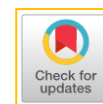


# Does the Constitutional Court on Local Election Responsive Decisions ?



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## ABSTRACT

The dynamism of the implementation of general elections in Indonesia is directly related to the legal products that regulate them. In this case, legal politics that continue to change legal products can further complicate the systems, mechanisms, and behavior of general election organizers and participants, and make them vulnerable to future general election disputes. This article aims to explain how the legal politics of the Constitutional Court's decision regarding the Regional General Election Law influences changes to the Regional Head Election Law, as well as its responsiveness to regional head general elections. This article uses a normative legal research method with a statute approach which focuses on the analysis of Constitutional Court decisions regarding regional head elections. In addition, the author presents a comparison of the legal politics of general election regulation in Indonesia and in the USA and Europe. This article finds that the Constitutional Court's authority to adjudicate regional elections has become permanent after almost a decade and a half of legal uncertainty and doubt. During that time, legal politics in several Constitutional Court decisions regarding regional head election cases had a similar character, namely producing responsive legal products. This indicates that democracy in Indonesia is built based on fulfilling human dignity, fairness, and justice. Thus, the issue of regional head general elections could have its origins in other things but not in the legal politics of the Constitutional Court's decision and its influence on related laws.



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## 1. Introduction

Indonesia is a country that is often swayed by repeated massive political changes. Starting from the old order era, the new order, to the reform era. As a democratic country, Indonesia is not free from sharp and significant fluctuations in the organization and implementation of general elections. This condition is influenced by political changes and the quality of democracy that is taking place

over a period of time.<sup>1</sup> General elections are a means for realizing people's sovereignty, which is a crucial element in democracy. General elections are a mechanism for filling political positions in government based on the formal choice of citizens who meet the requirements. In a pluralistic society like Indonesia, identity politics will be very attached to general election contestation and often become a boomerang for the implementation of democracy.<sup>2</sup>

General elections can function as a 'two-way street' which is bottom-up and top-down. From a bottom-up perspective, elections are seen as a means by which politicians can be called to responsibility and pressured to deliver how policies reflect public opinion. On the other hand, the bottom-up function in the election included the recruitment of politicians. In democratic countries, elections are the main source for recruiting politicians with political parties being the main means of nominating candidates.<sup>3,4</sup>

General elections in Indonesia and the majority of other countries are not only held to fill positions at the central or national level but also for positions at the regional level, commonly known as general elections for regional heads. The general election of regional heads is a logical consequence that also arises from the decentralization system.<sup>5</sup> Normatively, the 1945 Constitution of the Republic of Indonesia regulates the election of regional heads in Article 18, which states that (4) Governors, Regents, and Mayors, respectively, as heads of provincial, district, and city regional governments are elected democratically. Regional elections are a form of implementing people's sovereignty in the province and or district/city areas to directly and democratically elect regional heads every 5 (five) years.

Furthermore, the regulation of regional head general elections is regulated in Law no. 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2014 concerning the Election of Governors, Regents, and Mayors Became Law as amended by Law no. 8 of 2015 concerning Amendments to Law no. 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2014 concerning the Election of Governors, Regents and Mayors Became Law as most recently amended by Law no. 10 of 2016 concerning the Second Amendment to Law no. 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and

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<sup>1</sup> Yuki Fukuoka and Chanintira na Thalang, 'The Legislative and Presidential Elections in Indonesia in 2014', *Electoral Studies*, 36 (2014), 230–35 <https://doi.org/https://doi.org/10.1016/j.electstud.2014.09.007>

<sup>2</sup> A B Barrul Fuad, 'Political Identity and Election in Indonesian Democracy: A Case Study in Karang Pandan Village – Malang, Indonesia', *Procedia Environmental Sciences*, 20 (2014), 477–85 <https://doi.org/https://doi.org/10.1016/j.proenv.2014.03.060>

<sup>3</sup> *The Oxford Handbook of Political Theory*, ed. by John S. Dryzek, Bonnie Honig, and Anne Phillips (Oxford University Press, 2008) <https://doi.org/10.1093/oxfordhb/9780199548439.001.0001>

<sup>4</sup> *Methods in Analytical Political Theory*, ed. by Adrian Blau (Cambridge University Press, 2017) <https://doi.org/10.1017/9781316162576>

<sup>5</sup> Rumayya and others, 'The Local Economy and Re-Election of Incumbent District Leaders in Indonesia', *Heliyon*, 6.5 (2020), e04098 <https://doi.org/10.1016/j.heliyon.2020.e04098>

Mayors into Law. jo. Law no. 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law no. 2 of 2022 concerning Job Creation becomes law.

As seen in the history of legal products governing general elections for regional heads, there are continuous changes that occur and regulate important matters, such as whether or not members of the House of Representatives and Regional Representatives Council (DPR, DPRD, and DPD) need to resign if they run as candidates in the regional elections. Apart from that, the issue of simultaneous regional head elections is also being discussed for changes to related laws. Changes to the law regarding general elections for regional heads are often triggered by political turmoil approaching the political years, which then culminate in attempts to review the law judicially at the Constitutional Court.

For example, the Constitutional Court's decision in the regional head election dispute in East Java. Through Constitutional Court Decision No. 41/PHPU.D-VI/2008, the judge ordered the East Java Regional General Election Commissions (KPUJ) to carry out a re-vote and it could be concluded that it did not meet the requirements as mandated in Article 219 paragraphs (1) and (2) of Law no. 10 of 2008.<sup>6</sup> In Constitutional Court Decision No. 166/PHPU.D-VIII/2010, the judge decided that a revote will be held in the 2010 General Election of Regional Heads and Deputy Regional Heads of Tanjungbalai City in 17 (seventeen) sub-districts. Meanwhile, in Constitutional Court Decision No. 149/PHP.GUB-XIV/2016, it was decided that the implementation of the supplementary election for the Governor and Deputy Governor of Central Kalimantan remained constitutional.

Apart from that, there was a Constitutional Court decision regarding the review of the regional head general election law, which resulted in substantive changes. For example, Constitutional Court Decision No. 100/PUU-XIII/2015, whose decision was partially granted, namely deciding to allow the implementation of regional elections involving a single pair of candidates. In the same year, part of the *petitum* on the judicial review of regional election issues was granted again with Constitutional Court Decision Number 105/PUU-XIII/2015. The Constitutional Court agreed to the definition of working days and the period for registering cases. Meanwhile, applications related to articles that allow a single candidate to be rejected and not accepted.<sup>7</sup>

Previously, in the Constitutional Court Decision No. 60/PUU-XIII/2015, it was decided that individual candidates can register themselves as Candidates for Governor and Candidates for Deputy Governor or Candidates for Regent and Candidates for Deputy Regent if they meet the requirements for supporting the number of residents who have the right to vote and included in the list of

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<sup>6</sup> Muhammad Fauzan, 'Terobosan Hukum Mahkamah Konstitusi (Analisis Tentang Putusan Mk Nomor: 41/Phpu.D-Vi/2008)', *Jurnal Dinamika Hukum*, 9.1 (2009), 1-8 <https://doi.org/10.20884/1.jdh.2009.9.1.15>

<sup>7</sup> R. Nazriyah, 'Calon Tunggal Dalam Pilkada Serentak Tahun 2015 Terhadap Putusan Mahkamah Konstitusi No 100/PUU-XIII/2015', *Jurnal Konstitusi*, 13.2 (2016), 379-405 <https://doi.org/10.31078/jk1327>

permanent voters in the general election or most recent elections in the area concerned. This decision is stated in Law No. 10 of 2016. However, this decision was then subjected to a judicial review with the results of Constitutional Court Decision No. 54/PUU-XIV/2016. The Constitutional Court's decision in 2016 then changed the norm regarding the requirements for support for individual candidates, not referring to the name listed in the list of permanent voters (DPT), but to the number of residents who have the right to vote.<sup>8</sup>

In another judicial review, Constitutional Court Decision No. 48/PUU-XVII/2019 of 2019, decided to grant all requests regarding the differences in the nomenclature of "Regency/City election supervisory committee (*Panwaslu*)" in the Regional Election Law and "Regency/City election supervisory body (*Bawaslu*)" in Law no. 7 of 2017 which influences the institutional nature as well as the authority and function of an agency. In addition, reducing the number of commissioners for the Provincial Election Supervisory Body (*Bawaslu*) and Regency/City Election Supervisory Body (*Bawaslu*) from 5 (five) based on Law no. 7 of 2017 to only 3 (three) commissioners by referring to Article 23 paragraph (3) of the Regional Election Law is a form of ignoring the provisions of Article 27 paragraph (2) of the 1945 Constitution.<sup>9</sup>

The Constitutional Court's decision in this case contributed to significant changes to the regional election law. Although President Joko Widodo has asked to pay attention to the decision of the Constitutional Court (MK), which is final and binding so that after the law was agreed upon with the House of Representatives (DPR) it did not undergo the changes because of the cancellation by the Constitutional Court. It should be noted that in 2024, regional head elections in Indonesia will be held simultaneously for regions whose regional heads' term of office ends in 2022, 2023, 2024 and 2025. The voting is planned to be held simultaneously on November 27, 2024. In total, 548 regions will hold simultaneous regional head elections in 2024, with details of 38 provinces, 415 districts, and 98 cities. Therefore, the implementation of regional head elections is a political contestation that reflects the well-maintained democratic process in Indonesia at a high cost, so guarantees of direct, general, free, secret, honest, and fair regional elections must be prioritized.<sup>10</sup>

In this study, Constitutional Court judges in deciding a case have gone through a long and in-depth consideration process. However, every legal product certainly has a legal political direction. Legal politics refers to an official position on the law that will be upheld through the creation of new laws with the repeal of existing

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<sup>8</sup> Sulardi Sulardi and Tri Sulistyaningsih, 'Konstruksi Regulasi Sistem Pemilihan Kepala Daerah Menuju Sistem Pemilihan Kepala Daerah Yang Demokratis Dan Aspiratif', *Jurnal Media Hukum*, 24.1 (2017) <https://doi.org/10.18196/jmh.2017.0086.24-34>

<sup>9</sup> Joeri Morpurgo and others, 'The Role of Elections as Drivers of Tropical Deforestation', *Biological Conservation*, 279 (2023), 109832 <https://doi.org/https://doi.org/10.1016/j.biocon.2022.109832>

<sup>10</sup> Gotfridus Goris Seran, 'Konstitusionalitas Dan Desain Pemilukada Langsung Serentak Nasional', *Jurnal Konstitusi*, 16.3 (2019), 655 <https://doi.org/10.31078/jk16310>

ones to further state objectives.<sup>11</sup> Meanwhile, according to Padmo Wahjono in Agus Pramono's article, legal politics is the policy of state organizers on what is used as a criterion to punish something that includes the formation, application of, and law enforcement.<sup>12</sup> Teuku Muhammad Radhie as mentioned in Herniwati's paper defined legal politics as a statement of the will of the state ruler regarding the laws in force in his territory and regarding the direction of legal development that was built. Soedarto also argued about legal politics, which he defined as state policy through state bodies authorized to establish the desired regulations that were estimated will be used to express what is contained in society and to achieve the aspired one.

There are commonalities among the definitions, particularly concerning the motivation behind creating laws or legal goods. Legal politics is an attempt undertaken by the state to establish acceptable legal goods to fulfill state goals, with the state reserving the power to replace or create a new legal product due to those efforts. The preamble to the 1945 Constitution lays out the goals of the Indonesian state when seen in the context of the Indonesian constitution. The definition also allows us to consider the law's centrality as a tool. The scope of the study of legal politics according to Mahfud MD in Siti Mahmuda's article is divided into three main things, including<sup>13</sup> : a) state policy (official line) on the law to be enacted or not enacted while achieving the objectives of the state; b) the political, economic, socio-legal background, the culture of the release of legal products; and c) law enforcement in on the ground.<sup>14</sup> Legal politics is also used as a tool to comprehend the process of legislation reform. Understanding how those legal reforms were accomplished before and after they were implemented through various legislative processes is crucial. History shows that revisions to the rules governing the holding of regional elections are frequent in Indonesian constitutional practice. These modifications may be restrained by Government Regulations In Lieu of Law (*Perppu*), Constitutional Court rulings, or the law.<sup>15</sup>

The research ultimately focuses on efforts to find out how are the legal politics of several Constitutional Court decisions regarding regional head election cases, whether they are consistent and responsive to regional head general election problems, or whether they make them worse. Compared with several previous studies, this study has several sections but still has differences in its discussion and findings. For example, research conducted by (Pavel Šaradín, et.al, 2021) discusses

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<sup>11</sup> M Lutfi, 'Legal Politics and Public Policies in the Industrial Era 4.0 (an Indonesian Legal Civilization Discourse Perspective of Prophetic Science Religiousity)', *IOP Conference Series: Earth and Environmental Science*, 456.1 (2020), 012084 <https://doi.org/10.1088/1755-1315/456/1/012084>

<sup>12</sup> Agus Pramono, 'Ideologi Dan Politik Hukum Pancasila', *Gema Keadilan*, 5.1 (2018), 74–84 <https://doi.org/10.14710/gk.2018.3650>

<sup>13</sup> *Ibid.*

<sup>14</sup> Siti Mahmudah, 'Politik Penerapan Syari'at Islam Dalam Hukum Positif Di Indonesia (Pemikiran Mahfud MD)', 10.2 (2012), 403–14 <https://doi.org/10.24042/adalah.v10i2.294>

<sup>15</sup> Krisztina Kis-Katos and Bambang Suharnoko Sjahrir, 'The Impact of Fiscal and Political Decentralization on Local Public Investment in Indonesia', *Journal of Comparative Economics*, 45.2 (2017), 344–65 <https://doi.org/https://doi.org/10.1016/j.jce.2017.03.003>

politics in local elections in the Czech Republic. This research focuses on understanding the relationship between political values, political participation, political knowledge, and voting behavior at the local level.<sup>16</sup>

Furthermore, research (Eny Kusdarini et.al, 2022) focuses on the process of resolving Election Administrative Disputes in Indonesia through the Election Supervision Body (ESB), Honorary Council of the General Election (HCGE), or State Administrative Court.<sup>17</sup> Apart from that, research (Kelliher, C. et.al., 2019) is more focused on answering how the post-conflict regional elections are structured, what actual results are disputed, and how the Constitutional Court handles these cases. This research also provides an analysis of legal issues arising from jurisdiction over post-conflict regional election results disputes. Based on several previous studies, nothing has specifically discussed the political direction of Constitutional Court decisions and their responsiveness in resolving regional election problems. Looking at local elections in the USA, despite the large amount of research on local elections in America, there is no interest in how regulations should be implemented or how the legal politics of any regulations regarding local elections should be reviewed through a judicial review process. Meanwhile, as a developed country, politics in America and its arrangements are certainly more diverse. Therefore, a comparison between Indonesia and America is quite worthy of writing to provide new insights.

In the end, in the Indonesian state administration structure, changes in the system, mechanism, and behaviors of election and post-conflict local election organizers as well as election and post-conflict local election participants are a result of the political renewal of election and post-conflict local election law following the Constitutional Court Decision. People think dynamically to organize and improve the system and are aware of the constitutional rights guaranteed by the 1945 Constitution for their political rights for the spirit of regional development through regional head elections to elect ideal figures.<sup>18</sup>

The dynamics of holding regional head elections, both in terms of statutory regulations and changes from time to time, are aimed at resolving injustice and legal uncertainty in holding regional elections. However, it should also be noted that the political system can cause gaps between constitutional interpretation (concerning Constitutional Court Decisions) and legislative implementation

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<sup>16</sup> Pavel Šaradín and others, 'Post-Election Survey Data: Local Democracy and the 2018 Local Elections in the Czech Republic', *Data in Brief*, 36 (2021), 107039 <https://doi.org/10.1016/j.dib.2021.107039>

<sup>17</sup> Eny Kusdarini and others, 'Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia', *Heliyon*, 8.12 (2022), e11932 <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11932>

<sup>18</sup> Wahyu Nugroho, 'Politik Hukum Pasca Putusan Mahkamah Konstitusi Atas Pelaksanaan Pemilu Dan Pemilukada Di Indonesia', *Jurnal Konstitusi*, 13.3 (2016), 480 <https://doi.org/10.31078/jk1331>

(formation and/or amendments to laws).<sup>19</sup> The large number of regulations, material tests, and dissatisfaction with the implementation of the regional elections are crucial problems that the public continues to criticize by conducting judicial reviews. Unfortunately, the results of Constitutional Court decisions often make several legal products governing regional elections and their amendments increasingly complex and make it difficult to implement them. Therefore, the urgency of this research is to identify the legal politics that underlie the making of regulations and changes to the Regional Election Law. This is important to enrich the knowledge of scholars in knowing the inner political atmosphere when regulations are being formed. It would be even better if it could be used as a reference for reading the direction of regional election politics in the future.

## 2. Research Method

This research is legal research based on secondary legal materials. This paper uses a legal approach to see how a legal product is challenged at the Constitutional Court and changed because of the decision.<sup>20</sup> Laws and regulations regarding regional elections, as well as decisions of the Constitutional Court. This article will only limit itself to analyzing the Constitutional Court's decision regarding disputes over regional head election results and decisions regarding the review of the regional head election law in the period before and after the promulgation of Law No. 1 of 2015, including (Constitutional Court Decision No. 41/PHPU.D-VI/2008, Constitutional Court Decision No. 149/PHP.GUB-XIV/2016, Constitutional Court Decision No. 60/PUU-XIII/2015, Constitutional Court Decision No. 54/PUU-XIV/2016. This approach will not be successful if the author does not use a conceptual approach, such as legal politics, the formation of laws and regulations, and other studies regarding regional head elections. To study regional election arrangements and their implementation in Indonesia and the USA, comparative and philosophical methods are used.<sup>21</sup> This article uses deductive techniques to explain the issue of regional head general elections and the legal politics that underlie changes to the Regional Election Law.

## 3. Results and Discussion

### *The Role of the Constitutional Court in Local Election Decisions*

Reading Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is regulated that: "General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional Representative Council." In this article, there is no

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<sup>19</sup> Camden Kelliher and others, 'Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes', *Election Law Journal: Rules, Politics, and Policy*, 18.3 (2019), 297–308 <https://doi.org/10.1089/elj.2018.0535>

<sup>20</sup> Lego Karjoko and others, 'Indonesia's Sustainable Development Goals Resolving Waste Problem: Informal to Formal Policy', *International Journal of Sustainable Development and Planning*, 17.2 (2022), 649–58 <https://doi.org/10.18280/ijstdp.170230>

<sup>21</sup> Abdul Kadir Jaelani and others, 'Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China', *Legality: Jurnal Ilmiah Hukum*, 31.2 (2023), 202–23 <https://doi.org/https://doi.org/10.22219/ljih.v31i2.25874>

mention of general elections intended to elect regional heads. The regional head election regime is in CHAPTER VI concerning Regional Government, which is regulated explicitly in Article 18 paragraph (4), namely: "Governor, Regent and Mayor respectively as heads of provincial, district and city regional governments are elected democratically." Looking at these articles provides a picture of the different regimes between general elections and regional head elections. This also provides a different justification regarding the authority of the Constitutional Court to examine disputes over the results of general elections and regional head elections.<sup>22</sup>

It should be noted that these differences in regimes have given rise to uncertainty about whether the Constitutional Court can truly decide the results of regional election disputes since 2008. Because, the authority of the Constitutional Court is regulated directly in the 1945 Constitution of the Republic of Indonesia. Article 24C paragraph (1) of the 3rd amendment, states that "The Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by The Constitution, decides on the dissolution of political parties and resolves disputes regarding the results of general elections."<sup>23</sup> The authority of the Constitutional Court to adjudicate cases regarding disputes over the results of regional head elections is considered to expand the meaning of general elections. Meanwhile, the authority of the Constitutional Court should be limited by a rigid Constitution. Its jurisdiction cannot be changed only by law or the decision of the Supreme Court itself. This situation continues to give rise to doubts, legal uncertainty, and the absence of institutions with the authority to resolve disputes over regional head general election results due to the lack of a governing law. Therefore, in practice, from year to year, resolving disputes over regional head general election results remains the authority of the Court.<sup>24</sup>

In 2022, the Constitutional Court's authority to decide regional head election disputes will become the Court's permanent authority. Through Decision Number 85/PUU-XX/2022, it is stated that the phrase "until the establishment of a special judicial body" in Article 157 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Determination of Government Regulations The replacement of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law is contrary to the 1945 Constitution of the Republic of Indonesia. Article 157 paragraph (3) of the Regional

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<sup>22</sup> Smriti Tiwari, 'Does Local Development Influence Outmigration Decisions? Evidence from Indonesia', *World Development*, 93 (2017), 108–24  
<https://doi.org/https://doi.org/10.1016/j.worlddev.2016.12.028>

<sup>23</sup> Hamid A. Chalid, 'Dualism Of Judicial Review In Indonesia: Problems And Solutions', *Indonesia Law Review*, 7.3 (2017) <https://doi.org/10.15742/ilrev.v7n3.353>

<sup>24</sup> Cole J Harvey, 'Who Delivers the Votes? Elected versus Appointed Local Executives, Election Manipulation, and Natural Support for Ruling Parties', *Electoral Studies*, 76 (2022), 102455  
<https://doi.org/https://doi.org/10.1016/j.electstud.2022.102455>



Election Law regulates institutions that are temporarily given authority as/become electoral judicial bodies during the transition period or during the period when the particular electoral judicial body has not yet been formed. This article is tested because it interprets the Constitutional Court's authority to adjudicate regional head general election disputes temporarily until another body is created.<sup>25</sup>

According to the Court, the interpretation of the 1945 Constitution, which no longer differentiates between national general elections and regional head elections, systematically has implications for changing the interpretation of the authority of the Constitutional Court as regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Article 24C paragraph (1) states that the Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final to, among other things, decide disputes regarding the results of general elections. However, the question remains whether it can be justified if the authority of the Constitutional Court is obtained through their own decision under the pretext of changing the interpretation of the meaning of general elections.<sup>26</sup>

Another authority of the Constitutional Court relating to regional elections is judicial review. To test whether a law conflicts with the constitution or not, the agreed mechanism is judicial review.<sup>27</sup> If a law or one of its parts is declared to be inconsistent with the Constitution, the legal product will be annulled by the Constitutional Court. In the development of constitutional issues, through Constitutional Court Decision No. Number 138/PUU-VII/2009 states that the Constituent Court also has the authority to review regulations in lieu of law (*Perpu*). *Perpu* may only be issued if there is a compelling Emergency.<sup>28</sup> The authority to review the *Perpu* can be interpreted as having changed the constitution through the Constitutional Court Decision. According to Jimly Asshiddiqie, judicial interpretation can function to make constitutional changes in the sense of adding, reducing, or correcting the meaning contained in the constitutional text without going through official changes(formal amendment).<sup>29,30</sup> Concerning this article, the

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<sup>25</sup> Blane D. Lewis, Hieu T.M. Nguyen, and Adrianus Hendrawan, 'Political Accountability and Public Service Delivery in Decentralized Indonesia: Incumbency Advantage and the Performance of Second Term Mayors', *European Journal of Political Economy*, 64.May (2020), 101910 <https://doi.org/10.1016/j.ejpoleco.2020.101910>

<sup>26</sup> D N Aisyah and others, 'Democracy and Pandemic: Evaluating Health Protocol Compliance in Regional Election Using Integrated Monitoring System', *International Journal of Infectious Diseases*, 116 (2022), S31 <https://doi.org/https://doi.org/10.1016/j.ijid.2021.12.074>

<sup>27</sup> Abdurrachman Satrio, 'Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pemilu Sebagai Bentuk Judicialization Of Politics', *Jurnal Konstitusi*, 12.1 (2016), 117 <https://doi.org/10.31078/jk1217>

<sup>28</sup> Fitra Arsil, 'Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial', *Jurnal Hukum & Pembangunan*, 48.1 (2018), 1 <https://doi.org/10.21143/.vol48.no1.1593>

<sup>29</sup> Muhammad Addi Fauzani and others, 'Living Constitution in Indonesia: The Study of Constitutional Changes Without A Formal Amendment', *Lentera Hukum*, 7.1 (2020), 69 <https://doi.org/10.19184/ejllh.v7i1.13953>

Constitutional Court's decision to decide on the application for a judicial review of the *Perpu* regarding regional head general elections is valid and does not conflict with the Constitution since this study discusses the results of the Constitutional Court's decision which tested the articles of the *Perpu* regarding general elections for regional heads.<sup>31</sup>

In its other authority, the Constitutional Court not only adjudicates general election disputes but also has the authority to adjudicate cases regarding the results of regional head elections. Unfortunately, the facts on the ground still experience several obstacles. Resolving general election disputes in the regions is still less effective due to two factors. First, aspects of the institutional structure of the Constitutional Court which is centralized in the capital alone, the number of judges is limited to only nine people, and the dispute resolution time is only 14 days. Second, the aspect of the large number of dispute cases resulting from regional head general elections and the vast territory of Indonesia with the characteristics of a large area and many islands. These obstacles may be also factors that influence the results of the judge's decision.<sup>32</sup> Later, this article will only speak in the context of the Constitutional Court's authority to review the constitution and decide disputes over general election results at the regional level.<sup>33</sup>

Before carrying out the analysis, it is important to know what can influence the judge's decision. Difficult cases do occur in the judiciary. Unfairness and gaps in the law give rise to complex cases. Changes in society in the democratic process require that adequate and beneficial solutions be provided in the interests of society.<sup>34</sup> Constitutional justices in making decisions will certainly take the fairest and most beneficial path by referring to the Constitution. However, in the trial process, influences both from inside and outside of the court can affect the outcome of the judge's decision. Some things that influence the decision include psychology, the professional motivation of judges, the character of judges, the character of litigants, group dynamics, numerical reasoning, bias, court processes, technological advances, and influence of political institutions.<sup>35</sup> All factors influence decisions and shape the character of a legal product and reflect its legal politics since legal politics is defined as activities that determine patterns and ways of forming laws, overseeing the operation of laws, and updating laws for state purposes.

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<sup>30</sup> Daeyoung Jeong and Semin Kim, 'Stable Constitutions', *Games and Economic Behavior*, 2023 <https://doi.org/10.1016/j.geb.2023.09.013>

<sup>31</sup> Bambang Suharnoko Sjahrir, Krisztina Kis-Katos, and Günther G Schulze, 'Administrative Overspending in Indonesian Districts: The Role of Local Politics', *World Development*, 59 (2014), 166–83 <https://doi.org/https://doi.org/10.1016/j.worlddev.2014.01.008>

<sup>32</sup> Ija Suntana and Tedi Priatna, 'Four Obstacles to the Quality of Constitutional Law Learning in Indonesia', *Heliyon*, 9.1 (2023), 1–8 <https://doi.org/10.1016/j.heliyon.2023.e12824>

<sup>33</sup> Fukuoka and na Thalang.

<sup>34</sup> Temitope Obasaju Stephen, 'Law or Morality: What Influences Judges Decisions?', *SSRN Electronic Journal*, 2013 <https://doi.org/10.2139/ssrn.2269886>

<sup>35</sup> Brian M. Barry, *How Judges Judge* (Informa Law from Routledge, 2020) <https://doi.org/10.4324/9780429023422>

According to Soedarto, legal politics is a policy from the state through authorized state bodies to establish the desired regulations, which are expected to be used to express what is contained in society. Therefore, law is a determinant of politics and is related to democracy. This article will not discuss the debate of whether politics influences law or law influences politics. Because in fact, political pressure is a complex factor that can influence a judge's decision. Thus, in order, the judge's decision on the case can be influenced by factors outside and within the judiciary, one of which is the political system or direction. The decision produced by the constitutional judge is a legal product, and it will reflect the political direction and character of the decision. Next, we see whether these decisions are responsive to solving problems in society or not.<sup>36</sup>

### *The Constitutional Court on Local Election Responsive Decisions*

Indonesian politics historically until the present day shows that democratic and authoritarian configurations continually alternate, shift, or reject each other. It is important to note that democratic countries are required to codify citizens' rights to fulfill human rights. Meanwhile, in a more authoritarian country, its ruler has the power to impose anything. The state has the authority to enforce unity, and that leadership has the authority to continue the cycle indefinitely. Even though it displays a form of democracy textually, in practice it is often different. It is noted that several existing government regimes have shown an authoritarian configuration several times, such as in the guided democracy era and the New Order era. Until the collapse of the New Order era commonly known as the reform era, many changes occurred in the Indonesian constitutional system, one of which was related to the choice of political configuration.<sup>37</sup>

One of the products born after the reform era, Constitutional Court Decision No. 41/PHPU.D-VI/2008 chooses democratic configuration as the type of political configuration. This can be seen from the decision ordering a revote and recount of votes in the East Java Province General Head Election (*Pilkada*). History records the Constitutional Court Decision No. 41/PHPU.D-VI/2008 is the first decision in the Regional Head General Election Results Dispute (PHPUD) case which ordered a revote and recount of votes. Through this decision, the Constitutional Court justifies its authority to question matters of judicial process so that the results of the regional head election are not only seen from the quantity of the calculations but also from the process of how the number of votes was obtained.<sup>38</sup>

This decision is considered to provide progressive legal politics - not only looking at the law in writing but also at justice. No longer looking at H.L.A Hart but at the concept. However, some judges are not like that, and quite a few have

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<sup>36</sup> Gerrit J Gonschorek, 'Subnational Favoritism in Development Grant Allocations: Empirical Evidence from Decentralized Indonesia', *World Development*, 139 (2021), 105299 <https://doi.org/https://doi.org/10.1016/j.worlddev.2020.105299>

<sup>37</sup> Ken M.P. Setiawan and Dirk Tomsa, *Politics in Contemporary Indonesia* (London: Routledge, 2022) <https://doi.org/10.4324/9780429459511>

<sup>38</sup> Lewis, Nguyen, and Hendrawan.

developed progressive law in deciding cases. It can be referred to Dworkin's opinion, that judges rely on moral reasoning to justify their decisions. This means that judges not only rely on the laws of a legal system to make decisions, but they also consider whether a decision is morally justified.<sup>39</sup> The order for a re-vote was based on the argument that there had been systematic, structured, and massive violations that were detrimental to democracy. Systematic, structured, and massive violations are violations that not only occur during voting but also events that occur before voting. The meaning of systematic, structured, and massive violations is explained in Constitutional Court Decision No. 166/PHPU.D-VIII/2010.

The reasons for the systematic, structured, and massive violations also prove that the Constitutional Court judge's choice in handing down the decision to re-vote was to fulfill the basic rights of voters who were violated. This is in line with the spirit of fulfilling human rights carried out by democratic countries. Therefore, the choice of political configuration in Constitutional Court Decision Number 41/PHPU.D-VI/2008 is a democratic configuration.<sup>40</sup> In Indonesia, for the first time, there has been a paradigm shift in the judicial process for regional head elections at the Constitutional Court. If previously the emphasis was on formal aspects of law and justice, after the emergence of this decision, the handling of cases at the Constitutional Court entered the level of substantial law and justice. Through this decision, the concept of systematic, structured, and massive violations became known.<sup>11</sup>

The decision to conduct voting and recount votes for certain areas is the result of purposive interpretation. In this case, the Constitutional Court carries out reasoning to explore the objectives contained in the constitutional provisions and then implement them in concrete cases. Its implementation was realized through decisions, one of which ordered a re-vote in Bangkalan Regency and Sampang Regency as well as a recount of votes in Pamekasan Regency. Thus, what the Constitutional Court has done through its decision by interpreting both its authority and its decision after providing evidence is a form of ignoring the formalities of procedural law. This can be justified because the fair handling of election result disputes should not be confused just because of complying with procedural legal formalities. Procedural law should be used as an aid to justice, not to defeat justice.<sup>12</sup>

The character of law, literacy studies will narrow the topic of discussion to two major poles, which are responsive/populist law and orthodox/conservative/elitist law. These two legal product concepts were introduced by John Henry Marryman. These two types of legal products are identical and related to the existing political configuration. Democratic configurations tend to produce more responsive legal products. Meanwhile, the authoritarian configuration produces legal products that

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<sup>39</sup> Thomas Riesthuis, 'The Legitimacy of Judicial Decision-Making: Towards Empirical Scrutiny of Theories of Adjudication', *Utrecht Law Review*, 19.2 (2023), 75–86 <https://doi.org/10.36633/ulr.877>

<sup>40</sup> Muhammad Reza Winata, 'Judicial Restraint Dan Constitutional Interpretation Terhadap Kompetensi Mengadili Pelanggaran Pemilihan Umum Terstruktur, Sistematis, Dan Masif', *Jurnal Legislasi Indonesia*, 17.4 (2020), 423 <https://doi.org/10.54629/jli.v17i4.663>

are more orthodox/conservative/elitist.<sup>41</sup> Constitutional Court Decision Number 41/PHPU.D-VI/2008 shows the nature of a responsive legal product because this decision is the first case accepted and decided by the Constitutional Court after the transfer of authority to examine and decide PHPUD cases from the Constitutional Court. Supreme Court to the Constitutional Court based on Article 236C of Law no. 12 of 2008 concerning the Second Amendment to Law no. 32 of 2004. Responsive character is demonstrated by the ability of Constitutional Court judges to respond to the transfer of authority to decide PHPUD cases.

The types of political configuration and character of legal products that have been discussed previously, Constitutional Court Decision No. 41/PHPU.D-VI/2008 provides the release of new concepts/principles related to the Constitutional Court decision which questions, examines, and assesses violations that result in voting. This is following the mandate contained in Article 24 paragraph (1) of the 1945 Constitution, Article 28D paragraph (1) of the 1945 Constitution, and Article 45 paragraph (10) of the Constitutional Court Law. In legal considerations, Constitutional Court Decision No.41/PHPU.D-VI /2008 also explicitly explains the prohibition on the Constitutional Court carrying out administrative and criminal justice functions. The next legal concept that was formed through Constitutional Court Decision No. 41/PHPU.D-VI/2008 is that decisions produced by the democratic process can be annulled by the court.

This concept is that democracy cannot only be carried out based on political struggle alone but must also be accompanied by law enforcement. Following the spirit of Article 1 paragraph (3) of the 1945 Constitution stated Indonesia as a legal state. The attitude of decision makers in Constitutional Court Decision No. 41/PHPU.D-VI/2008 shows the function of the Constitutional Court as a judicial body that not only interprets the language of statutory regulations but also considers the principles of substantive justice.<sup>42</sup> Turning to Constitutional Court Decision No. 149/PHP.GUB-XIV/2016. In the same year, 2015, the government again revised the law regarding general elections for regional heads. Law no. 1 of 2015 has been amended by Law no. 8 of 2015, one of the important points is related to differences in the maximum vote count results that can be filed in a PHPUD lawsuit at the Constitutional Court. This provision is contained in Article 158 of Law Number 8 of 2015. The reason for the lawmakers is that this limitation is provided so that not all PHPUD could file a lawsuit with the Constitutional Court. This aims to ensure the effectiveness of the Constitutional Court and avoid many candidates filing lawsuits with the Constitutional Court because they are dissatisfied with the results of the regional elections.

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<sup>41</sup> John Henry Merryman, 'Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement', *The American Journal of Comparative Law*, 25.3 (1977), 457 <https://doi.org/10.2307/839690>

<sup>42</sup> Muhibuddin Muhibuddin, Mahdi Syahbandir, and M. Nur Rasyid, 'Tinjauan Yuridis Pembatasan Upaya Hukum Kasasi Dalam Kasus Gugatan Terhadap Keputusan Pejabat Daerah', *Syiah Kuala Law Journal*, 1.2 (2017), 67–82 <https://doi.org/10.24815/sklj.v1i2.8474>

This policy has a direct impact on several PHPUD cases, one of which is PHPUD in Central Kalimantan Province. In Constitutional Court Decision No. 149/PHP.GUB-XIV/2016, the Constitutional Court finally decided that the applicant's petition could not be accepted because the maximum vote difference exceeded 1.5%. The difference in votes for the Central Kalimantan Regional Election of 5.9% means that it has exceeded the maximum limit permitted for filing a lawsuit with the Constitutional Court, namely 1.5% based on Article 158 paragraph (1) letter b of Law no. 8 of 2015. Based on these considerations, it is clear that the choice of political configuration in the Constitutional Court Decision Number 149/PHP.GUB-XIV/2016 is an authoritarian configuration. The real proof can be seen through the limitations imposed by the Constitutional Court. Every citizen has the right to file a lawsuit if he feels his basic rights have been violated. The concept of democracy provides a logical consequence, that the state guarantees the fulfillment of human rights.

However, it does not rule out the possibility that the state will ignore the fulfillment of human rights in its implementation. Constitutional Court Decision Number 149/PHP.GUB-XIV/2016 may provide conclusive evidence regarding this matter. This means that the choice of a political configuration cannot be done solely based on language, but must also consider how this will be implemented in practice.<sup>43</sup> Even though the government seems to be curbing the basic rights of citizens in the Constitutional Court Decision Number 149/PHP.GUB-XIV/2016, the maximum voting threshold for filing a lawsuit with the Constitutional Court is a proactive step in responding to the many cases that occur. PHPUD lawsuit filed with the Constitutional Court. With the restrictions contained in Law Number 8 of 2015, the drafters of this law are essentially trying to increase the effectiveness and efficiency of the Constitutional Court's performance. This condition also becomes a place for political education for candidates who fail to win the regional elections, so that they can learn to be sincere and willing to accept defeat.

The political life of society is encouraged to become more balanced with democratization. The law regulates it, and politics is about realizing human rights and being bound by legal constraints. Recently reflected legal points begin to reflect this. By looking closely at the political development of election law, it is clear how elitism has been oppressive from the start. Legal politics began to swing back and forth influencing judges to decide well in the era before Law No. 1 of 2015 and thereafter. An increasingly critical public will continue to complain to the Constitutional Court if the results of regional elections do not reflect the true nature of democracy. However, seeing the emergence of the concept of repeat voting due to systematic, structured, and massive violations of the Constitutional Court's decision, it provides high responsibility in most cases of general election results. This means that the nature of the current legal product, after undergoing several

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<sup>43</sup> David Pradhan and Haris Haris, 'Religious Tolerance in Multifaith Democracies: A Comparative Legal Study of Indonesia and India', *Legality: Jurnal Ilmiah Hukum*, 29.1 (2021), 46–62 <https://doi.org/10.22219/ljih.v29i1.14694>

revisions due to the Constitutional Court Decision, is more adaptive and can respond to the interests of the parties.<sup>44</sup>

In the general election, the subject who will be nominated as chairman or deputy chairman of the regional head will attract public attention. Therefore, setting the conditions for submitting candidates is an interesting issue. Constitutional observers have several times submitted a judicial review to the Constitutional Court regarding the provisions on regional head candidates who come from individuals - not political parties. In 201, the Constitutional Court issued Constitutional Court Decision No. 60/PUU-XIII/2015. In the considerations and rulings of Constitutional Court Decision No. 60/PUU- 5/PUU-V/2007 is the population.

The Constitutional Court Decision No. 60/PUU-XIII/2015 in point 1.1 which reads as follows: "States Article 41 paragraph (1) letters a, b, c and d of Law no. 8 of 2015 is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted to mean that the percentage of support for individual candidates who wish to register themselves as Candidates for Governor and Candidates for Deputy Governor is based on the number of residents who already have the right to vote as stated in the permanent voter candidates in the area concerned at the election. General beforehand." This means that the reference for supporting individual candidates is the Permanent Voter List (DPT) which has been published. Therefore, the legislators revised Law No. 8 of 2015 as a result of one of these decisions became as stated in Article 41 paragraph (1) and paragraph (2) as well as Article 43 in Law No. 10 of 2016.

In the end, the Constitutional Court in its decision regarding Article 41 paragraphs (1) and (2), as well as Article 43, stated that the phrase "and contained"/"and listed" does not have binding legal force, as long as it is not interpreted as not referring to the name contained/ listed in the DPT, but rather on the number of residents who have the right to vote, is a decision that contradicts the previous decision of the Constitutional Court and shows the inconsistency in the train of thought of the Constitutional Court judges in deciding a case. Constitutional Court Decision No. 54/PUU-XIV/2016 is inconsistent with Constitutional Court Decision No. 60/PUU-XIII/2015 because the nomination mechanism for individual candidates has changed in a fairly short time, giving rise to legal uncertainty.

The judicial review decided by the Constitutional Court changed and provided political updates to the election and regional head election laws after the Constitutional Court's decision had an impact on changes in the system, mechanisms, and patterns of organizers and participants in regional head general elections. As stated in Constitutional Court Decision No. 60/PUU-XIII/2015 and No. 54/PUU-XIV/2016, which changed significantly at critical times during regional

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<sup>44</sup> Tonye Clinton Jaja and Zaka Firma Aditya, 'Promoting the Good Governance by Advancing the Role of Parliamentarians and the Term Offices Limitation (Comparing Nigeria and Indonesia)', *Journal of Indonesian Legal Studies*, 7.1 (2022), 265–98 <https://doi.org/10.15294/jils.v7i1.54776>

elections, certainly could not be separated from the political and legal influences of that time. Changes to the decision on this same article occurred in a very short period of time, in fact, the 2016 Constitutional Court decision was only announced in 2017. This of course adds to the workload of the General Election Commission, which at that time will immediately organize the stages, program, and schedule for the Regional Election. In 2017, the organizers announced the results of factual verification of support for individual candidates. It is not impossible that the spiritual atmosphere leading up to the general election will put pressure on the judges.

Tamanaha 1999, states that the social and institutional environment around a judge is an important variable in understanding how he decides a particular case. The social environment consists of the general public and the legal community such as fellow judges, lawyers, and legal staff. The institutional environment consists of a vertical component and a direct component. The vertical component refers to the place or status of the judge's court within the overall legal system. The direct component refers to the surrounding environment which causes decision-making such as negotiations, deliberations with fellow judges, and even media pressure.<sup>45</sup> Recently, people in Indonesia have even started to raise their voices in accordance to no viral no justice to seek justice. It is not surprising that the current political direction is more efficiently carried out using the mass media<sup>46</sup> both formally and with satirical discussions.<sup>47</sup>

The two decisions above are legal products of the Constitutional Court, decided by considering and referring to the Constitution. However, the results of the two have significant differences. Remembering that Indonesia is a positivistic country of law, the judge's decision is based on the law. In H.L.A. Hart's theory of adjudication, it is stated that judges must make decisions by relying as much as possible on the laws of a legal system. Likewise, regional head elections must also be carried out following existing regulations. Therefore, the Constitutional Court's decision is final and binding and must be implemented, so there is no choice but to amend Law No. 10 of 2016 for the third time. However, in certain cases, and not only in the Constitutional Court institution, the judges made legal breakthroughs. But specifically in the Constitutional Court's decision on judicial review, improving legal products becomes a binding order.

However, in Decision No. 54/PUU-XIV/2016, the Court 'defended itself' against 'accusations' of giving contradictory decisions in the near future. In its consideration, it was stated that Decision No. 60/PUU- believes that the calculation

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<sup>45</sup> Brian Z. Tamanaha, 'Studies of Judicial Decision-Making', in *Realistic Socio-Legal Theory Pragmatism and a Social Theory of Law* (Oxford University Press, 1999), pp. 196–227 <https://doi.org/10.1093/acprof:oso/9780198298250.003.0007>

<sup>46</sup> Ella S Prihatini, 'Women and Social Media during Legislative Elections in Indonesia', *Women's Studies International Forum*, 83 (2020), 102417 <https://doi.org/https://doi.org/10.1016/j.wsif.2020.102417>

<sup>47</sup> Sunarso Sunarso and others, 'Heliyon The Political Satire of Mojok . Co in the 2019 Indonesian Election', *Heliyon*, 8.August 2021 (2022), e10018 <https://doi.org/10.1016/j.heliyon.2022.e10018>



basis for determining the percentage of support for citizens who wish to nominate themselves as regional heads and deputy regional heads must use the number of residents who already have the right to vote, which in this case is represented in the list of permanent voter candidates in each region concerned. "What is meant by the list of permanent voter candidates in this connection is the list of permanent voter candidates in the previous General Election."

Therefore, the phrase "as contained in the list of permanent voter candidates in the area concerned in the previous General Election" must not be understood purely textually but must take into account the spirit above, namely not the names listed in the DPT but the number of residents present. have registered as voters as a basis for calculating the percentage of support for individual candidates. Because the right to provide support or receive support is a human right that has been accepted as a constitutional right of citizens, as is the right to vote and the right to be elected, its fulfillment must be guaranteed in accordance with the mandate of the Constitution. This decision seeks to be more democratic by accommodating the rights of citizens in individual nominations, where people whose constitutional rights to be included in a 'group' that can nominate are initially disturbed to become eligible.

Political encouragement during the judicial review process leading up to the political year will play a very important role. Constitutional judges as part of law enforcement certainly have the potential to gain influence outside the court, within the court, and themselves. The legal politics of a nation in a certain period also directs the mindset of constitutional judges in deciding a case. The decision as a legal product can describe a legal political direction. Timothy J. Capurso, 1998 quoting (Bishop Benjamin Hoadly, 1759), wrote: "Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the Law-giver to all intents and purposes, and not the person who first wrote or spoke them."

It could be that decision No. 60/PUU-XIII/2015 and No. 54/PUU-XIV/2016 is a decision that is responsive to the applicants and the public, or vice versa. If we look closely at the period of the decision, both are products of post-reformation. Decision No. 60/PUU-XIII/2015, one of which led to the revision of Law No. 8 of 2015 became Law No. 10 of 2016 during the critical period of regional head elections in 2018. Philip Nonet, in responsive legal theory, explained that the concept of responsive law initiated by Philippe Nonet and Selznick, legal products that have a responsive character, the process of making them is participatory.<sup>48</sup> This means that the legal product is not the will of the ruler to legitimize his power.<sup>49</sup> Responsiveness can be interpreted as serving social needs and interests that are

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<sup>48</sup> Agam Ibnu Asa, Misnal Munir, and Rr. Siti Murti Ningsih, 'Nonet And Selznick's Responsive Law Concept In A Historical Philosophy Perspective', *Jurnal Crepido*, 3.2 (2021), 96–109. <https://doi.org/10.14710/crepido.3.2.96-109>

<sup>49</sup> A. C. Hutchinson, 'Law And Society In Transition: Toward Responsive Law, By Philippe Nonet and Philip Selznick. New York: Harper and Row, 1978', *The American Journal of Jurisprudence*, 24.1 (1979), 207–12 <https://doi.org/10.1093/ajj/24.1.207>

experienced and discovered, not by officials but by the people. In this case, the judge decides based on justice, not on the political will of the authorities alone or certain interested groups. Likewise, the decisions about whether the Constitution is responsive to regional election issues should not only be influenced by political influence.

Based on the judge's considerations and his decision, if examined from legal certainty, these two decisions are related to each other. Both decisions try to strengthen, explain, and justify the provision of protection of citizens' rights to be used as a basis for calculating the percentage of support for individual candidates. However, the results of the decision lead to different things so that in the implementation stage later. The differences in the rulings between the two have created chaos in preparations for holding regional head general elections. Therefore, the responsibility for these two decisions is not completely correct. However, if what makes it not fully responsive is not substantive, then it could possibly be set aside in order to accommodate larger legal interests.

Potential problems in the implementation of regional head general elections certainly originate from the legal products that regulate them. For example, there is still the problem of updating voter data; procurement and distribution of election logistics such as ballot papers; the workload of election organizers is too high; there is not yet optimal synergy between the Regional Election Supervisory Body and the Regional General Election Commission regarding KPU Regulations and Regional Election Supervisory Body Regulations; the facts that money politics is still rampant; participants who still have difficulty exercising their right to vote, threats and interference with voter freedom, and the spread of hoax news and 'hate speech'.

The Constitutional Court's decision on the authority of judicial review will greatly influence changes to the law and its implementation in the implementation process. Meanwhile, the authority to decide on election results will affect the dispute itself and become the basis for other disputes. In the end, the responsibility of the Court's decisions will greatly influence the success of holding elections and maintaining democracy. Therefore, the element of political influence on judges in deciding cases must be eliminated if it does not bring justice at all. This is because an unfair decision will only lead to the application of other disputes, which causes legal uncertainty. This is because the laws will continue to change according to political directions/trends and make them too flexible.

### ***Constitutional Court and Local Election di the USA***

The Supreme Court in America plays a crucial role in the government system in America because the Supreme Court is the highest in a country. It is the court of last resort for those seeking justice. Because of its powers of judicial review, the agency plays an important role in ensuring that each branch of government recognizes the limits of its authority. Protect civil rights and freedoms by eliminating laws that violate the Constitution. Finally, these laws set appropriate

limits for democratic governance by ensuring that majority groups cannot pass laws that harm and or take undue advantage of unpopular minority groups.

In contrast to Indonesia, the mention of the Supreme Court in America is given to an institution that has the status of 'the guardian of the constitution.' In Indonesia, the Supreme Court only examines cassations or appeals against decisions given by lower courts. Constitutional protection is carried out by a separate court, namely the Constitutional Court. Supreme Court in America authorized judicial review, declaring a Legislative or Executive Action to violate the Constitution. This concept is a doctrine based on the case *Marbury v. Madison* (1803). Interestingly, in America, judicial reviews are also carried out on constitutionality cases by all ordinary courts. This testing is carried out through decentralized testing or distributed testing in cases examined in ordinary courts. This means that cases that are being judicially reviewed are not independent institutional cases, but can be included in other cases that are being examined by judges at all levels of the court. Meanwhile in Indonesia, constitutional matters center on the Constitutional Court.

Following its authority, the Supreme Court can declare that Acts of Congress that conflict with the Constitution are untenable. It can also overturn state laws that are found to violate the Constitution. After the Fourteenth Amendment (1869), most provisions of the Bill of Rights also applied to the states. Therefore, the Court has the final say regarding when a right is protected by the Constitution or when a Constitutional right is violated.

Similar to democratic countries in the world, America also realizes that judicial review decisions that follow doctrine must have the following characteristics: (1) seriousness of purpose in trying to understand the Constitution, and (2) selflessness personally and institutionally. However, they also realized that all court decisions would be influenced by the times and the personalities of the people making those decisions. This system, recognizing that human weakness is inevitable, provides for the right that future judges can correct the mistakes of their predecessors. This means that judges in deciding a case can be influenced by other things, this is following what Brian Barry said in his book 'How judges judge.'

In research conducted by (Guilherme Lambais, et.al, 2023), it was found that formal independence does not completely isolate judicial institutions from political influence. Politicians at the state and federal levels influence appellate courts—especially in appointing judges and determining judicial budgets. Therefore, a judge with career interests may be reluctant to punish a mayor who has ties to powerful politicians at the state or federal level.<sup>50</sup>

In America, democracy improved earlier than in Indonesia. Local political research has developed quickly in recent years and entered the mainstream of

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<sup>50</sup> Guilherme Lambais and Henrik Sigstad, 'Judicial Subversion: The Effects of Political Power on Court Outcomes', *Journal of Public Economics*, 217 (2023), 104788 <https://doi.org/10.1016/J.JPUBECO.2022.104788>

American political studies.<sup>51</sup> In America's local election, looking at a selection of local offices is crucial. Most previous research has concentrated on mayoral elections and other municipal politics-related topics. Yet, most Americans do not reside in big cities, and municipal governments comprise a minor portion of local governments nationwide. School boards, county governments, sheriffs, judges, and other offices should be the subject of future research.

Due to the lack of extensive national data sets on local politics across various municipal offices, American local election research has typically concentrated mainly on large cities. Academics could close this knowledge gap by creating extensive datasets of public opinion and voting behavior, exit polls, past election outcomes for several local offices, and governmental outcomes (such as roll call votes and social policies). With this knowledge, academics could address various crucial issues in municipal politics.<sup>52</sup> What proportions of Democrats and Republicans are in local office? Does elected officials' demographic and party makeup fluctuate depending on the office (for example, mayors versus school boards)? How do electoral tides that win federal elections affect local governments' party and demographic makeup? How does partisan control of local government affect different offices differently in terms of policy? Do racial, political, and ideological effects in local elections differ from those in national elections?

Second, it is critical to comprehend the function of institutions in neighborhood politics. What impact do institutions have on local elections? Which organizations improve or undermine representation? What are the impacts of these legislative procedures, how do they differ across municipal governments and county commissions, and how do they control the agenda and have veto power, for example? Insights into the functions of institutions at the state and national levels, where there is less institutional heterogeneity, can also be gained from studying local institutions. However, using sound research strategies to increase our understanding of regional institutions is critical. For instance, researchers could look at how institutional changes impact voting patterns, roll call votes, or policy changes. Despite all the research on local elections in America, there are no interest in how regulation should be implemented or how legal politics of any regulation on local elections should be reviewed by judicial review.

The hot-button issue in local American elections is how the prior leader (past Governor or whoever) can improve the government. The question in a study on local elections in America is no longer how a rule is implemented, political and legal restrictions relating to *Pilkada* and the like, but rather have seen the outcomes of the *Pilkada* at the level of society at large. The election competition at both the national and regional levels reflect the polarization of Democrats and Republicans as a whole. Of course, this issue is very different from what happened in Indonesia.

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<sup>51</sup> Christopher Warshaw, 'Local Elections and Representation in the United States', *Annual Review of Political Science*, 22 (2019), 461–79 <https://doi.org/10.1146/annurev-polisci-050317-071108>

<sup>52</sup> Lee B. Becker and Sharon Dunwoody, 'Media Use, Public Affairs Knowledge and Voting in a Local Election', *Journalism Quarterly*, 59.2 (1982), 212–18 <https://doi.org/10.1177/107769908205900203>

### *Constitutional Court and Local Election di Several Countries in Europe*

Firstly, let's discuss the authority of the Constitutional Court in European countries. For example, Austria has a constitutional review model that applies the principle of 'parliamentary supremacy must be balanced with the principle of constitutional supremacy. The hope is of course related to safeguarding the people's defense represented by parliament and does not deviate from the constitution. The courts are independent with special judges, like in Indonesia. In testing in Austria, judges also have the authority to test abstract norms, just as the Supreme Court of the Indonesian Constitution gives meaning to norms in-laws. This Austrian testing model is followed by many countries in Europe, such as Latvia, Spain, Turkey, Ukraine, Poland, Luxembourg, Italy, etc.

In Europe, apart from the Austrian model, the French model has its own differences. The model is based on the institutional form of the Constitutional Council which carries out a testing function. However, in its development, constitutional review can be carried out by a special chamber of the Supreme Court in a reconcentrated manner. This is certainly a difference that could be beneficial if implemented in Indonesia. Remembering in the previous chapter, the constraints on the Constitutional Court in Indonesia are its centralized location in the capital and the limited number of constitutional judges. Year after year they are busy testing election laws at the national and regional levels. After the general election took place, while still convening for another judicial review, the Indonesian Constitutional Court competed with the regional head general election to examine the election results from all regions in Indonesia.

Constitutional Court in Indonesia and Constitutional Council in France. Regarding equality, both the Indonesian Constitutional Court and the French Constitutional Council (Conseil Constitutionnel) have the authority to review laws against the Constitution. Furthermore, the decisions of the Constitutional Court of the Republic of Indonesia and the Conseil Constitutionnel are final and binding, and the authority to review laws against the Constitution carried out by the Constitutional Court of the Republic of Indonesia and the Conseil Constitutionnel is absolute. authority that has been regulated in the constitution of each country. Apart from similarities, there are also differences between the Indonesian Constitutional Court and the French Conseil Constitutionnel. These differences include that the Constitutional Court of the Republic of Indonesia is a judicial institution, while the Conseil Constitutionnel is a political institution. Furthermore, Constitutional Judges at the Constitutional Court of the Republic of Indonesia must be people who have a legal educational background, while members of the Conseil Constitutionnel do not have to come from people who have a legal educational background.<sup>53</sup>

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<sup>53</sup> Muhammad Iqbal Samsudin, 'A Comparison of Judicial Review in Indonesian Constitutional Court and French Constitutional Council', *Indonesian Comparative Law Review*, 5.1 (2022), 31–42 <https://doi.org/10.18196/iclr.v5i1.15127>

Secondly, discussing the local election in Europe that was held in five countries: Denmark, the Netherlands, Norway, Switzerland, and the United Kingdom,<sup>54</sup> highlighted no problems implementing legislation or regulation regarding local elections. However, the studies on local elections are more attractive under the topic of citizens' motivation to participate is more remarkable in small governmental units than in large ones. It aligns with the light of Dahl and Tufte's 1973 classic study *Size and Democracy* (Stanford University Press). Municipal size is undoubtedly a significant factor, but it is not the only one explaining cross-national variations in local election turnout. Cross-national comparisons of local election turnout should consider institutional factors like majoritarian versus proportional systems, compulsory voting, and holding local elections on the same day as general elections, which are significant in explaining variations in turnout between countries in national elections.

Talking about the Netherlands, this country is not experiencing an unusual political or economic crisis. Although the 2008 economic crisis and the so-called asylum crisis had an impact on Dutch politics, the Netherlands was not as badly affected by these events (as Italy, for example). The Netherlands is one of the few countries that has both left-wing and right-wing populist parties in recent times. The Netherlands adheres to a multiparty system so that voters frustrated with mainstream parties are given a wide opt-out option "allowing us to better separate populism from vote-switching and protest voting." It examines whether political trust, political effectiveness external, and populist attitudes enter different latent dimensions.<sup>55</sup>

Moreover, the previous research between the early 1970s and 2000s found no issues applying laws governing European local elections. Therefore, if connections and updates are made with the study presented in this article, it can contribute exceptional richness and freshness to future studies. According to the author's point of view, a typical study of local elections in Europe tends to concentrate more attention on factors affecting voters than local election regulation-related concerns. Besides studies in five European countries, there is also a study in the Czech Republic by examines the connections between regional political engagement, local democracy, and political opinions.<sup>56</sup> The study, which used data from 2018, tries to comprehend the connection between local voting behaviors and political beliefs, political participation, and political knowledge.

Office for Democratic Institutions and Human Rights explained sharing suggestions for resolving general election obstacles. At a minimum, the election law must expressly grant authority to the highest election organizing body to issue regulations or instructions aimed at ensuring uniform interpretation and

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<sup>54</sup> Gaardsted Annie Frandsen, 'Size and Electoral Participation in Local Elections', *Environment and Planning C: Government and Policy*, 20.6 (2002), 853–69 <https://doi.org/10.1068/c0228>

<sup>55</sup> Bram Geurkink and others, 'Populist Attitudes, Political Trust, and External Political Efficacy: Old Wine in New Bottles?', *Political Studies*, 68.1 (2020), 247–67 <https://doi.org/10.1177/0032321719842768>

<sup>56</sup> Šaradín and others.

application of election law by election bodies. The highest judicial body must ensure that all laws and regulations relating to elections, including laws and regulations (such as the Civil Code and Criminal Code, as well as the KUHAP) which are generally considered to have priority over other laws and regulations, are not acted upon. The highest judicial body should also take the necessary steps to ensure that a coherent set of judicial precedents is established and that judges understand those precedents and the reasons behind them.

Long before the election, the highest institution in the election commission hierarchy and the highest judicial body responsible for issuing final and legally binding decisions regarding election-related cases must jointly develop instructions, guidelines, or resolutions regarding elections. Various matters related to election disputes. If there is a double complaint and appeal process, the two institutions must clarify their respective areas of competence and those of the courts and election commissions at lower levels. They may also play an important role in pushing for reform of the electoral legal framework or judicial practices and standards in the consideration of election-related cases. Inter-institutional conflicts or misunderstandings can seriously weaken the uniform interpretation and application of electoral laws and regulations at lower levels and can threaten legal certainty and confidence in the electoral process.

In the end, both in America and Europe, implementing democracy in countries through elections cannot avoid regulatory problems. The countries above have their models for resolving constitutional issues. They adapt themselves to the mode most suitable and effective for their own country. So far, the problems of democracy in local general elections are still being resolved. Of course, there is political unrest that influences judges, but we still have to see how it turns out. Separating law from politics is not possible, especially in the case of general elections. Therefore, assessing whether the results are responsive or not will be better than simply debating how the judge did not eliminate the political element in his decision.

#### **4. Conclusion**

The Constitutional Court's authority to adjudicate regional elections has become permanent after almost a decade and a half of legal uncertainty and doubt. Nowadays, The Indonesian Constitutional Court has powers including judicial review and deciding disputes over regional head general election results, which citizens use to uphold the ideals of democracy. In Indonesia, the Court's decision will greatly influence changes to the law and its implementation in the implementation process. Meanwhile, the authority to decide on election results will affect the dispute itself and become the basis for other disputes. Based on several Constitutional Court decisions that have been analyzed, the four of them are responsive to dealing with regional head general elections, although with several notes. Judges' decisions can be influenced by external factors, namely legal politics which can be reflected in the results of decisions that try to be more democratic and make legal breakthroughs. Responsibility for the Court's decision will greatly

influence the success of holding elections and maintaining democracy. Meanwhile, in the USA and European countries, general election problems occur as well as political turmoil. Regarding the authority regarding constitutional review, it has a different model from Indonesia. However, as is the case with Indonesia, external circumstances and politics have room to influence the judge's decision.

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