E-NISN : 2614-2643
P-NISN : 2541-7037
Journal Equitable
Vol 11 No 3
2026

LIMITS OF TERRITORIAL AUTHORITY OF DOMESTIC COURTS THROUGH THE INTERPRETATION OF THE PRINCIPLE OF UNIVERSALITY AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 89/PUU/XX/2022

Jellian Malisa Evikayati Djonga Tari
Hasanuddin University, Indonesia, tarije351@gmail.com

Virginia Agatha Balsenisca
Hasanuddin University, Indonesia, virginiaagth@gmail.com

Nurhaliza Novari Nas
Hasanuddin University, Indonesia, nurhalizahkalisa20@gmail.com

Zigi Anasfa Ramadhani
Hasanuddin University, Indonesia, sigianasfa16@gmail.com

Zahra Munadira
Hasanuddin University, Indonesia, zahra.munadira19@gmail.com

Abstract

Eradicating extraordinary crimes requires extraterritorial jurisdiction to prevent impunity for perpetrators of gross human rights violations. This article aims to examine the limits of domestic court jurisdiction in responding to international crimes through the application of universal jurisdiction. This research is normative legal research employing statutory, conceptual, and case approaches. The collection of legal materials is conducted through library research and then analyzed using the prescriptive analytical method. The findings indicate the court's refusal to expand pure extraterritorial jurisdiction under the pretext of territorial sovereignty and the non-intervention principle. Domestic courts maintain the application of territorial and active personality jurisdictions. This sovereignty limitation creates a void in the judicial mechanism for prosecuting foreign perpetrators for extraordinary crimes abroad. The absence of universal jurisdiction isolates the national legal order from the dynamics of global criminal law.

Keywords: *Domestic Court, Human Rights, State Sovereignty, Universal Jurisdiction*

A. Introduction

The eradication of *extraordinary crimes* such as genocide and crimes against humanity requires jurisdiction that goes beyond the territorial boundaries of a country. International law adopts the

principle of universality as an instrument of granting authority for a country's domestic courts to try international criminals regardless of the place where the crime occurred, the nationality of the perpetrator, or the nationality of the victim. Ideally, the application of the principle of universality is a manifestation of the collective responsibility of the international community to prevent impunity for perpetrators of gross human rights violations. The state has a moral and legal obligation to ensure that the perpetrators *of hostile humani generis* (enemies of humanity) get justice. This concept is in line with the view that international law enforcement must be fair by prosecuting all perpetrators regardless of their nationality.[1]

In Indonesia itself, there is an absolute restriction on the application of the principle of universality. This fact is confirmed through the Constitutional Court Decision Number 89/PUU-XX/2022. The Constitutional Court rejected the application for testing of Article 5 of Law Number 26 of 2000 concerning the Human Rights Court submitted by Marzuki Darusman et al.[2] The petitioners initially intended to expand the authority of the Indonesian Human Rights Court to prosecute Myanmar's military junta for alleged genocide against the Rohingya, even though the *locus delicti* was outside Indonesian territory with the victim being a foreign citizen. The Constitutional Court is of the opinion that the authority of the Indonesian Human Rights Court is absolutely subject to the territorial principle and the

[1] Armeliyanti and Vivi Amelia, "State Responsibility for the Crime of Genocide According to International Law," Journal of Legal Sovereignty 1, no. 2 (2025): p. 74.

[2] Constitutional Court of the Republic of Indonesia, Decision No. 89/PUU-XX/2022 concerning the Examination of Law No. 26 of 2000 concerning the Human Rights Court, (April 14, 2023): p. 171.

principle of active nationality. This ruling creates a visible gap between the moral obligation to respond to international crimes and the normative limits of the authority of domestic judicial institutions.

The attitude of limiting oneself to territorial jurisdiction poses new vulnerabilities in the era of globalization. International criminals often flee abroad to avoid legal accountability.[3] In the global realm, the International Criminal Court (ICC) has limited formal jurisdiction that only binds states to the Rome Statute. This condition makes the crime of genocide in non-party countries often escape the reach of the global judicial instrument.[4] If countries close the option of universal jurisdiction at the domestic level, the risk of impunity for criminals will increase.

The urgency of adopting the principle of universality is even more urgent when looking at the case of genocide by Israel in the Palestinian territories. Israel's military aggression raises strong suspicions of gross human rights violations at the global level. Israel is a non-party state to the Rome Statute. This condition makes the International Criminal Court experience formal jurisdictional obstacles in prosecuting. Domestic courts in various countries should take a role through the principle of universality to try the perpetrators of crimes against humanity. The absence of a legal basis due to the Constitutional Court Decision Number 89/PUU-XX/2022

[3] Ade Putri Hanifa, Riyanti Angelina, and H. Zaenudin, "Implications and Constraints of the Application of International Criminal Law in the Era of Global Modernization (Case Study of the Rohingya Massacre in Myanmar)," Synergy: Multidisciplinary Scientific Journal 2, no. 1 (2026): p. 740.

[4] Aura Anisah et al., "Challenges in the Implementation of ICC Jurisdiction in Law Enforcement of Crimes of Genocide in Non-Party States," Media Hukum Indonesia (MHI) 3, no. 4 (2025): p. 405.

eliminates the capacity of Indonesian jurisdiction to participate in law enforcement against suspected perpetrators of genocide in Palestine.

Various previous literature has discussed the issue of genocide crimes and gross human rights violations from the perspective of international criminal law. Efiziduhu Zebua et al. focus their study on the factors that cause the genocide of the Rohingya ethnic group and the obligation to enforce the law through the ICC.[5] In line with the focus of international justice, Armeliyanti and Vivi Amelia examine the obligations of the United Nations and the instruments of the Rome Statute in responding to the crime of genocide, emphasizing that immunity should be set aside in the law enforcement process.[6] Regarding conflicts in the Middle East, Angelika Joli explores aggression in the Palestinian territories and qualifies it as genocide based on the parameters of the Rome Statute and Islamic criminal law.[7]

In the context of domestic regulation, Andi Muh Ismail et al. have analyzed the formulation of genocide in Indonesian legal instruments, ranging from the Human Rights Court Law to the new Criminal Code.[8] Egalita Basita Dewi et al. highlight humanitarian crises in conflict areas through international humanitarian law approaches and universal moral ethics.[9] Dedi Sugari and

[5] Efiziduhu Zebua et al., "Settlement of Genocide Crimes Committed by the Myanmar Government Against the Rohingya Muslim Ethnic in Myanmar in the Perspective of International Criminal Law," INNOVATIVE: Journal Of Social Science Research 5, no. 4 (2025): p. 5952.
[6] Armeliyanti and Vivi Amelia, "State Responsibility for the Crime of Genocide," p. 80.
[7] Angelika Joli, "Juridical Analysis of Israeli Aggression in Palestine Perspectives of International Criminal Law and Islamic Criminal Law Regarding Genocide Sanctions in the Rome Statute Part 7 No. 77 of 1998," Maqasid: Journal of Islamic Law Studies 14, no. 2 (2025): p. 247.
[8] Andi Muh Ismail, Abdul Rahman, and Nurfadhilah Mappaselleng, "Criminal Law Analysis of Genocide as a Human Rights Violation in Indonesia," Legal Dialogica 1, no. 1 (2025): p. 1.
[9] Egalita Basita Dewi et al., "Review of Crises and Human Rights Violations in Conflict Areas through Legal and Ethical Approaches," Journal of Lentera Ilmu (JLI) 1, no. 1 (2025): p. 52.

Hilalludin also describe the dynamics of the debate on universalism and human rights particularism in the perspective of the modern global order.[10]

The majority of the literature tends to focus on the role of the ICC, the classification of genocide crimes, and state obligations in the international arena. Previous literature has failed to examine the comprehensive impact of the Constitutional Court Decision Number 89/PUU-XX/2022 on the lack of room for the application of the principle of universality in Indonesian domestic courts. Therefore, this article offers a state *of the art* in the form of a deconstruction of the Constitutional Court's arguments in interpreting the limits of territorial authority and its implications for Indonesia's participation in the international criminal law system.

This article is a type of normative legal research. The focus of the study focuses on the issue of the emptiness of norms and doctrinal analysis of final court decisions. The research approach uses a statutory *approach*, a *conceptual approach*, and a *case approach*. Primary legal materials include Constitutional Court Decision Number 89/PUU-XX/2022 and Law Number 26 of 2000 concerning Human Rights Courts. Secondary legal materials come from books, scientific journals, and international legal instruments. Search and collection of legal materials applying literature study techniques. All collected legal materials are analyzed using analytical prescriptive methods to unravel the gap between legal texts and universal moral obligations. Conclusions are drawn through deductive syllogism in order to find a proportionate

[10] Dedi Sugari and Hilalludin, "Human Rights in the Perspective of Islamic Law: Between Universalism and Particularism," IMANU: Journal of Islamic Law and Civilization 1, no. 1 (2025): p. 16.

formulation of regulation for the expansion of the authority of the Indonesian Human Rights Court.

This article is a type of normative legal research. The focus of the study focuses on the issue of the emptiness of norms and doctrinal analysis of final court decisions. The research approach uses a statutory *approach*, a *conceptual approach*, and a *case approach*. Primary legal materials include Constitutional Court Decision Number 89/PUU-XX/2022 and Law Number 26 of 2000 concerning Human Rights Courts. Secondary legal materials come from books, scientific journals, and international legal instruments. Search and collection of legal materials applying literature study techniques. All collected legal materials are analyzed using analytical prescriptive methods to unravel the gap between legal texts and universal moral obligations. Conclusions are drawn through deductive syllogism in order to find a proportionate formulation of regulation for the expansion of the authority of the Indonesian Human Rights Court.

B. Problem Formulation

1. How is the Principle of Universality Constructed in International Law and National Law?
2. What is the Constitutional Court's interpretation of the Principle of Universality in Decision Number 89/PUU-XX/2022?

C. Research Objectives

This study aims to analyze the construction of the principle of universality in international law and national law as the basis for granting authority to states to prosecute international criminals. This study also aims to examine the Constitutional Court's interpretation of the principle of universality in Decision Number 89/PUU-XX/2022 and its implications for the

authority of the Indonesian Human Rights Court in dealing with international crimes that occur outside the area of national jurisdiction.

D. Research Methods

This research is a normative legal research that focuses on the study of legal norms, doctrines, and court decisions. The approaches used include the statute *approach*, the *conceptual approach*, and *the case approach*. The primary legal materials consist of Constitutional Court Decision Number 89/PUU-XX/2022, Law Number 26 of 2000 concerning the Human Rights Court, as well as international legal instruments related to universal jurisdiction. Secondary legal materials are obtained from books, scientific journals, research results, and relevant legal literature. The collection of legal materials is carried out through literature studies. Furthermore, all legal materials are analyzed qualitatively using a prescriptive method to examine the construction of the principle of universality and assess the implications of the Constitutional Court's decision on the territorial limits of the domestic courts. The conclusions of the study were drawn using the deductive method.

E. Research and Discussion Results

1. Interpretation of the Constitutional Court on the Principle of Universality in Decision Number 89/PUU-XX/2022

The examination of the constitutionality of Law Number 26 of 2000 concerning the Human Rights Court was submitted to the Constitutional Court of the Republic of Indonesia through a case registered with Number 89/PUU-XX/2022. The Petitioners in this case consist of Marzuki Darusman as Petitioner I, Muhammad Busyro Muqoddas as Petitioner II, and the Alliance of Independent Journalists (AJI) as Petitioner III. The

Petitioners focus the test on the norms contained in Article 5 of the Human Rights Court Law. The article reads, "The Human Rights Court is also authorized to examine and decide cases of gross human rights violations committed outside the territorial boundaries of the territory of the Republic of Indonesia by Indonesian citizens." The main constitutional issue boils down to the phrase "by Indonesian citizens" contained in the provision.[11]

The Petitioners postulate that the restriction on the subject of perpetrators of gross human rights violations which only refers to Indonesian citizens is contrary to the principle of universal justice. They argued that the phrase closed the space for the Indonesian Human Rights Court to examine and prosecute perpetrators of crimes against humanity of foreign nationality who committed crimes outside Indonesia's territorial jurisdiction. Based on the Petitioners' construction of arguments, gross human rights violations constitute a crime against the international community as a whole or *hostile humani generis*. This concept carries the consequence of universal jurisdiction, where each country has the legal authority to prosecute the perpetrator of a crime without having to have a link of nationality or territorial link of the crime of the crime.

The essence of human rights is rooted in the doctrine of natural rights that is inherent in every individual from birth regardless of the limits of state sovereignty. This right is inherent and cannot be revoked by any power entity.[12] The argument about

[11] Constitutional Court of the Republic of Indonesia, *Decision Number 89/PUU-XX/2022*, pp. 1-2.
[12] Muh. Ramli, Ahmadin, and Bakhtiar, "Human Rights: Essence, Principles, and Violations," *PESHUM: Journal of Education, Social and Humanities* 4, no. 4 (2025), p. 6423.

the universality of this right is in line with the philosophical view of natural law. In the review of legal philosophy, the concept *of lex naturalis* provides an ontological foundation for the applicability of the principle of universality of human rights.[13] This concept places human dignity at the center of legal protection. On the basis of this philosophical thinking, the Petitioners believe that Indonesia has a constitutional obligation to participate in maintaining world order by opening access to law enforcement against gross human rights violations in other countries, such as the coup and military repression cases that occurred in Myanmar.

This constitutional issue requires the Constitutional Court to unravel the clash between the universality of human rights as a fundamental norm and the limits of state sovereignty in the enforcement of international criminal law. International human rights law formulates standards of protection that cross national borders. Global standards such as the Universal Declaration of Human Rights (DUHAM) have become the main reference instruments in the formulation of human protection norms in various parts of the world.[14] The 1945 Constitution of the Republic of Indonesia guarantees the protection of human rights in a separate chapter. The legal issue being tested is whether the constitutional guarantee immediately expands the jurisdiction of Indonesia's national judiciary to reach purely legal events involving foreign nationals in foreign territories. The Constitutional Court

[13] Jenniefer Royhan, "An Analysis of Thomas Aquinas's Natural Law Thought in the Context of Human Rights Protection in Indonesia," *Das Sollen: Journal of Contemporary Studies of Law and Society* 4, no. 1 (2025), p. 1.

[14] Nisma Ikrimatuz Zahra and Aulia Bintang Salsabilla Kurniawan, "A Comparison of Principles Between Human Rights Law and the Universal Declaration of Human Rights," *QOSIM: Journal of Education, Social & Humanities* 3, no. 4 (2025), p. 1.

is faced with the task of dissecting the meaning of a just and civilized humanity within the framework of relations between nations.

The Constitutional Court issued a judgment rejecting the Petitioners' application in its entirety.[15] This ruling is based on a comprehensive set of legal considerations regarding the boundaries of jurisdiction, state sovereignty, and principles of international law. The Court provides a firm differentiation between human rights as a universal substance and the power to adjudicate as a procedural domain limited by state sovereignty.

In the implementation of the legal system in Indonesia, human rights values must be translated through the formation of positive laws that are in line with the values of Pancasila and the Indonesian constitutional structure.[16] The Court considered the phrase "by Indonesian citizens" in Article 5 of the Human Rights Court Law to be an embodiment of the principle of active personality or the principle of active nationality. This principle provides a legal basis for a country to impose its criminal provisions on its own citizens who commit criminal acts abroad. The Constitutional Court emphasized that the lawmakers consciously chose the principle of active personality and the territorial principle as the basis of the jurisdiction of the Indonesian Human Rights Court. The Court considers that this open legal policy choice is not contrary to the Constitution.

The application of unconditional universal jurisdiction in the national judiciary

[15] Constitutional Court of the Republic of Indonesia, *Decision Number 89/PUU-XX/2022*, p. 171.
[16] Yosep Copertino Apaut and Carles Ino Fallo, "The Implementation of Human Rights in the Indonesian Legal System: A Review of Legal Philosophy," *SCIENCE MIKUM: Journal of Science, Economics, Management, Accounting and Law* 2, no. 4 (2025), p. 323.

has the potential to violate the principle of equality of state sovereignty or *par in parem non habet imperium*. A sovereign state has no power over other sovereign states. Opening up the jurisdiction of the Indonesian Human Rights Court to prosecute foreign nationals for acts in foreign territories without any link of Indonesia's national interest, according to the court, risks triggering diplomatic tensions. The Constitutional Court emphasized that jurisdictional intervention in the domestic affairs of another country can injure the principle of non-intervention in international law. The primary responsibility for prosecuting international crimes rests with the state where the crime occurred on a territorial basis. If the territorial state is unable or unwilling to carry out the judiciary, the law enforcement mechanism shifts to international criminal courts such as the International Criminal Court, in accordance with the principle of complementarity.

The Court separated the concept of moral obligation to participate in implementing world order with the expansion of the authority to adjudicate the constitutional judiciary. The Constitution mandates the Indonesian nation to participate in implementing a world order based on independence, lasting peace, and social justice. The Court interpreted this mandate to be executed through diplomacy, international cooperation, and legitimate multilateral forums under the framework of the United Nations. The opening of the absolute authority of the Human Rights Court without nationality restrictions is considered to exceed the capacity and mandate of the national judiciary.

The principle of universality in human rights governs the inherent value and dignity of human beings regardless of their

citizenship status.[17] This principle is combined with the principles of equality and non-discrimination. The protection of human rights is binding on all state entities from the point of view of customary international law. Nonetheless, procedural law procedures for dragging individuals to court require an orderly jurisdictional regime. The Court concluded that the absence of pure universal jurisdiction in the Human Rights Court Law was not a form of neglect of the universality of human rights values. This construction is a form of compliance with the public international legal order that respects the territorial sovereignty of each country. The Petitioners' argument regarding the crime *of hostile humani generis* is recognized as valid in the international legal discourse, but the Court ruled that the adoption of such jurisdiction into national law remains the sole discretion of the legislature, not the realm of constitutional interpretation that invalidates the norm.

2. Territorial Authority Limits of Domestic Courts After Decision Number 89/PUU-XX/2022

Jurisdiction is the embodiment of state sovereignty in the realm of law enforcement. The domestic courts operate as state organs that carry out the functions of judicial power within established territorial boundaries. The Constitutional Court through Decision Number 89/PUU-XX/2022 affirmed the limits of the territorial authority of the Human Rights Court in Indonesia. This decision rejected the application for a material test of Article 5 of Law Number 26 of 2000 concerning the Human Rights Court. The petitioners filed a petition so that Indonesian domestic courts can prosecute

[17] Muh. Ramli, Ahmadin, and Bakhtiar, "Human Rights: Facts, Principles, and Violations," *PESHUM: Journal of Education, Social and Humanities* 4, no. 4 (2025), p. 6424.

perpetrators of gross human rights violations regardless of the perpetrator's nationality or the geographical location of the crime.

Constitutional Law dissects the structure of the state, the operational organs of the state, and the limits of their power. Hedwig Adianto Mau and Tinton Ditisrama explained the formulation that Constitutional Law is the main guide to understand the foundation of state formation, the implementation of the concept of democracy, and state instruments in carrying out its work functions.[18] The Human Rights Court has a position as an instrument of the state. The authority of this institution is subject to constitutional limitations. The 1945 Constitution of the Republic of Indonesia presents an absolute framework for all state organs. Dian Aries Mujiburohman argued that the regulation of the constitution has perpendicular implications to the state power system, limiting the operational scope of each institution to prevent overlapping authority or violation of territorial sovereignty.[19]

This request for the expansion of jurisdiction clashes directly with the limits of state sovereignty. Tundjung Herning Sitabuana underlined the reality that the practice of constitutional administration is always based on the protection of the constitutional rights of citizens as stated in the proclamation and the basic constitution.[20] The fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia in 1945 mandates the establishment of an Indonesian state government that is tasked

[18] Hedwig Adianto Mau and Tinton Ditisrama, *Indonesian Constitutional Law: Theory and Its Application* (Jakarta: Amerta Media, 2022), p. 1.
[19] Dian Aries Mujiburohman, *Introduction to Constitutional Law* (Yogyakarta: STPN Press, 2017), p. iii.
[20] Tundjung Herning Sitabuana, *Indonesian Constitutional Law* (Jakarta: Constitution Press, 2020), p. 1.

with protecting the entire Indonesian nation and all Indonesian bloodshed. The Constitutional Court interpreted this constitutional mandate as the boundary line of operational jurisdiction. The Indonesian government and judicial organs have a primary obligation to protect Indonesian citizens and the territory of the Republic of Indonesia. Expand the reach of the Human Rights Court to prosecute foreign nationals for crimes that occur outside the jurisdiction of Indonesia beyond the limits of such constitutional duties.

Indonesia's constitutional system is built on the basis of territorial protection and the personality of its citizens. The Constitutional Court considers that the amendment to Article 5 of the Human Rights Court Law will overhaul the entire design of the national criminal justice system. The current system rests on the locus delicti. Gathering evidence, summoning witnesses between countries, and executing verdicts for extraterritorial crimes committed by foreign nationals raises massive procedural legal constraints. This constraint represents a manifestation of the limits of the sovereignty of an independent state entity.

The principle of universality was born as a legal response to extraordinary crimes that threaten the existence of humanity. Gross human rights violations such as genocide and crimes against humanity are classified as enemies of all humanity. The Introduction to International Law details various jurisdictional principles, the universal principle of which provides a basis for any state to prosecute the perpetrators of pure international crimes without the need to prove the existence of national ties or

territorial ties.[21] Nils Melzer in his study of International Humanitarian Law reinforces this concept of jurisdiction. Gross violations of the Geneva Conventions oblige all participating states to seek, prosecute, or extradite war criminals, reflecting the concrete embodiment of universal jurisdiction to break the chains of global impunity.[22]

The Constitutional Court in Decision Number 89/PUU-XX/2022 outlines the absolute demarcation limit for the application of the principle of universality in Indonesia's jurisdiction.[23] The Court held that the application of the principle of pure universality failed to be in accordance with the design of the Indonesian constitution. The Court adheres to the principle of passive personality and the principle of active nationality. The application of universal jurisdiction without limitation has the potential to violate the sovereignty of other countries. Every entity of an independent state has a legal system and territorial sovereignty that must be respected by other subjects of international law. The Court highlighted the threat of legal intervention between countries if the Republic of Indonesia imposes itself to adjudicate cases that are locus delicti and the subject of the law has absolutely no correlation with Indonesia's national interests.

The determination of this boundary is relevant to the discourse of state legal responsibility. Rhona K. M. Smith and her colleagues affirm the principle that

[21] Diva Pitaloka et al., *Introduction to International Law* (Jakarta: Mega Press, 2023), p. 2.
[22] Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (Geneva: ICRC, 2019), p. 366.
[23] Constitutional Court of the Republic of Indonesia, *Decision Number 89/PUU-XX/2022*, p. 172.

international human rights law instruments place the responsibility for the fulfillment and protection of human rights on the shoulders of the country concerned.[24] The absolute responsibility of the state is entirely within its own jurisdiction. When a country expands its jurisdiction beyond its territorial boundaries without the authorization of a valid international treaty, it runs the risk of taking over the domestic jurisdiction of another country. Indonesia's national law has not accommodated adequate procedural law instruments to deal with absolute extraterritorial crimes. The pursuit of evidence, cross-jurisdictional cross-examination, and the implementation of judgments in foreign jurisdictions require highly complex extradition mechanisms and mutual legal assistance.

The Constitutional Court is of the view that Law No. 26 of 2000 has adopted the element of extraterritorial jurisdiction, limited to the principle of active and passive nationality. The law allows for the prosecution of Indonesian citizens who commit offences abroad, or the prosecution of anyone who commits offences against Indonesian citizens abroad. The Court considered that further expansion towards purely universal jurisdiction undermines the fundamental balance between international obligations and respect for national sovereignty.

The Constitutional Court's rejection of the application of universal jurisdiction has a systemic impact on the national law enforcement structure. Indonesia affirms its position as a country that upholds the limits of state sovereignty in the conventional

[24] Rhona K. M. Smith et al., *Human Rights Law* (Yogyakarta: PUSHAM UII, 2008), p. 37.

sense. State sovereignty acts as a pillar of support for the constitutional structure. The state holds exclusive power over its territorial boundaries. If domestic courts declare the authority to criminalize foreign nationals for acts in a foreign country, this triggers jurisdictional disputes between countries. Constitutional Law regulates the pattern of relations between state institutions at the domestic level. This law also provides an operational basis for foreign policy. The practice of Indonesian constitutional law harmonizes the function of the judiciary with the principle of non-interference with the sovereignty of friendly countries.

The implications of this ruling limit the procedural authority of Indonesian law enforcement. The prosecutor's office and police are not authorized to investigate alleged crimes against humanity located in areas outside Indonesia's jurisdiction, despite the massive number of victims. The criminal law and constitutional system of the Republic of Indonesia is focused on resolving internal territorial problems. This focus creates legal certainty for enforcement at the domestic level. This legal certainty secures the state apparatus from operational obligations that go beyond its institutional capacity and constitutional mandate. Constitutional Law places the judiciary as the guardian of justice for the Indonesian people first.

Another implication is that Indonesia's position is isolated from the progressive trend of international criminal law developments. The international community continues to promote the enforcement of universal jurisdiction to eradicate impunity for perpetrators of extraordinary crimes. Domestic courts in the European region often exercise universal jurisdiction to prosecute war crimes perpetrators from transcontinental conflict areas. Indonesia has made a very cautious constitutional choice.

This prudence protects the constitutional structure from international political shocks. The state retains the autonomy of its judicial jurisdiction from global pressures that have the potential to harm territorial national interests.

The Constitutional Court's assertiveness in maintaining the sovereignty of national law ensures that the judiciary does not function as an instrument of pure international justice. Domestic courts focus on executing the material and formal laws produced by national legislatures. The judicial burden is focused on the constitutional protection of Indonesian citizens. The state prioritizes constitutional stability rather than taking on the dual role of enforcer of the world's humanitarian law that requires separate international juridical instruments.

The Constitutional Court's Decision Number 89/PUU-XX/2022 requires an examination from the perspective of progressive Constitutional Law. The Constitutional Court's textual approach has proven to be effective in maintaining sovereignty stability, but it turns a blind eye to the dynamics of global human rights law.

Related then to the logic of interpretation of the Preamble to the Constitution of the Republic of Indonesia in 1945. The Court highlighted the phrase "protect the entire Indonesian nation and all Indonesian bloodshed" as a clause limiting judicial authority. This single interpretation overrides the constitutional obligation in the same paragraph. The Constitution mandates state organs to "participate in the implementation of a world order based on independence, lasting peace and social justice". Participating in realizing world order presents a strong constitutional foundation for Indonesia to take concrete action to crack down on extraordinary

criminals wherever they are located. Gross human rights violations destroy lasting peace and social justice at the world level. Allowing perpetrators to roam freely is contrary to the spirit of maintaining world order.

Then it is related to Indonesia's international commitment. Indonesia has ratified various international human rights instruments. Constitutional law and international law thinkers agree that crimes with the dimension of genocide have the status of jus cogens, the absolute basic norm of international law that is unlawful to be violated by any state entity. Rhona K. M. Smith postulated that the direction of human rights law development has always been oriented to reach beyond the limits of territorial sovereignty for the sake of human supremacy.[25] The Constitutional Court's stance establishes a rigid conception of sovereignty and rejects the principle of unlimited human rights. This decision produced an anomaly of diplomatic attitudes. The Government of the Republic of Indonesia has been very vocal in condemning crimes against humanity in various United Nations forums, on the other hand, Indonesia's domestic justice system closes access to prosecute perpetrators of similar crimes if they cross the jurisdiction of the Republic of Indonesia.

The third criticism focuses on the Constitutional Court's unwillingness to see the opportunity for the application of conditional universal jurisdiction. Pure universal jurisdiction provides judicial authority without the obligation to present the perpetrator at trial. Conditional universal jurisdiction requires the physical presence of the perpetrator in the territory of the state that

[25] Ibid., p. 46.

will be prosecuting him. The principle of aut dedere aut judicare requires each country to extradite the perpetrator or hold a judicial process. International Humanitarian Law relies entirely on this operational mechanism.[26] The Constitutional Court actually has the authority to give birth to conditional constitutional interpretations. This interpretation can require the state to process the law of international crime perpetrators of foreign nationals, with the absolute condition that the perpetrator is in the sovereign territory of the Republic of Indonesia and the country of origin refuses to hold a judicial process. The Court's absolute rejection castrates the potential of Indonesia's constitutional system to serve as a pillar of alternative jurisdictions for global justice.

Constitutional Law must have the ability to adapt in line with the high need for criminal law enforcement with a global dimension. This ruling locks the national legal system to the paradigm of territorial sovereignty in the past. The legal order of the modern century presents a paradigm shift in sovereignty that was previously centered on territorial exclusive authority towards sovereignty that is integrated on the obligation to protect universal human values. The Human Rights Court in Indonesia is limited later by narrow administrative prerequisites. Judicial institutions are missing a golden opportunity to make a real contribution to the enforcement of universal justice at the praxis level. The absence of this legal umbrella has the potential to harm Indonesia's geostrategic position, distort the function of law enforcement, and make national jurisdictions a safe escape location

[26] Nils Melzer, op. cit. cit., p. 366.

for international criminals due to the absence of enforcement instruments.

F. Conclusion

The construction of the principle of universality in the national criminal law system, especially in Law Number 26 of 2000 concerning the Human Rights Court, is implemented in a limited form through a combination of territorial principles and active personality principles. The Constitutional Court through Decision Number 89/PUU-XX/2022 reaffirmed the limits of this jurisdiction by rejecting an application for the expansion of the authority to prosecute foreign nationals for gross human rights violations that occurred outside Indonesian territory. The Court based its decision on the value of respect for the territorial sovereignty of friendly countries and the principle of non-intervention in order to maintain the stability of the domestic constitutional system from potential disputes of international jurisdiction. This decision shows the direction of Indonesia's judicial policy that prioritizes the settlement of cases of domestic jurisdiction and limits its absolute role in global humanitarian protection efforts. The rejection of the application of the principle of universality has implications for the isolation of national law from the dynamics of international criminal law. The textual approach in interpreting constitutional authority limits Indonesia's capacity to contribute to breaking the chain of impunity of perpetrators of extraordinary crimes between nations. The legislature is advised to review the draft new regulations to accommodate the principle of conditional universality. The adaptation of this legal instrument requires the physical presence of the alleged perpetrator in the sovereign territory of the Republic of Indonesia based on the principle *of aut dedere aut judicare*. This adaptive policy is

able to bridge the obligation to maintain state sovereignty at the same time as fulfilling the constitutional mandate to participate in realizing world order.

Bibliography

Books

Mau, Hedwig Adianto, and Tinton Ditisrama. *Indonesian Constitutional Law: Theory and Application*. Jakarta: Amerta Media, 2022.

Melzer, Nils. *International Humanitarian Law: A Comprehensive Introduction*. Geneva: ICRC, 2019.

Mujiburohman, Dian Aries. *Introduction to Constitutional Law*. Yogyakarta: STPN Press, 2017.

Pitaloka, Diva, et al. *Introduction to International Law*. Jakarta: Mega Press, 2023.

Sitabuana, Tundjung Herning. *Indonesian Constitutional Law*. Jakarta: Constitution Press, 2020.

Smith, Rhona K. M., et al. *Human Rights Law*. Yogyakarta: PUSHAM UII, 2008.

Scientific Journal

Anisah, Aura, et al. "Challenges in the Implementation of ICC Jurisdiction in Law Enforcement of Genocide Crimes in Non-Party States." *Media Hukum Indonesia (MHI)* 3, no. 4 (2025).

Apaut, Yosep Copertino, and Carles Ino Fallo. "The Implementation of Human Rights in the Indonesian Legal System: A Review of Legal Philosophy." *SCIENCE MIKUM: Journal of Science, Economics, Management, Accounting and Law* 2, no. 4 (2025).

Armeliyanti, and Vivi Amelia. "State Responsibility for the Crime of Genocide According to International Law." *Journal of Legal Sovereignty* 1, no. 2 (2025).

Dewi, Egalita Basita, et al. "A Review of Crises and Human Rights Violations in Conflict Areas through Legal and Ethical Approaches." *Journal of Science Lanterns (JLI)* 1, no. 1 (2025).

Edrisy, Ibrahim Fikma, and Angelina Putri. "Indonesian Law and Human Rights: Evolution, Struggle, and Hope." *PESHUM: Journal of Education, Social and Humanities* 5, no. 2 (2026).

Hanifa, Ade Putri, Riyanti Angelina, and H. Zaenudin. "Implications and Constraints of the Application of International Criminal Law in the Age of Global Modernization (Case Study of the Rohingya Massacre in Myanmar)." *Synergy: Multidisciplinary Scientific Journal* 2, no. 1 (2026).

Ismail, Andi Muh, Abdul Rahman, and Nurfadhilah Mappaselleng. "Criminal Law Analysis of Genocide as a Human Rights Violation in Indonesia." *Legal Dialogica* 1, no. 1 (2025).

Joli, Angelika. "Juridical Analysis of Israeli Aggression in Palestine: Perspectives of International Criminal Law and Islamic Criminal Law on the Sanction of Genocide in Rome Statute, Part 7, No. 77 of 1998." *Maqasid: Journal of Islamic Law Studies* 14, no. 2 (2025).

Manurung, Marzuki, et al. "International Human Rights and Its Enforcement in Indonesia." *Journal of Mudabbir* 5, no. 2 (2025).

Nandiwardhana, Anak Agung Gede Agung, and I Gusti Ngurah Nyoman Krisnadi Yudiantara. "The Problem of the Implementation of Chemical Castal Sanctions Reviewed from Legal and Human Rights Principles." *Journal of Academic Media (JMA)* 3, no. 8 (2025).

Ramli, Muh., Ahmadin, and Bakhtiar. "Human Rights: Facts, Principles, and Violations." *PESHUM: Journal of Education, Social and Humanities* 4, no. 4 (2025).

Rasidi, Ibrahim Abdillah, and Mochamad Kemal Al Farizi. "The Implementation of the Second Precept of Pancasila in the Protection of Human Rights: A Perspective of Humanism Theory and the Declaration of Human Rights." (2025). *(Note: Journal name is not listed in original data)*

Royhan, Jenniefer. "Analysis of Thomas Aquinas's Natural Law Thought in the Context of Human Rights Protection in Indonesia." *Das Sollen: Journal of Contemporary Studies of Law and Society* 4, no. 1 (2025).

Setiaji, Muhammad Bayu, et al. "Human Rights in the Perspective of Liberalism." *Economics: Journal of Economics and Business* 1, no. 3 (2026).

Sugari, Dedi, and Hilalludin. "Human Rights in the Perspective of Islamic Law: Between Universalism and Particularism." *IMANU: Journal of Islamic Law and Civilization* 1, no. 1 (2025).

Wiritanaya, Inge Nur Az'zahra Maheswari Dharmalingga, and Irwan Triadi. "Human Rights as the Principle of Jus Cogens: A Philosophical Study of Law." *Studia: Journal of Humanities and Education Studies* 1, no. 1 (2025).

Zahra, Nisma Ikrimatuz, and Aulia Bintang Salsabilla Kurniawan. "A Comparison of Principles Between Human Rights Law and the Universal Declaration of Human Rights." *QOSIM: Journal of Education, Social & Humanities* 3, no. 4 (2025).

Zebua, Efiziduhu, et al. "The Settlement of Genocide Crimes Committed by the Myanmar Government Against the Rohingya Muslim Ethnic in Myanmar in the Perspective of International Criminal Law." *INNOVATIVE: Journal Of Social Science Research* 5, no. 4 (2025).

Laws and Regulations and Court Decisions

Indonesia. *Law Number 26 of 2000 concerning the Human Rights Court*.

Constitutional Court of the Republic of Indonesia. *Decision Number 89/PUU-XX/2022 regarding the Examination of Law Number 26 of 2000 concerning the Human Rights Court*. April 14, 2023.

Papers and Working Papers

Marzuki, Suparman. "Human Rights Court." The paper was presented at the Scientific Banquet on Human Rights Law for Educators of the Semarang Police Academy, Yogyakarta, May 16-18, 2017.