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# The Applicability of Constitutional Court Decision Number 118/PUU-XX/2022 Regarding the Statute of Limitations for Document Forgery in Relation to the New Criminal Code

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Original Article

## Abstract

Constitutional Court Decision Number 118/PUU-XX/2022 altered the policy for calculating the statute of limitations for the crime of document forgery; however, the implementation of the new Criminal Code does not reflect this change. This study employs a normative approach, using a literature review to analyze the applicability of the Constitutional Court's decision to the new Criminal Code, which does not incorporate this change. The findings of the study indicate that, based on the principle of *lex posterior derogat legi priori*, the current regulations still adhere to Constitutional Court Decision 118/2022, as the new Criminal Code will not take effect until 2026. Should a material review related to this article arise in the future, the Constitutional Court must apply the principle of *similia similibus* to ensure justice and prevent discrimination, thereby guaranteeing equal treatment for all individuals under the law.

**Keywords:** *Validity, Forgery of Letters, Expiration, Material Testing*

## Abstrak

Adanya Putusan MK Nomor 118/PUU-XX/2022 mengubah kebijakan perhitungan daluwarsa terhadap tindak pidana pemalsuan surat. Akan tetapi dalam penerapannya, penyusunan KUHP baru tidak mengakomodir, bahkan mengabaikan perubahan pasal tersebut. Tulisan ini menggunakan metode penulisan normatif, yang mana data-data yang diperlukan diperoleh dengan studi pustaka. Penelitian ini bertujuan untuk melihat keberlakuan Putusan MK Nomor 118/PUU-XX/2022 terhadap KUHP baru yang tidak merespon putusan MK tersebut. Hasil penelitian diperoleh bahwa berdasar pada asas *lex posterior derogat legi priori*, penerapan aturan yang berlaku di masa ini adalah masih aturan yang diputus oleh MK, yakni Putusan MK 118/2022. Hal ini dikarenakan KUHP baru, baru akan berlaku di tahun 2026. Akan tetapi apabila kedepannya, pada masa berlakunya KUHP baru, terdapat adanya pemohon yang mengajukan kembali permohonan uji materiil perihal rumusan pasal tersebut, MK dengan asas *similia similibus* harus memutus perkara dengan putusan yang sama seperti sebelumnya. Asas ini bertujuan untuk menjamin hak setiap rakyat untuk diperlakukan sama di hadapan hukum dan menghindari diskriminasi.

**Kata kunci:** *Keberlakuan, Pemalsuan Surat, Daluwarsa, Uji Materiil*

## 1. INTRODUCTION

As criminal law in Indonesia has evolved, various types of criminal acts have continued to emerge. Among these are acts that, while traditionally considered within the domain of civil law, may also be categorized as criminal offenses, such as document forgery. In recent years, Indonesia has experienced a significant increase in cases of document forgery, a phenomenon that has become increasingly concerning.<sup>1</sup> Broadly defined, document forgery involves creating or altering documents to appear legitimate and valid while concealing falsehoods that contradict actual circumstances.<sup>2</sup> This crime encompasses acts of manipulation or fabrication, presenting documents as authentic when they are, in fact, inconsistent with reality and contrary to the truth.<sup>3</sup>

The Indonesian Criminal Code (KUHP) includes provisions allowing for the termination of prosecution rights under certain conditions. One such condition is when a case is declared expired by law.<sup>4</sup> Constitutional Court Decision Number 118/PUU-XX/2022 (hereinafter referred to as Constitutional Court Decision 118/2022) revised the statute of limitations for document forgery under Article 79, paragraph 1 of the Criminal Code. The previous formulation stated that the statute of limitations for forgery or destruction of currency began on the day after the forged or damaged currency was used. This was changed to stipulate that the statute of limitations begins on the day after the forged or damaged currency is known, used, and causes losses. This amendment was necessitated by the article's proven infringement upon the applicant's constitutional rights, as guaranteed by the 1945 Constitution of the Republic of Indonesia.<sup>5</sup>

Despite this ruling, the newly formed Criminal Code has not adequately responded to the Constitutional Court's revised formulation. Article 137(a) of the new Criminal Code retains the substance of the previously invalidated provision but adopts different wording and a modified approach. This reflects a clear lack of compliance and awareness on the part of the legislative body regarding the necessity to adhere to Constitutional Court decisions.<sup>6</sup>

Under Article 10 of Law No. 12 of 2011 on the Formation of Legislation, the content of a law must incorporate and follow up on Constitutional Court decisions, as these rulings

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<sup>1</sup> Ray Cita, Arifai Arifai, and Kamaruddin Kamaruddin, "Tindak Pidana Pemalsuan Surat," *Journal Publicubo* 7, no. 1 (2024): 414–24, <https://doi.org/10.35817/publicuho.v7i1.374>.

<sup>2</sup> Adami Chazawi and Ardi Ferdian, *Tindak Pidana Pemalsuan: Tindak Pidana Menyerang Kepentingan Hukum Terhadap Kepercayaan Masyarakat Mengenai Kebenaran Isi Tulisan Dan Berita Yang Disampaikan* (Depok: PT. RajaGrafindo Persada, 2014).

<sup>3</sup> Jufri Natsir, Ruslan Renggong, and Baso Madiung, *Pemalsuan Surat Tanah Rinci Dan Sanksi Tindak Pidana*, ed. Hariufddin Halim (Gowa: Pusaka Almaida, 2021).

<sup>4</sup> Marfuatul Latifah, "Penghapusan Tahapan Penyelidikan Dalam Ruu Tentang Hukum Acara Pidana," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 4, no. 1 (2013): 105–23, <https://doi.org/10.22212/jnh.v4i1.198>.

<sup>5</sup> Eka N.A.M. Sihombing and Cynthia Hadita, "Bentuk Ideal Tindak Lanjut Atas Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang," *Jurnal JAPHTN-HAN* 1, no. 1 (2022): 35–46, <https://doi.org/10.55292/japhtnhan.v1i1.4>.

<sup>6</sup> Anna Triningsih and Oly Viana Agustine, "Putusan Mahkamah Konstitusi Yang Memuat Keadilan Sosial Dalam Pengujian Undang-Undang," *Jurnal Konstitusi* 16, no. 4 (2020): 834–60, <https://doi.org/10.31078/jk1648>.

are final and binding. A Constitutional Court decision represents the first and last legal recourse available to the applicant, and its binding nature compels all parties—including legislative institutions—to implement and comply with its terms. Furthermore, Constitutional Court decisions are not limited to the parties directly involved in the case but are binding on all Indonesian citizens and institutions. Consequently, such decisions possess an *erga omnes* effect, applying universally and without exception.

## 2. RESEARCH METHODOLOGY

This study employs a normative research methodology, a form of legal research that focuses on applicable laws and regulations. The objective is to ensure that legal science and its findings remain relevant and practically significant.<sup>7</sup> Data collection is conducted through a literature review process, gathering primary and secondary legal materials. Primary legal materials consist of statutory laws to be analyzed, while secondary legal materials include official documents, books, and other scholarly references. This approach is also categorized as library research, which involves seeking scientific truth through the use of secondary data.<sup>8</sup> By employing this method, the researcher reads, examines, and collects books, references, lecture notes, and other literature pertinent to the theoretical framework under discussion, particularly in relation to document forgery and the statute of limitations. The research conceptualizes law as a structured system of norms encompassing principles, statutory regulations, judicial decisions, agreements, and legal doctrines.

## 3. RESEARCH RESULT AND DISCUSSION

### 3.1. The Applicability of Constitutional Court Decision Number 118/PUU-XX/2022 Regarding the Statute of Limitations for Document Forgery in Relation to the New Criminal Code

The statute of limitations refers to the lapse of a specified period that results in the loss or termination of the right to file a lawsuit or enforce a sentence against an individual who has committed a crime. Under the Indonesian Criminal Code (KUHP), every criminal offender, in a broad sense, is subject to prosecution and trial. However, the law allows exceptions by regulating the elimination or termination of prosecution in certain circumstances, including cases where the statute of limitations applies.

The statute of limitations in criminal law refers to the expiration of the right to prosecute a crime due to the passage of a designated time limit. The rationale behind the application of the statute of limitations includes limitations in human memory and natural

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<sup>7</sup> Fenti Hikmawati, *Metodologi Penelitian* (Jakarta: PT. RajaGrafindo Persada, 2017).

<sup>8</sup> Muhammad Siddiq Armia, *Penentuan Metode & Pendekatan Penelitian Hukum* (Aceh: Lembaga Konsumen Ketenagalistrikan Indonesia, 2022).

factors that may result in the loss or degradation of evidence, making it unusable in court.<sup>9</sup> If the investigation of a criminal act extends over an excessively long period, public awareness and memory of the incident diminish, thereby reducing the perceived benefits of prosecution.<sup>10</sup> Additionally, prolonged investigations make it increasingly difficult to gather sufficient evidence, especially when the defendant denies the charges.<sup>11</sup> Over time, emotional distress experienced by victims, their families, and society as a result of the crime tends to wane, eventually fading into forgetfulness.

From the perspective of retributive theory, reopening cases long forgotten by society becomes less relevant. Furthermore, criminal prosecutions are fundamentally an effort to uncover and establish the truth (*materiele waarheid*) about past events. Such truth-seeking relies on evidence governed by law, both in terms of its type and method of presentation. As time passes, obtaining admissible evidence becomes increasingly challenging due to factors such as the fading or loss of witness memories and the deterioration or destruction of physical evidence. The prolonged passage of time significantly reduces the likelihood of successfully resolving a case and may even lead to the failure of the prosecution process.<sup>12</sup>

Constitutional Court Decision 118/2022 introduced changes to the calculation of the statute of limitations for the crime of document forgery. Article 79, paragraph 1 of the Criminal Code previously stipulated that the statute of limitations for forgery or destruction of currency began the day after the forged or damaged currency was used. The revised provision now states that for counterfeiting or damage to currency, the statute of limitations begins on the day after the counterfeit goods or damaged currency are known, used, and cause losses. This amendment notably shifts the mechanism for calculating the statute of limitations for document forgery. Previously, the limitation period was calculated from the time the counterfeit document was used; under the new provision, it is calculated cumulatively from the time the counterfeit document is known, used, and causes losses.

The applicant in this decision also requested a change to Article 137(a) of the new Criminal Code, which, during the testing process, was still in draft form (referred to as the RKUHP). However, it was found that the new Criminal Code did not address the changes to this article and instead re-enacted a provision with the same substance. This is evident when comparing the formulation of the provisions in both the old and new Criminal Codes, which contain nearly identical wording, as shown below:<sup>13</sup>

<sup>9</sup> Nurul Syafriyani, Dwi Febri Susilawati, and Kevin Rivaldi, "Peran Mahkamah Konstitusi Dalam Mempertahankan Negara Hukum Dan Mengupayakan Perlindungan Hak Asasi Manusia," *Jurnal Insan Pendidikan Dan Sosial Humaniora* 2, no. 3 (2024): 90–99, <https://doi.org/10.59581/jipsoshum-widyakarya.v2i3.3401>.

<sup>10</sup> Safaruddin Harefa, "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam," *University of Bengkulu Law Journal* 4, no. 1 (2019): 35–58, <https://doi.org/10.33369/ubelaj.4.1.35-58>.

<sup>11</sup> Totok Sugiarto, Wawan Susilo, and Purwanto Purwanto, "Studi Komparatif Konsep Tindak Pidana Dalam Hukum Pidana Indonesia Dan Hukum Pidana Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 2 (2022): 219–32, <https://doi.org/10.15642/alqanun.2022.25.2.219-232>.

<sup>12</sup> Fina Rosalina, "Daluwarsa Tindak Pidana Korupsi Melalui Sudut Pandang Teori Hukum: Optimalisasi Pengembalian Kerugian Keuangan Negara," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 8, no. 2 (2022): 29–36, <https://doi.org/10.33319/yume.v8i2.169>.

<sup>13</sup> Eva Achjani Zulfa et al., *Perkembangan Asas-Asas Hukum Pidana: Persandingan Buku I KUHP Dan Baru*, 1st ed. (Depok: Rajawali Pers, 2023).

**Tabel 1.***Identical wording of the old and new criminal codes*

<b>Article 79, paragraph 1 (Old Criminal Code)</b>	<b>Article 137(a) (New Criminal Code)</b>
Regarding counterfeiting or damage to currency, the statute of limitations begins the day after the counterfeit goods or damaged currency are used.	The criminal act of counterfeiting and the criminal act of damage to currency expires starting the next day after the counterfeit goods or damaged currency are used.

According to Article 24C, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court is an institution with the authority to adjudicate at both the first and final levels, with its decisions being final, to test a law against the Constitution. Similarly, Article 10(a) of Law No. 24 of 2004 concerning the Constitutional Court stipulates that the Constitutional Court has the authority to adjudicate at the first and final levels, with its decisions being final, to test a law against the 1945 Constitution of the Republic of Indonesia.

The Constitutional Court's authority to test the constitutionality of laws is a manifestation of the principle of the constitutionality of law, which guarantees that any legislative regulation must not conflict with the 1945 Constitution. The Constitutional Court's decision is final and binding, meaning it is the first and last legal remedy for the applicant. The finality of the decision ensures the preservation of the constitution through analytical review. The binding nature of the decision indicates that all parties are required to implement and comply with changes to any law or regulation found to be in conflict with the 1945 Constitution by the Constitutional Court.<sup>14</sup>

A decision is considered final and binding when no judicial institution can review a Constitutional Court decision due to its ultimate authority. The legal basis for the Constitutional Court's authority is enshrined in the Constitution, which grants the Court the right and authority to adjudicate at the first and final levels and test the validity of laws against the Constitution. The Constitutional Court plays a crucial role as a special institution safeguarding the constitution of Indonesia, ensuring the principle of the constitutionality of law. In fulfilling its duty to protect the constitution, the Court's function of testing laws is an essential part of the Indonesian legal system. This reflects a shift from parliamentary supremacy to constitutional supremacy<sup>15</sup>, a principle that is both normatively and empirically recognized. Normative recognition is achieved through the legal hierarchy where the constitution is paramount, while empirical recognition arises from the relationship between government and society, governed by legal regulations.

Material testing embodies the principle of constitutional supremacy (UUD NRI 1945) and constitutionalism. The material testing method is employed to ensure legal certainty by

<sup>14</sup> Dedi Iskandar et al., "Perkembangan Teori Dan Penerapan Asas Legalitas Dalam Hukum Pidana Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 293–305, <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/view/147>.

<sup>15</sup> Mukhlis Mukhlis, Eddy Purnama, and Zahratul Idami, "Kekuatan Hukum Putusan Mahkamah Konstitusi Terhadap Pencabutan Larangan Keterlibatan Mantan Narapidana Sebagai Pejabat Publik," *Syah Kuala Law Journal* 3, no. 2 (2019): 266–80, <https://doi.org/10.24815/sklj.v3i2.12443>.

ensuring that no laws or regulations beneath the constitution contradict or violate the constitution, which is the supreme law of the land. Theoretically, material testing requires a procedure to assess the constitutionality of a law, ensuring that it aligns with the constitution. Ultimately, the Constitutional Court's decision, which is final and binding, also carries legal consequences if it is deemed the highest law. Therefore, the constitution (UUD NRI 1945) and its policies cannot be challenged.<sup>16</sup> This principle is driven by the validity of prevailing legal norms, particularly the general legal principle *lex superior derogat legi inferiori*, which underpins the Constitutional Court's role as the guardian of the 1945 Constitution. This principle holds that if a higher law conflicts with a lower one, the higher law prevails. No law may conflict with the constitution, the 1945 Constitution of the Republic of Indonesia. This principle is fundamental to the Constitutional Court, granting it the authority to declare a law constitutional or not.

However, issues arise when the final and binding nature of the Constitutional Court's decisions is not properly followed up by relevant authorities. This failure creates uncertainty about the position of the Constitutional Court's decisions. For instance, in the case of Constitutional Court Decision 118/2022, which amended Article 79, paragraph 1 of the Criminal Code, the new Criminal Code failed to address or incorporate the Court's decision. This issue underscores the need for greater awareness and accountability in following up on, responding to, and implementing the final and binding nature of Constitutional Court decisions. Failure to do so risks diminishing public trust in the Constitutional Court. The erosion of public trust is a direct result of ineffective implementation of Constitutional Court decisions and signals a weakening of the Court's authority.

Signs of resistance to Constitutional Court decisions are increasingly evident. One example is the law-making institutions' tendency to reinstate provisions previously revoked by the Court. This resistance may stem not only from lawmakers' lack of awareness but also from the absence of specific regulations governing the enforcement of Constitutional Court decisions. The Constitutional Court itself lacks the authority to compel law-making bodies to implement its decisions, as this power is not outlined in either the 1945 Constitution or the Constitutional Court Law. Resistance is more likely when the decision is perceived to undermine the political interests of particular groups. Furthermore, without a complete set of enforcement rules, the Constitutional Court's decisions may be ignored, and previously revised laws may be disregarded. In some cases, there may even be attempts to diminish the Court's authority or exert pressure to influence judicial appointments in future terms. Ultimately, this creates a power struggle between the Constitutional Court and other branches of government or institutions.

Alexander Hamilton argued that the Constitutional Court is the weakest institution in a system of state power. This view is based on the fact that implementing Constitutional

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<sup>16</sup> Dian Ayu Widya Ningrum, Al Khanif Al Khanif, and Antikowati Antikowati, "Format Ideal Tindak Lanjut Putusan Mahkamah Konstitusi Untuk Mengefektifkan Asas Erga Omnes," *Jurnal Konstitusi* 19, no. 2 (2022): 314–58, <https://doi.org/10.31078/jk1924>.

Court decisions requires the involvement of other branches of government. However, compliance with the Constitutional Court's decisions reflects the maturity of a country that prides itself on being a rule-of-law state. In line with this perspective, Bede Harris contends that the key factor influencing whether the doctrine of constitutionalism is respected is the role of the government—specifically, whether the government respects and enforces court decisions.

Following the issuance of a Constitutional Court decision in a case, the implementation of that decision within the country's legal system, particularly in terms of statutory regulations, falls under the authority of the legislature. There are currently no specific regulations or legal provisions that require the legislature to implement or adhere to Constitutional Court decisions when forming new laws. The legislature has the discretion to determine whether a change is necessary in the law, even if the Constitutional Court has ruled that certain provisions are unconstitutional.<sup>17</sup> In this context, it is reasonable for the Constitutional Court to have the authority to re-examine new laws that fail to incorporate the changes mandated by its rulings. Thus, both laws and Constitutional Court decisions hold the same hierarchical status and can invalidate each other's provisions.

The authority of these two institutions can create a complex situation, making it difficult to achieve legal certainty. For instance, the legislature may pass a law that the Constitutional Court later declares unconstitutional, only for the legislature to re-enact the same law. If an applicant then submits a new challenge to this regulation, the Constitutional Court is likely to reaffirm its previous decision based on the principle that its decisions are final. This is due to the nature of Constitutional Court decisions, which are binding, meaning that subsequent decisions on the same issue must be consistent with previous rulings. This principle, known in legal terms as *similia similibus*, dictates that similar cases should be decided in the same way.

The principle of *similia similibus* asserts that like cases should be decided alike. It ensures that similar cases are treated similarly, which is designed to guarantee equality before the law and avoid discrimination, as outlined in Article 4, paragraph (1) of Law No. 48/2009 on Judicial Power: "The court judges according to the law without discriminating between people." According to this principle, all individuals are equal in the eyes of the law and are judged impartially based on legal standards, without favoritism.<sup>18</sup> This principle could be applied if, in the future, an applicant challenges Article 137, letter a of the new Criminal Code, in a material review. In such a case, the constitutional judge would likely declare the article conditionally unconstitutional, unless the article is interpreted as follows:

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<sup>17</sup> Adhitya Widya Kartika, "The Existence of Decision Norms of the Constitutional Court as A Source of Legislative and Executive Laws," *E-Journal Lentera Hukum* 6, no. 2 (2019): 307–18, <https://doi.org/10.19184/ejlh.v6i2.10495>.

<sup>18</sup> Deny Arisandy, "Efforts to Divert Children in Conflict with Narcotics Crime Laws Are Linked to the Juvenile Criminal Justice System (SPPA)," *Ratio Legis Journal* 3, no. 1 (2024): 511–20, <http://dx.doi.org/10.30659/rj.3.1.511-520>.

“Acts of counterfeiting and destruction of currency, the expiration period is calculated from the next day after the counterfeit goods or damaged currency are known, used, and cause losses.”

From these principles, it is clear that the binding nature of the Constitutional Court’s decisions plays an active role in shaping future rulings. This binding nature ensures that the Court will address new cases in accordance with its previous decisions in similar cases.

If we examine the current application of the rules, they are still governed by the Constitutional Court’s Decision 118/2022. This is because the new Criminal Code will not come into effect until 2026. However, in the future, once 2026 arrives, which provisions will be applicable? To answer this question, we must return to the use of legal principles. Among the three primary principles of law, one is *lex posterior derogat legi priori* or *lex posterior derogat legi anteriori*, which holds that a more recent regulation overrides an earlier one.

In the case of Constitutional Court Decision 118/2022, the decision was issued in 2022, while the new Criminal Code was ratified in 2023. This indicates that the new Criminal Code, as a more recent regulation, will function as *lex posterior*, while the Constitutional Court Decision 118/2022 acts as *lex priori*, or an older regulation. Therefore, in accordance with this principle, the new Criminal Code provisions will be applied to determine the start of the statute of limitations for document forgery. The policy of the new Criminal Code will remain in effect until an applicant files a new challenge to the same article and case. In such an instance, the Constitutional Court, following the principle of *similia similibus*, will likely render the same decision, declaring Article 137, letter a of the new Criminal Code to be conditionally unconstitutional.

## CONCLUSION

The Constitutional Court Decision 118/2022 modifies the provisions for calculating the statute of limitations for the crime of document forgery. However, in its implementation, the drafters of the new Criminal Code did not address this change. The formulation that was previously revoked by the Constitutional Court was re-inserted into the new Criminal Code, resulting in a debate over the validity of a Constitutional Court decision. Material testing represents the embodiment of constitutional supremacy (UUD NRI 1945) and constitutionalism. The material testing method is used to ensure legal certainty by confirming that no laws or regulations subordinate to the constitution contradict or violate the constitution, which is the highest law of the land. The Constitutional Court’s decision is not only binding on the parties involved in the case but also on all Indonesian citizens, including lawmaking institutions. Based on the principle of *erga omnes*, it is only proper that lawmakers must comply with and implement the decisions issued by the Constitutional Court.

The lack of specific rules mandating the implementation of a Constitutional Court decision has led to a tendency for certain institutions to ignore or disregard such decisions. According to the research, the current policy being implemented is governed by



Constitutional Court Decision 118/2022, as the new Criminal Code will not take effect until 2026. However, once the new Criminal Code is enacted in 2026, the application of future policies must be based on the principle of *lex posterior derogat legi priori*, meaning that the more recent regulation will override the Constitutional Court Decision 118/2022, as a new, equivalent rule will be in place. The policy of the new Criminal Code will continue to be in effect unless an applicant submits a new challenge to the same article and case. In that instance, the Constitutional Court, following the principle of *similia similibus*, is likely to issue the same decision, declaring Article 137, letter a of the new Criminal Code to be conditionally unconstitutional.

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