

CRIMINAL JUSTICE SYSTEM: AFTER THE CONSTITUTIONAL COURT DECISION
IN INDONESIA AND THE FEDERAL COURT IN MALAYSIA

SISTEM PERADILAN PIDANA: SETELAH PUTUSAN MAHKAMAH KONSTITUSI DI INDONESIA
DAN MAHKAMAH FEDERAL DI MALAYSIA

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Abstract: this study aims to analyze the role of Constitutional Court decisions in achieving synchronization of the criminal justice system in Indonesia from the perspective of criminal law policy and to compare it with judicial review practices in Malaysia. The methods used include normative legal research employing statutory, conceptual, and case-based approaches. The results of the study indicate that Constitutional Court decisions have evolved into an instrument for reforming criminal law policy to limit excessive criminalization, strengthen the protection of constitutional rights, and promote the harmonization of the criminal justice system. The Constitutional Court's rulings have not been fully implemented due to a lack of harmony in jurisdiction between the Constitutional Court and the Supreme Court regarding the enforcement of rulings related to the review of criminal cases. The Federal Court of Malaysia applies the doctrine of horizontal stare decisis flexibly while upholding the federal constitution as the supreme law; thus, precedents may be set aside if they conflict with constitutional principles.

Abstrak: Kajian ini bertujuan untuk menganalisis peran putusan Mahkamah Konstitusi dalam mewujudkan sinkronisasi sistem peradilan pidana di Indonesia melalui perspektif kebijakan hukum pidana serta membandingkannya dengan praktik *judicial review* di Malaysia. Metode yang digunakan yaitu penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Hasil kajian menunjukkan bahwa putusan Mahkamah Konstitusi telah berkembang menjadi instrumen pembaruan kebijakan hukum pidana untuk membatasi kriminalisasi yang berlebihan, memperkuat perlindungan hak konstitusional, serta mendorong sinkronisasi sistem peradilan pidana. Putusan Mahkamah Konstitusi belum dilaksanakan secara optimal karena adanya disharmoni kewenangan antara Mahkamah Konstitusi dan Mahkamah Agung dalam pelaksanaan putusan yang berkaitan dengan peninjauan kembali perkara pidana. *Federal Court* Malaysia menerapkan doktrin *horizontal stare decisis* secara fleksibel dengan tetap menempatkan konstitusi federal sebagai hukum tertinggi, sehingga preseden dapat dikesampingkan apabila bertentangan dengan prinsip konstitusional

INTRODUCTION

Indonesia and Malaysia share similarities in history and culture with a majority Muslim population. Both have also experienced periods of colonialism which shaped their legal systems. Indonesia, once colonized by the Dutch, adopted a civil law system (Afandi, 2016; Rasyid & Setiawan, 2022). Malaysia, a former British colony, operates under a common law system. Both countries have developed legal systems that maintain customary law and Islamic law as essential elements in the legal foundation of the state (Somadiyono, 2020; Victoria & Kusriyah, 2022) agreements and provisions required by the laws and regulations and/or that the interested party wants to be stated in the authentic deed, guarantees the certainty of the deed creation date, keeps the deed, provides grosse, copies and excerpts of the deed, all of them as long as the deeds are drawn up, they are not assigned or exempted from other officials or other people as stipulated by law. Therefore, the general power (*openbaar gezaag*). The Constitutional Court in Indonesia plays a role in preventing the phenomenon of autocratic legalism that adopts or recognizes unconstitutional constitutional amendments and considers the existence of judicial activism when deciding judicial review cases (Hadinatha, 2022). The goal is to actively question politics because its manifestations have the potential to diminish popular sovereignty. The reason is that the Constitutional Court's decision was not complied with or was denied by the criminal justice institution, thus contradicting the *erga omnes* principle.

The decisions that are correlated with the judicial review of laws against the 1945 Constitution of the Republic of Indonesia, have binding legal force and can be enforced directly without requiring a decision from an authorized official unless otherwise stipulated by statutory regulations. The direct enforcement of these decisions aligns with the Explanation of Article 10 paragraph (1) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. The judicial system in Malaysia, unlike that of Indonesia, is based on the common law system. The highest court under Malaysia legal system is Federal Court. The Federal Court is vested with exclusive jurisdiction to adjudicate constitutional

legal matters. The Malaysian judicial model is completely different from Indonesia's legal system, which adopts a separate institutional arrangement through the establishment of a Constitutional Court specifically tasked with constitutional legal issues.

The doctrine of binding precedent serves as a cornerstone of the common law through the application of the principle of *stare decisis*. The term of *stare decisis* is derived from the latin maxim, namely *et non quita movere*, which means to stand by decided matters and not disturb what is settled. The doctrine of *stare decisis* represents a fundamental principle of common law, which requires courts to follow authoritative precedent when deciding subsequent cases involving similar legal issues (Muhamad dkk., 2020). Several legal studies related to the ignoring of the Constitutional Court's decision by the courts was conducted to compare the definitions, characteristics, objectives, and legal systems of the judicial structure. The benefit is that Indonesia must create a good legal system, the court structure must take into account the culture of society like Malaysia so that law enforcement is more effective (Lala dkk., 2024). The study focuses on comparing the legal systems of Indonesia and Malaysia with regard to the definition, characteristics, objectives, and structure of the judiciary.

The ignoring of Constitutional Court decision number 45/PHPU.D.VIII/2010 by decision number 153/G/2011/PTUN-JKT, which has implications for chaos in the legal system. The Supreme Court has given an assessment of the Constitutional Court decision resulting in no solution for the inauguration of the Regent and Deputy Regent of West Kotawaringin Regency, in addition to giving rise to discourse regarding the rivalry between the Supreme Court and the Constitutional Court (Soeroso, 2013). The study focuses on the Constitutional Court's decision as assessed by the Supreme Court in the inauguration of Regional Heads and resulted in no solution. Constitutional Court decision number 137/PUU-XIII/2015 embodies the principles of constitutionalism, a unitary state, regional autonomy, decentralization, judicial power, and the rule of law. The legal implications of this ruling have resulted in an increase in cases seeking judicial review at

the Supreme Court, the authority of regional heads or governors regarding the cancellation of district or city regional regulations, and the emergence of obstacles to accelerated development programs (Bonadi, Syafa'at, & Sudarsono, 2019). The study focuses on the impact of the Constitutional Court's decision regarding regional autonomy resulting in an increase in requests for judicial review to the Supreme Court.

The progressive evolution of national jurisprudence heavily relies on the Constitutional Court's authority to reconstruct conventional legal norms across multiple legal domains. Constitutional Court decision number 46/PUU-VIII/2010 addresses the civil status of children born from unregistered marriages. The landmark ruling establishes a legal relationship between the child and the biological father based on a notarial deed of recognition, birth certificates, and DNA testing. The determination of this relationship integrates philosophical, sociological, and juridical dimensions through a rigorous procedure involving problem inventory, DNA validation, marriage confirmation, and inheritance distribution (Abdillah, Hamidah, & Kawuryan, 2021). The judicial intervention directly transforms the restrictive framework of Law Number 1 of 1974 concerning Marriage expanding the child's civil rights beyond the maternal lineage to include the biological father. Parallel to this family law shift significant structural adjustments also manifest within the criminal justice sector. The sequence of landmark rulings including decisions number 4/PUU-V/2007, number 16/PUU-VIII/2010, number 31/PUU-X/2012, number 1/PUU-XI/2013, number 34/PUU-XI/2013, and number 91/PUU-XVIII/2020 introduces dynamic criminal law norms that frequently redefine the boundaries of the strict principle of legality. Law enforcement agencies are required to operationalize these new judicial mandates, which subsequently compel formal legislative updates to relevant criminal statutes (Wulandari dkk., 2022). The paradigm demonstrates how constitutional jurisprudence actively drives substantive changes and generates newly binding norms within the criminal law system.

The primary objective of this study is research addresses existence of the criminal justice system

through substantial synchronization, structural synchronization, and cultural synchronization so that the Constitutional Court's decisions are obeyed by criminal justice institutions. The literature review in this research, there is a lack of synchronization between the Constitutional Court's rulings and criminal law enforcement related to the issuance of the Supreme Court circular letter. The penal policy is needed through formulation, application, judicial policy, and execution supported by a statutory, case-based, and comparative approach. The minimalist criminal law theory from Douglas Husak, Plato's legal theory, Austin's legal theory, George Gurvitch's legal theory, rule of law, *rechtstaat*, the principle of *litis finiri oportet*, and the positivistic paradigm are used so that the functionalization of law in synchronizing the criminal justice system is realized according to the expectations of society.

METHOD

The method of this study is normative juridical using the statute approach, case approach, and comparative approach. The statute approach examines relevant legislation and regulations, the case approach focuses on court decisions, and the comparative approach compares Indonesia's legal system with that of Malaysia (Marzuki, 2017). The data sources used in this research consist of primary and secondary legal materials. Primary legal materials in Indonesia consist of the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981, Law Number 8 of 2011, Law Number 29 of 2004, Law Number 12 of 2011, Law Number 48 of 2009, Law Number 3 of 2009, and Constitutional Court decision. Primary legal materials in Malaysia consists of the federation constitution of Malaysia, the Courts of Judicature Act 1964, and the rules of the Federal Court regulates operational procedures. Secondary legal consist of books, journal articles, and previous research relevant to the topic. Primary and secondary legal materials were collected through documentary and library research techniques and literature related to the research topic. The collected legal materials were then analyzed quantitatively using legal theories and legal doctrine to ensure their relevance to the research objectives.

RESULTS AND DISCUSSION

Substantial Synchronization in the Criminal Justice System

The *Black's Law Dictionary* explains the term criminal justice system as the network of courts and tribunals which deal with criminal law and its enforcement. Based on this definition, it shows the existence of a network and function within the judicial institution to enforce criminal law in addition to building a network to carry out the function of law enforcement (Sugiharto, 2012). The foundational components of this system comprise the police, prosecutor's office, courts, and correctional institutions. The independent entities cooperate to execute criminal law across successive stages of investigation, prosecution, adjudication, and the implementation of penal sanctions. The structural process encompasses criminal law application policies, which form an integral part of the broader criminal policy alongside formulation and execution policies.

The operational integration of law enforcement agencies plays a critical role in determining the efficacy of legal enforcement. The sub-system institutions within the criminal justice network often operate partially rather than systematically. The fragmented approach triggers conflicting interpretations of functional differentiation fostering institutional rivalry that directly undermines overall systemic performance (Waskito, 2018). Addressing these frictions requires a comprehensive synchronization framework that operates across structural, substantial, and cultural dimensions. Structural synchronization harmonizes judicial administration among law enforcement bodies, substantial synchronization aligns positive law vertically and horizontally, and cultural synchronization unifies the underlying legal philosophies and attitudes (Setiadi & Kristian, 2017). Rigid bureaucratic structures within these sub-systems frequently obstruct fluid law enforcement. Comprehensive synchronization is therefore essential to prevent institutional misperceptions particularly regarding Constitutional Court decisions that alter, supplement, or invalidate existing criminal law provisions.

Substantive synchronization, encompassing both vertical and horizontal harmonization of legislation, is necessary to ensure consistency between Constitutional Court decisions and the broader framework of criminal law. The

regulation of judicial review in Indonesia has evolved through a series of legal instruments including the Civil Procedure Regulation (S.1847-52 jo. 1849-63), particularly Chapter XI and Article 400, Article 66 paragraph (1) and Article 70 paragraph (2) of Law Number 14 of 1985, Article 268 paragraph (3) of Law Number 8 of 1981, and Supreme Court Circular Letter Number 10 of 2009. The circular letter initially restricted judicial review applications to a single submission. Point 2 of the same instrument provided an exception by allowing multiple applications where conflicting judicial review decisions existed in relation to the same object of dispute in either civil or criminal cases. The fundamental shift occurred following Constitutional Court Decision Number 34/PUU-XI/2013 concerning Article 268 paragraph (3) of Law Number 8 of 1981 on criminal procedure law. The court held that the limitation permitting judicial review only once was inconsistent with constitutional guarantees and therefore no longer possessed binding legal force.

The legal grounds for judicial review are explicitly regulated under Article 67 which recognizes circumstances such as falsified evidence, the discovery of new evidence (*novum*), and *ultra petita* judgments. Additional grounds include unexamined claims, contradictory judgments involving the same parties at the same judicial level, and manifest judicial errors. The regulation of judicial review was further strengthened through Article 20 of Law Number 20 of 2025 concerning the New Criminal Procedure Code, which recognizes judicial review as an exclusive remedy available to convicted persons against final and binding court decisions. The provision is consistent with Constitutional Court Decision Number 20/PUU-XXI/2023, which invalidated the prosecutor's authority to seek judicial review against acquittals. Judicial review has become an exclusive procedural safeguard for convicted persons, reflecting the principles of due process of law and the protection of constitutional rights within the criminal justice system.

The legal implications of Constitutional Court decisions can be observed in cases involving medical practice regulations. Following a decision of the Madiun District Court and a subsequent cassation ruling, the Supreme Court sentenced a practicing physician to one year and six months of imprisonment for practicing

medicine without a valid license at the Army Health Service Hospital in Madiun Regency, East Java Province. The conviction was based on penal provisions contained in the prevailing medical regulatory framework. The Constitutional Court reviewed the constitutionality of criminal sanctions related to licensing violations and declared Article 76 and Article 79 of Law Number 29 of 2004 concerning Medical Practice contrary to the 1945 Constitution of the Republic of Indonesia. The imprisonment sanctions previously imposed for violations of medical practice licensing requirements lost their constitutional validity, reflecting a shift toward a more proportionate approach to professional regulatory enforcement.

Constitutional Court Decision Number 34/PUU-XI/2013 states that a judicial review can be filed more than once as an extraordinary legal remedy. Several related statutory provisions still appear inconsistent with this ruling. Article 268 paragraph (3) of Law Number 8 of 1981 and Article 24 paragraph (2) of Law Number 48 of 2009 states that a judicial review decision cannot be requested for a judicial review again. Article 66 paragraph (1) of Law Number 3 of 2009 states that a judicial review can only be submitted once. The apparent conflict exists considering that a judicial review is considered to be in conflict with the 1945 Constitution of the Republic of Indonesia and its legal force is not binding with the aim of fulfilling legal certainty without disregarding the value of justice.

Constitutional Court Decision Number 34/PUU-XI/2013 concluded that a petition for case review may be submitted more than once. The repetitive mechanism serves as an extraordinary legal pathway to uncover material truth and safeguard substantive justice within society. The decision of the Constitutional Court must be implemented by the authorities because the decision is final and binding so that it is necessary to improve the regulations for submitting resubmissions in criminal cases in the form of Supreme Court regulations through the decision of the Constitutional Court (Chakim, 2016). The judicial review as a last resort is expected to be able to provide justice, even if the decision is final and binding, due to human error on the part of the judge, lies during the trial and the discovery of novum (Mujahidin, 2012). Legal certainty must be achieved without

disregarding substantive justice ensuring that every criminal case reaches a definitive conclusion in accordance with the principle of *litis finiri oportet*.

The existence of the *erga omnes* principle, which requires that legal acts apply only to legal subjects without discrimination or non-discrimination, consequently requires adherence to Constitutional Court decisions and prohibits any denial. The duties and authorities of the criminal justice subsystem in enforcing or enforcing the law essentially require cooperation and interconnection. Adequate legislation is needed to enable coherent, coordinated, and integrative cooperation including between the Constitutional Court and the Supreme Court and other institutions in the criminal justice system (Nursyamsudin & Samud, 2022). The legislative harmonization ultimately serves as the vital foundation for aligning the judicial mandates of both the Constitutional Court and the Supreme Court with the operational workflows of other law enforcement institutions.

The federal constitution in Malaysia provides a constitutional foundation for the establishment, composition, and jurisdiction of the Federal Court as the apex court in the country. The federal constitution provides that the Federal Court shall be responsible for advising the Yang di-Pertuan Agong on constitutional matters referred to. The federal constitution also delineates the Federal Court with special jurisdiction including power to hear disputes between federation and states, questions concerning the interpretation of constitutional provisions, and validity of law passed by parliament or states. The procedural matter of Federal Court is further governed by other statutes namely the court of Judicature Act 1964 and the rules of the Federal Court 1995. The structure, jurisdiction, and appellate powers of the Federal Court are formally governed by the court of judicature act. The specific procedural frameworks for seeking leave to appeal, managing proceedings, and conducting court hearings are defined by the rules of the Federal Court 1995.

The courts in Malaysia adopt the principle of of binding precedent which operates through the doctrine of stare decisis. Stare decisis asserts that lower courts are bound by the decisions of higher courts within the same judicial hierarchy. Several fundamental rationales support this

principle. First, it promotes legal certainty by ensuring consistency and predictability in the application of the law (Kahar, 2024). Secondly, recognizing the need for institutions to determine the final authority on legal issues thereby avoiding disputes on the same legal issues from being endlessly litigated. The decision of the superior court must prevail over that of the lower court (Woon, 1982). The doctrine of *stare decisis* is usually understood to operate in two dimensions namely vertical and horizontal (Graham, 2024; Legarre & Handy, 2021). Vertical *stare decisis* strictly binds the lower court to the decision of the superior court while *stare decisis* is horizontal to determine the extent to which the court is bound by its own previous decisions (Abdulla, 2020; Bonomi, Mortati, & Marques, 2024). The clear division is important for assessing the normative force of precedent especially at the highest court level.

The judicial hierarchy in Malaysia consists of the subordinate courts, the high courts, the court of appeals, and the Federal Court. The Federal Court occupies the highest position in the civil court structure (Hamdan dkk., 2017). The Federal Court plays an important role in shaping Malaysian legislation (Hisyam dkk., 2020). Significant legal complexities emerge regarding the strict application of the *stare decisis* doctrine specifically in evaluating the degree to which the Federal Court must remain bound by its own precedents. Establishing the precise boundaries within which the court may legitimately depart from earlier rulings remains vital to preventing arbitrary shifts in case law. The careful balance is necessary to allow for organic legal evolution while simultaneously safeguarding the fundamental principles of legal certainty and institutional legitimacy.

Structural Synchronization in the Criminal Justice System

Structural synchronization among law enforcement institutions, particularly between the Constitutional Court and the Supreme Court, is essential to ensure coherence within Indonesia's judicial system. Both institutions occupy equal constitutional status as high state organs under the 1945 Constitution of the Republic of Indonesia following its fourth amendment. Each functions as an independent holder of judicial power and is constitutionally protected from interference by other branches of government including the

executive and legislative authorities. Despite sharing equal constitutional standing, the two institutions differ significantly in terms of jurisdiction and organizational structure. The Constitutional Court operates as a court of first and final instance with a relatively streamlined institutional framework. The Supreme Court serves as the apex of a vertically and horizontally integrated judicial system comprising general courts, religious courts, military courts, and state administrative courts. The Constitutional Court primarily adjudicates constitutional disputes concerning the state system and constitutional governance whereas the Supreme Court examines, reviews, and adjudicates cases arising within the ordinary judicial system to uphold justice and legal certainty.

The issuance of Constitutional Court Decision Number 34/PUU-XI/2013 marked a significant development in the regulation of judicial review by declaring that Article 268 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code, which limited judicial review applications to a single submission no longer possessed binding legal force. The Supreme Court subsequently issued Supreme Court Circular Letter Number 7 of 2014 concerning the Submission of Judicial Review Applications in Criminal Cases reaffirming the position that judicial review may only be filed once. The development created a normative tension between the Constitutional Court's constitutional interpretation and the Supreme Court's administrative policy regarding the implementation of judicial review. Supreme Court justices adjudicating cassation and judicial review cases have continued to rely on internal administrative instruments including Chief Justice Decree Number 119/KMA/SK/VII/2013 concerning the Determination of Deliberation and Pronouncement Dates and Chief Justice Decree Number 214/KMA/SK/XII/2014 concerning Case Handling Time Limits at the Supreme Court. These instruments have played an important role in shaping judicial practice and maintaining procedural consistency in the handling of cassation and judicial review applications.

The contradiction between the Supreme Court which wants the principle of simple, fast, and low-cost justice through the justification of the two legal products above but the Constitutional

Court actually extends the process of resolving cases by opening the opportunity for a judicial review application that can be done multiple times or not enough just once. The Supreme Court in order to provide legal certainty to justice seekers, issued Supreme Court Circular Letter Number 7 of 2014 as an affirmation that the request for judicial review is limited to one time in criminal cases through legal instruments namely the law on judicial power and the law on the Supreme Court (Machmudin, 2016). The persistent regulatory divergence underscores the urgent need for a unified statutory mechanism to bridge the gap between procedural efficiency and substantive justice.

The Supreme Court circular letter provides guidance aimed at ensuring legal certainty in the administration of judicial review applications. The legal framework governing judicial review is primarily regulated under Article 268 paragraph (3) of Law Number 8 of 1981 and Article 24 paragraph (2) of Law Number 48 of 2009, both of which stipulate that no further judicial review may be submitted against a judicial review decision. Article 66 paragraph (1) of Law Number 3 of 2009 limits the submission of judicial review applications to a single filing. Constitutional Court Decision Number 34/PUU-XI/2013 declared the restriction contained in Article 268 paragraph (3) of Law Number 8 of 1981 unconstitutional and therefore no longer legally binding, the Supreme Court has maintained the position that only one judicial review application may be filed in a criminal case. The position is based on the continued validity of Article 24 paragraph (2) of Law Number 48 of 2009 and Article 66 paragraph (1) of Law Number 3 of 2009 which were not reviewed or invalidated by the Constitutional Court. The Constitutional Court's decision did not entirely eliminate the normative limitations governing judicial review applications within the Indonesian legal system.

The divergence between Constitutional Court Decision Number 34/PUU-XI/2013 and Supreme Court Circular Letter Number 7 of 2014 generated significant legal debate concerning the scope and implementation of judicial review. The Coordinating Minister for Political, Legal, and Security Affairs convened a meeting involving representatives of the Attorney General's Office, the Supreme Court,

and the Criminal Investigation Agency of the Indonesian National Police to discuss the legal implications of judicial review applications. The meeting concluded that the execution of death row inmates would continue despite the rejection of presidential clemency applications. Participants also emphasized the necessity of issuing implementing regulations to operationalize Constitutional Court Decision Number 34/PUU-XI/2013. Such regulations were considered essential for clarifying the legal definition of *novum*, establishing procedural time limits, and formulating standard operating procedures for judicial review applications. The adoption of these implementing regulations was viewed as necessary to provide legal certainty regarding the possibility of submitting subsequent judicial review applications following the discovery of new evidence.

The establishment of a comprehensive legal framework governing judicial review remains imperative, particularly through the enactment of implementing regulations, government regulations, and other supporting legal instruments. Such regulatory measures are necessary to ensure legal certainty and institutional consistency in the implementation of Constitutional Court decisions. The responsibility is closely associated with the authority of the Supreme Court as stipulated in Article 28 paragraph (1) letter c of Law Number 14 of 1985 concerning the Supreme Court, as last amended by Law Number 3 of 2009. Constitutional Court Decision Number 34/PUU-XI/2013 is founded on the premise that judicial review constitutes an extraordinary legal remedy designed to safeguard substantive justice and uncover material truth. The judiciary has a constitutional obligation to protect fundamental rights and prevent miscarriages of justice. Limiting judicial review to a single application may undermine the opportunity to correct judicial errors, particularly where new evidence (*novum*) or other exceptional circumstances emerge after a final judgment has been rendered. Although the principle of *litis finiri oportet* requires that every legal dispute eventually reach finality, the pursuit of legal certainty should not override the realization of substantive justice. The continuing divergence between the Constitutional Court's interpretation and the Supreme Court's regulatory approach demonstrates the absence of effective structural

synchronization within Indonesia's criminal justice system. The institutional inconsistency not only creates normative conflict but also generates legal uncertainty in the implementation of judicial review, thereby affecting the coherence and effectiveness of criminal justice administration.

Supreme Court justice states that the Supreme Court is permitted to fill a legal vacuum to facilitate the smooth running of the judicial process, provided that such intervention does not conflict with the Constitutional Court's rulings. The prosecutor's office must adhere to Constitutional Court rulings and the existence of the Supreme Court circular letters as a guide for lower-level officials, so it is not obligated to comply with regulations issued by parties outside the Supreme Court. Justice based on legal certainty will be realized with the existence of a Constitutional Court decision because a request for a judicial review more than once is actually an evaluation of the previous judicial review decision which could be contrary to the sense of justice. Director of the Institute for Criminal Justice Reform restricting judicial review could be considered contrary to the constitution. Legal uncertainty will arise if the execution of the sentence is not carried out immediately with the permission to submit multiple judicial review requests in the criminal justice process. The procedural protractedness violates human rights as mandated by the constitution. The discovery of new evidence raises a critical procedural question regarding whether a petitioner is strictly barred from submitting a subsequent judicial review request once their initial application has been rejected.

The Federal Court of Malaysia is the highest court in the country serving as both the final appellate court and the holder of constitutional jurisdiction. The Federal Court is responsible for resolving constitutional disputes such as issues concerning fundamental rights, the distribution of powers between the federal and state governments in accordance with the provisions of the federal constitution. Malaysia lacks a separate constitutional court as this specific role is assigned and integrated directly within the Federal Court in its capacity as the apex judicial body. The hierarchy of the courts in Indonesia starts from the district court, high court, and Supreme Court while in Malaysia it

starts from magistrates, sessions, high, appeal, and federal.

Synchronization of the Criminal Justice System to Realize Legal Functionality in Just Constitutional Court Decisions

The criminal justice system requires structural, substantive, and cultural integration to ensure that criminal policy effectively promotes justice, legal certainty, and public welfare. Criminal policy has been defined as the rational organization of society's response to crime and serves as a guiding framework through which governments achieve social welfare by means of law enforcement, conflict resolution, and legislative formulation (Arief, 2010; Hoefnagels, 1969; Barda, 2010). Criminal policy encompasses both penal and non-penal approaches. Besides the application of criminal sanctions, it also incorporates preventive measures and public education, illustrating that crime control relies on both coercive and non-coercive instruments. Criminal policy operates through three interrelated stages namely the legislative stage which formulates criminal norms in *abstracto*, the judicial stage which law enforcement agencies and courts apply those norms in concrete cases, and the administrative stage which governs the execution of criminal sanctions. Constitutional Court decisions interact with each of these stages by reviewing statutory provisions against constitutional standards and ensuring that criminal legislation remains consistent with evolving social values and substantive justice (Ruman, 2012). The dynamic reflects Jerome Hall's proposition that criminal law reform is a continuous process rather than a completed legislative project.

Indonesia's conception of the *rechtsstaat* reinforces this constitutional function. The Indonesian legal system combines the principles of the continental *rechtsstaat* and the Anglo-American *rule of law* with the philosophical values of Pancasila embodied in the 1945 Constitution. Judicial decision-making by both the Constitutional Court and the Supreme Court must uphold constitutional supremacy, equality before the law, non-discrimination, and the protection of constitutional rights (Rokilah, 2020). The principles are operationalized through judicial reasoning which requires judges to identify applicable legal norms, construct constitutional arguments, and justify their decisions based

upon juridical, philosophical, and sociological considerations (Eleanora, 2018). Such reasoning underpins the *erga omnes* effect of Constitutional Court decisions and strengthens their legitimacy within the criminal justice system.

The doctrine of *ultimum remedium* further reinforces this constitutional limitation by emphasizing that criminal sanctions should only be imposed when alternative legal mechanisms prove inadequate. Administrative sanctions, disciplinary measures, or other regulatory instruments may often achieve the objectives of law enforcement more proportionately than criminal punishment (Ali & Setiawan, 2021). The principle is illustrated by Constitutional Court Decision Number 4/PUU-V/2007 concerning the Medical Practice Law. The Court invalidated conflicting provisions contained in Articles 76 and 79 of Law Number 29 of 2004 because disproportionately criminalized professional conduct, thereby demonstrating a preference for administrative accountability over punitive criminal sanctions.

The binding force (*erga omnes*) of Constitutional Court decisions strengthens constitutional protection while also creating challenges of institutional coordination. Although judicial review serves as an essential mechanism for protecting constitutional rights, the implementation of Constitutional Court decisions frequently encounters institutional resistance from other state organs (Purbacaraka & Halim, 1982). Greater cooperation between the Constitutional Court and other institutions is therefore necessary to ensure legal certainty and effective implementation of constitutional judgments (Ningrum, Al Khanif, & Antikowati, 2022). The issue becomes particularly significant in the context of judicial review under Article 263 of the Indonesian Criminal Procedure Code, which permits convicted persons to seek extraordinary legal remedies based on judicial error or newly discovered evidence (Sonia & Widyahayu, 2016). Constitutional adjudication consequently functions not only as a mechanism of constitutional control but also as a driving force for continuous criminal law reform.

Judicial review constitutes an essential safeguard within Indonesia's criminal justice system because it protects constitutional rights while ensuring that criminal procedure serves substantive justice rather than procedural

finality. Under Article 263 paragraph (2) of the Indonesian Criminal Procedure Code, judicial review provides an extraordinary legal remedy that allows convicted persons to seek reconsideration of final judgments based on *novum* or judicial error. The Constitutional Court strengthened this protection by annulling Article 268 paragraph (3) of the former Criminal Procedure Code which limited judicial review to a single application. The Court reasoned that restricting judicial review solely for the sake of legal certainty could undermine the more fundamental objective of achieving substantive justice. The approach is consistent with criminal policy which recognizes criminal law as an instrument for resolving violations while remaining responsive to evolving concepts of justice.

The Court's reasoning also reflects the relationship between law, morality, and social development. Von Savigny's *Volksgeist* theory argues that law develops organically from the values and traditions of society rather than being created solely through legislation (Aulia, 2020). Legal norms cannot be detached from ethical considerations because morality constitutes an important foundation of legal legitimacy despite its variation across societies (Amalia, 2018). The perspective explains why constitutional adjudication should remain responsive to social development while preserving constitutional guarantees. The Constitutional Court's approach in the Madiun medical practice case illustrates this principle by favouring administrative accountability instead of immediate criminal punishment, thereby reflecting a more proportionate response consistent with the doctrine of *ultimum remedium*. The decision therefore represents not only constitutional adjudication but also a practical form of criminal law reform.

The review of Constitutional Court decisions between 2003 and 2018 identified 32 judicial review cases concerning criminal procedure of which only 13 produced outcomes that were fully implemented. The Supreme Court subsequently issued Supreme Court Regulations or Supreme Court Circulars that diverged from Constitutional Court rulings, particularly regarding judicial review procedures (Akbar, 2019). The institutional inconsistency demonstrates that constitutional supremacy alone does not automatically ensure harmonized law enforcement.

The divergence becomes particularly evident in Constitutional Court Decision Number 34/PUU-XI/2013 which departed from Constitutional Court Decision Number 16/PUU-VIII/2010 concerning the limitation on judicial review applications. The earlier decision accepted statutory restrictions limiting judicial review to one application, decision number 34/PUU-XI/2013 invalidated Article 268 paragraph (3) of the Criminal Procedure Code and permitted multiple judicial review applications, provided that the statutory requirements under Article 268 paragraph (2) were satisfied. Although the decision significantly strengthened access to justice, it simultaneously generated concerns regarding legal certainty, the finality of litigation, and public confidence in criminal adjudication. The traditional doctrine that judicial review does not suspend the execution of final judgments under Article 268 paragraph (1) consequently became more difficult to reconcile with repeated applications for judicial review.

The resulting institutional conflict reflects broader challenges of constitutional interpretation. Comparative legal scholarship demonstrates that constitutional interpretation inevitably evolves alongside constitutional development. Poland's derivational theory, for example, emphasizes that judicial interpretation seeks to derive legal norms from statutory language through systematic reasoning rather than relying exclusively upon literal textual interpretation (Bogucki, 2020). Studies on Indonesia's Constitutional Court indicate that constitutional interpretation has gradually developed beyond ordinary statutory interpretation despite the continuing influence of the Romano-Germanic legal tradition inherited from Dutch colonial rule (Safaat, Widiarto, & Suroso, 2017). Judicial interpretation has become increasingly important in reconciling constitutional values with statutory criminal law.

Judicial interpretation must also satisfy broader philosophical commitments to justice. Article 5 of Law Number 48 of 2009 concerning Judicial Power requires judges to discover and apply the living law within society when deciding cases. Constitutional Court decisions function as authoritative legal norms that guide judicial reasoning in subsequent cases. Judges therefore possess not only the authority but also the constitutional obligation to interpret statutory provisions through juridical, sociological, and

philosophical reasoning to ensure that criminal justice reflects both legal certainty and substantive justice.

The pursuit of equality remains a foundational pillar in the philosophy of modern legal systems. The core issues of justice and non-discrimination must be rigorously upheld in classical thought. Aristotle's formulation of justice defines it as proportional human behavior situated precisely between excess and deficiency to prevent unfairness (Maliki & Soponyono, 2021). The Socratic philosophical tradition complements this perspective by asserting that absolute justice must take precedence over subjective human judgment during law enforcement (Ishaq, 2018). Law is part of a policy system to achieve general justice objectively. The Sophist philosophical framework heavily influenced Plato's thinking that the means to achieve justice is law (Atmadja & Budiarta, 2018). The shared consensus must be between the people and the rulers in enforcing the law to realize justice so that leaders will enforce the law and act wisely.

The evolution of criminal law is likewise inseparable from legal politics and democratic governance. Legal development responds to changing social conditions while strengthening law enforcement institutions and their officials (Syaukani & Thohari, 2010). Democratic governance directly influences both criminal legislation and criminal justice institutions because criminal law operates within a broader political system. The criminal justice system should pursue comprehensive objectives including preventing crime, protecting victims, ensuring fair punishment for offenders, and reducing recidivism through balanced criminal policy (Reksodiputro, 1994). The constitutional orientation inevitably challenges strict legal positivism. Although legal positivism emphasizes legal certainty and obedience to formally enacted law, excessive reliance upon rigid statutory interpretation may undermine substantive justice. Austin's analytical positivism treats law primarily as sovereign command accompanied by sanctions while recognizing little relationship between legal validity and moral considerations (Sudiyana & Suswoto, 2018; Supriyono, 2017). Modern constitutional adjudication demonstrates that constitutional justice requires judges to evaluate legislation not only according to formal legality but also

according to constitutional values (Amin, 2019). The tension confirms that Constitutional Court decisions increasingly function as instruments of constitutional criminal policy rather than merely exercises in statutory interpretation.

Disobedience toward Constitutional Court decisions can be addressed by canceling any conflicting Supreme Court decisions that cause legal uncertainty and delay constitutional justice. The concept of contempt of court can be expanded as an alternative mechanism to impose disciplinary sanctions or financial penalties (Nggilu, 2019). One way is by empowering the Judicial Commission through its supervisory function with the assistance of the Judicial Review Liaison and the Judicial Review Network. The Judicial Review Liaison's task is to assist the judicial review during trials and accommodate reports from the public. The Commission Network is tasked with assisting the judicial review Liaison to socialize the judicial review institution (Kusuma, Fajriah, & Putri, 2020). The judicial review also supervises judges together with the Supreme Court regarding the limits of the institution's jurisdiction and strengthening the role of the judicial review Liaison in supervising judges namely receiving reports of public complaints and detecting violations committed by judges and utilizing socialization regarding the existence of the judicial review to the public.

The recurring non-compliance with final and binding Constitutional Court decisions stems from a fundamental conflict in judicial authority which constitutional rulings hold a statutory status equal to formal law. Institutional friction occurs because Supreme Court justices and lower court judges refuse to serve as mere mouthpieces of the law, thereby exercising their inherent judicial authority to independently interpret Constitutional Court decisions when resolving specific cases. Efforts to interpret the law can influence the enforcement or implementation and formation of laws towards progressive and responsive law although the Supreme Court's decision is not related to the accuracy and constitutionality of norms (Suhariyanto, 2016). Every case should have a final limit so that it creates legal certainty, especially criminal cases so that material truth is found or known as the Principle of *litis finiri oportet*. The Constitutional Court Decision Number 33/PUU-XIV/2016 it is stated that the

formulation of Article 263 paragraph (1) of the Criminal Procedure Code is a fundamental basis for decision that has permanent legal force can file a judicial review, it is not permitted to file a judicial review against a decision to release from all charges or an acquittal.

The Federal Court of Malaysia operates as the nation's highest judicial body and functions as the final appellate court. Most significant legal disputes consequently reach this apex court for authoritative and definitive determination. The evolution of judicial review shaped by this jurisprudence serves as a critical reference point for policymakers, academics, and researchers studying constitutional governance and the rule of law (Aziz ., *et al.* 2025). The dynamic constitutional development underscores how apex court judgments directly redefine the limits of state power and institutional checks and balances. The resulting legal precedents establish a robust framework that ensures the supremacy of the constitution remains protected against legislative or executive overreach. The Federal Court of Malaysia is the highest court and functions as the final appellate court. Most significant legal disputes may ultimately reach the Federal Court for authoritative and final determination. The evolution of judicial review in Malaysia serves as a reference point for policymakers, academics, and researchers that concerned with the development of constitutional governance and the rule of law.

The judiciary in Malaysia presents a different picture regarding whether the Federal Court is bound by its own previous decisions. The important body of case law shows that the Federal Court considers itself bound by previous statutory pronouncements. The Federal Court, in *Central Securities or Holdings et v. Haron bin Mohamed Zaid* (1980) 1 MLJ 304, clearly decided that it was bound to follow previous decisions regarding the nature of final and interlocutory orders. The Federal Court, in *Lorrain Esme Osman v. Attorney General of Malaysia* (1986) 2 MLJ 288 confirmed that when exercising institutional authority, he is bound by his own previous decisions. Stance was reaffirmed in *Kingdom of Malaysia v. Tay Chai Huat* (2012) 3 CLJ 577. The Federal Court emphasized the primary importance of compliance with precedent in maintaining legal certainty and public confidence in the

judiciary. The court warned that frequent or unprincipled departures from precedent would undermine respect for judicial decisions. The aforementioned cases collectively suggest that, as a general rule, horizontal stare decisis is applicable to the Federal Court, although not in the absolute sense of the word.

The Federal Court has explicitly demonstrated a more flexible jurisprudential stance across several landmark decisions. The federal Supreme Court explained the judicial philosophy in which the Federal Court generally respects stare decisis, but reserves the discretion to deviate from precedent in the interests of institutional dominance and justice. *Krishnasamy v. Suruhanjaya Perkhidmatan Awam* (2010) 6 MLJ 441, in *Gnanasekaran Malaysia, Richard Malanjum CJ in Sabah and Sarawak* ruled that the Federal Court was not necessarily bound by its own previous decision and could deviate from it if necessary. The resulting judgement outlined the court's view that horizontal stare decisis does not operate as an inflexible restraint at the highest level, particularly the federal Supreme Court. The ambivalence is reflected again in constitutional cases. The Federal Court has clearly asserted its power to deviate from precedent. The court, in *Prosecutor General v. Dato' Seri Anwar Ibrahim* (2021) 6 MLRA acknowledged its power to deviate from previous erroneous decisions, while confirming that the horizontal stare decisis doctrine operates as a guideline rather than an absolute constraint in Malaysian legislation (Ghani, Yunus, & Sukereman, 2025) particularly when existing infrastructure such as pipeline networks is situated on privately owned land without formal ownership rights. This study examines the weaknesses in Malaysia's regulatory framework for land ownership pertaining to water supply assets, which arose from water industry restructuring and privatisation policies lacking clear mechanisms to manage treated assets on private land. Using comparative policy review analysis of 50 court cases (2015–2023). The judicial flexibility reflects the Federal Court's broader effort to balance predictability with the correction of past institutional errors.

The Federal Court of Malaysia reinforced this constitutional stance in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* (2017) 3 MLJ 561. The Federal Court decided that

judicial precedents must be subject to compliance if they conflict with the federal constitution which occupies the highest position in the legal hierarchy. The court stressed that adherence to precedent should not justify the perpetuation of institutional errors or the judgment of alienation of power (Mahmud & Safiuddin, 2025). The robust affirmation of judicial authority power clearly embodies a hierarchical framework in which Federal Institutions take precedence over judicial precedent (Tay, 2019). The approach simultaneously grants the Federal Court the power to correct past legislative errors that threaten the basic structure of the country.

Reference may also be made to the conflicting decisions of the Federal Court regarding the jurisdictional relationship between the civil court and the sharia court under Case 121(1A) of the federal constitution. Previous Federal Court decisions, especially *Lina Joy v. Islamic Religious Council of Federal Territories & Ors* (2007) 3 CLJ 557(FC) and *Subashini Rajasingam v. Saravanan Thananghoray* (2008) 2 MLJ 147 (FC), uses a domain respect model. The cases consider cases that fall within the area of competence of the sharia court as beyond the reach of civil courts, even though the institutional rights and interests of non-Islamic parties are involved. Case 121(1A) was interpreted broadly, resulting in a limited role for civil courts and an emphasis on institutional boundaries. The case of *Indira Gandhi a/p Mutho v. Director of the Islamic Religious Department of Perak & Ors* [2018] 1 MLJ 545, the Federal Court uses a different institutional approach in its principles. The court rejected the response that Case 121(1A) operated as a waiver clause and revalidated the civil court's obligation as custodian of the constitution. Interpretation of institutions and the protection of fundamental freedoms falls within the purview of civil courts, especially access to justice would otherwise be denied. The movement of this doctrine was not accompanied by a real repudiation or systematic reconciliation of the former authorities as in *Lina Joy* and *Subashini*.

The analysis of the decided cases discloses a judicial philosophy that the Federal Court in Malaysia generally adopts the principle of stare decisis, yet reserves for itself the discretion to depart from precedents in the interest of

constitutional supremacy and justice. The role of the German Constitutional Court or *bundesverfassungsgericht* (BverfG) is an institution that ensures that state institutions and citizens are subject to the constitution, there is protection of basic rights and democratic principles (Poli & Cisotta, 2020). The German institutional paradigm served as a foundational model for Indonesia and other nations undergoing democratic transitions, directly inspiring the establishment of the Indonesian Constitutional Court under the third amendment to the 1945 Constitution (Palguna & Gede, 2017). The problem is how to create a Constitutional Court that is credible and whose decisions can be accounted for and obeyed by all institutions including institutions in the criminal justice system.

Disharmony between the Constitutional Court and the Supreme Court given their equal standing despite differing authorities, should not impact the application and enforcement of the law. Solutions must be sought to create more responsive and accommodating laws. Synchronization of the criminal justice system is a crucial consideration to ensure the achievement of the legal objectives of justice, certainty, and utility. The final and binding nature of Constitutional Court decisions has given rise to legal political processes related to amendments to laws or reformulations, which are the formulations that the Constitutional Court considers a statutory regulation to be in conflict with the constitution. Different decisions and approaches in Malaysia reflect a broader legislative reality namely that the Federal Court considers itself not bound by previous decisions. The findings of this study emphasize that the Federal Court of Malaysia acted under the application of *stare decisis*. The doctrine functions to maintain the consistency of the law but does not bind the highest court to its previous decisions. Judicial action is based on the principle that the federal constitution, thereby requiring that previous decisions that are inconsistent with constitutional provisions must be submitted to uphold the sovereignty of the law (Neo, 2020; Dressel & Inoue, 2022). The comparative analysis ultimately demonstrates that balancing institutional harmony between supreme courts and preserving the flexibility of constitutional precedents is the definitive path toward achieving a unified, responsive, and just legal system.

CONCLUSION

Constitutional Court rulings serve a strategic function as an instrument for reforming criminal law policy, strengthening the synchronization of the criminal justice system through constitutional review of legal norms, limiting disproportionate criminalization, and protecting constitutional rights. The effectiveness of Constitutional Court rulings still faces obstacles due to institutional disharmony with the Supreme Court. Differences in the interpretation of Constitutional Court decisions indicate that the final and binding nature of these decisions has not yet been fully supported by implementation mechanisms capable of ensuring compliance by all judicial bodies. The comparison with the Federal Court of Malaysia shows that the application of the horizontal doctrine of *stare decisis* is carried out adaptively while maintaining the supremacy of the constitution as the highest principle. Although the Federal Court generally respects precedent to maintain legal consistency, the court retains the authority to deviate from prior decisions if they conflict with the Federal Constitution or no longer reflect justice. The model illustrates that harmonizing legal certainty, the flexibility of precedent, and the supremacy of the Constitution are essential elements in building an effective judicial system. Indonesia needs to strengthen the mechanisms for coordinating and implementing Constitutional Court decisions within the criminal justice system to ensure harmony among judicial institutions while guaranteeing effectiveness.

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