

Balancing Constitutional Rights and Personal Data Protection for Citizens in the Digital Society: A Proportionality Test Analysis of Constitutional Court Decisions

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ABSTRACT

The development of digital technology and the enactment of the Personal Data Protection Law (PDP Law) have raised constitutional tensions between the right to privacy and freedom of expression, particularly when the disclosure of personal data is related to public interest. This conflict raises questions about how the Constitutional Court balances these two rights in Decision Number 135/PUU-XXIII/2025 and the extent to which the approach used reflects the proportionality test. This study aims to analyse the practice of balancing rights in the decision, examine its compliance with the stages of the proportionality test, and formulate a more systematic model for applying proportionality in the context of digital constitutionalism. The study employs normative legal methods with conceptual, legislative, and case study approaches, as well as limited comparative analysis. The research results indicate that the Court has substantively carried out constitutional balancing, but has not yet operationalized the proportionality test explicitly and systematically, especially in terms of necessity and proportionality in the strict sense. The implication is that formalization of the proportionality test is needed in adjudication and legislative practices to maintain the balance of rights in a rational, consistent, and democratic manner in the era of digital governance.

Keywords: *Mahkamah Konstitusi, proportionality test, digital constitutionalism*

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INTRODUCTION

The digital technology evolution over the last twenty years has transformed the dynamics significantly among countries, their citizens, and the flow of information. Individual data has gone beyond its former status as a mere administrative matter and has now become an integral component of the constitutional right to privacy, as enshrined in Article 28G of the 1945 Constitution. The enactment of Law Number 27 of 2022 concerning Personal Data Protection (UU PDP) marks a significant development in the formation of digital constitutionalism in Indonesia, where data governance is grounded in the principles of protecting human rights and limiting government authority (Subekti et al., 2023).

However, these regulations often raise issues between data privacy protection and the right to freedom of expression, as guaranteed by Article 28F of the 1945 UUD. This conflict becomes more complicated when the personal data disclosure is related to public interest issues, such as cases of corruption reporting or supervision of public officials. In such cases, resolving a conflict of rights is not possible through a pure interpretation of the constitutional text alone, but instead requires the application of a rational and proportionate balancing methodology. The rights theory articulated by Robert Alexy argues that conflicts among fundamental rights must be decided through proportionality assessments, because each right represents an optimization sequence whose actualization depends on factual and normative circumstances (Zulfall: 2022). The importance of this theoretical framework is further emphasized when the norm being examined constitutes a criminal act, as described in Article 65 paragraph (2) together with Article 67 paragraph (2) of the PDP Law, which has the potential to create a wide range and have a detrimental effect on civil liberties.

Mahkamah Konstitusi Decision Number 135/PUU-XXIII/2025 presents a concrete arena for assessing how the conflict between the right to privacy and freedom of expression is resolved in Indonesian constitutional judicial practice. Although the Court appears to have used a substantive balancing approach, the application of the proportionality test has not been explicitly and systematically formulated as a standard doctrine. On the other hand, academic studies regarding the PDP Law are still dominated by administrative law and consumer protection approaches, while analysis from a constitutional balancing perspective, especially through a proportionality test framework, is still relatively limited. Based on this context, this article aims to analyze how the Constitutional Court balances the right to privacy and freedom of expression in Decision Number 135/PUU-XXIII/2025, examine the extent to which its considerations reflect the stages of the proportionality test, and formulate a model for applying the proportionality test which is more systematic in testing norms that limit constitutional rights in the digital era.

METHOD

This research employs a normative legal research method, combining a conceptual and statutory approach with a case approach, to analyze Constitutional Court Decision Number 135/PUU-XXIII/2025 as the primary object of analysis. The normative approach was chosen because this research focuses on constructing constitutional arguments, interpreting norms, and examining the conformity of rights restrictions with the principles contained in the 1945 Constitution. In this context, the Court's decisions are analyzed as primary legal sources reflecting the practice of constitutional interpretation by judicial institutions. Furthermore, this research uses a conceptual approach to examine the theory of proportionality testing in modern constitutional law, drawing on the thinking of experts such as Robert Alexy and Aharon Barak, as well as its practical application in various constitutional jurisdictions. Through this approach, the research not only describes the Court's reasoning but also critically evaluates whether the decision's argumentation structure meets the stages of the proportionality test—namely, legitimacy of purpose, suitability, necessity, and proportionality in the strict sense (Sivkov: 2024).

To enrich the analysis, this research also utilizes a limited comparative approach, specifically comparing the practice of balancing rights within personal data protection regimes in other jurisdictions that have explicitly developed proportionality tests. The data used include primary legal materials (the 1945 Constitution, the Personal Data Protection Law, and Constitutional Court decisions), secondary legal materials (literature, scientific journals, and doctrine), and relevant tertiary legal materials. All legal materials are analyzed qualitatively using deductive and argumentative reasoning techniques to formulate a more systematic model of balancing constitutional rights in the context of digital constitutionalism in Indonesia

FINDINGS AND DISCUSSION

Constitutional Tribunal and Substantive Constitutional Balancing Methodologies

The results of the examination of Constitutional Court Decision No. 135/PUU-XXIII/2025 indicate that the Court has effectively achieved a substantive balance between the right to privacy and the freedom of expression within the framework of personal data protection. In its deliberations, the Court did not regard the right to privacy as an unconditional right; instead, it is acknowledged as a constitutional right that must be interpreted in conjunction with other constitutional rights, particularly the right to information and freedom of expression as enshrined in Article 28F of the 1945 Constitution. This perspective reflects the Court's acknowledgment that the tension between fundamental rights is an intrinsic characteristic of a democratic legal system (Rianarizkiwati: 2024). Furthermore, the Court affirmed that the safeguarding of personal data serves a legitimate constitutional objective, specifically aimed at upholding the dignity and integrity of individuals within the digital realm. Concurrently, the Court acknowledged that limitations on the disclosure of personal data must not compromise the essential role of freedom of expression as a cornerstone of democracy, especially when such

disclosures pertain to matters of public interest. The recognition of these dual aspects reinforces that the Court does not adhere to a binary approach that elevates either right above the other in absolute terms.

From the perspective of the rights theory articulated by Robert Alexy, the Court's methodology may be viewed as an implicit recognition that constitutional rights operate as optimization mandates (Zysset:2019). In essence, when two rights confront one another, both must be realized to the fullest extent possible without undermining the other. Therefore, it can be concluded that the Court has assimilated the notion that resolving rights conflicts requires a balancing mechanism (Agustini et al.: 2024). However, despite the substantive presence of balancing practice, the Court does not overtly reference or delineate the proportionality test framework as the analytical approach employed. There exists no systematic argumentative structure that differentiates between assessing the legitimacy of objectives, the appropriateness of means, the necessity of restrictions, and the narrow weighing of interests. In other words, while the Court employs balancing terminology, it has yet to operationalize it within a formalized methodological context.

When the Verdict is analyzed using the four-stage proportionality test (Luna:2025), it is evident that the initial stage, which concerns the legitimacy of objectives, is satisfied. The Court recognizes that the protection of personal data is a legitimate constitutional objective within a democratic society. At the second stage, suitability, the Court accepts that the criminal provisions of the Personal Data Protection Act may function as a means to prevent data misuse. However, deficiencies become apparent at the third stage, necessity. This stage requires that restrictions on rights must be the least restrictive means of achieving a legitimate objective. In this case, the central question is whether criminalizing the disclosure of personal data, without explicit exceptions for journalistic, academic, or artistic purposes, is the only effective method for protecting privacy.

The Court's deliberations did not include an explicit examination of potential alternatives to less severe restrictions, such as administrative penalties, distinctions between public officials and private citizens, or exceptions based on public interest. This omission suggests that the Court has not fully applied the principle of necessity in its strict interpretation. In contemporary proportionality theory, the necessity stage is essential for preventing undue limitations on rights (Romashko, 2024). Without evaluating less restrictive alternatives, courts may endorse measures that unnecessarily constrain civil liberties. In the context of criminal regulations that may produce a chilling effect, the necessity assessment is increasingly important.

In Decision 135/PUU-XXIII/2025, the Court highlighted the essential requirement to uphold an equilibrium between the right to privacy and the right to freedom of expression. Nevertheless, there exists a lack of definitive criteria

regarding the assessment of the relative importance of these two rights. No established benchmarks have been created to ascertain when the public interest ought to take precedence, nor to differentiate between the disclosure of exploitative data and disclosures intended for public accountability. The lack of such benchmarks suggests that the balancing act may appear more rhetorical than substantive. In contemporary constitutional adjudication, proportionality, in its strictest sense, typically necessitates a more comprehensive analysis concerning the severity of restrictions, the urgency of the objectives at hand, and the societal implications of the norm under scrutiny (Choudhry: 2013). In this context, the Court has yet to reach a level of articulation that provides such detailed analysis.

From the overall assessment, one can infer that the Constitutional Court is presently undergoing a transitional phase towards the incorporation of proportionality as a foundational doctrine in addressing conflicts between constitutional rights (Barak: 2012). The practice of balancing has been notably evident in various judgments, including this particular case addressing the safeguarding of personal data. However, this practice has not yet been articulated as an explicit and systematic analytical framework. This transitional period can be perceived as an integral component of the evolutionary trajectory of constitutional justice in Indonesia. As the intricacies of cases pertaining to digital rights and technology regulation escalate, the necessity for a more systematic methodological framework becomes increasingly imperative. Criminal norms within the realm of digital governance exert a substantial influence on civil liberties, rendering ad hoc or casuistic constitutional testing insufficient.

From a broader perspective, Decision 135/PUU-XXIII/2025 serves as a pivotal moment for the Court to elucidate the standards for evaluating rights restrictions. Should the proportionality test be explicitly operationalized, the Court will not only enhance the quality of its constitutional reasoning but also fortify its institutional legitimacy as the custodian of rights equilibrium in the age of digital constitutionalism (Nardi, 2025). Consequently, the interpretation of this study's findings substantiates two principal assertions: firstly, the Court acknowledges the necessity for a balance between the right to privacy and freedom of expression; secondly, this balancing framework still necessitates methodological reinforcement to ensure alignment with proportionality standards in contemporary constitutional judicial theory and practice.

Digital Constitutionalism

The results of this study yield significant theoretical advancements by contextualizing the Court's Verdict Number 135/PUU-XXIII/2025 within the paradigm of digital constitutionalism. Presently, research regarding the Personal Data Protection Act often frames the regulation as an administrative tool in data

governance or as an element of consumer protection frameworks (Rasid: 2025). Through a thorough analysis of proportionality, this article demonstrates that the PDP Law constitutes an arena of intricate constitutional rights conflicts, necessitating its interpretation within the scope of state law rather than solely administrative law.

This conceptualization broadens the understanding that digital regulation transcends a mere technical concern of data control, serving as a component of the power dynamics within a digital democracy (Pohle & Voelsen: 2022). Therefore, the safeguarding of personal data alongside freedom of expression should be perceived as a constitutional relationship that require a systematic mechanism for balancing. This perspective enriches the national discourse by integrating a constitutional balancing approach into the studies of Indonesian digital law. Theoretically, the article also contends that rights conflicts within the digital era increasingly necessitate the internalization of proportionality as a fundamental method for evaluating rights restrictions. In this context, Decision 135/PUU-XXIII/2025 is not merely significant as a concrete case ruling, but also serves as an indicator of the evolution of Indonesian constitutional judicial methodology in addressing the challenges posed by digital regulation.

Another theoretical contribution of this research lies in the reconstruction of the constitutional underpinnings of proportionality within the Indonesian legal framework. Historically, proportionality has frequently been perceived as a doctrine emerging from the judicial practices of European constitutions or specific legal systems. However, this study reveals that Article 28J of the 1945 Constitution has normatively established a constitutional basis for the implementation of the proportionality test. Article 28J not only acknowledges potential limitations on rights but also mandates that such limitations be legally established and directed towards safeguarding the rights of others as well as the overarching interests of a democratic society (Aji & Nurhalimah, 2020). This framework inherently embodies the principle of proportionality: the affirmation of legitimate objectives, lawful restrictions, and equilibrium within a democratic context. Consequently, this article posits that proportionality is not an alien concept within Indonesian state law; rather, it can be reinterpreted as an interpretive method that aligns with both the letter and the essence of the 1945 Constitution. This reinterpretation carries significant theoretical implications as it paves the way for the formal integration of proportionality as a definitive doctrine within the jurisprudence of the Constitutional Court.

The findings of this study offer a critical analysis of balancing models characterized by casuistic and disorganized features. Implicit balancing practices that lack distinct methodological frameworks risk generating inconsistencies in judicial decisions regarding restrictions on constitutional rights. In the context of criminal legislation, ambiguity in the balancing methodology can significantly undermine legal certainty (Lobach: 2025). Without clearly defined parameters, the interpretative

scope becomes excessively broad and depends on unpredictable casuistic considerations. This critique does not seek to justify the Court's role but instead underscores the urgent need to improve adjudicative methodologies in cases involving digital rights. Theoretically, this article contends that declarative balancing is insufficient within the context of digital governance. A standardized approach to argumentation, utilizing a structured proportionality test, is essential to ensure that the resolution of rights conflicts is not based solely on normative intuition but is instead grounded in a rationally testable analytical framework (Alexy: 2021).

Research Implications

The findings of this study highlight the necessity for the Constitutional Court to formalize proportionality as a central element within the constitutional testing framework. As cases involving digital rights and technology regulation become more prevalent, the Court will increasingly face complex conflicts between fundamental rights. Formalizing proportionality is expected to improve the quality of judicial reasoning and strengthen the institutional legitimacy of the Court in maintaining constitutional balance (Jackson et al., 2025). Establishing an explicit and systematic structure will promote consistency in rulings and offer clearer guidance for judges in similar future cases. From a legislative perspective, this study highlights the risks associated with overcriminalization when developing norms that restrict constitutional rights. The criminal provisions in the PDP Act demonstrate that limitations on rights in the digital context can significantly impact civil liberties. Therefore, it is essential to integrate the principle of proportionality from the earliest stages of legislative drafting. Legislators should carefully assess whether criminal sanctions are indispensable and ensure that adequate exceptions exist to protect public interests, including journalism and academic research.

Practically, the findings of this study are highly relevant to journalists, scholars, and arts practitioners who regularly engage with complex digital regulations. Ambiguity in the criteria for balancing rights can create legal uncertainty and may contribute to an environment that encourages self-censorship (Oliver & Stothers, 2017). Adopting a more structured approach to proportionality will provide clearer guidance on the legitimate boundaries for disclosing information containing personal data (Maulidina, 2024). It is essential to prevent privacy protections from becoming tools that suppress criticism or hinder public scrutiny of authority. While this research provides a systematic analysis of the implementation of the proportionality test in Constitutional Court Decision No. 135/PUU-XXIII/2025, several limitations must be acknowledged. Recognizing these limitations serves to appropriately contextualize the findings within the evolving field of state law scholarship.

First, this research focuses solely on a single Constitutional Court decision as its primary case study. Although this approach allows for an in-depth examination of

the Court's argumentation and balancing methods, it limits the generalizability of the findings to broader Indonesian constitutional adjudication. Since court doctrine evolves through the accumulation of multiple decisions, a more comprehensive understanding of proportionality's application would require longitudinal analysis across various cases involving restrictions on constitutional rights in both digital and non-digital contexts.

Second, the study employs a normative-doctrinal methodology, focusing on the analysis of the verdict's text, argumentation structure, and legal theory development. While this approach facilitates critical evaluation of rights-balancing practices, it does not empirically assess the societal impacts of the norm, such as potential chilling effects on journalists, academics, or civil society. Consequently, the practical implications discussed are primarily theoretical and inferential, rather than based on empirical data regarding social behavior following the norm's enforcement.

Third, although this study draws on proportionality theory and global constitutional jurisprudence as a conceptual framework, its comparative analyses are limited and do not provide in-depth, jurisdiction-specific insights. The article does not undertake a detailed examination of proportionality's systematic application within any single legal system. Instead, it uses global literature and practices as theoretical references for evaluating the Constitutional Court's methodology. As a result, the comparative contribution is primarily conceptual rather than extensively descriptive or comparative.

Fourth, the study is based on the normative assumption that proportionality is the optimal method for adjudicating conflicts involving constitutional rights. While this assumption aligns with contemporary constitutional law theory, academic debate regarding the strengths and weaknesses of proportionality as an evaluative method remains ongoing. This article does not address critiques of proportionality, such as concerns about subjectivity in the balancing phase, thereby leaving space for further critical discussion in future research.

In light of these limitations, this study is not intended as a definitive statement on the Constitutional Court's role in developing the doctrine of proportionality. Instead, it represents an initial contribution to ongoing discussions about standardizing methodologies for assessing rights restrictions within digital constitutionalism. Recognizing these limitations also highlights the need for a multidimensional approach to the evolution of constitutional proportionality theory and practice in Indonesia, integrating normative, comparative, and empirical analyses.

CONCLUSION

This scholarly article commences with the assertion that the dichotomy between the right to privacy and the freedom of expression within the realm of

personal data protection constitutes a constitutional quandary that transcends mere textual interpretation, necessitating instead a methodical approach to balancing these rights. An examination of Constitutional Court Decision No. 135/PUU-XXIII/2025 reveals that the Court has fundamentally acknowledged the imperative for equilibrium between these two essential rights. Nonetheless, the implementation of this balancing act has not been explicitly delineated within a coherent framework of systematic proportionality assessment.

The findings indicate that the Court has adequately addressed aspects concerning the legitimacy of objectives and appropriateness of means when evaluating constraints on rights; however, it has not rigorously scrutinized the criteria of necessity and proportionality stringently. The lack of an explicit methodological framework may engender inconsistencies in argumentative discourse and hinder the transparency of judicial reasoning, particularly in instances involving criminal statutes that exert considerable influence on civil liberties.

From a theoretical standpoint, this article contends that the principle of proportionality possesses a normative foundation in Article 28J of the 1945 Constitution and can be reconceptualized as an intrinsic constitutional methodology within the Indonesian legal framework. The ruling of 135/PUU-XXIII/2025 may be interpreted as emblematic of the Court's transitional evolution toward the internalization of proportionality as a fundamental doctrine for adjudicating conflicts of constitutional rights in the context of the digital era. Consequently, the primary contribution of this article resides in its endeavor to elevate the discourse surrounding personal data protection from an administrative perspective to the domain of constitutional balancing, while providing a conceptual framework for the formal incorporation of proportionality into Indonesian constitutional judicial practice.

Based on these findings, several normative and academic recommendations are proposed. The Constitutional Court should consider formalizing proportionality assessments as a standard part of the methodology used to evaluate restrictions on constitutional rights, especially in the context of criminal legislation and digital governance. Establishing a structured testing framework that includes legitimacy of purpose, suitability, necessity, and proportionality analysis is expected to improve the consistency, transparency, and legitimacy of judicial reasoning. Legislators are encouraged to incorporate the principle of proportionality at the initial stage of ex ante proportionality evaluation, particularly when preparing regulations that may limit freedom of expression. This process requires a comprehensive assessment of the justification for criminalization, consideration of less restrictive alternatives, and the formulation of clear exemptions for public interest activities, including journalism, academic research, and oversight of public officials.

The academic community, including scholars in state law, is encouraged to conduct empirical and comparative studies to contribute to the discourse on

proportionality in the Indonesian context. Research into the societal impacts of personal data regulations, such as potential chilling effects, is expected to provide a more comprehensive basis for the development of constitutional doctrine. Within the framework of digital constitutionalism, proportionality serves as both a methodological tool and a normative standard to maintain a balance between the protection of individual dignity and the preservation of democratic spaces. The integration of proportionality into judicial and legislative processes is intended to ensure that personal data protection does not become a means to restrict public discourse, but remains aligned with the principles of democratic rule of law.

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