




# Artikel 7

## Constitutional Review

 Cekli Setya Pratiwi  
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# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

Volume 10, Number 2, December 2024

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# Note From the Editors



The editorial team is pleased to present the December 2024 edition of *Constitutional Review* (Volume 10, Number 2). Published semiannually in May and December, the journal remains committed to fostering scholarly dialogue on constitutional law, judicial independence, and the critical role of constitutional courts in promoting democratic principles. This edition features a carefully curated selection of eight articles, each addressing pressing issues in constitutional governance and the complex relationship between law and politics across diverse jurisdictions.

The first article, “*The Rejection of the Voice for Aboriginal People in Australia: A Postmortem of Causes of Failure*” by Bertus de Villiers, provides a detailed analysis of the 2023 Australian referendum that proposed a constitutionally enshrined advisory body for Aboriginal peoples. The author explores the roots of public skepticism, including ambiguities surrounding the body’s structure and functions, and examines the referendum’s implications for indigenous rights and reconciliation efforts in Australia.

The second article, “*Threat to Indonesia’s Constitutional Court Independence Posed by Religious Populist Movements and Its Implication towards Human Rights*” by Cekli Setya Pratiwi, investigates the challenges posed by the rise of religious populism in Indonesia. Drawing on empirical research, the article highlights how conservative hardliner groups advocating specific religious interpretations pressure the Constitutional Court, thereby threatening judicial independence, democracy, and the rule of law.

In “*Weak-Form Review and Judicial Independence: A Comparative Perspective*,” Mirza Satria Buana examines shifting paradigms in judicial review within Indonesia, contrasting strong-form and weak-form review models. The article argues for a return to strong-form review to bolster judicial independence and reinforce legal constitutionalism in the context of Indonesia’s political dynamics.

## Note From the Editors

The fourth article, *“The Relationship between the Constitutional Judges’ Selection by the House of Representatives and the Position of Judges in Judicial Review Decisions”* by Muchamad Ali Safa’at et al., explores the connection between judicial selection processes and judicial independence. The authors emphasize the importance of transparent and participatory mechanisms in fostering impartiality and integrity in constitutional decision-making.

Manuel Adrián Merino Menjívar, in *“The Removal of the Constitutional Chamber Justices in El Salvador: A Story about the Fragility of Judicial Independence,”* critiques the unconstitutional removal of constitutional justices in El Salvador in 2021. The article frames this development as a manifestation of authoritarian populism, shedding light on the vulnerabilities of judicial independence in emerging democracies.

In *“Constitutional Court Regression in Post-Democratic Transition: A Comparison of Court Packing in Hungary, Poland, and Indonesia,”* Idul Rishan examines how regimes utilize court-packing strategies to undermine judicial independence. Through a comparative analysis, the article highlights the political motivations behind such manipulations and their impact on democratic backsliding in these jurisdictions.

The seventh article, *“Universality of Rights as an Interpretive Principle for the Indonesian Constitutional Court”* by Titon Slamet Kurnia and Ninon Melatyugra, advocates for the adoption of universality as a guiding principle in human rights adjudication. The authors propose interpretive frameworks that prioritize unenumerated rights, protect minority rights, and minimize rights limitations.

The final contribution, *“Initiating Constitutional Morality: Political Intervention, Ethical Reinforcement, and Constitutional Court Decisions in Indonesia”* by Annisa Salsabila et al., examines ethical challenges faced by Indonesia’s Constitutional Court. The article underscores the importance of constitutional morality in mitigating political interventions and promoting ethical judicial practices to uphold constitutional supremacy.

Together, these articles provide a comprehensive exploration of contemporary constitutional challenges, combining theoretical insights with practical considerations. The editorial team extends its gratitude to the authors, reviewers, and contributors whose efforts have made this edition possible.

It is hoped that this issue will provoke thoughtful discourse among scholars, practitioners, and policymakers worldwide. The editorial team appreciates the continued support for *Constitutional Review* and looks forward to future engagements with its readership.

Warm regards,

**The Editorial Team**

*Constitutional Review*

December 2024



*Abstract*

## The Rejection of the Voice for Aboriginal People in Australia – A Postmortem of Causes of Failure

**Bertus de Villiers**

*Constitutional Review*, Vol. 10 No. 2, December 2024, pp. 266-306

On 14 October 2023, the Australian electorate rejected by an overwhelming majority a proposal for a constitutionally guaranteed advisory body, to be called the **Aboriginal and Torres Strait Islander Voice**. This was the fourth attempt in Australia to create an advisory voice for Aboriginal people, but the first time it was attempted via a constitutional amendment involving a public vote. The rejection is continuing to reverberate through Australian society. To many Aboriginal people this was not only a rejection of a technical proposal, but a rejection of their aspirations of self-determination. This article reflects on some of the root causes why in the view of the author, the referendum failed. The article is critical of the lack of information about the composition and functions of the proposed Voice as well as the inconsistencies between various reports and public documents. These contributed to public scepticism and rejection of the proposal.

**Keywords** : Advisory Body; Australia; Indigenous Rights; Referendum; Self-Determination; The Voice



# THREAT TO INDONESIA'S CONSTITUTIONAL COURT INDEPENDENCE POSED BY RELIGIOUS POPULIST MOVEMENTS AND ITS IMPLICATION TOWARDS HUMAN RIGHTS

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## Abstract

One of the biggest challenges to a democratic state under the rule of law today is rising populist movements that endanger the independence of the judiciary. In Indonesia, the religious populist movement led by hardliner Islamic groups continues to try to enter courtrooms to advocate for religious interpretations of court decisions, such as when the Indonesian Constitutional Court reviews the 1965 anti-blasphemy law. This socio-legal research examines empirical data from key resource interviews and secondary data from related Constitutional Court judgements, pertinent legislation, and public policies to determine the socio-political backdrop of the Court decision. This technique enables the author to evaluate religious populism and how it affects Constitutional Court rulings. Political pressure may weaken the court, according to this research, encourage the religious populism of the former of Islamic Defenders Front to impose its will by stating that the repeal of the Anti-Blasphemy Law shows strong indications of corruption within the Court. Religious populism in the justice system raises concerns about political or religious decision-making, thereby undermining

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56 the rule of law. This research shows that the pattern or tendency of religious  
3 populism shows the Court's compromise of the legal system towards democratic  
3 government in Indonesia, eroding the independence of the judiciary, endangering  
the right to religious freedom, and weakening public confidence in the justice  
system and democracy.

37 **Keywords:** Independence of Constitutional Court; Indonesia; Religious Populist  
Movements; Right to Freedom of Religion; Rule of Law

## I. INTRODUCTION

4 The independence of the Constitutional Court Republic of Indonesia is  
facing a significant challenge posed by religious populist movements. These  
movements, which advocate for a conservative interpretation of Islam and seek  
to implement Islamic law, have gained considerable influence and pose a threat  
to democracy and the rule of law in the country.

Studying judicial independence has mostly focused on general court judiciary  
independence and its link with legislative capacity to remove judges. Other  
studies on Constitutional Court independence employ the Judicial Reform Index  
47 (JRI) framework devised by the Central European and Eurasian Law Initiative  
47 (CEELI), which focuses on judicial system issues. Included among these concerns  
are the quality, education, and diversity of judges, (iii) the source of funds or the  
budget; (iv) the assurance that the organisation will endure; (v) accountability  
and transparency; and (vi) efficiency.<sup>1</sup> Meanwhile, the existing literature on the  
role of religious populist movements<sup>2</sup> in Indonesia concentrates on their influence  
on the country's political and social institutions.<sup>3</sup> Adding to studies concerning  
43 the influence of religious populist movement compromising the independence  
of the Constitutional Court that have been done in various countries, including

32 <sup>1</sup> Ahmad Fadlil Sumadi, "The Independence of the Constitutional Court," *Jurnal Konstitusi* 8, no. 5 (2011): 631–648. See also Luthfi W. Eddyono, "Independence of the Indonesian Constitutional Court in Norms and Practices," *Constitutional Review* 3, no. 1 (2017): 71–97.

<sup>2</sup> The use of the term "religious populist movement" in the title was chosen rather than the term "Islamic populist movement" because the author avoids generalizations about existing Islamic populist movements. Specifically, what is meant by "religious populist movement" in the title has been explained by the author in this paper.

62 <sup>3</sup> Marcus Mietzner and Burhanuddin Muhtadi, "Explaining the 2016 Islamist Mobilisation in Indonesia: Religious Intolerance, Militant Groups and the Politics of Accommodation," *Asian Studies Review* 42, no. 3 (2018): 479–497. See Ihsan Yilmaz, Nicholas Morieson, and Hasnan Bachtiar, "Civilizational Populism in Indonesia: The Case of Front Pembela Islam (FPI)," *Religions* 13, no. 12 (2022): 1208.

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in Turkey,<sup>4</sup> the United States,<sup>5</sup> and Israel,<sup>6</sup> this study conducted in Indonesia aims to assess the potential consequences of the rise of religious populist movements in Indonesia towards the independency of the Constitutional Court of the Republic of Indonesia (hereinafter the CCRI). This study argues that the radical religious movements advocate for a conservative interpretation of Islam and seek to implement Islamic law, have gained considerable influence to undermines the impartiality and integrity of the judiciary and poses a significant threat to democracy and the rule of law in the country.

The paper begins by providing an overview of the current political and social landscape in Indonesia, highlighting the emergence and growth of religious populist movements. It then delves into the concept of judicial independence and its crucial role in upholding the principles of democracy and the rule of law. The paper explores the various ways in which religious populist movements challenge the independence of the Constitutional Court including attempts to influence judicial appointments, exert pressure on court decisions, and employ intimidation tactics against critics. Furthermore, the paper examines the potential consequences of compromising the independence of the Constitutional Court, such as the erosion of democratic values, the violation of human rights, and the weakening of the rule of law. It also analyzes the implications for minority rights and religious freedom in a society where religious populist movements hold significant sway.

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In concluding section, the paper proposes recommendations and strategies to address the challenge posed by religious populist movements and safeguard the independence of the Constitutional Court. These recommendations aim to strengthen the judiciary's autonomy, enhance transparency and accountability, and promote a culture of respect for the rule of law and democratic principles. By undertaking this assessment, the paper seeks to contribute to the understanding

<sup>4</sup> James Corl and Mushin Yunus Sozen, "The Effect of Populism on American and Turkish Judiciaries," *Journal of Student Research* 11, no. 1 (2022).

<sup>5</sup> Corl and Sozen, "The Effect of Populism."

<sup>6</sup> Guy Ben-Porat and Dani Filc, "Remember to Be Jewish: Religious Populism in Israel," *Politics and Religion* 15, no. 1 (2022): 61–84.

45 of the threats faced by the Constitutional Court's independence in Indonesia  
4 and the urgent need to protect democracy and the rule of law.

## II. METHOD

4 This study applies socio-legal<sup>7</sup> approach through investigating the influence  
4 of political pressure from religious populist movements on the Constitutional  
4 Court's decisions and require a comprehensive analysis of the court's decisions,  
the political context surrounding the cases, and the legal arguments presented  
by the parties involved. This socio-legal analysis is used to examine the gap  
between what the Court believes in its legal considerations and rulings, and the  
116 reality on the ground. Is the Court's belief in maintaining the Anti-Blasphemy  
Law on the grounds of preventing horizontal conflict between religions based  
solely on the fact that the enactment of this Law reduces the occurrence of  
such conflicts, or is it actually the opposite? Where the judge's confidence in  
maintaining the Anti-Blasphemy Law is merely an indication of the judge's lack  
of independence in facing the pressures of religious populism.

14 This study gathered data through in-depth interviews with 32 peoples,  
including judges, human rights activists and experts, members of religious  
minorities groups, non-governmental organizations and other stakeholders. This  
12 study also employed secondary resources in the form of legal arguments for the  
Constitutional Court's judgements of the judicial review of the Anti-Blasphemy  
Law No. 140/PUU-VII/2009, No. 84/PUU X/2012, and No. 76/PUU XVI/2018,  
related laws and regulations, as well as various other sources to understand the  
socio-political context when the decision was made. This approach allows the  
author to analyse the phenomenon of religious populism and how its movement  
4 influences the decisions of the Constitutional Court, which the doctrinal approach  
is unable to reach.

100 The formulation of the problem to be studied is first, whether the  
17 Constitutional Court's decision regarding the Blasphemy Law in Indonesia was  
influenced by political pressure from populist religious movements. Second,

42 <sup>7</sup> Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Oxford: Hart Publishing, 2005).

the extent to which the decision endangers democracy and the rule of law. To answer this problem formulation, first by identifying the pattern of involvement of religious populist movements in influencing the Constitutional Court's decision in the judicial review case of the Anti-Blasphemy Law. In this case, evidence of pressure or lobbying from religious populist movements during the trial process, as well as the judge's consistency in formulating arguments and deciding cases related to religion, will be the focus of the study. Second, to assess the extent of the Constitutional Court's decision in the judicial review case regarding the blasphemy law, its impact on the protection of human rights and the principle of the rule of law will be further studied. This means that the investigation is focused on whether there is political pressure that pushed the court to follow the wishes of religious populist groups, assessing the Court's consistency in deciding on the constitutional religious rights of citizens, and examining the impact of the Court's decision on the rights of religious minority groups.

Utilizing a socio-legal approach allows the author to understand and analyse the gap between the legal provisions of the 1965 Anti-Blasphemy Law, along with various derivative regulations and what happens in reality. After obtaining an overview of the pattern of the religious populism movement in influencing the Court in deciding on judicial review cases regarding the Anti-Blasphemy Law, as well as examining matters related to the impact of the ambiguity of the Court's decisions on the rights of minority groups that are violated, as well as the principles of the rule of law that best, then the author can draw conclusions. In this way, the challenges and implications of the influence of the religious populism movement on the independence of the Indonesian Constitutional Court can be formulated.

### III. ANALYSIS AND DISCUSSION

#### 3.1. Overview of Religious Populist Movements in Indonesia

The global rise of religious populism has impacted the political situation in Indonesia and has become an integral part of populist discourses in numerous Asia-Pacific countries, including Indonesia. Religious populist movements in Indonesia

can be defined by their characteristics, which include: first, instrumentalization of religious discourse. Religious populist movements in Indonesia often instrumentalize religious discourse to gain support and mobilize their followers.<sup>8</sup> They use religious rhetoric and symbols to appeal to the religious sentiments of the population. Second, it cause division of society. These religious movements tend to divide society into distinct groups. They often portray themselves as the virtuous ummah (Muslim community) and label others as corrupt elites or immoral non-Muslim enemies. This division is based on religious and civilizational lines, creating an “us versus them” mentality.<sup>9</sup> Third, they influence on politics and society. Religious populist movements in Indonesia have gained influence in politics and society. They have been able to strengthen their political power and negotiate with mainstream political parties. Their growing influence has shaped public discourse and policies in the country.<sup>10</sup> Fourth, they appeal to religious identity. These movements emphasize religious identity as a central component of their populist discourse. They present themselves as defenders of religious values and use religious symbols and narratives to rally support.<sup>11</sup> Fifth, they take benefits of the growth of social media. Religious populist movements in Indonesia have utilized social media platforms to disseminate their messages and mobilize their followers.<sup>12</sup> The religious populist movements have created communities of support and have contributed to the development of religious populism in the online sphere.

It is important to note that these characteristics may vary among different religious populist movements in Indonesia. The specific ideologies, strategies, and goals of each movement may differ, but they share a common tendency to use religion as a tool for political mobilization and influence.

<sup>8</sup> Rizky Widian, Putu Agung Nara Indra Prima Satya, and Sylvia Yazid, “Religion in Indonesia’s Elections: An Implementation of a Populist Strategy?,” *Politics and Religion* 16, no. 2 (June 2023): 351–373, <https://doi.org/10.1017/S1755048321000195>.

<sup>9</sup> Greg Barton, Ihsan Yilmaz, and Nicholas Morieson, “Religious and Pro-Violence Populism in Indonesia: The Rise and Fall of a Far-Right Islamist Civilisationist Movement,” *Religions* 12, no. 6 (2021): 397, <https://doi.org/10.3390/rel12060397>.

<sup>10</sup> Corl and Sozen, “The Effect of Populism.”

<sup>11</sup> Ihsan Yilmaz and Nicholas Morieson, “A Systematic Literature Review of Populism, Religion and Emotions,” *Religions* 12, no. 4 (2021): 272, <https://doi.org/10.3390/rel12040272>.

<sup>12</sup> Robertus Wijanarko, “Religious Populism and Public Sphere in Indonesia,” *Jurnal Sosial Humaniora* 14, no. 1 (2021): 1–9.

124 The growth of new religious movements in various parts of the world, although not labelled as formal religion, is a socio-psychological symptom of loneliness and alienation.<sup>13</sup> The influence of these movements on Indonesian society has been significant, with some movements gaining political power and negotiating with mainstream political parties. The most prominent religious movements in Indonesia are Islamic Defenders Front (FPI),<sup>14</sup> Prosperous Justice Party (PKS), and National Movement to Safeguard the Indonesian Ulema Council's Fatwa (GNPF-MUI), which includes the 411, 212 movement and the grand reunion of 212 alumni. The FPI is a radical Islamist group that has been known for its violent and aggressive tactics against those who oppose its views. 70 39 The civilizational turn in Indonesian populism has been demonstrated by the FPI's actions and discourse during the Ahok affair, in which a Christian Chinese politician was accused of blasphemy by Indonesian Islamists.<sup>15</sup> The FPI divides Indonesian society into three groups: the virtuous ummah, corrupt elites, and immoral internal and external non-Muslim enemies, particularly the West. 134 9 46 Second, Prosperous Justice Party (PKS): The PKS is an Islamist political party that has gained significant influence in Indonesian politics. It has been known for its conservative views on Islam and its opposition to secularism. 69 National Movement to Safeguard the Indonesian Ulema Council's Fatwa (GNPF-MUI): The GNPF-MUI is a coalition of Islamist groups that was formed in response to the 2016 Jakarta gubernatorial election. It has been involved in various protests and demonstrations, including the 2017 mass rally against the then-governor of Jakarta, Basuki Tjahaja Purnama. These movements have been instrumental in shaping public discourse and policies in Indonesia, with some gaining political power and negotiating with mainstream political parties. They have also been known to use religious rhetoric and symbols to appeal to the religious sentiments of the population and divide society into distinct groups based on religious

39 137 39 34 141 <sup>13</sup> Johannes Haryatmoko, "The Pathology of Tribal Nationalism According to Hannah Arendt: Uncovering Religious Populism Mechanisms Which Jeopardize Cultural Diversity," *Jurnal Kawistara* 9, no. 1 (2019): 60–77.

<sup>14</sup> Muhamad Luthfi, Rusydan Fathy, and Mohammad Faisal Asadi, "GNPF MUI: Strategi Peningkatan dan Keberhasilan Gerakan Populis Islam di Indonesia" [GNPF MUI: Framing Strategy and Success of the Islamic Populist Movement in Indonesia], *Asketik: Jurnal Agama dan Perubahan Sosial* 3, no. 1 (2019).

<sup>15</sup> Yilmaz, Morison, and Bachtiar, "Civilizational Populism in Indonesia."

and civilizational lines. Overall, the emergence and growth of religious populist movements in Indonesia have had a significant impact on politics and society, shaping public discourse and policies in the country.<sup>16</sup>

This study concentrates on the religious populist movement that continues to employ religious symbols in its battle for the applicable anti-blasphemy law. This study examines to what extent the threat these populist religious movements pose to the independence of the Constitutional Court's judicial review decision on the anti-blasphemy law. This study found that the religious populism movement mentioned above was not only actively involved as a party supporting the Government to maintain the Anti-Blasphemy Law in the judicial review of the law at the Constitutional Court, but also in pressing the Constitutional Court building by imposing a large number of people to urge the court to maintain the law.

How does the Constitutional Court see these demands? The Constitutional Court's assessment of the Anti-Blasphemy Law: does it prioritise the rule of law or Islamic populism? The Constitutional Court hesitated to face pressure from the Islamic populist movement, so it maintained the Anti-Blasphemy Law even though it recognised articles with multiple interpretations that endanger religious minority believers.

### 3.2. Constitutional Court's Ruling Repeatedly Uphold the Constitutionality of the Flawed Anti's Blasphemy Law

The Constitutional Court was established and assigned the responsibility to protect and defend human rights.<sup>17</sup> This role has been effectively fulfilled by the Court, which has, through its judicial review authority, invalidated numerous laws deemed unconstitutional and in violation of human rights. As reflected in Decision No. 011-017/PUU-VIII/2003, Decision No. 6-13-20/PUU-VIII/2010, Decision No 55/PUU-VIII/2010 and Decision No. 27/PUU-IX/2011, where the Court has succeeded in giving a strong decision by cancelling ambiguous articles that conflict

<sup>16</sup> Sunardi, "Islamic Populism: Asymmetrical, Multi-Class Coalition-Based Social Mobilization," *Jurnal Politik* 4, no. 2 (2019): 18.

<sup>17</sup> Saldi Isra, "The Role of the Constitutional Court in Strengthening Human Rights in Indonesia," *Jurnal Konstitusi* 11, no. 3 (2014): 409-427.

with legal certainty. In this decision, the Court was also firm in upholding the principle of discrimination as an absolute right and cannot be limited.<sup>18</sup>

However, when it comes to judicial review cases related to religion, the Court still faces challenges. The judge's decision prevented them from making a strong decision. The Court no longer views violations of the right to be treated without discrimination as an absolute right that can make an article of a law unconstitutional. Court independence ultimately becomes an important study.

To redress the constitutional rights that have been breached as a result of the implementation of the Indonesia's anti-blasphemy law, various adherents of minority religions have lodged claims for judicial review of the provisions within the law that are deemed to impinge on their constitutional rights guaranteed under the 1945 Constitution. Various minority religious groups in Indonesia who continue to be criminalized and intimidated because their religion or religious sect is deemed deviant by the state submitted this judicial review. However, the government and legislators backed by radical Islamic groups have persuaded the courts that the state can restrict religious sects because religious sects are

<sup>18</sup> At least this is reflected in several decisions. *First*, In Decision no. 011-017/PUU-VIII/2003, the Court stated that Article 60 letter g of the Law No. 12 of 2003, which contains a prohibition on those who are "former members banned organizations of the Indonesian Communist Party, including its mass organizations, or not a person directly or indirectly involved in G.30.S/ PKI or other prohibited organizations", become members of the DPR, DPD, DPRD Provincial, Regency or City DPRD has been declared to have no binding legal force. The Court considered that this article violated the people's constitutional right not to be discriminated against in participating in government. *Second*, in Decision Number 6-13-20/PUU-VIII/2010 the Constitutional Court annulled article 30 of Law No. 16 of 2004 concerning the Indonesian Prosecutor's Office stating "In the field of maintaining public order, the prosecutor's office participates in organizing activity through supervise the circulation of printed materials". The Court considers that the article relates to the prohibition on the distribution of books as a source of information, inclusion without trial. This is an action that is inconsistent and even contrary to Article 28F of the 1945 Constitution and is an excessive form of regulation of the right to freedom of expression and violates Article 28J of the 1945 Constitution. *Third*, In Decision Number. 55/PUU-VIII/2010. (4) Decision Number 27/PUU-IX/2011. *Third*, In Decision No. 55/PUU-VIII/2010 The Court stated that Article 21 and its explanation and Article 47 Paragraph (1) do not have binding force and (2) Law No. 18 of 2004 concerning Plantations because the Constitutional Court considered that these articles had unclear (ambiguous) formulations that could disrupt legal certainty. The Court also considers that this article violates the right to recognition and guarantees of legal certainty, rights develop oneself in order to meet the needs of life, guaranteed and protected with the instrument Article 28D Paragraph (1) and Article 28G Paragraph (1) of the 1945 Constitution. *Fourth*, In Decision The Court considers that Article 29 Paragraphs (1), (2), (3), (4), (5), (6), (7), and (8); Article 64; Article 65 Paragraph (1), (2), (3), (4), (5), (6), (7), (8), and (9); Article 66 Paragraphs (1), (2), (3) and (4) in Law Number 13 of 2003 concerning Employment which regulates the outsourcing system or Certain Time Work Agreements, are provisions that do not guarantee job security and therefore violate the rights of guaranteed in the 1945 Constitution, including Article 28D Paragraph (2) of the 1945 Constitution. That is, Article 27 Paragraph (2) of the 1945 Constitution, namely the right of every person to work and receive imbalance and fair and appropriate treatment in relationships Work. This is reflected in several Constitutional Court decisions. For detailed analysis, see Isra, "The Role of the Constitutional Court in Strengthening Human Rights in Indonesia," 421-426.

a form of religious expression and not an absolute right. The state may restrict religious sects that deviate from the religions practiced in Indonesia.

During the trial, hardline Islamic groups, such as Hizb ut-Tahrir Indonesia, the Board of Trustees of the Indonesian Kyai-Islamic Boarding School Friendship Council, Aisyiyah Central Leadership, IAIN Sunan Ampel, rejected the annulment of the Anti-Blasphemy Law by submitting themselves as petitioners for intervention, in addition to their supporters. Outside the court, they staged a demonstration outside the court. Based on the interviews with representatives of groups that support the law against blasphemy being maintained and not repealed, it is that deviations from religious teachings disrupt religious harmony because they provoke conflict, whereas Article 28J of the 1945 Constitution grants the state the authority to protect religious expression. This argument was also considered by the Constitutional Court, which believed that maintaining the Anti-Blasphemy Law was necessary to prevent the law's abolition in the event of a conflict between religions in which no law could be used to resolve it. On the other hand, the Court opined that the Articles of the Anti-blasphemy Law contained ambiguous provisions that could lead to discriminatory conduct.

The CCRI has delivered at least three judgments on judicial reviews of the 1965 Anti-Blasphemy Law, namely Decision Number 140/PUU-VII/2009, Decision Number 84/PUU-X/2012, and Decision Number 76/PUU-XVI/2018 and repeatedly uphold the validity of the law. This study reveals that various scholars have concluded that the Anti-blasphemy law is a flawed law,<sup>19</sup> due to weaknesses in substance and is no longer relevant to continue to be implemented in countries that have guaranteed the right to freedom of religion. This study at least confirms that first, the problematic substance of the articles in the Anti-Blasphemy Law is unclear or has multiple interpretations, thereby disrupting legal certainty. Second, the lack of clarity regarding what is meant by "defaming religion" can cause

<sup>19</sup> Meghan Fischer, "Hate Speech Laws and Blasphemy Laws: Parallels Show Problems with the UN Strategy and Plan of Action on Hate Speech," *Emory International Law Review* 35 (2021): 177. See also Cekli S. Pratiwi, "Rethinking the Constitutionality of Indonesia's Flawed Anti-Blasphemy Law," *Constitutional Review* 7, no. 2 (2021): 273–299, <https://doi.org/10.31078/consrev724>. Andreas Harsono, "Indonesia to Expand Abusive Blasphemy Law: Revoke New Provisions Violating Basic Rights," *Human Rights Watch*, October 31, 2019, <https://www.hrw.org/news/2019/10/31/indonesia-expand-abusive-blasphemy-law>.

groups that have religious interpretations that are different from the religions practiced in Indonesia to become targets of discrimination under this law.

According to interviews with parties who support the Anti-Blasphemy Law, any expression or interpretation that does not match Indonesia's interpretation of Islam is blasphemy and intolerance that can divide the people. The sources don't understand the Anti-Blasphemy Law's key shortcomings. While the Anti-blasphemy Law protects official faiths, it also affects religious minorities whose beliefs vary and may be criminalised. Minorities that suffer threats of violence want their religious teachings safeguarded by the state, not to undermine official faiths (Islam). Therefore, the religious minority organisations have submitted a request for a judicial review of the Anti-Blasphemy Law to the Constitutional Court in response to the ongoing discriminatory treatment and prosecution they face.

In contrast to its prior rulings, the Court rendered confusing judgements in many judicial reviews of the Anti-Blasphemy Law. One perspective argues that articles lacking clarity have the potential to result in discriminatory treatment. However, conversely, the court ruled that the statute is constitutional. In brief, the arguments of the petitioner, the responses of the respondents in this case the DPR and the Government, and the verdicts of the CCRI are as describe in Table.1.

**Table 1.**

**The Main Point of the Constitutional Court Rulings of the ABL's Review**

Decision Number	Petitioner's Arguments	Respondent's Arguments	The Main Point of the Court Rulings
Decision Number 140/PUU-VII/2009	The ABL contradict the principle of the rule of law and the Indonesia Constitution, enacted during state emergency, violated the right of religious freedom, not in line with the principle of legal certainty and justice	The enactment of the ABL happened when the government in the normal condition, the religious expression is not an absolute rights and can be limited under Article 28J of the Constitution.	(1) The CCRI declared that the State need to limits the religious expression to eliminate conflicts among religions.

Decision Number	Petitioner's Arguments	Respondent's Arguments	The Main Point of the Court Rulings
84/PUU-	Shia's follower claimed that the element of crime, such as "insult the feeling of others, in public space, hostility" under Article 156a has not been defined clearly	The respondents followed the arguments stated in the Decision number 140/PUU-VII/2009.	<p>(2) The CCRI concluded that the limitation is only apply to religious expression or in form of speech or behaviors in public space.</p> <p>(3) The CCRI declared that the substance of the Law on the Prevention of Blasphemy against Religion has to be X/2012 modified in terms of the form of regulation, formulation, and legal principles.</p>
Decision Number 76/PUU-XVI/2018	Ahmadiyya's follower claimed that Article 1 and 2 of the ABL	Every religion has its own teachings that contradictive with other religions, Article 4 the ABL violated the right to religious freedom, the defamation of religion could not be criminalized, Article 4 does not necessary limit religious freedom of the people.	<p>(4) The CCRI argues that "the need for a revision of the Law on the Prevention of Blasphemy Against Religion, both within the formal framework of law and in content, in order to have more clear material aspects that will of not lead to ambiguity in reality" (Crouch, 2011).</p> <p>(5) However, the CCRI concluded that the 1965 ABL is constitutional because it does not restrict the freedom to believe, but rather restricts public religious speech that is antagonistic, abusive, or desecrates the religion practiced in Indonesia.</p>

Sources: Cited from the CCRI verdicts and the interview of the Judges.

83 The ambiguity of the Constitutional Court's decision demonstrates that, on the one hand, the Court wishes to base its decision on the principle of the rule of law, according to which laws must contain clear elements and not be open to multiple interpretations, but, on the other hand, the Court continues to assert that the law is valid, the Court's considerations lending more weight to the experts of the defendants than those of the petitioners. It cannot be denied that the Court's decision to consider the opinions of experts reflects the influence of populist religious groups on its case decisions.

12 In decisions number 140/PUU-VII/2009, 84/PUU X/2012, and 76/PUU XVI/2018, the CCRI has opined that the Indonesia Anti-Blasphemy Law does not prohibit individuals from holding beliefs that differ from other religions or beliefs. However, the law does limit the methods through which such beliefs may be expressed or disseminated to others in public. The Court has held that, in accordance with Article 28J and the IHRL, religious speech can be regulated by law. It is worth noting that limits on the freedom of religion and the freedom of expression guaranteed by Article 18(3) and Article 19(3) of the ICCPR.

115 It is no doubt that the Court considers arguments related to the protection of religious sentiments and the right to express opinions or critique religious beliefs and shape the boundaries of acceptable speech and actions under the law. Nevertheless, this precedent's decision has been criticized by some NGOs and leaders of democracy, who argue that the law is contrary to the guarantee of freedom of religion that cannot be reduced under any circumstances. This criticism suggests that the court's interpretation of the law may have become more restrictive over time. As the results, it provided legal backing for the enforcement of the law and has influenced subsequent cases related to blasphemy. Thus, the weaknesses of the Anti-blasphemy law were never corrected, instead the existence of the ambiguous and discriminatory law was actually made worse by the ratification of various new laws that still maintained the goal of providing guarantees for protection of the six religions adhered to in Indonesia.

16 What factors cause the Court to be so hesitant when reviewing laws relating to religion? Has the current political situation and pressure from radical Islamic

groups shaken the independence of the Court? Before answering the core question of this study, in the next section the author will explain the theoretical framework regarding judicial independence. In the subsequent part, the author will elucidate the theoretical framework pertaining to judicial independence, emphasising the imperative nature of upholding the rule of law and ensuring the safeguarding of human rights, prior to addressing the central research topic.

### 3.3. The Importance of Judicial Independence in a Democratic Society

Judicial independence is a concept that refers to the freedom of the judiciary from interference by other institutions and individuals. It connotes a constitutional arrangement of a separation of the judicial power from the executive and legislative powers.<sup>20</sup> Judicial independence is a means to the ends of impartiality and legitimacy; therefore, links between diversity, legitimacy, and impartiality may not explicitly mention judicial independence, despite the existence of an obvious connection. Legal independence is when judges issue commands based on their own scales and directives, without internal or external influence. The independence of judges is violated if their decisions are influenced by factors other than the law, conscience, and a recognized judge, and as a result, justice and human security are not realised. The concept of judicial independence has been cited as a key causal variable in comparative political science for outcomes ranging from regime stability to economic development to the protection of human rights. Each year, the international community expends considerable resources to promote judicial reform and autonomy.

The independence of the judiciary is essential to the maintenance of democracy and the rule of law.<sup>21</sup> It ensures the separation of the judiciary from the executive and legislative branches, which is necessary to prevent any branch from becoming too powerful and to maintain a system of checks and balances.

<sup>20</sup> Vyacheslav Harkusha, "The Principle of Independence of the Judiciary as the Basis of a Democratic Society," *Naukovyy Visnyk Dnipropetrovs'kogo Derzhavnogo Universytetu Vnutrishnikh Sprav* 1, no. 1 (2021): 72–76, <https://doi.org/10.31733/2078-3566-2021-1-72-76>.

<sup>21</sup> Michel Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional Democracy," *Southern California Law Review* 74 (2000): 1307.

10 The independence of the judiciary permits judges to make decisions based on  
10 the law and the circumstances of a case without fear of retaliation or influence  
3 from other branches of government or external actors. This impartiality is crucial  
20 for ensuring that justice is served and the rule of law is maintained. Moreover,  
10 judicial independence is essential to the protection of human rights because it  
enables judges to make decisions based solely on the law and not political or social  
pressures. This protection is necessary to ensure that everyone is treated equally  
and equitably under the law. In conclusion, judicial independence strengthens  
the legitimacy of the judiciary and the entire legal system. It ensures that the  
public has faith in the judicial system and that decisions are made impartially  
and equitably.

81 The connection between judicial independence and human rights is  
indispensable for ensuring a fair and just legal system. International human  
rights instruments mandate a fair prosecution by an independent and impartial  
tribunal, which is an absolute right to which no exceptions may be made. The  
21 principle of a judge's impartiality is one of the most important principles of judicial  
21 evidence and one of the most important guarantees of litigation, limiting the  
74 judge's powers of proof in favour of the litigants. Empirical analyses of domestic  
6 legal traditions demonstrate that common law states have, on average, better  
human rights practises than civil law, Islamic law, and mixed law states. This is  
because the procedural characteristics of common law result in greater judicial  
independence and protection of individual rights. Judicial independence is not  
15 an objective in and of itself, but rather a means to impartiality and legitimacy;  
therefore, links between diversity, legitimacy, and impartiality may not explicitly  
mention judicial independence, despite the obvious connection.

20 Overall, judicial independence is a fundamental component of a democratic  
society and the rule of law, and it is essential to ensure that justice is served,  
human rights are protected, and the legal system is legitimate and trustworthy.

### 3.4. Challenges to the Independence of the Constitutional Court Posed by Religious Populist Movements

Drawing from the previously outlined theoretical framework, it can be inferred that the Constitutional Court's judicial independence may face disruptions stemming not only from internal factors, such as the suspension or removal of judges and the financial autonomy of the judiciary, but also from external factors like the prevailing political climate and the presence of other disturbances, such as populist movements.

There are some potential ways in which religious populist movements may exert pressure on courts to align with their beliefs. First is public protests and demonstrations. Religious populist movements may organize large-scale protests and demonstrations outside court buildings to pressure judges and influence their decisions. These public displays of support or opposition can create an atmosphere of intimidation and sway the court's judgment. Second is political influence. Religious populist movements may have political connections or alliances that enable them to exert influence over the appointment of judges or other key judicial processes. This influence can be used to ensure that judges sympathetic to their beliefs are appointed or that decisions align with their religious and political agenda. Third, is social media campaigns. Religious populist movements often utilize social media platforms to mobilize their followers and shape public opinion. They may launch targeted campaigns to rally support for their cause and put pressure on the court to rule in their favor. Fourth is public discourse and rhetoric. Religious populist movements may engage in public discourse and rhetoric that portrays the court as biased or corrupt if its decisions do not align with their beliefs. This can create a narrative that puts pressure on the court to conform to their agenda or face public backlash.

Moreover, according to Mietzer and Muhtadi, courts typically respond to pressure from religious populist movements. It is important to note that the

specific strategies employed by religious populist movements to pressure courts may vary depending on the context and the particular movement in question.

- a) Upholding judicial independence: "Courts may resist pressure from religious populist movements and uphold their independence by making decisions based on the law and facts of the case, rather than political or religious considerations."<sup>22</sup>
- b) Compromising independence: "In some cases, courts may succumb to pressure from religious populist movements and compromise their independence by making decisions that align with their beliefs. This compromise can undermine the integrity of the judiciary and erode the rule of law."<sup>23</sup>
- c) Delaying decisions: "Courts may delay decisions in response to pressure from religious populist movements. This delay can be used to avoid making a controversial decision or to wait for the political climate to change before making a decision."<sup>24</sup>
- d) Seeking international support: "In some cases, courts may seek international support to resist pressure from religious populist movements. This support can come in the form of international human rights organizations or other international judicial bodies."<sup>25</sup>

36 Following Mietzer and Muhtadi, this study found that in reviewing the Anti-Blasphemy Law, the Court gave in to pressure from religious populist movements and compromised their independence by making decisions in line with their beliefs. This compromise could undermine the integrity of the judiciary and erode the rule of law. The Court faced intimidation tactics against critics and opponents. Religious populist movements in Indonesia have employed various tactics to pressure courts to align with their beliefs. While the literature does

34 <sup>22</sup> Marcus Mietzner and Burhanuddin Muhtadi, "The Myth of Pluralism: Nahdlatul Ulama and the Politics of Religious Tolerance in Indonesia," *Contemporary Southeast Asia* 42, no. 1 (2020): 58–84, <https://doi.org/10.1355/cs42-1c>.

86 <sup>23</sup> Mietzner and Muhtadi, "The Myth of Pluralism."

34 <sup>24</sup> Mietzner and Muhtadi, "The Myth of Pluralism."

139 <sup>25</sup> Mietzner and Muhtadi, "The Myth of Pluralism."

not provide a comprehensive list of these tactics, some potential ways in which religious populist movements may exert pressure on courts.

One of the challenges to the independence of the Constitutional Court posed by religious populist movements is their attempts to influence judicial appointments. This challenge is significant because it could compromise the impartiality and independence of the court. The court's independence may be compromised by external influences in cases when the court's judgement is characterised by ambiguity, fails to establish legal clarity, and has ramifications for the violation of human rights.

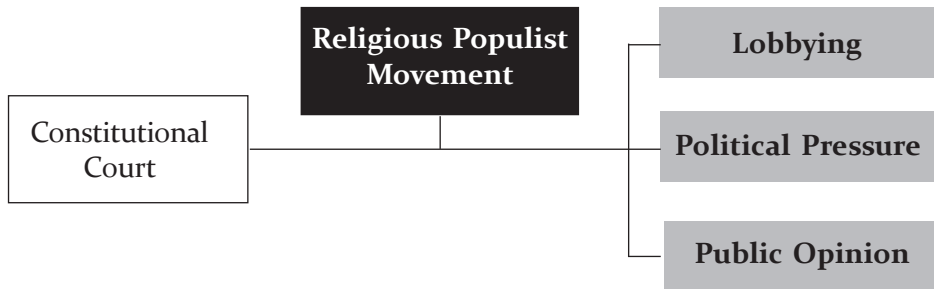
This research has identified three distinct manners in which the religious populist movement exerted influence on the Constitutional Court's verdict during the judicial review of the anti-blasphemy legislation. These influences are described in the diagram 1.

- **Lobbying:** Religious populist movements may lobby government officials to appoint judges who share their religious and political beliefs. This lobbying has been done through various means, such as public statements, protests, and petitions. Religious populist movements organized large-scale protests and demonstrations outside court buildings to pressure judges and influence their decisions.<sup>26</sup> During the process, the Minister of Religion, MUI, FPI made statements in various media that they supported the Anti-Blasphemy Law not being repealed and calling for the repeal of the law to be rejected by the Constitutional Court.<sup>27</sup>

<sup>26</sup> Sana Jaffrey, "Right-Wing Populism and Vigilante Violence in Asia," *Studies in Comparative International Development* 56, no. 2 (2021): 223–249.

<sup>27</sup> "Jelang Demo 212, Ormas Islam Jawa Timur Gelar Tabligh Akbar [Ahead of the 212 Demonstration, East Java Islamic Organizations Hold Grand Tabligh]," *Tempo.co*, accessed 20 August 2023, <https://nasional.tempo.co/read/823279/jelang-demo-212-ormas-islam-jawa-timur-gelar-tabligh-akbar>. See also "Ketua Fraksi PKS: UU Larangan Penodaan Agama Jangan Dihapus [Chairman of PKS Faction: Blasphemy Law Should Not Be Abolished]," *PKS.id*, accessed 20 August 2023, <https://pks.id/content/ketua-fraksi-pks-uu-larangan-penodaan-agama-jangan-dihapus>. "MUI East Java Asks Constitutional Court Not to Abolish PNPS Law 1965," *Kominfo Jawa Timur*, accessed 20 August 2024, <https://kominfo.jatimprov.go.id/read/umum/20702>. "PBNU Minta MK Tolak Judicial Review UU Penodaan Agama [PBNU Requests Constitutional Court to Reject Judicial Review of Blasphemy Law]," *Wahdah Islamiyah*, <https://wahdah.or.id/pbnu-minta-mk-tolak-judicial-review-uu-penodaan-agama>. See "PKS Tidak Setuju UU Larangan Penodaan Agama Dihapus [PKS Disagrees with Abolition of Blasphemy Law]," *BeritaSatu*, accessed 20 August 2023, <https://www.beritasatu.com/nasional/431375/pks-tidak-setuju-uu-larangan-penodaan-agama-dihapus>.

Diagram 1. The impact of the religious populist movement on the independency of the Constitutional Court may be seen via three distinct avenues.



Sources: developed by the Author based on several interviews and secondary data sources.

- **Political pressure:** Religious populist movements may exert political pressure on government officials to appoint judges who align with their views. This pressure was happened in the form of threats, intimidation, or other coercive tactics. During the judicial review process, extremist Islamic groups continued to file reports on religious minority organisations, which law enforcement continued to investigate.<sup>28</sup> Simultaneous with the ongoing legal examination of the Anti-Blasphemy Law, there exists a political scenario in a state of turbulence involving Ahok, who was a gubernatorial candidate in Jakarta and was also needed to engage in blasphemous acts. The persistence of extremist Islamic organisations in advocating against the repeal of the Anti-Blasphemy Law, which serves as a legal foundation for the conviction of Ahok, might be attributed to the circumstances.
- **Public opinion:** Religious populist movements may try to sway public opinion in favor of their preferred candidates for judicial appointments. They may use social media, public rallies, or other means to influence public opinion and pressure government officials to appoint judges who share their views. Religious populist movements often utilized social media platforms to mobilize their followers and shape public opinion. They launch

<sup>28</sup> Simultaneously with the judicial review process, the Ahok and Meiliana cases continue to be processed.

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targeted campaigns to rally support for their cause and put pressure on the court to rule in their favor.<sup>29</sup> Religious populist movements engaged in public discourse and rhetoric that portrays the court as biased or corrupt if its decisions do not align with their beliefs.<sup>30</sup> These attempts to influence judicial appointments can compromise the independence of the judiciary and undermine the rule of law. It is essential to safeguard the independence of the judiciary and ensure that judicial appointments are made based on merit and impartiality, rather than political or religious considerations.

The extent to which these tactics have influenced the independence of the Constitutional Court in Indonesia is a complex issue that depends on various factors, including the strength of the judiciary's independence and the specific movement in question. However, it is essential to protect the independence of the judiciary by ensuring that court decisions are made based on merit and impartiality, rather than succumbing to external pressures.<sup>31</sup>

In addition to external pressures exerted by religious populist movements, it is noteworthy that these organisations also have influence inside the court and align themselves with parties advocating for the preservation of the anti-blasphemy law. In the judicial review, the group requesting the repeal of the anti-blasphemy law and the group defending the anti-blasphemy law did not reach an agreement. Each group presents an expert for informational purposes. Moeslim Abdurrahman, Djohan Effendi, Garin Nugroho, Thamrin Amal Tamagola, and Luthfie Assyaukanie, for instance, were among the experts who demanded the repeal of the law. A number of authorities, including Komaruddin Hidayat, Siti Zuhro, Taufik Ismail, and Azyumardi Azra, believe that this law is problematic and have called for its revision. On the other hand, the group requesting that the law not be annulled comprise of Chairperson of the Islamic Defenders Front (FPI) Rizieq Syihab, Minister of Religion Suryadharma Ali, Minister of Law

<sup>29</sup> Andrew Chadwick and Jennifer Stromer-Galley, "Digital Media, Power, and Democracy in Parties and Election Campaigns: Party Decline or Party Renewal?," *The International Journal of Press/Politics* 21, no. 3 (2016): 283–293.

<sup>30</sup> M. Iqbal Ahnaf and Danielle N. Lussier, "Religious Leaders and Elections in the Polarizing Context of Indonesia," *Humaniora* 31, no. 3 (2019): 227.

<sup>31</sup> Mietzner and Muhtadi, "The Myth of Pluralism."

and Human Rights Patrialias Akbar, Chairman of Indonesia Ulema Assembly Amidhan, Nahdhatul Ulama figure Hasyim Muzadi, expert on constitutional law Yuzril Ihza Mahendra, expert on criminal law Gajah Mada University in Yogyakarta, Eddy OS Hiariej, and Islamic feminist Khofifah Indar Parawansa. In its considerations, the Constitutional Court adopted the expert opinion presented by the respondent rather than the expert from the plaintiff. The Constitutional Court did not consider the fact that the petitioners' constitutional rights were violated when defending their religious beliefs, nor did it take into account the numerous incidents they endured. In the meantime, the Constitutional Court acknowledged the ambiguity of the law's interpretations. Nonetheless, the Constitutional Court ruled that this law was constitutional, arguing that it would prevent legal idiocy that could spark conflict. The court did not consider the fact that the implementation of this law led to vigilante actions and targeted minority groups. It is difficult to assert that the religious populist movement has compromised the judicial independence.

Second, the sole female justice and Christian, justice Maria Farida, expressed a dissenting opinion. According to her, the application of the Blasphemy Law has resulted in numerous violations of the right to religious freedom. Additionally, Judge Maria stated that the six religions recognized and mentioned in the Blasphemy Law, with the exception of mysticism, were forms of treatment. In practice, only these six adherents of this religion can, for instance, list their religion on a driver's license, marriage license, or death certificate. Thus, the anti-blasphemy law has no justification for limiting the existence of non-established religions and belief groups, as it has discriminated against their status from the outset, denying them the same protection as the six established religions.<sup>32</sup> When Maria Farida, in other judicial review's decisions, concurred that the blasphemy law would not be repealed, the independence of the Court was called into question.

The challenges to the independence of the Constitutional Court posed by religious populist movements leads to pressure on court decisions to align with

<sup>32</sup> Simon Butt, "The Function of Judicial Dissent in Indonesia's Constitutional Court," *Constitutional Review* 4 (2018): 1.

religious and political beliefs. Religious populist movements pressure courts to align with their beliefs through various means. While the search results provided do not directly address this specific question, we can draw insights from the broader literature on religious populism and its influence on the judiciary.

### 3.5. Consequences of Compromising the Independence of the Constitutional Court

#### 3.5.1. Erosion of Democratic Values and The Rule of Law

Within this particular section, the author posits that the compromise decision pertaining to the judicial review of the Anti-Blasphemy Law carries significant implications, particularly in terms of establishing the primacy of legal principles and facilitating transgressions against human rights, specifically the freedom of religion. These outcomes, in turn, are argued to pose a threat to the democratic fabric of Indonesia.

First, when the independence of the Constitutional Court is compromised due to pressure from religious populist movements, it can have significant consequences, including: erosion of democratic values: The interference and influence of religious populist movements on the court can undermine the democratic principles of separation of powers and checks and balances. This erosion of democratic values can weaken the overall democratic system and lead to an imbalance of power. According to Crouch, the Constitutional Court's decision upholding the Anti-Blasphemy Law further confirmed that there is no separation of church and state in Indonesia and bolstered a theocratic Islamic state. Even though the Constitutional Court examined the anti-blasphemy law against the constitution, the court should consider how this Anti-Blasphemy Law is implemented in practise to determine to what extent the law undermines the rule of law. This study found that maintaining the Anti-Blasphemy Law signifies that the state permits Islamic law to influence government policy, for instance by using the MUI fatwa as justification for removing restrictions on the religious activities of people of other faiths or beliefs.<sup>33</sup>

<sup>33</sup> Melissa A. Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7 (2012), <https://doi.org/10.1515/1932-0205.1391>.

**Table 2. List of New Religious Sects Accused of Deviance based on MUI Fatwas from 1975 to 2010**

No.	Name of Sect	Stigmatized as defiant Sect by MUI
1	Kerajaan Ubur-ubur	MUI Fatwa of Serang, Banten Province
2	Hakekok Blakatsu	MUI Fatwa, in Banten Province
3	Ahmadiyah Qadhiyan	MUI Fatwan 26 May 1980 claimed that
4	Lia Edem or Salamullah	MUI Fatwa Number 768/MUI/XII/1977 December 22th 1997
5	Al-Qiyadah Al-Islamiyah	MUI Fatwa Yogyakarta Province Number B-149/MUI-DIY/FATWA/IX/2007
6	<i>Gerakan Fajar Nusantara</i> (Gafatar)	MUI Fatwa Number 04 Year 2007
7	Tarekat Tajul Khalwatiyah Syekh Yusuf Gowa	MUI Fatwa Number 01/MUI-Gowa/XI/2016 November 9th Year 201

Source: Various secondary resources

Another consequences of compromising the independence of the Constitutional Court is undermining the rule of law. When the court's decisions are influenced by religious and political beliefs rather than being based on the law and legal principles, it undermines the rule of law. This can result in inconsistent and arbitrary rulings, eroding public trust in the judiciary and the legal system. In its arguments, the Constitutional Court favoured political interests, namely avoiding paying off the law in order to prevent a larger horizontal conflict.

“.....the Court considered whether the anti-blasphemy law was repealed or not, the conditions feared would not necessarily occur [...] Because of that, it is in the public interest and in anticipation of conflicts, both horizontal and vertical, that the existence of an anti-blasphemy law is very important”

The claim that there would be a legal vacuum if the anti-blasphemy law is repealed was unfounded because the Criminal Code already contains an article that regulates the actions of judges, namely article 173 of the Criminal Code. The fact that the anti-blasphemy law has multiple interpretations, is discriminatory, and has been used by vigilante groups to justify violence against religious minorities was rejected by the Constitutional Court.

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19 Furthermore, compromising the independence of the Constitutional Court  
27 threat to human rights since it can have severe implications for the protection of  
human rights. When decisions are influenced by religious and political pressures,  
the rights of individuals and minority groups may be disregarded or violated,  
leading to a decline in human rights protections. Various studies conducted by  
NGOs show that religious minority groups in Indonesia cannot optimally enjoy  
121 the right to freedom of religion and continue to experience criminalization,  
132 violence and other forms of human rights violations.

### 3.5.2. Weakening Judicial Legitimacy

42 The independence of the judiciary is crucial for its legitimacy. When the  
court is perceived as being influenced by external forces, such as religious  
populist movements, its credibility and legitimacy may be undermined. This  
can lead to a loss of public confidence in the court's ability to deliver impartial  
and fair judgments.

43 According to the Constitutional Court Law, the decision of the Constitutional  
Court is *erga omnes*,<sup>34</sup> must be carried out by all parties, not just the litigants.  
14 However, the legitimacy of the judicial review decision on the anti-blasphemy  
law is diminished because the Indonesia Parliament (the DPR) has not yet  
revised the norm of multiple interpretations in the law. The enactment of the  
New Criminal Code in 2023, which is anticipated to correct the flaws of the Law  
Against Blasphemy of Religion, does not appear to satisfy the public's sense of  
justice and is still viewed as a half-hearted improvement. Even though Article  
4 of the Law Against Blasphemy of Religion was nullified by the ratification  
37 of Article 302 of the (new) Criminal Code, which was against the prohibition  
of hate speech, the Criminal Code did not nullify the enactment of Articles 1,  
2, and 3 of the Law Against Blasphemy of Religion. This means that until the  
(New) Criminal Code goes into effect in 2025, the law against religious blasphemy  
109 poses a threat to the freedom of religion, particularly for religious minorities.  
In addition, the provisions of Article 302 continue to influence the protection

24 <sup>34</sup> Dian Ayu Widya Ningrum, Al Khanif, and Antikowati, "The Ideal Format for Implementing Constitutional Court Decisions to Effectuate the Erga Omnes Principle," *Jurnal Konstitusi* 19, no. 2 (2022): 314, <https://doi.org/10.31078/jk1924>.

45 of religion or belief in Indonesia rather than the protection of individual rights, so that the interpretation of enmity is heavily influenced by the interpretation of the majority religions.

118 Moreover, law enforcement officials and other criminal tribunals continue to punish religious minorities based on the law. Despite the fact that this law is defended in order to prevent horizontal conflict, vigilante groups continue to target religious minorities with violence and vigilante acts. In the case of vigilante justice against Gafatar, there were 21 defendants in the destruction of the Miftahul Huda Mosque in Bale Harapan Village, Sintang Regency, West Kalimantan. In the verdict read on January 6, 2022, they were only sentenced to 4 months and 15 days by the Pontianak District Court Judge. The Islamic Defenders Front, or FPI, is the hard-line Islamic community organization most frequently involved in the actions of vigilante actions. At least in this study, FPI was recorded as being involved in the attack on Ahmadiyah residents, Gafatar, destroying Meiliana's house, and mobilizing large numbers of people in the Ahok case as described in table

94 **Table 3. The incidents of vigilante justice carried out by the Islamic Defenders Front (FPI)**

No	Date	The Form of Vigilante Actions
1	February 10, 2011	FPI's attack on the Abmadiyya Congregation in Çikeusik, Banten.
2	January 28, 2011	FPI raided the Ahmadiyya An-Nushrat Mosque in Makassar, South Sulawesi, to attack and destroy the mosque's nameplate and furniture.
3	January 29, 2011	FPI held a demonstration to force the Ahmadiyya congregation to leave Makassar.
4	March 4, 2011	The FPI mob caused trouble and set fire to the Ahmadiyya headquarters in Lubuk Pinang District, Muko-Muka Regency, Bengkulu.
5	March 4, 2011	FPI mobs burn down a food stall belonging to members of the Ahmadiyya Congregation in Polewali City, Polewali Mandar Regency, West Sulawesi.

No	Date	The Form of Vigilante Actions
6	March 11, 2011	Dozens of mobs from the FPI occupy the Al Gbofur Mosque belonging to the Indonesian Ahmadiyya Muslim Community (JAI) in Cianjur.
7	March 13, 2011	The Ahmadiyya Mosque in Cisaar Village, Cipeuyeum Village, Hauwangi, District, Cianjur Regency, was attacked by hundreds of FPI mobs. As a result, several parts of the building were damaged. The mob also burned Ahmadiyah books and books. A house belonging to an Ahmadiyah figure in Tolenjeng Village, Sukagalib Village, Sukatatu. District, Tasikmalaya Regency, was damaged.
8	May 2, 2011	FPI Jakarta demands the termination of the film Pocong Mandi Goyang Hip, starring Hollywood porn actress, Sasha Grey.
9	July 26, 2011	FPI mobs vandalize a transgender meeting place in Purwokerto, Central Java.
10	August 8, 2011	FPI members ransacked the Coto, Makassar shop on Jl. AP Pettavani. Makassar for remaining open during the day during the fasting month.
11	August 12, 2011	FPI mobs destroy a food stall owned by Topaz Makassar Restaurant.
12	August 13, 2011	FPI mobs create trouble and burn the Ahmadiyya headquarters in Makassar.
13	August 14, 2011	FPI mob destroys a mom's food stall in Ciamis.
14	August 20, 2011	FPI mobs sweep a food stall selling their wares during the day in the Puncak Bogor area, West Java.
15	January 22, 2015	FPI demonstrates pressure on court when Ahok is in the Appeal court of Supreme Court .

### 3.5.3. Violation of Human Rights and Minority Rights

Compromising the independence of the Constitutional Court due to pressure from religious populist movements can have severe consequences, including the violation of human rights and minority rights. When the court's decisions are influenced by religious and political beliefs rather than being based on the law and legal principles, it can lead to inconsistent and arbitrary rulings, eroding public trust in the judiciary and the legal system . The interference and influence

of religious populist movements on the court can undermine the democratic principles of separation of powers and checks and balances, leading to the erosion of democratic values.

It is no doubt that the anti-blasphemy law around the world tends to discriminate minority groups inside and,<sup>35</sup> or outside of the court. Inside of the court, Judges have applied the law to punish blasphemous with disproportionate penalties.<sup>36</sup> The judge decision on blasphemy cases is usually using heavy sentencing such as 5 years jail time which should not be the same as criminal charge. Outside of the court, the law has been used more frequently by the local government as legal basis to issuing other relevant policies against the adherents of the heretical sect in Indonesia (see table 2 section 3.5.1. in previous section).

Additionally, compromising the independence of the Constitutional Court can have severe implications for the protection of human rights. When decisions are influenced by religious and political pressures, the rights of individuals and minority groups may be disregarded or violated, leading to a decline in human rights protections. Empirical analyses of domestic legal traditions demonstrate that common law states have better human rights practices on average than civil law, Islamic law, or mixed law states because the procedural features of common law result in greater judicial independence and protection of individual rights in these legal systems. At least 130 individuals were convicted under the Indonesia's anti-blasphemy law between 1988 and 2012, with an additional 66 cases being resolved by the courts between 2012 and 2018.<sup>37</sup> In addition, in 2021 the case of Gafatar then appeared.

### 3.6. Implications for Religious Freedom and Tolerance

Compromising the independence of the Constitutional Court due to pressure from religious populist movements can have severe consequences for religious freedom and tolerance. When the court's decisions are influenced by religious and political beliefs rather than being based on the law and legal principles,

<sup>35</sup> David F. Forte, "Apostasy and Blasphemy in Pakistan," *Connecticut Journal of International Law* 10, no. 1 (1994): 27-70, [https://engagedscholarship.csuohio.edu/fac\\_articles/79](https://engagedscholarship.csuohio.edu/fac_articles/79).

<sup>36</sup> Fischer, "Hate Speech Laws and Blasphemy Laws," 177.

<sup>37</sup> Crouch, "Law and Religion in Indonesia," <https://doi.org/10.1515/1932-0205.1391>.

it can lead to inconsistent and arbitrary rulings, eroding public trust in the judiciary and the legal system. The interference and influence of religious populist movements on the court can undermine the democratic principles of separation of powers and checks and balances, leading to the erosion of democratic values

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Additionally, compromising the independence of the Constitutional Court can have severe implications for religious freedom and tolerance. When decisions are influenced by religious and political pressures, the rights of individuals and minority groups may be disregarded or violated, leading to a decline in religious freedom and tolerance. The erosion of religious freedom and tolerance can have severe consequences for social cohesion and stability, leading to increased social tensions and conflicts.

The current legal politics under the Anti-Blasphemy Law regime has continued to place minority religions in a marginalized position. With various court decisions declaring minority religious groups as misguided, they no longer receive equal protection in society. Meiliana can no longer live comfortably, and she was evicted from her home. Gafatar group was forced to leave their place of residence and return to their respective homes, but their families did not recognize them as members. Ahmadiyya has experienced various forms of intimidation and violence. Under the Anti-Blasphemy Law regime, the court's decision to prosecute minority religious groups for their beliefs has caused a strain on interreligious relationships, characterized by suspicion and distrust. In cases such as Ahmadiyya or Gafatar, the communities that used to coexist peacefully and regarded the presence of these groups as a religious social dynamic now view them as a "common enemy" following the Fatwa MUI and various public policies in the regions.

Thus, when hardline Islamist groups call for resistance, public anger is easily stirred up. As a result, the fear of expressing their religious beliefs has become stronger among minority groups (PB House, 2014). For instance, after the issuance of the 3/2008 Joint Ministerial Decree, which prohibits the Ahmadiyya from promoting their activities and spreading their religious teachings and warns that Ahmadiyya followers could be prosecuted for blasphemy if they violate it, and

followed by the court's decision that the Ahmadiyya leaders are guilty of defiling Islamic teachings, the Ahmadiyya group has been secretive in practicing their religious rituals and beliefs. Various difficulties faced by Ahmadiyya followers, such as the lack of government recognition of their residency status, access to public services, property ownership status, and security concerns, have caused Ahmadiyya followers to fear expressing their freedom of worship according to their beliefs.

Therefore, it is essential to protect the independence of the judiciary by ensuring that court decisions are made based on merit and impartiality, rather than succumbing to external pressures.

Overall, compromising the independence of the Constitutional Court due to pressure from religious populist movements can have far-reaching consequences, including the erosion of democratic values, undermining the rule of law, threats to human rights, and weakening judicial legitimacy. It is essential to safeguard the independence of the judiciary to ensure the integrity and effectiveness of the court in upholding democracy and the rule of law.

#### IV. CONCLUSION

The study demonstrates that several variables have the potential to impede the effectiveness of the judiciary. The Anti-Blasphemy Law judicial review has witnessed the emergence of a religious populist movement in Indonesia, spearheaded by a former member of the Front Islamic Defender. This movement has garnered support due to the escalating political landscape, with efforts aimed at exerting influence on the justice system and urging the Constitutional Court to adopt policies aligned with their religious convictions. This movement attempts to use several strategies, including lobbying, exerting political pressure, and moulding public opinion, in order to advance its political objectives.

The aforementioned scenario presents a significant obstacle to the Constitutional Court's independence in its role of impartially preserving the Constitution and upholding human rights. The potential impact of religious populism on the Constitutional Court's judicial system gives rise to apprehensions

44 about the decision-making process, emphasising the need of adhering to the  
44 ideals of the rule of law rather than being influenced by political or religious  
considerations. This also raises concerns about the court's dedication to  
safeguarding the rights of minority groups, since these movements often endorse  
measures that might potentially infringe upon such rights.

129 The present study examines the impact of religious populism on cases of  
15 religious blasphemy in Indonesia, with a particular emphasis on its negative  
consequences for the country's legal system and democratic government. The  
possible loss of the Court's independence has the potential to undermine  
the basic concept of the separation of powers, so presenting a danger to the  
preservation of individual rights. Moreover, this phenomenon has the capacity  
to erode public confidence in not just the judiciary but also the democratic  
111 structure. The aforementioned findings contribute to a deeper understanding  
of the obstacles faced by the judicial system in Indonesia and the threat posed  
by religious populist organizations.

77 The erosion of judicial independence can have far-reaching consequences for  
democracy, the rule of law, and the protection of human rights. In anticipation  
of future developments, it is imperative to persist in pushing for the preservation  
of judicial independence and opposing any endeavours that may undermine  
25 its integrity. Advocating for the independence of the Constitutional Court is  
crucial, as it entails the production of robust judgements, the prioritisation of  
53 legal certainty, the adherence to human rights law standards, and the steadfast  
3 upholding of the principle of non-discrimination. The Constitutional Court  
must continue to serve as a stronghold of impartiality, diligently safeguarding  
the fundamental tenets of justice.

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### Example:

Foreign language in bibliography

Corte Costituzionale Italiana [Italian Constitutional Court]. Sent. 194/2013  
Giudizio di legittimità costituzionale in via principale [Judgment on  
question of constitutionality] No. 194/2013 (July 17, 2013).

Foreign language in footnote:

Carlo Azeglio Ciampi, Intervento del Presidente della Repubblica Carlo Azeglio  
Ciampi in occasione della consegna delle medaglie d'oro ai benemeriti  
della cultura e dell'arte [Speech of the President of the Italian Republic  
Carlo Azeglio Ciampi on the delivery of the Gold Medals for Culture  
and Arts merit], May 5, 2003.

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Therefore, the founding fathers of the Indonesian Constitution made the Negara Kesatuan [Unitary State] the central feature of the new Indonesian statehood, as it is set out most prominently in article 1(1)6 and 25A.

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- It is typed by using Times New Roman 16, upper case, alignment: center text.

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- The identity covers the author's name, affiliation, and e-mail address.
- The name is typed under the title by using Times New Roman 12, bold, alignment: center text then put asterisk after the name.
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### Example of identity with the asterisk

## **INDONESIA'S JUDICIAL REVIEW REGIME IN COMPARATIVE PERSPECTIVE**

**Theunis Roux\***

The University of New South Wales (UNSW), Sydney, Australia  
t.roux@unsw.edu.au

### Example of the explanation of the asterisk:

of legal and political authority lock into and mutually support each other. The fourth section uses this conceptual framework to assess the Indonesian Constitutional Court's approach to its mandate after 2003. Under its first two chief justices, the paper notes, the Court engaged in a concerted effort to build public understanding of its legitimate role in national politics. The Court's abrupt switch between its first Chief Justice, Jimly Asshiddiqie's legalist conception of

---

\* Professor of Law at The University of New South Wales (UNSW) Sydney, former, Secretary-General of the International Association of Constitutional Law (IACL), and the Founding Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC).

## III. Abstract

- The abstract should be written vividly, full and complete which describes the essence of the content of the whole writing in one paragraph.

- Font: Times New Roman, font size: 12, alignment: justify text, space: 1.5, margin: Normal.
- Total words: No more than 350 words.

#### IV. Keywords

- Preceded by the word “Keyword” in bold style (**Keywords**).
- Font: Times New Roman, font size: 12, lower case, alignment: justify text.
- Selected keywords have to denote the concept of the article in 3-5 terms (*horos*).

#### V. Body

The body of the manuscript should cover introduction, method, analysis and discussion, and conclusion.

- **Introduction:** It presents a clear information concerning the issue that will be discussed in the manuscript. The background of the article is presented in this section. The end of the introduction should be finished by stating the signification and the objective/aim of the article.
- **Method:** It is an optional section for articles which are based on research.
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- **Reference:** The paper needs to cover at least 10 articles from reputable journal. Our reference uses The Chicago Manual of Style (CMS).

Consult to: <http://www.chicagomanualofstyle.org/> [https://www.chicagomanualofstyle.org/tools\\_citationguide/citation-guide-1.html](https://www.chicagomanualofstyle.org/tools_citationguide/citation-guide-1.html).

- **Example of Table:**

**TABLE 2. Real-world magnitudes of the relationship between tort reform and death rates**

Tort reform	Annual death rates (%)	Number of deaths in 2000	Deaths across all years
Cap on noneconomic damages	-3.54	-333	-5,242
Higher evidence standard for punitive damages	-2.57	-982	-11,798
Product liability reform	-3.83	-1,267	-16,841
Prejudgment interest reform	-4.88	-647	-9,060
Collateral source reform			
Offset awards	+4.71	+938	+14,160
Admit evidence	+2.43	+294	+4,468
<b>Net effect</b>		<b>-1,998</b>	<b>-24,314</b>

*Note:* Values presented are average changes. These computations are based on the coefficients from the primary regression (table 3) and the average annual populations and average annual death rates in the states that had each reform. The sums of the individual reforms differ by one from the net effects owing to rounding.

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