constitutional Court's ruling reinforces the principle that public officials and institutions must have a higher tolerance for criticism. Criticism of state administrators is part of the public discourse protected by the constitution, not an attack that should be criminalised. The Court clearly places freedom of expression as a fundamental right that can only be restricted in a strict and proportional manner.

This ruling also creates legal certainty by eliminating the room for multiple interpretations that law enforcement officials have exploited. Prior to this ruling, the phrase "other people" was often interpreted broadly, opening up the possibility of criminalising criticism of institutions. With a clear constitutional interpretation, the Constitutional Court limits the discretion of officials so that they do not exceed their constitutional mandate.

Through a conditional unconstitutional mechanism, the Court did not invalidate the norm entirely, but corrected its application. This approach reflects judicial prudence as well as firmness in protecting the constitutional rights of citizens. The norm remains in force, but is directed to be in line with the principles of a democratic state based on the rule of law.

Another normative implication is a paradigm shift from power-based reputation protection to citizen-based rights protection. The state is no longer positioned as a subject that must be protected from criticism, but rather as an object of public scrutiny. This paradigm is consistent with the idea that sovereignty lies in the hands of the people.

The Constitutional Court's decision also contributes to strengthening due process of law by preventing the political use of criminal law. When criticism can no longer be criminalised in the name of institutions, the legal process becomes more rational and oriented towards substantive justice. However, this normative protection is not automatic. Without the awareness of officials and the public, the ruling may lose its transformative power. Therefore, the normative implications must be read in conjunction with the challenges of implementation.

Overall, Constitutional Court Decision Number 105/PUU-XXII/2024 not only changes the interpretation of one norm, but also corrects the way the state understands the relationship between power, criticism, and constitutional freedom.

3.2 Strengthening Public Control as a Mechanism of Checks and Balances

Public control is a fundamental element in constitutional democracy that serves to complement the formal oversight mechanisms between state institutions. This Constitutional Court decision strengthens public control by removing the threat of criminalisation that has long loomed over citizens' critical expressions. With this guarantee, the public discourse space becomes more open and healthier.

In modern checks and balances theory, oversight is not only carried out by the legislative or judicial branches, but also by the public through public opinion, the media, and academic spaces. The Constitutional Court's ruling affirms that citizen criticism is part of the corrective mechanism against abuse of power, not a form of defiance against the state.

This ruling encourages the creation of a deliberative climate that allows for the free exchange of ideas. When citizens no longer fear criminalisation for criticising institutions, the quality of public debate improves and public policy can be tested rationally.

In addition, this ruling provides stronger legal legitimacy for investigative journalism and critical academic research. The media and academics can carry out their supervisory functions without repressive criminal law pressure.

Structurally, strengthening public control creates moral and political pressure for state

administrators to act transparently and accountably. Public criticism becomes a corrective signal that cannot be ignored by those in power.

This ruling also expands citizens' political participation beyond electoral mechanisms. Criticism, advocacy, and public campaigns are positioned as legitimate and constitutional forms of participation.

However, effective public control still requires legal literacy and civil courage. Without awareness of rights, the space opened up by the Constitutional Court's ruling may not be optimally utilised.

In this context, the Constitutional Court's ruling serves as a structural prerequisite for substantive democracy, but it is not an automatic guarantee of the quality of democracy itself.

Thus, strengthening public control through Constitutional Court rulings is an important step in improving the relationship between the state and its citizens within a more balanced framework of checks and balances.

3.3 Institutional Impact on State Apparatus and Law Enforcement

Constitutional Court Decision Number 105/PUU-XXII/2024 has a significant institutional impact on the work of law enforcement agencies, particularly the police and the prosecutor's office. With the restriction of subjects reporting defamation offences to individuals only, the authorities no longer have a constitutional basis for processing reports submitted by public institutions, corporations or officials. This consequence requires immediate changes in the practices of receiving reports, the investigation stage, and the prosecution process. The Constitutional Court's decision implicitly corrects the previous permissive pattern of law enforcement towards reports based on institutional interests. Thus, law enforcement agencies are positioned as guardians of the constitution, not merely executors of the will of the reporting institution.

Organisationally, this ruling requires adjustments to standard operating procedures and internal law enforcement guidelines. Without such adjustments, there is a risk of inconsistency in the application of the ruling at the practical level, especially in the regions. Law enforcement officials can no longer hide behind technical loopholes to ignore the Constitutional Court's constitutional interpretation. In a state governed by the rule of law, Constitutional Court decisions are binding and must be used as a direct reference in administrative and judicial actions. Therefore, institutional adjustments are an absolute prerequisite for the effectiveness of the decision.

This Constitutional Court decision also tests the independence and professionalism of law enforcement officials in the face of political and institutional pressure. When public institutions no longer have the authority to report defamation, officials are faced with a choice between institutional loyalty and constitutional obedience. In this context, the Constitutional Court's decision serves as a measure of the extent to which law enforcement officials truly uphold the principle of constitutional supremacy. Officials who continue to process reports from public institutions have the potential to violate the constitutional rights of citizens. Thus, this ruling reinforces the demands for professional ethics and accountability of law enforcement.

In the long term, the Constitutional Court's decision has the potential to encourage more rational and proportional law enforcement. Law enforcement officials are required to be more selective in assessing criminal reports and to prioritise the principle of protecting human rights. Criminal law can no longer be used as a tool to protect the image of those in power, but rather as an instrument to protect legitimate individual interests. This gradual shift can improve the relationship between state officials and the community. Public trust in law enforcement is also likely to increase if officials consistently implement the Constitutional Court's ruling.

However, the institutional impact of the Constitutional Court's decision cannot be separated from deep-rooted legal cultural barriers. In bureaucratic practice, criticism is still often perceived as a threat to the stability and authority of institutions. This mindset has the potential to give rise to passive resistance to the implementation of Constitutional Court decisions. Without continuous constitutional education, normative change can be reduced to mere formal compliance. Therefore, institutional transformation must be accompanied by a change in the way officials view criticism as part of the mechanism of democratic accountability.

This Constitutional Court decision ultimately places law enforcement officials as key actors in determining the life and death of freedom of expression. Progressive constitutional norms will be meaningless without the institutional courage to implement them consistently. Law enforcement officials are not only executors of the law, but also guardians of constitutional values. Thus, the institutional impact of the Constitutional Court's decision is structural and requires a long-term commitment from all law enforcement institutions.

3.4 Risk of Transferring Disputes to Non-Criminal Channels

Although Constitutional Court Decision Number 105/PUU-XXII/2024 explicitly limits the use of defamation offences in the ITE Law, this decision does not completely close the space for silencing criticism through other legal instruments. One of the main risks that arises is the transfer of disputes from the criminal to the civil realm, particularly through lawsuits for unlawful acts on the basis of defamation. In this context, public institutions or parties who feel that their reputation has been damaged can still use civil proceedings as a means of exerting pressure on citizens who express criticism. This phenomenon shows that the protection of freedom of expression is not yet fully comprehensive. The Constitutional Court's ruling, although progressive, still operates within the limits of a certain legal regime.

The risk of transferring disputes is closely related to a phenomenon known in literature as strategic lawsuits against public participation (SLAPP). Such lawsuits do not always aim to win the case, but rather to create a deterrent effect through psychological, financial and time burdens on the criticised party. In such circumstances, citizens, journalists, or academics remain vulnerable even though they no longer face criminal charges. In other words, legal repression has shifted form but has not entirely disappeared. The Constitutional Court's ruling has not directly addressed this structural problem.

Juridically, this situation demonstrates the limitations of sectoral law review mechanisms. The Constitutional Court's ruling only binds the norms that were reviewed, while other legal regimes continue to operate under the old logic that is not yet fully sensitive to freedom of expression. Without harmonisation across legal regimes, constitutional protection has the potential to become fragmented. This creates an imbalance between the protection of rights and the legal authority of institutions or interested parties. As a result, public criticism can still be suppressed through non-criminal channels.

The risk of transferring disputes to non-criminal channels also raises the issue of access to justice. Civil lawsuits often require considerable financial resources and legal assistance, creating an imbalance between the plaintiff and the defendant. In this context, citizens who express criticism in the public interest may be forced to face lengthy and exhausting legal proceedings. The deterrent effect this creates is no less powerful than the threat of criminal prosecution. Thus, the protection of freedom of expression must take into account economic and structural dimensions, not just normative ones.

The Constitutional Court's ruling should be seen as a momentum to encourage broader legal reforms, including in civil and procedural law. Protection of public participation cannot be limited to the elimination of criminal threats, but must include mechanisms to prevent repressive strategic lawsuits. Without further steps from lawmakers, the effectiveness of the Constitutional Court's ruling has the potential to be reduced. In other words, the success of this ruling is highly dependent on the state's courage to carry out systemic legal harmonisation. From a constitutional perspective, shifting repression to non-criminal channels shows that limiting power cannot be achieved through a single legal instrument. Constitutionalism demands consistency of values across all branches of law. If one legal regime is improved while another remains repressive, the protection of constitutional rights will be uneven. Therefore, the risk of litigation shift must be anticipated as part of the post-Constitutional Court ruling legal reform agenda.

3.5 Challenges of Implementation and Legal Culture

The main challenge in implementing Constitutional Court Decision Number 105/PUU-XXII/2024 does not lie in the clarity of the norms, but in the legal culture that has developed in state administration practices. Although the Court has provided a clear constitutional interpretation, law enforcement officials and public officials have not immediately internalised the meaning of the decision. In many cases, public criticism is still perceived as a threat to institutional authority, rather than as a mechanism for accountability. This mindset reflects the gap between the text of the constitution and the exercise of power. Therefore, the problem of implementation is sociological and institutional in nature, not purely juridical.

Differences in interpretation among law enforcement officials also pose a serious challenge to the implementation of Constitutional Court decisions. Without binding technical guidelines, constitutional interpretations have the potential to be applied inconsistently across regions and levels of law enforcement. This situation creates legal uncertainty for citizens exercising their right to freedom of expression. In a state governed by the rule of law, consistency in the application of norms is a prerequisite for justice. When Constitutional Court decisions are understood differently, constitutional protection becomes relative and dependent on the preferences of officials.

In addition to law enforcement officials, implementation challenges are also related to the attitude of public institutions as subjects of criticism. Many state institutions are not yet normatively

and ethically prepared to accept open criticism from citizens. Instead of responding to criticism with clarification or policy improvements, some institutions still tend to use a defensive and legalistic approach. This attitude shows that legal cultural transformation has not kept pace with changes in norms. Without a change in institutional attitude, Constitutional Court decisions risk losing their transformative power.

The implementation of Constitutional Court decisions also depends heavily on the level of constitutional awareness among the public. Citizens who do not understand their rights tend to be reluctant to use Constitutional Court decisions as a basis for protection when facing legal pressure. This imbalance in legal knowledge can weaken the function of decisions as a tool for public empowerment. Therefore, constitutional education is an integral part of the effectiveness of decisions. Without the conscious participation of citizens, the protection of freedom of expression will be elitist and uneven.

From a legal culture perspective, normative change requires time and consistency. Law enforcement officials and public officials must be accustomed to viewing criticism as part of a democratic relationship, not as a disturbance of stability. This process cannot be achieved through a single court ruling alone. It requires internal policies, ongoing training, and exemplary leadership from institutional leaders. Thus, the Constitutional Court's ruling serves as a starting point for transformation, not as an instant solution.

Ultimately, the success of Constitutional Court Decision Number 105/PUU-XXII/2024 is largely determined by the institutional will to make the constitution a guide for life, not merely a legal text. Constitutionalism only has meaning if its values are realised in the daily practices of state apparatus. Without a change in legal culture, the protection of freedom of expression will remain fragile even if the norms have been improved. Therefore, the challenges of implementation must be understood as long-term agenda in the development of a democratic rule of law.

4. Conclusion

Constitutional Court Decision Number 105/PUU-XXII/2024 is an important milestone in the reconstruction of the law on freedom of expression and the strengthening of public oversight of power. The decision:

- 1) limits the legal subjects who can report defamation offences under the ITE Law to individuals only;
- 2) strengthens informal checks and balances mechanisms in democracy;
- 3) reduces the risk of criminal law being used as an instrument of political repression.

However, this ruling does not automatically eliminate the threat of silencing criticism through other legal channels. The effectiveness of the ruling depends on the consistency of law enforcement officials, judicial guidelines, and the harmonisation of criminal and civil law regimes.

Author Contributions

Muhamad Irwan served as the lead author, responsible for conceptualising the research, formulating the theoretical and constitutional framework, determining the research methodology, and conducting the main analysis of Constitutional Court Decision No. 105/PUU-XXII/2024. This author also drafted the initial version of the article, conducted prescriptive analysis, and integrated the research findings into the framework of constitutional democracy and checks and balances.

Rizky Perdana Bayu Putra contributed to the collection and analysis of primary legal materials, particularly legislation and the legal regime of defamation outside the ITE Law. This author was also involved in strengthening the normative argumentation related to the institutional implications of the Constitutional Court's decision and conducted a critical review of the consistency of legal logic in the results and discussion sections. **Tuti Handayani** contributed to the deepening of the conceptual and human rights approach, particularly in the analysis of freedom of expression, reputation protection, and the principle of proportionality. This author enriched the theoretical discussion and helped align the research arguments with constitutional democracy and human rights standards.

Elmi Sasmitaningtyas played a role in the preparation and strengthening of the analysis of legal culture and the challenges of implementing Constitutional Court decisions. Her contributions include a study of the relationship between legal norms and institutional practices, as well as a sharpening of the discussion on institutional resistance and the need for internalisation of democratic values.

Milka Kumala contributed to the literature review, the compilation of previous research reviews, and the editing of the manuscript to ensure the coherence of the arguments and academic consistency. She was also involved in the process of revising and refining the language to conform to the style of international scientific journals.

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