

The Role of the Constitutional Court in Determining the Police's Exclusive Jurisdiction through Judicial Review of the Criminal Procedure Code

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ABSTRACT

This study examines the role of the Constitutional Court in determining the absolute jurisdiction of the Police through judicial review of the Criminal Code. It aims to analyze the legal reasoning adopted by the Constitutional Court and the implications of its decisions for the authority of the Police within the criminal justice system. This research employs a normative legal research method using statutory, conceptual, and case approaches, with qualitative legal analysis. The findings indicate that the Constitutional Court's decisions play a significant role in providing legal certainty regarding the limits of the Police's absolute jurisdiction while reinforcing the principle of constitutionality in the exercise of law enforcement authority. The study concludes that judicial review conducted by the Constitutional Court serves not only as a mechanism for examining the constitutionality of statutory provisions but also as an important instrument for clarifying the distribution of authority among law enforcement institutions. Consequently, the Court's decisions contribute to greater legal certainty, the protection of citizens' constitutional rights, and the effectiveness of Indonesia's criminal justice system.

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1. Introduction

Indonesia is a constitutional state, as expressly stipulated in Article 1(3) of the 1945 Constitution of the Republic of Indonesia. Consequently, all exercises of state power, including the authority of law enforcement agencies, must be carried out in accordance with constitutional principles and the rule of law. Within Indonesia's criminal justice system, the National Police occupy a strategic position as the institution vested with the authority to conduct criminal investigations and inquiries. This authority constitutes part of the police's exclusive jurisdiction established by statutory regulations. It must therefore be exercised in accordance with the principles of legality, legal certainty, protection of human rights, and the system of checks and balances among law enforcement institutions ([Asshiddiqie 2020](#); [Marzuki, 2021](#)).

The development of Indonesia's criminal law demonstrates significant changes in the regulation of law enforcement authority. The enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) represents an important milestone in Indonesia's criminal law reform, aimed at aligning the national legal system with contemporary societal developments, Pancasila values, and international human rights standards. At the same time, the ongoing reform of the Criminal Procedure Code (KUHP) has generated extensive debate regarding the allocation of authority among the police, the prosecution service, and other law enforcement institutions within the criminal justice system ([Hiariej, 2021](#)).

As the institution constitutionally empowered to review statutes against the 1945 Constitution, the Constitutional Court plays a crucial role in safeguarding constitutional supremacy. Through the mechanism of judicial review, the Court not only determines the constitutionality of statutory provisions but also provides constitutional interpretation regarding the powers of state institutions. In the context of substantive criminal law and criminal procedure, several Constitutional Court decisions have significantly influenced the interpretation of investigative authority, evidentiary standards, the protection of suspects' rights, and the institutional relationship among law enforcement agencies. Accordingly, the Constitutional Court occupies a strategic position in defining the limits of the police's

exclusive jurisdiction while ensuring compliance with constitutional principles and the rule of law ([Chen & Ginsburg, 2017](#)).

Previous studies have extensively examined the Constitutional Court's influence on police authority. [Suryono and Amiluddin \(2025\)](#), conclude that Constitutional Court decisions issued through judicial review have generated new interpretations concerning police investigative authority and have produced several landmark decisions that have shaped Indonesian criminal procedure. Likewise, [Septiansyah & Anggono \(2024\)](#), argue that the Constitutional Court's judicial activism has not only transformed legal norms but has also influenced police policies and institutional practices in carrying out law enforcement functions. Furthermore, [Farikhah \(2021\)](#) demonstrates that numerous Constitutional Court decisions concerning judicial review of the Criminal Procedure Code have significantly contributed to the development of Indonesia's criminal justice system, particularly in clarifying the distribution of authority among law enforcement institutions.

Despite these contributions, previous studies have primarily focused on the general impact of Constitutional Court decisions on police authority or on amendments to criminal procedural law. None has specifically examined how the Constitutional Court determines the police's exclusive jurisdiction through judicial review of statutes governing criminal procedure by positioning Constitutional Court decisions as instruments for defining the constitutional boundaries of police authority. Consequently, a significant research gap remains concerning the relationship between judicial review, constitutional interpretation, and the determination of the police's exclusive jurisdiction within Indonesia's criminal justice system. Against this background, the novelty of this study lies in its integration of constitutional law and criminal procedure perspectives to analyze the Constitutional Court's role as the authoritative interpreter of the Constitution in determining the police's exclusive jurisdiction. This study goes beyond identifying Constitutional Court decisions affecting police authority by examining their constitutional implications for the distribution of powers among law enforcement institutions and for strengthening the principle of checks and balances within the criminal justice system.

This research is particularly important given the increasing complexity of law enforcement functions, which may give rise to overlapping authority, institutional conflicts, and legal uncertainty. A clear delineation of the police's exclusive jurisdiction is essential to ensuring effective law enforcement while simultaneously protecting citizens' constitutional rights. Therefore, an examination of the Constitutional Court's role is necessary to support the development of criminal procedural policies that are consistent with the rule of law, constitutional supremacy, and the protection of human rights. Based on the foregoing discussion, this study aims to analyze the role of the Constitutional Court in determining the police's exclusive jurisdiction through judicial review of statutes governing criminal procedure, examine the implications of Constitutional Court decisions for the distribution of authority within Indonesia's criminal justice system, and formulate recommendations for strengthening the legal framework governing police authority in accordance with constitutional principles and the rule of law.

2. Methodology

This study is a normative legal research (doctrinal legal research) that focuses on examining legal norms governing the authority of the police within the criminal justice system, as well as the role of the Constitutional Court in reviewing the constitutionality of such norms through the mechanism of judicial review. Normative legal research is employed because the object of study consists of statutory regulations, legal principles, doctrines, and court decisions, which are systematically analyzed to construct legal arguments regarding the limits of the police's exclusive jurisdiction from a constitutional perspective ([Soekanto, 2010](#)).

This research uses three approaches, namely the statutory approach, the conceptual approach, and the case approach. The statutory approach is conducted by examining the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code (KUHP), Law Number 2 of 2002 concerning the Indonesian National Police, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020, Law Number 1 of 2023 concerning the Criminal Code (KUHP), and other relevant

legislation related to law enforcement authority. The conceptual approach is used to analyze legal concepts such as the rule of law, constitutional supremacy, exclusive jurisdiction, separation of powers, and the principle of checks and balances based on legal doctrines and scholarly opinions. Meanwhile, the case approach is carried out by analyzing Constitutional Court decisions related to judicial review of criminal procedure laws and law enforcement authority in order to identify patterns of constitutional interpretation regarding the limits of police authority.

The legal materials used in this study consist of primary, secondary, and tertiary legal sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code, Law Number 2 of 2002 concerning the Indonesian National Police, Law Number 24 of 2003 concerning the Constitutional Court and its amendments, Law Number 1 of 2023 concerning the Criminal Code, as well as relevant Constitutional Court decisions. Secondary legal materials consist of legal textbooks, scientific journal articles, research reports, and scholarly opinions discussing constitutional law, criminal law, criminal procedure law, and law enforcement authority. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources that support the understanding of legal concepts used in this study.

The collection of legal materials is conducted through library research by inventorying, identifying, classifying, and reviewing all relevant legal sources related to the research issues. Furthermore, the legal materials are analyzed qualitatively using legal interpretation methods, including grammatical, systematic, historical, and teleological interpretation. In addition, the study also analyzes the ratio decidendi and legal reasoning of Constitutional Court decisions to identify how the Court interprets the limits of police authority within the criminal justice system. The results of the analysis are presented in a descriptive-analytical and prescriptive manner in order to answer the research questions and formulate normative recommendations regarding the strengthening of the distribution of authority among law enforcement institutions based on the principles of the rule of law, constitutional supremacy, and checks and balances.

3. Results and discussion

Police Exclusive Jurisdiction under Law No. 1 of 2023: Between Effectiveness and Power Concentration Risks

Law Number 1 of 2023 normatively strengthens the position of the police at the stages of investigation and inquiry as the primary actors within the Indonesian criminal justice system. This reinforcement is intended to enhance effectiveness, speed, and legal certainty in handling criminal cases. Within this framework, the police function as a gatekeeper who determines the initial direction of criminal proceedings through powers of investigation, inquiry, arrest, detention, search, and seizure ([Sihaloho & Sudarto, 2025](#)). However, from a constitutional perspective, the concept of exclusive jurisdiction cannot be interpreted as an unchecked or absolute authority. In a *rechtsstaat* (rule of law state), all public power must be constrained by the principle of limited government and a system of checks and balances. If exclusive jurisdiction is understood as authority that cannot be effectively reviewed or controlled by other institutions, it may lead to a concentration of power that contradicts the principles of the rule of law.

The strengthening of police authority is also closely related to the role of the prosecutor's office as *dominus litis* in the criminal justice system, particularly in controlling prosecution proceedings. An imbalance in the allocation of authority may blur institutional boundaries and potentially create overlapping jurisdiction among law enforcement agencies. Therefore, the issue of police exclusive jurisdiction is not merely a matter of criminal procedural law, but also concerns the constitutional design of the criminal justice system.

The National Police Commission (Kopolnas) is a non-structural body established to assist the President in formulating police policy directions and supervising the performance of the Indonesian

National Police. Its main functions include providing policy recommendations to the President, including proposals for the appointment and dismissal of the Chief of Police, as well as receiving and following up on public complaints regarding police performance. However, Kompolnas does not possess law enforcement authority or sanctioning power and functions solely on a recommendatory basis. Meanwhile, the Indonesian Prosecutorial Commission is responsible for maintaining and improving the professionalism and integrity of the prosecution service. It handles public complaints regarding alleged misconduct by prosecutors and provides recommendations to the President and the Attorney General for institutional improvement ([Mantri et al., 2025](#)).

Normatively, Kompolnas is regulated under Law Number 2 of 2002 concerning the Indonesian National Police, particularly Articles 37 to 39. It functions as an external supervisory body under the President without any law enforcement authority. The Prosecutor's Office, on the other hand, is regulated under Law Number 11 of 2021 amending Law Number 16 of 2004, which affirms that it is a government institution exercising state authority in prosecution. Thus, Kompolnas functions as an oversight and advisory body regarding police policy, while the Prosecutor's Office serves as a law enforcement institution directly responsible for prosecution in the criminal justice system. This distinction reflects an institutional division of functions that must be maintained to prevent overlapping authority and ensure balance within the criminal justice system.

Reconstruction of the Concept of Exclusive Jurisdiction in Criminal Procedure Law

The concept of exclusive jurisdiction in law refers to authority that is expressly and exclusively granted by legislation to a specific institution to handle certain categories of cases, which cannot be transferred to another institution unless explicitly provided by law. In civil procedural law, exclusive jurisdiction is generally associated with the classification of judicial systems, such as general courts, religious courts, administrative courts, and military courts. However, in criminal procedural law, the meaning of exclusive jurisdiction has shifted, as it is more closely related to the distribution of functional authority among law enforcement agencies within an integrated criminal justice system.

Within the framework of Law Number 1 of 2023 concerning the Criminal Code (KUHP), the exclusive jurisdiction of the police is interpreted as their primary authority at the stages of criminal investigation and inquiry. Normatively, this reinforcement aims to clarify institutional authority and eliminate the dualism of investigative functions that has historically generated inter-agency conflicts. In this structure, the police are positioned as the central actor in the early stages of criminal proceedings, responsible for determining whether an event constitutes a criminal offense and whether it should proceed to further legal processing.

However, from the perspective of the rule of law (*rechtsstaat*), any grant of exclusive authority must be understood within the framework of power limitation. The principle of limited government requires that public authority must not be absolute but must be constrained by law to prevent abuse of power ([Mantri et al., 2025](#)). This concept is strongly influenced by John Locke, who emphasized the protection of individual rights by the state. Its fundamental principles include the supremacy of law (*rule of law*), which ensures that all actors, including the government, are subject to law; the protection of human rights; and the separation of powers, as articulated in Montesquieu's theory of *trias politica*, to prevent the concentration of power. In addition, the constitution functions as a limitation on governmental authority, while sovereignty remains vested in the people. Accordingly, the main objective of limited government is to prevent arbitrariness, protect individual freedoms, and ensure the establishment of a just and democratic state.

The concept of restorative justice in criminal law is commonly associated with Howard Zehr, who defines it as an approach that emphasizes repairing harm suffered by victims, ensuring offender accountability, and involving the community in resolving conflicts arising from crime. In this view, crime is not merely a violation of state law but primarily a harm to individuals and social relationships, thereby

requiring restoration rather than punishment alone. Furthermore, John Braithwaite developed restorative justice through the concept of *reintegrative shaming*, which refers to a process of socially disapproving the offender's act without excluding the offender from society. The objective is to encourage offenders to acknowledge responsibility, repair harm, restore relationships with victims, and reintegrate into the community. This approach rejects purely retributive punishment and promotes dialogue-based, participatory, and inclusive mechanisms of justice.

Accordingly, restorative justice represents an approach grounded in restoration, accountability, and reconciliation. These principles have become an important foundation in contemporary criminal law reform, including in Indonesia's Law Number 1 of 2023 concerning the Criminal Code, which increasingly incorporates restorative justice values. Therefore, the exclusive jurisdiction of the police cannot be interpreted as authority that is free from judicial oversight or from horizontal coordination with other law enforcement institutions, particularly the public prosecutor's office, which holds prosecutorial authority. Conceptually, Indonesia's criminal justice system adopts an integrated criminal justice system model, which requires coordination and balance among its subsystems: the police, the prosecution service, the judiciary, and correctional institutions. If one subsystem is granted excessive dominance without effective control mechanisms, systemic interaction may be disrupted and may lead to an imbalance of power within the criminal justice system.

Judicial Review of Law No. 1 of 2023: Police Jurisdiction & Constitutional Implications

Substantive judicial review refers to a mechanism for examining statutory norms against the 1945 Constitution, focusing on the material content of legal provisions. In the context of Law Number 1 of 2023 concerning the Criminal Code (KUHP), judicial review serves as a crucial instrument to assess whether the strengthening of police authority particularly in investigation and inquiry stages—is consistent with constitutional principles such as human rights protection, due process of law, and checks and balances. Theoretically, this mechanism is grounded in Hans Kelsen's *Stufenbau Theory*, which posits that legal norms are hierarchically structured, where lower norms must not contradict higher norms. Accordingly, statutes such as Law No. 1 of 2023 must conform to the 1945 Constitution as the highest legal norm. In this framework, the Constitutional Court functions as the guardian of constitutional supremacy by annulling or interpreting norms that conflict with the Constitution.

In addition, Montesquieu's theory of separation of powers (*trias politica*) provides an important foundation for judicial review, emphasizing that state powers must be separated and mutually controlled to prevent abuse of power. This becomes particularly relevant in the regulation of police exclusive jurisdiction, as excessive concentration of authority in a single institution may disrupt institutional balance within the criminal justice system. Furthermore, A.V. Dicey's concept of the rule of law, particularly due process of law, reinforces the principle that all governmental actions must be based on law and must not be arbitrary. Therefore, judicial review ensures that investigative authority remains within a legal framework that guarantees fairness and protection of citizens' rights.

Within this constitutional framework, the role of the Constitutional Court in reviewing Law No. 1 of 2023 generates significant constitutional, legal, institutional, and systemic consequences. As the guardian of the Constitution, the Court not only annuls unconstitutional norms but also provides authoritative constitutional interpretation regarding the limits of law enforcement authority, including police jurisdiction. Constitutionally, this reinforces the principle that police authority is not absolute, but limited and subject to constitutional control based on human rights protection, due process of law, and checks and balances.

From a legal perspective, Constitutional Court decisions directly affect the validity and interpretation of statutory norms. The Court may annul, narrow, or issue conditional constitutional interpretations of provisions regulating police authority. Such decisions influence law enforcement practices, particularly during the investigation stage, including the strengthening of pretrial mechanisms,

improved coordination with the prosecutor's office, and enhanced procedural transparency. From an institutional perspective, Constitutional Court intervention may reshape the relationship between law enforcement agencies. Clarification of police jurisdiction helps reduce potential conflicts with the prosecution service and strengthens the integrated criminal justice system (*integrated criminal justice system*). However, it may also generate institutional tension when perceived as limiting investigative effectiveness.

From a systemic perspective, the Constitutional Court encourages a shift from procedural reform toward constitutional reform in criminal procedure law. Law enforcement practices are no longer evaluated solely on effectiveness but also on constitutional compliance and human rights protection. This transformation requires law enforcement institutions to be more accountable, professional, and rights-oriented. Ultimately, the Constitutional Court functions as a constitutional balancer, maintaining equilibrium between effective law enforcement and the protection of human rights. In this role, the Court acts not only as a negative legislator but also as a normative actor through progressive constitutional interpretation. The main consequence of its role in determining police exclusive jurisdiction under Law No. 1 of 2023 is the emergence of a more balanced, constitutional, and human rights-oriented criminal justice system, although it simultaneously demands strong institutional readiness and harmonization among law enforcement agencies to avoid systemic disharmony.

Constitutional parameters for reviewing statutory norms are derived from Article 24C paragraph (1) of the 1945 Constitution, which grants the Constitutional Court exclusive authority to conduct judicial review. In assessing police exclusive jurisdiction, constitutional conformity is not limited to formal legality but also includes substantive guarantees such as human rights protection, legal certainty, and institutional balance. This approach is reflected in Constitutional Court Decision No. 21/PUU-XII/2014, which expanded the scope of pretrial review to include the determination of suspect status, search, and seizure. The decision demonstrates a progressive judicial effort to strengthen control over investigative actions in order to ensure due process of law. Similarly, Decision No. 130/PUU-XIII/2015 emphasized the obligation to notify the commencement of investigation to the public prosecutor as a form of horizontal supervision and coordination within the criminal justice system. These decisions illustrate that the Constitutional Court does not merely conduct textual review, but also considers systemic implications for constitutional rights protection. Accordingly, if Law No. 1 of 2023 expands police exclusive jurisdiction without adequate oversight mechanisms, there is a strong constitutional basis for judicial review grounded in due process of law and the principle of checks and balances.

MK as Constitutional Balancer

The Constitutional Court functions not only as a *negative legislator* but also as a *constitutional balancer*. In its role as a negative legislator, the Court has the authority to annul statutory provisions that are inconsistent with the Constitution. However, in practice, the Court does not always act passively, as it frequently issues *conditionally constitutional* or *conditionally unconstitutional* decisions that substantively create new norms through constitutional interpretation. This pattern demonstrates that the Constitutional Court also acts as a *constitutional balancer*, maintaining equilibrium between effective law enforcement and the protection of human rights. In the context of police exclusive jurisdiction, the Court may affirm that the strengthening of police authority remains constitutional as long as it does not eliminate judicial control mechanisms or remove inter-agency coordination ([Baxter, 2020](#)).

Accordingly, the notion of "exclusive" jurisdiction of the police can be interpreted in a limited sense, remaining within the framework of an integrated criminal justice system. This indicates that the role of the Constitutional Court is not to weaken law enforcement institutions, but to ensure that the strengthening of authority remains consistent with democratic rule-of-law principles. This highlights the

significance of the Constitutional Court as the guardian of the Constitution, which harmonizes relations among state institutions through the instrument of judicial review.

Systemic Implications for Criminal Justice System Reform

Constitutional Court decisions concerning investigators' authority have a direct impact on law enforcement practice, particularly through the strengthening of pretrial mechanisms, investigative transparency, and coordination with public prosecutors. This demonstrates that criminal procedure reform is not merely procedural in nature, but also constitutional. The implications for police exclusive jurisdiction are systemic. When the Constitutional Court issues restrictions or conditional interpretations of investigative powers, all investigative practices must be adjusted to constitutional standards. This strengthens institutional accountability, expands judicial oversight, and reinforces the role of prosecutors within the criminal justice system ([Artello & Albanese, 2019](#)).

It also shows that reform of the Criminal Procedure Code (KUHP) cannot be separated from constitutional reform. The criminal justice system is part of the state power structure and is subject to constitutional supremacy. Accordingly, police exclusive jurisdiction must be understood as a limited, controlled, and constitutionally reviewable authority. This study uses legal principles as analytical tools rather than abstract concepts. The principle of due process of law requires that all investigative actions be lawful, fair, and non-arbitrary, thereby necessitating control mechanisms such as pretrial review, transparency, and accountability. The principle of checks and balances demands inter-institutional oversight, particularly between the police and the prosecutor's office, to prevent dominance at the investigative stage.

Furthermore, constitutional supremacy affirms that all authority must be subject to the 1945 Constitution, with the Constitutional Court acting as the *guardian of the constitution* empowered to interpret and limit legal norms through judicial review. The principle of the integrated criminal justice system emphasizes the need for balance among subsystems to prevent systemic dysfunction caused by institutional dominance. The paradigm shift in the 2023 Criminal Code (KUHP), which adopts a restorative justice approach, further reinforces a more humanistic model of law enforcement, where the police act not only as repressive actors but also as facilitators of conflict resolution. Thus, this study concludes that the regulation of police exclusive jurisdiction under the 2023 KUHP must be viewed within a constitutional framework that balances law enforcement effectiveness with human rights protection. The Constitutional Court plays a crucial role in ensuring that such authority remains proportional, accountable, and free from excessive concentration of power.

4. Conclusion

This study shows that the strengthening of police exclusive jurisdiction under Law No. 1 of 2023 is an effort to improve the effectiveness and legal certainty of criminal law enforcement. However, such strengthening also carries the potential risk of power concentration if it is not accompanied by adequate oversight mechanisms. Within the framework of the rule of law, exclusive authority cannot be interpreted as unlimited power, but must remain subject to the principles of due process of law, checks and balances, and constitutional supremacy. In this regard, the Constitutional Court plays a strategic role as the guardian of the constitution through judicial review, ensuring that police authority remains consistent with human rights protection and institutional balance within the criminal justice system.

According to the author, criminal law reform under Law No. 1 of 2023 is a progressive and relevant step in response to societal developments, particularly through the strengthening of a more humane restorative justice approach. However, the strengthening of police authority must be implemented proportionally, as the absence of effective control may lead to abuse of power and disrupt institutional relations within the criminal justice system. Therefore, legal reform should not only focus on expanding authority but also on clearly defining its limits and strengthening control mechanisms.

Moving forward, concrete measures are needed, including stronger regulations that explicitly limit police authority, optimization of pretrial mechanisms as a control tool over investigative actions, and enhanced coordination among law enforcement agencies to prevent jurisdictional overlap. In addition, oversight institutions such as Kompolnas and the Prosecutorial Commission should be strengthened to improve their effectiveness. The Constitutional Court is also expected to remain consistent in issuing progressive decisions that prioritize the protection of citizens' constitutional rights. In this way, Indonesia's criminal justice system can operate in a more just, balanced, and democratic rule-of-law framework.

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