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Integrating Constructive Res Judicata into Indonesian Civil Procedure Law: Lessons from India

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Banyaknya perkara perdata di Indonesia yang ditangani menimbulkan suatu pertanyaan tentang seberapa efektif asas res judicata untuk memberi kepastian akhir suatu sengketa. Pasal 1917 Kitab Undang-Undang Hukum Perdata Indonesia mengatur kekuatan mengikat putusan, tetapi belum secara tegas memuat konsep constructive res judicata, sehingga masih terbuka peluang gugatan berulang dengan dalil yang berbeda. Penelitian ini menganalisis pengaturan res judicata dalam hukum perdata Indonesia, membandingkannya dengan Pasal 11 Code of Civil Procedure 1908 India, serta merumuskan model integrasi constructive res judicata yang relevan bagi Indonesia. Metode yang digunakan adalah penelitian hukum doktrinal dengan pendekatan perundang-undangan, konseptual, dan komparatif. Hasil penelitian menunjukkan adanya kekosongan pengaturan yang berpotensi melemahkan sifat final suatu putusan. Integrasi doktrin ini penting untuk memperkuat kepastian, keadilan, dan meningkatkan efisiensi peradilan.

Kata Kunci: *Res Judicata; Constructive Res Judicata; Finalitas Putusan; Hukum Acara Perdata; Kepastian Hukum*

Abstract

The large number of civil cases in Indonesia raises questions about the effectiveness of the *res judicata* principle in providing finality in disputes. Article 1917 of the Indonesian Civil Code governs the binding force of decisions, but it does not explicitly include the concept of constructive *res judicata*, leaving the possibility of repeated lawsuits with different claims open. This research analyzes the regulation of *res judicata* in Indonesian civil law, compares it with Article 11 of the Indian Code of Civil Procedure 1908, and formulates a model for integrating constructive *res judicata* that is relevant for Indonesia. The method used is doctrinal legal research with a legislative, conceptual, and comparative approach. The research findings indicate a regulatory gap that could undermine the finality of a decision. The integration of this doctrine is important for strengthening certainty and justice and enhancing the efficiency of the judiciary.

Keywords: *Res Judicata; Constructive Res Judicata; Finality of Judgment; Civil Procedure Law; Legal Certainty*

INTRODUCTION

The Supreme Court of the Republic of Indonesia in its Annual Report (2025) reported a 22.35% increase in cases compared to 2024 (30.991 cases), with the handling burden rising by 22.51% (31.138 cases).¹ This increase indicates serious pressure on the judicial system, not only in terms of the number of cases but also the quality of their resolution. Philosophically, this condition is related to the adage "*interest reipublicae ut sit finis litium*," which emphasizes that every case must have an end for the sake of the

state.² Legally, this principle is reflected in Article 1917 of the Civil Code, which grants binding force to a decision if there is a similarity in the object, basis of the lawsuit, and parties involved.³ This study indicates that the existence of final and binding decisions is an important foundation in realizing legal certainty and justice.

The study of *res judicata* has developed extensively from various perspectives. Jesus Ezurmendia sees it as an "epistemic barrier"

¹ Mahkamah Agung Republik Indonesia, "Laporan Tahunan 2025," 2025. p. 42. <https://kepaniteraan.mahkamahagung.go.id/publikasi/laporan-tahunan>

² D. C. van der Linde, "Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in Rodrigues v The National Director of Public Prosecutions," *Potchefstroom Electronic Law Journal* 25 (2022): 7, <https://doi.org/10.17159/1727-3781/2022/v25i0a13096>.

³ Debby Flora Siahaan and Benny Djaja, "Legal Certainty of the Deed of Grant of the Will Whose Object Is Sold by the Grantor of the Will to Another Party," *OPSearch: American Journal of Open Research* 2, no. 4 (2023): 133–134, <https://doi.org/10.58811/opsearch.v2i4.50>.

that potentially limits the pursuit of truth.⁴ While Marco Morotti and Olivia Guidry emphasize its role as a pillar of legal certainty.⁵ ⁶ In another context, Luca G. Radicati di Brozolo and Flavio Ponzano place res judicata in arbitration as a result of the parties' autonomy,⁷ while Jovita Einikiene and Diana Jankiene emphasize reopening cases only under extraordinary conditions.⁸

However, there has been no research specifically discussing constructive res judicata or its integration into the national legal system, particularly in Indonesia. Furthermore, the available studies remain limited in conducting a focused comparative analysis of Indonesian and Indian civil procedural law, particularly regarding the regulation and application of constructive res judicata. This gap in research constitutes the novelty of this study: an analysis of the integration of constructive res judicata into Indonesian civil law through a comparative legal approach.

The urgency of this research arises from the increasing number of cases and the potential practice of filing lawsuits in stages. Without the regulation of constructive res judicata, parties can withhold some claims or demands to be reintroduced in a new lawsuit with slightly different construction.⁹ This practice substantially undermines the meaning of the finality of judgments and prolongs disputes. The impact not only increases the burden of cases and litigation costs but also has the potential to diminish public trust in the judiciary. Such a situation highlights the urgency of strengthening the concept of constructive res judicata so that all claims are encouraged to be submitted simultaneously from the outset.

This study focuses on three main issues. First, the development of the doctrine of res judicata in Indonesian civil law as compared to that in India. Second, there is a normative gap regarding constructive res judicata in Article 1917 of the Indonesian Civil Code. Third, the ideal model for integrating

⁴ Jesus Ezurmendia, "Finality, Res Judicata, and Counter-Epistemic Values in Civil Proceedings," *Global Jurist* 24, no. 1 (2024): 1, <https://doi.org/10.1515/gj-2023-0006>.

⁵ Marco Morotti, "Res Judicata and Consumer Protection in the EU: The Dialogue between the Courts (and the Legislator)," *Revista Italo-Espanola de Derecho Procesal* 2024, no. 2 (2024): 184-185, <https://doi.org/10.37417/rivitsproc/2401>.

⁶ Olivia Guidry, "Res Judica-Duh! The Impermissible Expansion of Claim Preclusion Through Louisiana Code of Civil Procedure Article 425," *Louisiana Law Review* 82, no. 4 (2022): 1219.

⁷ Luca G. Radicati di Brozolo and Flavio Ponzano, "How to Assess the Res Judicata Effects of International Arbitral Awards: Giving Concreteness to an Autonomous Approach," *Arbitration International* 40, no. 4 (2024): 409, <https://doi.org/10.1093/arbint/aiae020>.

⁸ Jovita Einikiene and Diana Jankiene, "Specific Features of The Renewal of Process in Civil And Administrative Proceedings," *Journal of Management* 41, no. 1 (2025): 19, <https://doi.org/10.38104/vadyba.2025.1.01>.

⁹ Nupur Chowdhury and Haaris Moosa, "Reviewing the Legitimacy of Suo Moto Actions: A Case Study of the National Green Tribunal," *Indian Law Review* 9, no. 3 (2025): 23-24, <https://doi.org/10.1080/24730580.2025.2547334>.

constructive res judicata into Indonesian civil law. These three issues serve as the basis for assessing the effectiveness of the finality of judgments and the need for legal reform.

The method used is doctrinal legal research with a legislative, case, conceptual, and comparative approach. The analysis was conducted on Article 1917 of the Civil Code and several court decisions and compared with Article 11 of the Code of Civil Procedure 1908 in India and its application practices. All legal materials were analyzed qualitatively to produce a coherent and systematic normative construction. This approach allows for the identification of legal gaps while also offering practical solutions.

This research identifies the gap in the regulation of constructive res judicata in Indonesian civil law, compares it with the regulation in India, and formulates an integration model that can strengthen the finality of decisions. The results are aimed at encouraging more thorough and efficient dispute resolution. In addition to providing theoretical contributions to the development of the res judicata doctrine, this research also offers practical contributions to the reform of civil procedural law.

RESULT AND DISCUSSION

Res Judicata and Finality of Judgment

The legal system fundamentally necessitates a mechanism to resolve disputes and prevent ongoing debate, which could lead to legal uncertainty. This aligns with the challenges faced in the judicial system, particularly concerning decisions that are both binding and possess a "final point," which ensures that the parties involved understand that the dispute has been legally resolved. This need is realized through regulations regarding the finality and binding nature of a decision, and of course, the most fundamental principle supporting this necessity is "res judicata."¹⁰ Historically, this principle has been well-known in ancient Roman law and has also developed in the English legal tradition since the Middle Ages.¹¹

In simple terms, res judicata can be defined as a case that has been decided by the court and has become legally binding cannot be "re-litigated." When a dispute has been examined and the main issue has been decided, the ruling is considered "final" and binding on the parties involved, so the case cannot be brought again by submitting it to another court or by restarting the process from the beginning due to dissatisfaction with the outcome of the ruling.¹²

Meanwhile, it is important to understand that there are two key aspects that

¹⁰ Jörg Kammerhofer, "Beyond the Res Judicata Doctrine: The Nomomechanics of ICJ Interpretation Judgments," *Leiden Journal of International Law* 37, no. 1 (2024): 207-209, <https://doi.org/10.1017/S0922156523000547>.

¹¹ Ezurmendia, "Finality, Res Judicata, and Counter-Epistemic Values in Civil Proceedings." 3.

¹² Ezurmendia. 3.

arise from the principle of res judicata: *first*, the court's decision that has become final and binding is "final and binding" on the parties involved. *Second*, this matter cannot be reexamined (*ne bis in idem*).¹³ Thus, the parties must follow the decision, even if they disagree.

In addition, in practice, the principle of res judicata also serves to prevent forum shopping,¹⁴ the practice of deliberately choosing to file a lawsuit or case in a court or legal forum considered most advantageous to one's interests.¹⁵ For example, after losing a land ownership dispute in the District Court, a party may attempt to revive the same dispute by filing a new case in another forum using a different legal basis, such as challenging the administrative validity of the land certificate in the Administrative Court. Similarly, in commercial disputes, a party may file parallel proceedings in multiple forums or jurisdictions solely to increase litigation costs and pressure the opponent into settling. Such practices have the potential to cause repeated litigation, inconsistent rulings, and inefficiencies in the administration of justice. Therefore, the principle of res judicata plays

an important role in maintaining legal certainty, preventing the abuse of legal proceedings, and ensuring that disputes that have been substantially decided are not continuously re-litigated through strategic forum shopping.

Forum shopping is not always wrong, but such practices become problematic when not used honestly, for example, when a plaintiff deliberately chooses a court with a slow process to pressure the opposing party to give up or, in the business field, to drive the opposing party to bankruptcy.¹⁶

From the explanation above, it shows that the presence of the principle of res judicata is essential to ensure legal certainty and fair dispute resolution and to maintain the dignity of the judiciary from being undermined by malicious legal practices.

Constructive Res Judicata

The principle of "constructive res judicata," which prohibits refiling claims that could have been submitted in a previous case, is rarely discussed in res judicata. Constructive res judicata broadens the concept of "finality of court decisions," indicating that not only the claims that were

¹³ Kammerhofer, "Beyond the Res Judicata Doctrine: The Nomomechanics of ICJ Interpretation Judgments." 208-209.

¹⁴ Erwin Susilo and Karell Mawla Ibnu Kamali, "Preventing Duplication of Civil Cases: Integrating Res Sub Judice into Indonesian Procedural Law," *Jurnal Bina Mulia Hukum* 10, no. 1 (2025): 160, <https://doi.org/https://doi.org/10.23920/>.

¹⁵ Ayyoub Jamali and Martin Faix, "The Application of the Doctrine of Res Judicata in the Context of the African Court on Human and Peoples' Rights: Analysis of the Court's Decisions in the Gombert and Dexter Cases," *Comparative Law Review* 27 (2021): 236-237, <https://doi.org/10.12775/CLR.2021.009>.

¹⁶ Eun Sol Sara Lee, "Forum Can Non Save Us Now," *German Law Journal* 25, no. 3 (2024): 455, <https://doi.org/10.1017/glj.2024.15>.

"truly" adjudicated are precluded from relitigation, but also those that "should have" been incorporated into the prior proceedings. This condition underscores the prohibition against parties "withholding" portions of their arguments for later use in a new case.¹⁷ This principle exists to facilitate a single, comprehensive examination of civil cases and prevent fragmentation.

If a plaintiff in a previous case had the opportunity to present their claim but failed to do so, that claim is legally regarded as "already submitted and decided." This means that this argument can't be used in the next case.¹⁸

To finish this part, it is important to say again what the difference is between res judicata and constructive res judicata. Res judicata typically pertains to the subject that cannot be reexamined. In a strict sense, res judicata solely forbids the resubmission of issues that have genuinely been presented and resolved in the prior case (actual res judicata).¹⁹

Constructive res judicata goes further by forbidding things that should have been brought up but weren't. In short, res judicata applies only to already decided issues, while

constructive res judicata applies only to issues that should have been part of the previous case.

A Comparative Study on the Regulation of the Res Judicata Principle in Indonesian and Indian Law

Pamela K. Bookman and Colleen F. Shanahan argue that civil procedural law must have projections and even be directed to ensure that the court adjudicates cases fairly and is adaptive to the increasingly complex legal issues in society.²⁰ This shows that civil procedural law as procedural justice does not only concern procedures but also the finality of a case, as the conclusion of a case can serve as a pillar of public trust in the judicial institution.

In principle, a decision is said to have permanent legal force if there are no longer any ordinary legal remedies available against that decision. However, not every final decision immediately closes the possibility of reintroducing a similar case. It is necessary to distinguish between decisions that address the substance of the dispute, namely decisions that "grant or reject the lawsuit," and decisions

¹⁷ Anshika Singh, "The Interplay Between Res Judicata and Public Interest Litigation: Balancing Finality with Access to Justice," *Advanced International Journal for Research* 6, no. 6 (2025): 3, <https://doi.org/10.63363/aijfr.2025.v06i06.2724>.

¹⁸ Fatima Idrees, "Comparative Analysis of the Principle of Estoppel With Principle of Res Judicata," *Available at SSRN 4864710*, 2024, 12.

¹⁹ Idrees, p. 12.

²⁰ Pamela K. Bookman and Colleen F. Shanahan, "A Tale of Two Civil Procedures," *Columbia Law Review* 122, no. 5 (2022): 1240-1241.

that declare the lawsuit inadmissible (*niet ontvankelijke verklaard*).²¹

Decisions that grant or deny the lawsuit generally resolve the substance of the dispute, whereas decisions that declare the lawsuit inadmissible address only formal or procedural defects, so the case can still be refiled after these defects are corrected. This can be seen in practice at the Sigli District Court, where, through Decision Number 4/Pdt.G/2023/PN Sgi, the lawsuit was declared inadmissible because the object of the dispute had not yet been measured. After the deficiencies were corrected, the plaintiff refiled the lawsuit, which was partially granted in Decision Number 25/Pdt.G/2023/PN Sgi. The decision was subsequently upheld by the Banda Aceh High Court in Decision Number 69/PDT/2024/PT BNA and maintained at the cassation level by the Supreme Court of the Republic of Indonesia in Decision Number 415 K/PDT/2025. This case shows that a decision of inadmissibility without examining the merits does not always prevent the filing of a new lawsuit.

The existence of the res judicata principle, legally, is found in Article 1917 of

the Civil Code, which states that "the authority of a court decision that has obtained permanent legal force only pertains to the main subject of the case in question."²² To use this authority, the case must be the same, the demand must be based on the same reasons, and it must be brought by and against the same parties in the same legal relationship.

This provision highlights three aspects of a final and binding judgment that cannot be re-litigated if there is similarity regarding the "object, basis of the claim, and the parties." Through this provision, the principle of ne bis in idem is also applied, serving as a safeguard to prevent the repetition of cases that have been decided identically.²³

Res judicata and nebis in idem cannot be separated; simply put, res judicata governs decisions that have permanent legal force and are considered true and binding on the parties, so the implication is that the decision inherently carries the principle of nebis in idem (the case cannot be re-litigated once it has been decided). The existence of the ne bis in idem principle is so important that the Supreme Court has issued circulars twice. First, the Supreme Court Circular Letter Number 03 of 2002 concerning the Handling

²¹ Achmad Hasan Basri and Rina Suryanti, *Hukum Acara Perdata Sebuah Pengantar* (Jember: Al-Bidayah, 2023). 13-14.

²² Esti Ayu Hutami and Mohammad Saleh, "Analysis of Judge's Consideration in Applying the Principles of Contract Law and Nebis in Idem in the Examination of Civil Disputes Related to the Birth of an Agreement (Case Study of Case No. 969/Pdt. G/2022/PN. Tng. and No. 173/Pdt/2023/PT. BTN.)," *UNES Law Review* 6, no. 4 (2024): 9784, <https://doi.org/https://doi.org/10.31933/unesrev.v6i4>.

²³ Nurbaedah and Marwan Hayemaming, "The Partij Akta Principle vs. Legal Precedent: How Divergent Interpretations in Indonesian Courts Create Uncertainty in Land Dispute Resolution," *International Journal of Law and Society* 4, no. 3 (2025): 411-412, <https://doi.org/10.59683/ijls.v4i3.131>.

of Cases Related to the Principle of Ne Bis In Idem: in this circular letter, the Supreme Court emphasizes that the principle of ne bis in idem applies to cases where the "subject and object" have been decided and have permanent legal force, whether decided by the court of first instance or at the cassation level.²⁴

The second circular is the Supreme Court Circular Number 07 of 2012 concerning the Legal Formulation of the Supreme Court Chamber Plenary Meeting as a Guideline for Court Task Implementation. This circular states that "the Cassation Chamber may deviate from the provisions of Article 1917 of the Civil Code and still consider a case as ne bis in idem even if the parties are not exactly the same as in the previous case, as long as in principle the parties are the same despite the addition of parties, and the status of the object of the case has been determined in the previous decision. The existence of the circular letter in 2012 is more flexible in interpreting the principle of ne bis in idem.

Meanwhile, the application of the ne bis in idem principle can also be found in various jurisprudences of the Supreme Court of the Republic of Indonesia. Supreme Court Decision Number 1456 K/Sip/1967 dated December 6, 1969, affirmed that the principle of ne bis in idem applies when the parties and

the object of the dispute are fundamentally the same. However, the application of this principle is generally assessed within the same judicial environment and in accordance with the nature of the claim.²⁵ Therefore, a legally binding decision in a civil case does not automatically preclude bringing a case to the Indonesian Administrative Court, as the administrative court examines the legality of administrative decisions. In contrast, the civil court fundamentally reviews the parties' civil rights and obligations. In such circumstances, the primary assessment is not merely whether the underlying facts are the same, but whether the basis of the lawsuit, the legal interests protected, the forum's jurisdiction, and the requested relief are truly identical. If those elements are different, then the submission of a case in the State Administrative Court cannot be considered ne bis in idem, even though it arises from the same event. Thus, legal practice in Indonesia tends to apply the principle of ne bis in idem functionally and contextually rather than mechanically, while still considering the identity of the dispute and the court's absolute competence.

Supreme Court Decision No. 123 K/Sip/1968 (April 23, 1969) expands the interpretation by asserting that even if the posita differ, if the subject and object remain

²⁴ Jeremia Alexander Wewo and Mathelda Naatonis, "Application Of The Ne Bis In Idem Principle By Judges To Civil Cases," *JATISWARA* 38, no. 3 (2023): 259-260, <https://doi.org/10.29303/jtsw.v38i3.544>.

²⁵ Ferdinand Marcos and Niru Anita Sinaga, "Ratio Decidendi Hakim Niaga Untuk Tidak Menerapkan Asas Ne Bis In Idem Dalam Perkara Permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) Dan Kepailitan," *Jurnal Inovasi Hukum* 6, no. 3 (2025): 269.

the same and their legal status has been established in a legally binding decision, then ne bis in idem is applicable.²⁶

Supreme Court Decision No. 547 K/Sip/1973 (April 13, 1976) also stresses this decision that this principle applies not only to parties that are similar but also to objects that are similar.²⁷

In Supreme Court Decision No. 1226 K/Pdt/2001 (May 20, 2002), the Supreme Court stated that even though the positions of the parties are different, if the object is the same and has been decided with final legal force, the lawsuit is declared ne bis in idem.²⁸

Supreme Court Decision No. 1146 K/Sip/1982 (March 10, 1983) also emphasizes that if the nature of the lawsuit and the parties are the same and have been previously decided, the principle of ne bis in idem applies.²⁹

Regarding its legal consequences, Supreme Court Decision No. 497 K/Sip/1973 (January 6, 1976) states that a case that has been examined and decided previously results in the lawsuit being declared inadmissible. This was reinforced in Supreme Court Decision No. 588 K/Sip/1973 (October 3,

1973), which stated that a lawsuit containing ne bis in idem should be declared inadmissible, not rejected.³⁰

On the other hand, there is also jurisprudence that shows the limits of the application of this principle. Supreme Court Decision No. 144 K/Sip/1971 (July 2, 1973) states that the ne bis in idem principle does not apply if one case is filed as a petition and the other as a lawsuit, even though the subject and object are the same. Supreme Court Decision No. 102 K/Sip/1972 (July 23, 1973) and Supreme Court Decision No. 1121 K/Sip/1973 (October 22, 1975) emphasize that if the parties are different, then the ne bis in idem principle does not apply, even if the object is the same.³¹

Furthermore, Supreme Court Decision No. 650 K/Sip/1974 (March 18, 1976) states that a lawsuit that has been withdrawn and then refiled with corrections does not fall under ne bis in idem. Supreme Court Decision No. 1424 K/Sip/1975 (June 8, 1976), Supreme Court Decision No. 878 K/Sip/1977 (June 9, 1979), and Supreme Court Decision No. 1990 K/Pdt/2000 (October 23, 2002) consistently state that if the previous decision ends with a

²⁶ Juwari Eddy Winarto and Megawati Barthos, "The Application of Ne Bis In Idem in Tax Disputes at the Tax Court in Indonesia," *Greenation International Journal of Law and Social Sciences* 3, no. 3 (2025): 1359, <https://doi.org/10.38035/gijlss.v3i3.633>.

²⁷ Klaudius Ilkam Hulu, "Penerapan Asas Ne Bis In Idem Dalam Perkara Perdata Di Indonesia," *Jurnal Education and Development* 13, no. 1 (2025): 674, <https://doi.org/10.37081/ed.v13i2.7307>.

²⁸ Paulus Tiku Taru Padang, "The Influence of Ne Bis In Idem on Inheritance," *Eduvest - Journal of Universal Studies* 5, no. 8 (2025): 9960, <https://doi.org/10.59188/eduvest.v5i8.51958>.

²⁹ Saputra, "Yurisprudensi: Penerapan Ne Bis In Idem Dalam Perkara Perdata."

³⁰ Hulu, "Penerapan Asas Ne Bis In Idem Dalam Perkara Perdata Di Indonesia." 673-674

³¹ Saputra, "Yurisprudensi: Penerapan Ne Bis In Idem Dalam Perkara Perdata."

ruling that is not accepted, then a re-filing is still possible.

From the explanation, it can be understood that in civil cases, the principle of *ne bis in idem* serves to provide legal certainty and simultaneously prevent the duplication of cases. However, the Supreme Court Circular of 2012 indicates that the interpretation of the *ne bis in idem* principle should not be applied rigidly, as supported by various jurisprudence discussed above.

In the Civil Code, the term "*res judicata*" is not explicitly included, but we can understand the concept of *res judicata* when reading the formulation of the relevant article.

This situation is different from India, where "*res judicata*" is explicitly stated in the Article of the Code of Civil Procedure, 1908. This provision emphasizes that no court may reexamine a lawsuit or issue if the main matter directly and substantially in dispute has been previously decided finally by the competent court in a prior case between the same parties or those who derive their rights from the same basis. Article 11 is supplemented with eight explanations that clarify the scope of its application:

Clarification The most intriguing explanation, III, requires a genuine argument and response, either explicitly or implicitly, to the main issue in the previous lawsuit. The progressive explanation is Explanation IV, which governs constructive *res judicata*; this means that any case I define as a "previous

lawsuit" refers to a lawsuit that has already been decided before the current lawsuit under examination, regardless of the order in which it was registered. Various jurisprudential perspectives, dating back to the colonial era, review the application of constructive *res judicata* in India.

Explanation II emphasizes that the competence of the court is assessed without considering the existence or absence of the right to appeal. Explanation III requires a genuine argument and response, either explicitly or implicitly, to the main issue in the previous lawsuit. Explanation V stipulates that claims not explicitly granted are considered rejected, while Explanation VI extends the binding effect of *res judicata* to interested parties in representative lawsuits. Explanation VII even extends the application of this principle to the execution stage of the judgment, and Explanation VIII states that court decisions with limited jurisdiction can also have *res judicata* effects. Explanation IV is the most interesting and forward-thinking one. It talks about constructive *res judicata*, which means that anything that should have been the basis for an attack or defense in the previous case is now considered to have been an issue that was decided.

The existence of constructive *res judicata* in India represents a fundamental difference with Indonesia, which does not regulate this term in the Civil Code. In India, constructive *res judicata* serves as a

manifestation of the rule of prudence, aimed at preventing parties from filing lawsuits in stages or withholding certain claims from being presented at a later opportunity. The application of constructive res judicata in India can be reviewed through various jurisprudential perspectives, even dating back to the colonial era. In *Alluri China Bapanna v. Sri Muttangi Jaggiah* (1939) and *Rajah Chattar Singh v. Diwan Roshansingh* (1945), the court affirmed that if the parties have had the opportunity to debate a matter, it is treated as if it has been debated and decided.³²

However, the court also set an important limit: it is not enough to merely show that a claim could have been made; it must be proven that the claim should have been made in the previous case. This point was later reinforced in *Devi Lal Modi v. Sales Tax Officer* (1965),³³ and *State of U.P. v. Nawab Hussain* (1977),³⁴ when the Supreme Court rejected the party's attempt to introduce a new legal basis in the subsequent case that they had actually been aware of in the previous proceedings.³⁵ The scope of this principle continues to expand. In *Prem Lata v. Lakshman Prasad* (1970), the Supreme Court

stated that the principle applies in the execution of judgments.³⁶ The Supreme Court applied this principle in an electoral dispute in *Nirmal E. Horo v. Jahan Ara* (1973).³⁷

Furthermore, *Shiromani Gurdwara Prabandhak Committee v. Harnam Singh* (2003) shows that constructive res judicata can also bind parties represented in a previous lawsuit. In *Alka Gupta v. Narendra Kumar Gupta* (2010), the Supreme Court provided a more measured limit: this principle only applies if the claim should reasonably and without ambiguity have been raised in the previous case. A sufficiently comprehensive explanation of the application of constructive res judicata can be reviewed in the case of *Workmen v. Board of Trustees, Cochin Port Trust*, where the Supreme Court stated that if an issue has been definitively decided, it precludes the re-examination of an identical issue. Res judicata prohibits even implicit decisions. Furthermore, if a defense or claim should have been raised in a previous case but was not, the jurisprudence in India demonstrates that the finality of a case is crucial.³⁸ To prevent the recurrence of litigation and achieve finality in the dispute,

³² MCO Legals, "Constructive Res Judicata," 2020, <https://www.mcolegals.in/kb/Constructive-Res-Judicata.pdf>.

³³ Singh, "The Interplay Between Res Judicata and Public Interest Litigation: Balancing Finality with Access to Justice." 3.

³⁴ Nirmala R Harish and Mallika SK, "An Analysis of Doctrine of Constructive Res Judicata and Its Impact on Fair Hearing Rights," *Indian Journal of Integrated Research in Law V*, no. V (2025): 2151.

³⁵ Legals, "Constructive Res Judicata."

³⁶ Supreme Court of India, "Prem Lata Agarwal vs Lakshman Prasad Gupta & Ors on 23 April, 1970," *Indiankanoon*, 1970, <https://indiankanoon.org/doc/437299/>.

³⁷ Supreme Court of India, "N. E. Horo vs Jahan Ara Jaipal Singh on 2 February, 1972," *Indiankanoon*, 1972, <https://indiankanoon.org/doc/453229/>.

³⁸ Legals.

the plaintiff must thoroughly present their claims in the lawsuit so that the judge's decision can address the root of the issue and resolve the dispute. To prevent the recurrence of litigation and achieve finality in the dispute, a claim is considered to have been constructively raised and decided.

According to Indian jurisprudence, the finality of a case is very important, so the plaintiff must thoroughly represent their claims in the lawsuit so that the judge's decision can address the root of the issue and end the dispute. The following table clarifies the comparison of the *res judicata* principle regulations in Indonesia and India:

Table 1: A Comparative Overview of *Res Judicata* in Indonesia and India

Indonesia	India
Not explicitly mentioning the term <i>res judicata</i>	Explicitly mention and formulate <i>res judicata</i> .
Focus on the similarities of the parties, objects, and basis of the claims.	Focus on whether the issue has been or should be decided.
Does not recognize constructive <i>res judicata</i> in writing.	Understanding constructive <i>res judicata</i> (Explanation IV)
Regulated in Article 1917 of the Civil Code.	Strictly regulated under Article 11 of the Code of Civil Procedure, 1908.

Source: Researcher's Elaboration, 2026.

The table indicates that both Indonesia and India fundamentally recognize the importance of a civil case having a conclusion; however, their regulations differ, with India being more progressive in its approach to constructive *res judicata*. The absence of regulations on constructive *res judicata* in Indonesia potentially allows the plaintiff to file a lawsuit that should have been submitted concurrently with the previous lawsuit.

Such an arrangement in 2025 will certainly prolong the judicial process and simultaneously weaken the principles of swift, simple, and low-cost justice, which are fundamental to the time pressure. Time pressure often prompts judges to prioritize efficiency through quick resolutions, standard

approaches, or early case filtering. administration of justice.

Therefore, it is necessary to develop a model of constructive *res judicata* for Indonesia that is not only a transplant from India but also adjusts to the characteristics of the Indonesian legal system, which is of the civil law type.

In implementing that model, Indonesia cannot simply copy India's approach. As a country with a civil law tradition that places judges more actively in the fact-finding and interpretation of the law, the application of constructive *res judicata* must be done with caution. The assessment of whether a claim or demand "should have been raised" in the previous case must consider whether the party involved had a fair opportunity, was aware of

the relevant facts, and had a reasonable procedural possibility of raising it from the beginning. Therefore, this doctrine should function as a proportional instrument to prevent repetitive litigation that abuses the process, rather than as a rigid barrier that restricts access to justice.

An Integrative Model of Constructive Res Judicata in Indonesian Civil Procedure Law

The background shows that the Supreme Court got more cases in 2025 than it did in 2024, an increase of 22.35%. This increase, on the one hand, shows that more and more people are aware that they can settle their differences through the courts instead of taking matters into their own hands. But because there are so many cases, it's challenging to know if judges can make beneficial decisions.

In line with that, a high case load can affect the way judges work.³⁹ When time pressure increases, procedural choices tend to be directed toward efficiency: quick resolutions, the use of standard approaches, or early case filtering. Such a situation may be rational from a case management perspective, but it may reduce the depth of analysis and the quality of legal reasoning. Conversely, when the workload is more manageable, judges have greater room to read through the facts and construct well-thought-out arguments.

The evidence suggests that the proposed reconstruction of this provision should ensure that the cases presented to judges are genuinely matters that need substantive decisions, thereby necessitating the establishment of the principle of constructive res judicata to filter cases and also serve as a deterrent for parties with bad intentions, preventing them from repeating their actions. and the proposed reconstruction of this provision is as follows:

Article 1917:

- (1) A court decision that has obtained permanent legal force is binding on the parties regarding the subject matter that has been directly and substantially decided.
- (2) A case cannot be refiled if:
 - a. the subject matter claimed is the same;
 - b. based on the same legal relationship and basis of claim; and
 - c. filed by and against the same parties or parties who acquire rights from them in the same legal capacity.
- (3) In addition to the provisions as referred to in paragraph (2), any claim, basis of claim, or defense that should have been reasonably and properly submitted in the previous case but was not submitted is considered included and decided in that decision.
- (4) The provisions in paragraph (3) do not apply if:
 - a. There are new facts that could not reasonably have been known at the time of the previous examination;
 - b. there are compelling circumstances that prevent the submission of the claim; or

³⁹ Victoria Angelova, Will Dobbie, and Crystal S Yang, "Algorithmic Recommendations and Human Discretion," *Review of Economic Studies*, 2025, 29, <https://doi.org/10.1093/restud/rdaf084>.

- c. Its application would result in manifest injustice based on objective and verifiable circumstances.
- (5) A decision declaring a lawsuit inadmissible on procedural grounds does not have binding force on the merits of the case, as long as the defect has been rectified.

The reconstruction of the provision is not based on guesswork; it is based on Article 11 of the Indian Code of Civil Procedure 1908, specifically Explanation IV, which lays out the idea of constructive *res judicata*. It also looks at how things are done in India: The court said in *Alluri China Bapanna v. Sri Muttangi Jaggiah* (1939) that the chance to make an unused argument is the same as if it had been used. This was also emphasized in *Devi Lal Modi v. Sales Tax Officer* (1965) and *State of U.P. v. Nawab Hussain* (1977), when the Supreme Court of India rejected the new ground that had actually been known in the previous proceedings. Even in *Workmen v. Board of Trustees, Cochin Port Trust*, it was emphasized that issues that have been implicitly decided cannot be reopened.

Nevertheless, the adaptation of the regulations from India is not a rigid or textual copying, but rather takes the spirit and principles found in the doctrine of constructive *res judicata* so that court decisions can take root and simultaneously

end disputes. This comparative approach has taken into account the differences in the judicial systems between India and Indonesia. India tends to have a more integrated judicial structure. It exerts a stronger influence on court decision precedents. In contrast, Indonesia has a pluralistic judicial system under the Supreme Court of the Republic of Indonesia, with a separate judicial system and a civil law tradition that makes legislation the primary source of law. Therefore, the proposed model is not a direct transplantation of Indian law, but rather a selective adaptation of the doctrine of constructive *res judicata* aligned with Article 1917 of the Civil Code, the segmented structure of the Indonesian judiciary, and the persuasive nature of jurisprudence in Indonesian legal practice.⁴⁰

If all arguments are presented comprehensively and certainly with a long-term projection, the resulting reconstruction can reduce procedural complexity, lower costs, and expedite the process (this has been a crucial criticism of the judicial system).⁴¹

The reconstruction of constructive *res judicata* in the Indonesian legal system is also in line with the mandate of Article 28D, paragraph (1) of the 1945 Constitution regarding fair legal certainty.⁴²

⁴⁰ Juan Garcia Blesa, "The Cultural Dimensions of Legal Certainty: A Study on the Use of Intercultural Knowledge in European Law-Application," *European Papers-A Journal on Law and Integration* 2025, no. 2 (2025): 412-414, <https://doi.org/https://doi.org/10.15166/2499-8249/838>.

⁴¹ Elena Alina Onțanu and Eric Tjong Tjin Tai, "Digital Technology and Procedural Justice: Towards a Geography of Justice," *Tilburg Law Review* 30, no. 2 (2025): 267, <https://doi.org/10.5334/tlir.422>.

⁴² Erwin Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia," *Hasanuddin Law Review* 3, no. 3 (2024): 342, <https://doi.org/10.20956/halrev.v10i3.6088>.

This means that procedural justice is crucial here so that the lawsuit is not filed to manipulate or prolong the dispute. This strategy indicates alignment. Therefore, procedural justice underscores the significance of transparency, accountability, and the legitimacy of legal institutions.⁴³

From the perspective of procedural justice theory, it can create institutional legitimacy (in this case, the judiciary) if the process is carried out fairly and consistently.⁴⁴ So, the integration of constructive res judicata for Indonesia essentially maintains the quality of decisions, provides certainty in the finality of a case, and simultaneously preserves public trust in the judiciary.

CONCLUSION

This research shows that the principle of res judicata in Indonesian civil law, as regulated in Article 1917 of the Civil Code and developed through jurisprudence, has essentially functioned to maintain legal certainty by preventing the same case from being reexamined. However, this construction is still limited to the equality of the parties, the object, and the basis of the lawsuit, especially in the same court forum. It has not yet explicitly regulated constructive res judicata or comprehensively addressed the practice of

dispute repetition through different procedural mechanisms and court jurisdictions. As a result, there is still room for staged litigation, in which claims that should have been submitted from the beginning are instead reintroduced in subsequent lawsuits with minor variations. This condition may undermine the finality of a legally binding decision.

A comparison with India shows that Article 11 of the Code of Civil Procedure 1908 explicitly regulates constructive res judicata, thereby not only prohibiting the repetition of issues that have been decided but also of those that should have been raised in the previous case. However, its adaptation in Indonesia must still take into account differences in the judicial structure, the pluralistic judicial system, and the civil law tradition that makes legislation the primary source of law.

SUGGESTION

An update or reaffirmation of the norm in Article 1917 of the Civil Code is necessary to explicitly accommodate constructive res judicata with clear and proportional limitations. The formulation must maintain a balance between legal certainty and the protection of the parties' rights so that finality

⁴³ Ahmet Guler, Sedat Kula, and Kaan Boke, "Examining Public Support for AI in Policing: The Role of Perceived Procedural Justice," *Police Practice and Research* 26, no. 6 (2025): 674, <https://doi.org/10.1080/15614263.2025.2516535>.

⁴⁴ Kenghui Lin and Ben Bradford, "The Generalisability of Procedural Justice in Post-Confucian Societies—A Test of Normative versus Instrumental Models in Taiwan," *Journal of Criminology*, 2025, 28, <https://doi.org/https://doi.org/10.1177/26338076251376923>.

does not turn into injustice. The Supreme Court can also strengthen the consistency of application through guidelines or the reinforcement of jurisprudence to prevent the practice of repetitive lawsuits with the same substance. Furthermore, it is essential to improve judges' and lawyers' conceptual understanding through ongoing education and training, so that this principle can be applied wisely and judiciously.

AUTHOR CONTRIBUTIONS

Erwin Susilo: Conceptualization, Methodology, Investigation, Formal Analysis, Writing – Original Draft. **Dharma Setiawan Negara:** Supervision, Writing – Review & Editing, Project Administration. **Joel Niyobuhungiro:** Comparative Analysis, Investigation, Writing – Review & Editing.

BIBLIOGRAPHY

- Alexander Wewo, Jeremia, and Mathelda Naatonis. "Application Of The Ne Bis In Idem Principle By Judges To Civil Cases." *JATISWARA* 38, no. 3 (2023): 255–64. <https://doi.org/10.29303/jtsw.v38i3.544>.
- Angelova, Victoria, Will Dobbie, and Crystal S Yang. "Algorithmic Recommendations and Human Discretion." *Review of Economic Studies*, 2025, 1–85. <https://doi.org/10.1093/restud/rdaf084>.
- Basri, Achmad Hasan, and Rina Suryanti. *Hukum Acara Perdata Sebuah Pengantar*. Jember: Al-Bidayah, 2023.
- Blesa, Juan Garcia. "The Cultural Dimensions of Legal Certainty: A Study on the Use of Intercultural Knowledge in European Law-Application." *European Papers-A Journal on Law and Integration* 2025, no. 2 (2025): 405–34. <https://doi.org/https://doi.org/10.15166/2499-8249/838>.
- Bookman, Pamela K., and Colleen F. Shanahan. "A Tale of Two Civil Procedures." *Columbia Law Review* 122, no. 5 (2022): 1183–1242.
- Chowdhury, Nupur, and Haaris Moosa. "Reviewing the Legitimacy of Suo Moto Actions: A Case Study of the National Green Tribunal." *Indian Law Review* 9, no. 3 (2025): 1–26. <https://doi.org/10.1080/24730580.2025.2547334>.
- Einikiene, Jovita, and Diana Jankiene. "Specific Features of The Renewal of Process in Civil And Administrative Proceedings." *Journal of Management* 41, no. 1 (2025): 19–29. <https://doi.org/10.38104/vadyba.2025.1.01>.
- Ezurmendia, Jesus. "Finality, Res Judicata, and Counter-Epistemic Values in Civil Proceedings." *Global Jurist* 24, no. 1 (2024): 1–23. <https://doi.org/10.1515/gj-2023-0006>.
- Guidry, Olivia. "Res Judica-Duh! The Impermissible Expansion of Claim Preclusion Through Louisiana Code of Civil Procedure Article 425." *Louisiana Law Review* 82, no. 4 (2022): 1182–1219.
- Guler, Ahmet, Sedat Kula, and Kaan Boke. "Examining Public Support for AI in Policing: The Role of Perceived Procedural Justice." *Police Practice and Research* 26, no. 6 (2025): 673–695. <https://doi.org/10.1080/15614263.2025.2516535>.
- Hulu, Klaudius Ilkam. "Penerapan Asas Ne Bis In Idem Dalam Perkara Perdata Di Indonesia." *Jurnal Education And Development* 13, no. 1 (2025): 671–76. <https://doi.org/10.37081/ed.v13i2.7307>.
- Hutami, Esti Ayu, and Mohammad Saleh. "Analysis of Judge's Consideration in Applying the Principles of Contract Law and Nebis in Idem in the Examination of Civil Disputes Related to the Birth of an Agreement (Case Study of Case No. 969/Pdt. G/2022/PN. Tng. and No. 173/Pdt/2023/PT. BTN.)." *UNES Law Review* 6, no. 4 (2024): 9781–88.

- <https://doi.org/https://doi.org/10.31933/unesrev.v6i4>.
- Idrees, Fatima. "Comparative Analysis of the Principle of Estoppel With Principle of Res Judicata." *Available at SSRN 4864710*, 2024, 1–17.
- India, Supreme Court of. "N. E. Horo vs Jahan Ara Jaipal Singh on 2 February, 1972." *Indiankanoon*, 1972. <https://indiankanoon.org/doc/453229/>.
- . "Prem Lata Agarwal vs Lakshman Prasad Gupta & Ors on 23 April, 1970." *Indiankanoon*, 1970. <https://indiankanoon.org/doc/437299/>.
- Indonesia, Mahkamah Agung Republik. "Laporan Tahunan 2025," 2025.
- Jamali, Ayyoub, and Martin Faix. "The Application of the Doctrine of Res Judicata in the Context of the African Court on Human and Peoples' Rights: Analysis of the Court's Decisions in the Gombert and Dexter Cases." *Comparative Law Review* 27 (2021): 235–53. <https://doi.org/10.12775/CLR.2021.009>.
- Juwari Eddy Winarto, and Megawati Barthos. "The Application of Ne Bis In Idem in Tax Disputes at the Tax Court in Indonesia." *Greenation International Journal of Law and Social Sciences* 3, no. 3 (2025): 1357–61. <https://doi.org/10.38035/gijlss.v3i3.633>.
- Kammerhofer, Jörg. "Beyond the Res Judicata Doctrine: The Nomomechanics of ICJ Interpretation Judgments." *Leiden Journal of International Law* 37, no. 1 (2024): 206–227. <https://doi.org/10.1017/S0922156523000547>.
- Lee, Eun Sol Sara. "Forum Can Non Save Us Now." *German Law Journal* 25, no. 3 (2024): 447–462. <https://doi.org/10.1017/glj.2024.15>.
- Legals, MCO. "Constructive Res Judicata," 2020. <https://www.mcolegals.in/kb/Constructive-Res-Judicata.pdf>.
- Lin, Kenghui, and Ben Bradford. "The Generalisability of Procedural Justice in Post-Confucian Societies—A Test of Normative versus Instrumental Models in Taiwan." *Journal of Criminology*, 2025, 1–35. <https://doi.org/https://doi.org/10.1177/26338076251376923>.
- Linde, D. C. van der. "Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in *Rodrigues v The National Director of Public Prosecutions*." *Potchefstroom Electronic Law Journal* 25 (2022): 1–25. <https://doi.org/10.17159/1727-3781/2022/v25i0a13096>.
- Marcos, Ferdinand, and Niru Anita Sinaga. "Ratio Decidendi Hakim Niaga Untuk Tidak Menerapkan Asas Ne Bis In Idem Dalam Perkara Permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) Dan Kepailitan." *Jurnal Inovasi Hukum* 6, no. 3 (2025): 264–79.
- Morotti, Marco. "Res Judicata and Consumer Protection in the EU: The Dialogue between the Courts (and the Legislator)." *Revista Italo-Espanola de Derecho Procesal* 2024, no. 2 (2024): 167–88. <https://doi.org/10.37417/rivitsproc/2401>.
- Nurbaedah, and Marwan Hayeemaming. "The Partij Akta Principle vs. Legal Precedent: How Divergent Interpretations in Indonesian Courts Create Uncertainty in Land Dispute Resolution." *International Journal of Law and Society* 4, no. 3 (2025): 406–24. <https://doi.org/10.59683/ijls.v4i3.131>.
- Onțanu, Elena Alina, and Eric Tjong Tjin Tai. "Digital Technology and Procedural Justice: Towards a Geography of Justice." *Tilburg Law Review* 30, no. 2 (2025): 96–119. <https://doi.org/10.5334/tilr.422>.
- Padang, Paulus Tiku Taru. "The Influence of Ne Bis In Idem on Inheritance." *Eduvest - Journal of Universal Studies* 5, no. 8 (2025): 9952–63. <https://doi.org/10.59188/eduvest.v5i8.51958>.
- R Harish, Nirmala, and Mallika SK. "An Analysis of Doctrine of Constructive Res Judicata and Its Impact on Fair Hearing Rights." *Indian Journal of Integrated*

- Research in Law* V, no. V (2025): 2150–58.
- Radicati di Brozolo, Luca G., and Flavio Ponzano. “How to Assess the Res Judicata Effects of International Arbitral Awards: Giving Concreteness to an Autonomous Approach.” *Arbitration International* 40, no. 4 (2024): 409–44. <https://doi.org/10.1093/arbint/aiae020>.
- Saputra, Andi Ramdhan Adi. “Yurisprudensi: Penerapan Ne Bis In Idem Dalam Perkara Perdata.” *MARI News*, 2025. <https://marinews.mahkamahagung.go.id/putusan/yurisprudensi-penerapan-ne-bis-in-idem-dalam-perdata-0ux>.
- Siahaan, Debby Flora, and Benny Djaja. “Legal Certainty of the Deed of Grant of the Will Whose Object Is Sold by the Grantor of the Will to Another Party.” *OPSearch: American Journal of Open Research* 2, no. 4 (2023): 130–37. <https://doi.org/10.58811/opsearch.v2i4.50>.
- Singh, Anshika. “The Interplay Between Res Judicata and Public Interest Litigation: Balancing Finality with Access to Justice.” *Advanced International Journal for Research* 6, no. 6 (2025): 1–10. <https://doi.org/10.63363/aijfr.2025.v06i06.2724>.
- Susilo, Erwin, Mohd Din, Suhaimi, and Teuku Muttaqin Mansur. “Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia.” *Hasanuddin Law Review* 3, no. 3 (2024): 342–57. <https://doi.org/10.20956/halrev.v10i3.6088>.
- Susilo, Erwin, and Karell Mawla Ibnu Kamali. “Preventing Duplication of Civil Cases: Integrating Res Sub Judice into Indonesian Procedural Law.” *Jurnal Bina Mulia Hukum* 10, no. 1 (2025): 149–65. <https://doi.org/https://doi.org/10.23920/>.