

When Speech Becomes Crime: Defamation and Constitutional Power After Decision 78/2023

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Abstract

This study examines the constitutional and legal dimensions of defamation in Indonesia in light of Constitutional Court Decision No. 78/PUU-XXI/2023 and District Court Decision No. 8/Pid.B/2024/PN Wns. Using a normative juridical method combined with a qualitative case approach, it analyzes how the Constitutional Court's interpretation of Article 310(1) of the Indonesian Penal Code (KUHP) as a verbal act reshapes the legal framework of defamation. Relevant regulations include Articles 310–321 of the KUHP, Articles 433–439 of Law No. 1 of 2023 (New Penal Code), and Law No. 1 of 2024 (ITE Law). The findings reveal a constitutional enforcement gap: while the Constitutional Court provides a clear interpretive standard, the Watansoppeng District Court failed to apply it despite issuing a substantively appropriate sentence. This inconsistency reflects institutional weaknesses in implementing constitutional decisions within ordinary courts. To deepen the analysis, this study draws on comparative experiences from Germany and Colombia. Both jurisdictions face similar enforcement gaps but address them through structured mechanisms, such as mandatory appellate references in Germany and the tutela mechanism in Colombia. These insights show that binding constitutional authority requires institutional enforcement measures to ensure effectiveness. The novelty of this study lies in identifying this enforcement gap as a critical challenge to constitutional supremacy in criminal defamation and situating it within a comparative perspective. It contributes to legal scholarship and judicial reform discourse by emphasizing the need for systematic judicial compliance to guarantee legal certainty, protect fundamental rights, and maintain coherence in defamation law.

1. Introduction

Defamation, or *aanranding of goede naam*, constitutes an attack on a person's honor or reputation. In Indonesian law, it is categorized as insult (*penghinaan*) and regulated under several legal frameworks, particularly Article 310–321 of the Criminal Code (KUHP), Law No. 1 of 2023 (New Penal Code), and Law No. 1 of 2024 (Second Amendment to the ITE Law).¹ Historically, these provisions were designed to protect individuals from reputational harm.² However, their interpretation and application have often intersected with the constitutional guarantee of freedom of expression under the 1945 Constitution,³ creating persistent tension between individual reputation and fundamental rights. This tension is not merely doctrinal but structural, reflecting how penal provisions intersect with constitutional guarantees of free expression.

This tension became particularly visible in the case involving human rights activists Haris Azhar and Fatia Maulidiyanty, who were charged under Article 310(1) KUHP following public criticism of a state official.⁴ The judicial review submitted to the Constitutional Court, supported by YLBHI and AJI, culminated in Constitutional Court Decision No. 78/PUU-XXI/2023, which declared Article 310(1) conditionally unconstitutional. The Court inserted the word “verbally” to clarify the scope of defamation and ensure legal certainty, underscoring its role not merely as a negative legislator but as a constitutional guardian of fundamental rights.⁵

Yet, the judicial impact of this decision remains contested. In District Court Decision No. 8/Pid.B/2024/PN Wns, the panel of judges did not incorporate the Constitutional Court's interpretation, applying Article 310(1) in its original form. Such omission raises fundamental questions regarding the binding force of Constitutional Court decisions, since Article 24C of the 1945 Constitution affirms that these decisions are final and binding. This gap between constitutional interpretation and lower court implementation reveals a systemic challenge in ensuring vertical judicial consistency⁶ and the effective enforcement of constitutional norms.⁷

¹ Oemar Seno Adji, “Perkembangan Delik Pers Di Indonesia,” *Erlangga*, 1990, <https://cir.nii.ac.jp/crid/1130000793676749696>.

² Asrianto Zainal, “Pencemaran Nama Baik Melalui Teknologi Informasi Ditinjau Dari Hukum Pidana,” *Al-'Adl* 9, no. 1 (2016): 57–74.

³ Undang-Undang Dasar RI 1945, Pasal 28F.

⁴ CNN Indonesia, “Haris Azhar Dan Fatiah Didakwa Lakukan Pencemaran Nama Baik Luhut,” 2023, <https://www.cnnindonesia.com/nasional/20230403103638-12-932758/haris-azhar-dan-fatiah-didakwa-lakukan-pencemaran-nama-baik-luhut>.

⁵ Kresna Satrya, “Kedudukan Putusan Mahkamah Konstitusi Dalam Proses Pemberhentian Presiden Dan/Atau Wakil Presiden Di Indonesia,” *LEX PRIVATUM* 13, no. 5 (2024), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/57118>.

⁶ Denny Indrayana, *Negara Antara Ada Dan Tiada: Reformasi Hukum Ketatanegaraan* (Penerbit Buku Kompas, 2008), https://books.google.com/books?hl=id&lr=&id=72vdFAPCnyYC&oi=fnd&pg=PA3&dq=Denny+Indrayana,+Negara+Antara+Ada+dan+Tiada&ots=yZ5DXMmZbm&sig=j-Lx93K_-XMRgkMrk52XXS9d4c.

⁷ Liana Nasir et al., “Kedudukan Putusan Mahkamah Konstitusi Dalam Pembentukan Undang-Undang Di Indonesia,” *Jurnal USM Law Review* 8, no. 2 (2025): 622–38.

This research departs from that tension. It examines how Constitutional Court Decision No. 78/PUU-XXI/2023 should shape the interpretation of defamation law and questions why lower courts may fail to apply it. Comparative experiences from other constitutional systems, such as Germany and Colombia, reveal similar enforcement gaps between constitutional interpretation and judicial application at lower court levels.⁸ These patterns indicate that the issue is not merely doctrinal but structural, linked to how judicial hierarchies internalize constitutional court authority. By doing so, this study positions the problem of judicial obedience to constitutional interpretation as a key legal and constitutional issue moving the discussion beyond doctrinal explanation toward a more structural analysis of constitutional enforcement mechanisms in Indonesia.⁹

2. Method

This study uses a normative juridical method that emphasizes the analysis of legal norms, constitutional principles, and judicial practices relevant to the enforcement of defamation law in Indonesia.¹⁰ The selection of this method is based on the main objective of examining the binding effect of Constitutional Court decisions in criminal adjudication, particularly in the application of Article 310(1) of the Indonesian Penal Code after Constitutional Court Decision No. 78/PUU-XXI/2023.

Two research approaches are applied. The first is the statutory approach, which focuses on the interpretation and systematic study of legal provisions contained in the Criminal Code, Law No. 1 of 2023, Law No. 1 of 2024, and the Constitutional Court decision.¹¹ The second is the case approach, which examines how lower courts implement or ignore the Constitutional Court's interpretation in District Court Decision No. 8/Pid.B/2024/PN Wns. These two approaches provide a comprehensive understanding of the relationship between constitutional interpretation and its implementation at the judicial level.

The research relies on secondary data consisting of primary legal materials (laws, regulations, and court decisions), secondary legal materials (textbooks, journal articles, and legal commentaries), and tertiary materials (legal dictionaries and reports).¹² Data collection is conducted through literature review by systematically identifying, selecting, and analyzing legal documents and scholarly works relevant to defamation law and constitutional enforcement.

The data are examined using qualitative legal analysis combined with deductive reasoning that moves from general constitutional principles to specific judicial

⁸ Mark Tushnet, "New Forms of Judicial Review and the Persistence of Rights-and Democracy-Based Worries," in *Bills of Rights* (Routledge, 2017), <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315096339-10/new-forms-judicial-review-persistence-rights-democracy-based-worries-mark-tushnet>.

⁹ David Landau, "Political Institutions and Judicial Role in Comparative Constitutional Law," *Harv. Int'l LJ* 51 (2010): 319.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group, 2005).

¹¹ Bagir Manan, *Hukum Positif Indonesia: Satu Kajian Teoritik* (Fh Uii Press, 2004).

¹² Soerjono Soekanto, *Pengantar Penelitian Hukum* (Rajawali Pers, 2006), <https://cir.nii.ac.jp/crid/1130000798017116160>.

practices.¹³ This analytical model helps identify the gap between constitutional interpretation and lower court application and provides theoretical and practical insights to strengthen judicial compliance with constitutional rulings.

3. Analysis or Discussion

3.1. The Constitutional Court's Perspective on the Criminal Offense of Defamation in Constitutional Court Decision Number 78/PUU-XXI/2023

The Constitutional Court examined the substance of Article 433 of Law No. 1 of 2023 and found a normative distinction between this provision and Article 310(1) of the Indonesian Penal Code (KUHP).¹⁴ Article 433 expressly includes the word "verbally" in defining the act of defamation, whereas Article 310(1) does not. This absence has created legal ambiguity in the interpretation and enforcement of the provision, particularly in determining the form of defamatory acts.

The Court observed that although Article 433 will only become legally binding on January 2, 2026, its formulation reflects the legislature's intention to clarify the scope of defamation as a criminal offense.¹⁵ Therefore, the Court decided that the element "verbally" could be adopted to interpret Article 310(1) KUHP to ensure legal certainty and uniform application of the law. This interpretation aims to prevent inconsistent judicial reasoning and discriminatory practices in handling defamation cases.

Based on this legal reasoning, the Court declared that Article 310(1) KUHP is conditionally unconstitutional. The provision remains valid as long as it is interpreted to include the element of verbal acts.¹⁶ This conditional unconstitutionality reflects the Court's approach to harmonizing older criminal provisions with constitutional principles and legislative developments without striking down the article entirely.¹⁷ Through this decision, the Court reinforces legal clarity, ensures equal treatment before the law, and strengthens the protection of constitutional rights.¹⁸

The wording of Article 310(1) KUHP before the decision read: "Anyone who intentionally attacks the honor or good name of another person by accusing them of something, with the clear intention that it becomes publicly known, shall be sentenced for defamation with imprisonment of up to nine months or a fine of up to four thousand five hundred rupiah." After the decision, it must be understood as:

¹³ Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel," *Yogyakarta: Mirra Buana Media* 8 (2020).

¹⁴ Rio Suryo Darmawan, "Analisis Putusan Mahkamah Konstitusi Nomor 78/PUU-XXI/2023 Tentang Penghapusan Larangan Penyebaran Berita Hoax Perspektif Siyasah Dusturiyah," *Analisis Putusan Mahkamah Konstitusi Nomor 78/PUU-XXI/2023 Tentang Penghapusan Larangan Penyebaran Berita Hoax Perspektif Siyasah Dusturiyah* 5, no. 2 (2024): 1-16.

¹⁵ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana

¹⁶ Ahmad Syahird et al., "Constitutional Court's Limitation on the Resubmission of Indictments," *LEGAL BRIEF* 13, no. 5 (2024): 1202-14.

¹⁷ Kay L. Levine et al., "The Unconstitutional Conditions Vacuum in Criminal Procedure," *Yale Law Journal* 133 (2024 2023): 1401.

¹⁸ Ernst-Ulrich Petersmann, "Human Rights, International Economic Law and 'Constitutional Justice,'" *European Journal of International Law* 19, no. 4 (2008): 769-98, <https://doi.org/10.1093/ejil/chn041>.



“Anyone who intentionally attacks the honor or good name of another person by accusing them of something verbally, with the clear intention that it becomes publicly known, shall be sentenced for defamation with imprisonment of up to nine months or a fine of up to four thousand five hundred rupiah.”

This modification signifies an interpretative correction by the Constitutional Court to align statutory interpretation with constitutional guarantees of legal certainty and non-discrimination.¹⁹ It also reflects the Court’s active role in ensuring that criminal provisions are applied consistently in accordance with fundamental rights.

Table 1. Article Comparison

Article 310 Paragraph (1) Before the Constitutional Court Decision Number 78/PUU-XXI/2023	Article 310 Paragraph (1) After the Constitutional Court Decision Number 78/PUU-XXI/2023
Anyone who intentionally attacks the honor or good name of another person by accusing them of something, with the clear intention that it becomes publicly known, shall be sentenced for defamation with imprisonment of up to nine months or a fine of up to four thousand five hundred rupiah.	Anyone who intentionally attacks the honor or good name of another person by accusing them of something verbally, with the clear intention that it becomes publicly known, shall be sentenced for defamation with imprisonment of up to nine months or a fine of up to four thousand five hundred rupiah.

Source: *Constitutional Court Decision Number 78/PUU-XXI/2023*.

This decision illustrates how the Constitutional Court plays a corrective role in ensuring the harmony between statutory provisions and constitutional principles. By integrating the term “verbally,” the Court not only removed ambiguity from Article 310(1) KUHP but also reinforced the principle of legal certainty, equality before the law, and protection of fundamental rights.²⁰ This reflects the broader theoretical framework of constitutional enforcement, in which judicial interpretation functions as a mechanism to realign ordinary legislation with constitutional mandates.²¹

In this context, lower courts carry the constitutional obligation to follow the interpretative standards set by the Constitutional Court. Failure to comply may lead

¹⁹ Maria Farida Indrati, *Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muata* (Kanisius, 2007), <https://library.stik-ptik.ac.id/detail?id=9147&lokasi=lokal>.

²⁰ Achmad Dodi Haryadi et al., “Consistency of Constitutional Court Decisions in Realizing Fair Legal Certainty,” *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)* 869 (2024): 229, [https://books.google.com/books?hl=id&lr=&id=NSM6EQAAQBAJ&oi=fnd&pg=PA229&dq=the+Court+not+only+removed+ambiguity+from+Article+310\(1\)+KUHP+but+also+reinforced+the+principle+of+legal+certainty,+equality+before+the+law,+and+protection+of+fundamental+rights&ots=fPceM4BJ6Z&sig=9qSzLcYwu6fUNwFepiu13nBJZIU](https://books.google.com/books?hl=id&lr=&id=NSM6EQAAQBAJ&oi=fnd&pg=PA229&dq=the+Court+not+only+removed+ambiguity+from+Article+310(1)+KUHP+but+also+reinforced+the+principle+of+legal+certainty,+equality+before+the+law,+and+protection+of+fundamental+rights&ots=fPceM4BJ6Z&sig=9qSzLcYwu6fUNwFepiu13nBJZIU).

²¹ Richard Boldt and Dan Friedman, “Constitutional Incorporation: A Consideration of the Judicial Function in State and Federal Constitutional Interpretation,” *Md. L. Rev.* 76 (2016): 309.

to normative inconsistencies and weaken the authority of constitutional adjudication.²² The implications of this principle will be examined further in the next section, particularly in relation to District Court Decision No. 8/Pid.B/2024/PN Wns, which provides a practical illustration of how these interpretative standards are applied or neglected at the judicial level.

3.2. Regulations Related to the Criminal Offense of Defamation in Indonesia Criminal Law

Regulations pertaining to the criminal offense of defamation in Indonesian criminal law can be found in the Criminal Code (KUHP), Law Number 1 of 2023 on the New Criminal Code (KUHP *Baru*), and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law). In the KUHP, defamation is categorized under "Insults," regulated in Book Two, Chapter XVI. The relevant articles are:

1. Article 310 paragraph (1) on slander (*smaad*)
2. Article 310 paragraph (2) on written slander (*smaadschrift*)
3. Article 311 paragraph (1) on false accusation (*laster*)
4. Article 315 on minor insults (*eenvoudige belediging*)
5. Article 317 paragraph (1) on false accusation with intent (*lasterlijke aanklacht*)
6. Article 318 paragraph (1) on malicious accusation (*lasterlijke verdachmaking*)
7. Articles 320 and 321 on defamation of deceased individuals.²³

In Law No. 1 of 2023, also known as the New Criminal Code (effective January 2, 2026), defamation is referred to as a "Criminal Offense of Insult," regulated in Chapter XVII. This new KUHP aims to create a national criminal law based on Pancasila and the 1945 Constitution, adapting to current social, political, and legal developments, and replacing the old KUHP inherited from the Dutch colonial era.²⁴ Relevant provisions in the New KUHP include:

1. Article 433 paragraph (1) on verbal defamation
2. Article 433 paragraph (2) on written defamation
3. Article 434 paragraph (1) on slander
4. Article 436 on minor insults
5. Article 437 paragraph (1) on slanderous complaints

²² Assefa Fiseha, "Constitutional Adjudication and Constitutional Governance," in *Federalism, Devolution and Cleavages in Africa*, ed. Assefa Fiseha (Springer Nature Switzerland, 2024), https://doi.org/10.1007/978-3-031-50426-6_6.

²³ Raden Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal: Untuk Para Pejabat Kepolisian Negara, Kejaksaan/Pengadilan Negeri, Pamong Praja, Dsb.* (Polteia, 1974), <https://cir.nii.ac.jp/crid/1130282271588828800>.

²⁴ Ahmad Viqi, "KUHP Baru Berlaku 2026, Wamenkumham: Tidak Mungkin Puaskan Semua Pihak," accessed April 28, 2025, <https://www.detik.com/bali/berita/d-6820366/kuhp-baru-berlaku-2026-wamenkumham-tidak-mungkin-puaskan-semua-pihak>.

6. Article 438 on false suspicions

7. Article 439 paragraph (1) on defamation of deceased persons

Meanwhile, Law No. 1 of 2024 (the latest amendment to the ITE Law) addresses defamation in: Article 27A jo. Article 45 paragraph (4), Article 27B paragraph (2) jo. Article 45 paragraph (10), Article 45 paragraph (6), which concerns slander.²⁵ The government passed this amended ITE Law on December 5, 2023, and it was signed by the President on January 2, 2024. The ITE Law was previously amended in 2016 (Law No. 19 of 2016). In this study, the focus remains on Article 310 paragraph (1) of the KUHP regarding slander. Based on the earlier table, it's clear that this article was amended by the Constitutional Court's decision to include the element of "verbally." Below is a breakdown of the elements of Article 310 paragraph (1) post-decision:

a. "Anyone" (*Barang siapa*)

Refers to the offender and applies to all individuals, but in the KUHP system, only natural persons can be held criminally liable.²⁶

b. "Intentionally" (*Dengan sengaja*)

Indicates intent and culpability, interpreted as *willens en wetens* (intentional and aware).²⁷

c. "Attacks the honor or good name of another"

According to Wirjono Prodjodikoro, defamation is assessed by imagining being the target, reflecting the Javanese value of *tepo seliro* (empathy).²⁸

d. "By accusing them of something"

Concerns the clarity of the accusation. According to S. R. Sianturi, it need not be detailed but must clearly imply specific behavior.²⁹

e. "Verbally" (*Dengan cara lisan*)

This is the new element added by Constitutional Court Decision No. 78/PUU-XXI/2023. It clarifies that the defamatory act must be performed verbally, while written defamation falls under Article 310 paragraph (2).

f. "With the intention that it becomes publicly known"

The act must be made known to the public. If the accusation is shared in a private conversation between two people without a third party hearing it, it does not qualify as defamation. However, the presence of even one third party can make it a public matter.³⁰

²⁵ Willa Wahyuni, "Perubahan Penting Soal Pencemaran Nama Baik di UU ITE Baru," [hukumonline.com](https://www.hukumonline.com/berita/a/perubahan-penting-soal-pencemaran-nama-baik-di-uu-ite-baru-lt65a90c5004886/), accessed April 28, 2025, <https://www.hukumonline.com/berita/a/perubahan-penting-soal-pencemaran-nama-baik-di-uu-ite-baru-lt65a90c5004886/>.

²⁶ Rafiki Candra Priambudi, "Pencemaran Nama Baik Menurut Pasal 310 KUHP Dan Pasal 27 Undang-Undang Nomor 19 Tahun 2016 Tentang ITE," *Lex Administratum* 8, no. 4 (2020), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/31048>.

²⁷ Dwi Endah Nurhayati, "Sistem Pidana Denda Dalam Kebijakan Legislatif Di Indonesia" (PhD Thesis, program Pascasarjana Universitas Diponegoro, 2009), <https://eprints.undip.ac.id/17169/>.

²⁸ Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Di Indonesia* (Refika Aditama, 1989), <https://library.stik-ptik.ac.id/detail?id=45836&lokasi=lokal>.

²⁹ S. R. Sianturi, *Tindak Pidana Di KUHP Berikut Uraianannya* (Alumni AHM-PTHM, 1983).

³⁰ Fred H. Cate et al., "The Right to Privacy and the Public's Right to Know: The Central Purpose of the Freedom of Information Act," *Administrative Law Review* 46 (1994): 41.

3.3. Analysis of the Application of Article 310 Paragraph (1) in Decision Number 8/Pid.B/2024/PN Wns

1) Case Chronology

The Defendant contacted the victim's mother via WhatsApp, using a friend's phone, and accused the victim and her mother of practicing black magic and having taken many lives. The Defendant also shared these accusations with friends through WhatsApp and invited them to come to the mosque to witness the victim and her mother take an oath on the Qur'an, as challenged by the Defendant, to prove they did not possess black magic. As a result of the Defendant's actions, the victim felt humiliated and was afraid to leave the house because the accusations were known by many of the victim's friends and neighbors.

2) Indictment

The indictment in Decision Number 8/Pid.B/2024/PN Wns was a Single Indictment based on Article 310 paragraph (1) of the KUHP, which reads: "Anyone who intentionally attacks the honor or good name of another person by accusing them of something, with the clear intention that it becomes publicly known, shall be sentenced for defamation with imprisonment of up to nine months or a fine of up to four thousand five hundred rupiah."

3) Prosecutor's Demand

In this case, the Public Prosecutor demanded that the Defendant be sentenced to four (4) months in prison.

4) Legal Facts

Based on the evidence submitted, including testimonies from five witnesses for the prosecution, one defense witness (a de charge), and one item of physical evidence (a white iPhone 11), the following legal facts were established:

- a. The prosecution submitted a white iPhone 11 owned by the Defendant's friend as evidence
- b. The Defendant's accusations appeared in screenshot form in the police investigation report (BAP)
- c. The oath challenge proposed by the Defendant did not take place because the religious leader refused to perform the oath
- d. All elements of Article 310 paragraph (1) KUHP were met, but the judges did not consider the "verbal" element added after the Constitutional Court Decision
- e. The Defendant's defense was rejected, and guilt was upheld
- f. No grounds for justification or excuse were found during the trial
- g. Aggravating factor: The Defendant's actions caused psychological distress and loss of confidence in the victim

h. Mitigating factor: The Defendant admitted the wrongdoing and expressed remorse.

5) Verdict

Taking into account Article 310 paragraph (1) of the KUHP, Law No. 8 of 1981 on Criminal Procedure, and other related legislation, the Panel of Judges ruled:

- a. Declared the Defendant legally and convincingly guilty of the criminal act of defamation
- b. Sentenced the Defendant to seven (7) days in prison
- c. Ordered the return of the white iPhone 11 to the Defendant's friend
- d. Imposed court fees of Rp 5,000 on the Defendant.

Based on the case explanation above, it is evident that the panel of judges in Decision Number 8/Pid.B/2024/PN Wns did not consider Constitutional Court Decision Number 78/PUU-XXI/2023. The author believes that the judges handling the case in Watansoppeng should have taken the Constitutional Court's ruling into account. As previously explained, the Constitutional Court added a new element to Article 310 paragraph (1) of the KUHP, namely "verbally." According to the author, this addition is crucial and relevant to the actions committed by the Defendant in this defamation case.

The main issue raised by the victim, Resma Sahara, was that the Defendant, Chintya Bella alias Bella, committed defamation by sending WhatsApp messages to the victim's mother, Rahmatia. This was supported by the seizure of the Defendant's friend Sahuri's white iPhone 11, which was used by the Defendant to carry out the defamatory act. This fact was also confirmed by the legal findings presented in the court's decision.

The legal findings in the Watansoppeng District Court decision explain that the judges considered screenshot evidence of WhatsApp messages included in the police investigation report (BAP). This indicates that the Defendant's defamatory action was not verbal, but written in the form of WhatsApp texts. Therefore, the author believes that the Defendant's act does not fulfill the "verbal" element introduced into Article 310 paragraph (1) of the KUHP by the Constitutional Court Decision No. 78/PUU-XXI/2023. Nonetheless, the court did not address this new requirement.

If the judges had considered the Constitutional Court's decision, it is possible the Defendant could have received a lighter sentence or even been acquitted because the indictment was based solely on Article 310 paragraph (1), which now only applies to verbal defamation. The Defendant's actions, however, involved written messages, which are regulated under Article 310 paragraph (2). Since the prosecution did not include Article 310 paragraph (2) in the indictment, the existing charge could be considered unproven in light of the Constitutional Court's decision.

However, if we examine the court's reasoning closely, the panel of judges did not limit their assessment to the WhatsApp messages sent to the victim's mother. They also considered the Defendant's verbal statements to her friends, accusing the victim of practicing black magic and inviting them to the mosque to witness the oath challenge. Because these statements were spread by word of mouth and known by the public, the "verbal" element introduced by the Constitutional Court could be considered fulfilled.

When handing down a verdict, judges must also take into account relevant legal principles. In this case, although the Defendant's actions occurred before the Constitutional Court's decision was issued, meaning it aligns with the *lex temporis delicti* principle (i.e., the law in effect at the time of the offense applies), an exception exists in the *lex mitior* principle. The *lex mitior* principle states that if a new law is more favorable to the Defendant and the verdict has not yet been issued, the more lenient provision must be applied.³¹

This principle is affirmed in Article 18 paragraph (3) of Law No. 39 of 1999 on Human Rights, which reads: "In the event of a change in legislation, the most favorable provision for the suspect shall apply." The same principle is found in Article 1 paragraph (2) of the KUHP, and Article 3 paragraph (1) of Law No. 1 of 2023 (New Criminal Code). If a criminal case has not yet received a final judgment and a new, more favorable law comes into effect, then that new law may be applied retroactively to benefit the suspect, defendant, or convict.³²

Based on this reasoning, the panel of judges should have considered the Constitutional Court's decision. Had they done so, the Defendant might have received a lighter sentence, especially since the core of the offense involved written rather than verbal defamation. This would have had a significant impact on sentencing. However, if we look at the verdict handed down by the court, the author believes it was appropriate. Despite the public prosecutor demanding a four-month prison sentence, the panel of judges sentenced the Defendant to only seven (7) days in prison.

The judges argued that the prosecutor's demand was excessive and disproportionate, considering that the Defendant's actions caused only psychological harm to the victim, while the Defendant had already endured considerable mental stress and physical hardship during the investigation and trial process. Therefore, the author agrees with the decision, as the seven-day prison sentence is relatively light compared to the prosecutor's demand.

Even so, the court decision should have still included a consideration of the Constitutional Court's ruling to strengthen its legal foundation and ensure clarity in sentencing. This is in line with the view of Jimly Asshiddiqie, who stated that delays in the implementation of Constitutional Court rulings should not occur. Once pronounced, a Constitutional Court decision becomes legally binding and must be respected immediately.³³

³¹ Asti Dwiyantri et al., *Pengantar Hukum Pidana: Teori, Prinsip, Dan Implementasi* (PT. Green Pustaka Indonesia, 2024), https://books.google.com/books?hl=id&lr=&id=mwv0EAAAQBAJ&oi=fnd&pg=PA65&dq=Dwinand+a+L.+L.+H.+N.+Kusumawardhani,+Hukum+Pidana&ots=hIgnazOSpo&sig=77CrBgjsvrFgB_ulkiX10925n7k.

Had the judges taken the Constitutional Court's decision into account, they would have been seen as respecting and upholding the Constitution, particularly Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) of Law No. 24 of 2003 on the Constitutional Court, which grants the Court authority to issue final and binding decisions. Additionally, doing so would show that the judges are attentive to current legal developments especially given that the Constitutional Court decision was issued only five days prior. Such responsiveness would set a positive example for other legal practitioners.

This pattern of judicial non-compliance is not unique to Indonesia. Similar enforcement gaps between constitutional interpretation and lower court application can also be observed in other jurisdictions, such as Germany and Colombia. In Germany, decisions of the Federal Constitutional Court of Germany³⁴ are legally binding on all state organs, including lower courts, as stipulated in Article 31 of the German Federal Constitutional Court Act. In practice, however, some lower courts exhibit what scholars describe as "interpretive inertia," where constitutional reinterpretations are not immediately or fully internalized in judicial reasoning.³⁵ To address this, the German legal system employs corrective mechanisms such as mandatory references to constitutional reasoning in appellate review, administrative oversight, and disciplinary measures for persistent non-compliance. These mechanisms ensure that the binding nature of constitutional rulings is reinforced through structural enforcement, not merely formal authority.

A similar challenge arises in Colombia. The Constitutional Court of Colombia plays a central role in the country's transformative constitutionalism, where its decisions have erga omnes effect and are intended to reshape judicial practice and state behavior.³⁶ Yet, lower courts have been known to selectively comply with constitutional jurisprudence, particularly in cases involving defamation and freedom of expression. To close this gap, Colombia relies on the tutela mechanism, which allows individuals to file constitutional complaints directly when lower courts disregard constitutional interpretations.³⁷ Through this process, the

³² Bradley Scott Shannon, "The Retroactive and Prospective Application of Judicial Decisions," *Harv. JL & Pub. Pol'y* 26 (2003): 811.

³³ Jimly Asshiddiqie, *Perihal Undang-Undang Di Indonesia* (Raja Grafindo Persada, 2006), <https://library.stik-ptik.ac.id/detail?id=2445&lokasi=lokal>.

³⁴ Bundesverfassungsgericht, "Effect of Decisions," accessed October 28, 2025, https://www.bundesverfassungsgericht.de/EN/Decisions/EffectOfDecisions/effectofdecisions_node.

³⁵ Lothar Determann and Markus Heintzen, "Constitutional Review of Statutes in Germany and the United States Compared," *J. Transnat'l L. & Pol'y* 28 (2018): 95; Wolfgang Hoffmann-Riem, "The Venice Commission of the Council of Europe—Standards and Impact," *European Journal of International Law* 25, no. 2 (2014): 579–97.

³⁶ Manuel José Cepeda-Espinosa, "Judicial Activism in a Violent Context: The Origin, Role, and Impact of the Colombian Constitutional Court," *Wash. U. Global Stud. L. Rev.* 3 (2004): 529; Armin Von Bogdandy and René Uruña, "International Transformative Constitutionalism in Latin America," *American Journal of International Law* 114, no. 3 (2020): 403–42.

³⁷ Patrick Delaney, "Legislating for Equality in Colombia: Constitutional Jurisprudence, Tutelas, and Social Reform," *The Equal Rights Review* 1 (2008): 50–59.

Constitutional Court can realign lower court practice with constitutional standards and reinforce its interpretive authority.³⁸

These comparative experiences demonstrate that binding constitutional authority alone is insufficient to ensure consistent application at the judicial level. Both Germany and Colombia show that effective enforcement requires institutionalized mechanisms to internalize constitutional interpretation within the ordinary judiciary. As Landau observes, judicial enforcement of constitutional rights often falters without structural mechanisms that compel compliance.³⁹ In this regard, Indonesia faces not merely a doctrinal problem but a structural constitutional enforcement challenge. Strengthening mechanisms to integrate constitutional interpretation through appellate guidance, judicial training, or procedural oversight will be essential to ensure that decisions such as Constitutional Court Decision No. 78/PUU-XXI/2023 are not only declarative but effectively implemented in daily judicial practice.

4. Conclusion

The Constitutional Court's interpretation in Decision No. 78/PUU-XXI/2023 has changed the legal landscape of defamation in Indonesia. By inserting the word "verbally" into Article 310(1) of the Criminal Code, the Court clarified the scope of defamation as a criminal act and strengthened legal certainty and constitutional protection of freedom of expression. This decision establishes a clear interpretive standard that must be followed by lower courts when adjudicating defamation cases. The analysis of District Court Decision No. 8/Pid.B/2024/PN Wns reveals that the court did not refer to or apply the Constitutional Court's interpretation even though the decision was issued after the Constitutional Court's ruling. This indicates a gap between constitutional interpretation and its implementation at the lower court level. Such a gap weakens the binding force of Constitutional Court decisions and undermines the principle of constitutional supremacy.

The findings of this study confirm that judicial compliance is essential to ensure the effective enforcement of Constitutional Court decisions. Comparative experiences from Germany and Colombia show that the existence of binding constitutional authority alone is not sufficient to ensure uniform judicial practice. Germany employs corrective mechanisms such as mandatory appellate references and administrative oversight, while Colombia utilizes the tutela mechanism to compel lower courts to comply with constitutional interpretations. These approaches demonstrate the importance of structural mechanisms to close the enforcement gap. Strengthening mechanisms of judicial obedience to constitutional interpretation is therefore critical to achieving consistent and coherent enforcement of defamation law in Indonesia, as well as upholding legal certainty, constitutional supremacy, and the protection of fundamental rights.

³⁸ Isabel Inguanzo and Angélica Rodríguez Rodríguez, "Analysis of the Colombian Constitutional Court's Transformative Approach to Conflict-Related Sexual Violence," *Social & Legal Studies* 33, no. 2 (2024): 254–75, <https://doi.org/10.1177/09646639231159048>.

³⁹ David Landau, "Political Institutions and Judicial Role in Comparative Constitutional Law," *Harv. Int'l LJ* 51 (2010): 319.

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