

**JUDICIAL INCONSISTENCY AND LEGAL CERTAINTY IN THE
INDONESIAN REGIONAL HEAD ELECTIONS**
***INKONSISTENSI PUTUSAN PERADILAN DAN KEPASTIAN HUKUM
DALAM PEMILIHAN KEPALA DAERAH DI INDONESIA***

**Bryan Lucky Luciano¹, Giovanni Yonathan², Hesti Armiwulan³ dan Erly
Aristo⁴**
Universitas Airlangga^{1,2}, Universitas Surabaya^{3,4}

Korespondensi Penulis : bryan.lucky.luciano-2025@fh.unair.ac.id

Citation Structure Recommendation :

Luciano, Bryan Lucky, Giovanni Yonathan, Hesti Armiwulan dan Erly Aristo. *Judicial Inconsistency and Legal Certainty in The Indonesian Regional Head Elections*. Rewang Rencang : Jurnal Hukum Lex Generalis. Vol.6. No.10 (2025).

ABSTRACT

The 1945 Constitution of the Republic of Indonesia establishes a state based on the rule of law, mandating strict legal certainty under Article 28D. However, the administration of the Regional Head Elections revealed a critical systemic vulnerability characterized by conflicting judicial interpretations regarding candidate eligibility between the Supreme Court and the Constitutional Court. This study aims to analyze the systemic legal uncertainty generated by Supreme Court Decision No. 23/P/HUM/2024, which retroactively altered the gubernatorial age benchmark to the time of inauguration and to comprehensively examine the remedial role of Constitutional Court Decision No. 70/PUU-XXII/2024. Employing a normative juridical research design, this study utilizes a statutory approach to analyze the hierarchy of electoral norms alongside a conceptual approach to dissect the jurisprudential coherence of both decisions against the doctrine of Lex Certa and Open Legal Policy. The research demonstrates that the Supreme Court's expansive interpretation created a severe "Validation Paradox," rendering candidacy eligibility conditional on variable administrative scheduling rather than fixed statutory criteria. By isolating temporal indeterminacy as a unique threat, this study distinguishes itself from general structural critiques, concluding that the Constitutional Court's restoration of the initial registration benchmark was a constitutional imperative to preserve the logical sequence of the democratic process.

Keywords: Electoral Justice, Judicial Dualism, Lex Certa, Regional Elections, Validation Paradox

ABSTRAK

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 menetapkan Indonesia sebagai negara hukum yang mengamanatkan kepastian hukum yang adil sebagaimana diatur dalam Pasal 28D. Namun, penyelenggaraan Pemilihan Kepala Daerah (Pilkada) mengungkap kerentanan sistemik yang krusial, yang ditandai dengan adanya pertentangan interpretasi yudisial mengenai syarat ambang batas usia calon antara Mahkamah Agung dan Mahkamah Konstitusi. Penelitian ini bertujuan untuk menganalisis ketidakpastian hukum sistemik yang ditimbulkan oleh Putusan Mahkamah Agung Nomor 23/P/HUM/2024, yang

mengubah titik tolak ukur usia calon gubernur secara retroaktif menjadi saat pelantikan. Selain itu, studi ini menguji secara komprehensif peran pemulihan melalui Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024. Dengan menerapkan desain penelitian yuridis normatif, penelitian ini menggunakan pendekatan perundang-undangan (statutory approach) untuk menganalisis hierarki norma pemilihan, serta pendekatan konseptual (conceptual approach) untuk membedah koherensi yurisprudensi dari kedua putusan tersebut terhadap doktrin Lex Certa dan Kebijakan Hukum Terbuka (Open Legal Policy). Penelitian ini menunjukkan bahwa interpretasi ekspansif Mahkamah Agung menciptakan "Paradoks Validasi" yang parah, di mana kelayakan pencalonan menjadi bergantung pada jadwal administratif yang variabel, alih-alih kriteria statutoris yang tetap. Dengan mengisolasi ketidakpastian temporal sebagai ancaman unik, studi ini membedakan diri dari kritik struktural pada umumnya. Penelitian menyimpulkan bahwa restorasi ambang batas usia ke saat pendaftaran oleh Mahkamah Konstitusi merupakan imperatif konstitusional untuk menjaga alur logis dari proses demokrasi.

Kata Kunci: *Keadilan Pemilu, Dualisme Yudisial, Lex Certa, Pemilihan Kepala Daerah, Paradoks Validasi*

A. INTRODUCTION

The constitutional architecture of the Republic of Indonesia is fundamentally anchored in the concept of the *Rechtsstaat*, or rule of law, as explicitly codified in Article 1 Paragraph (3) of the 1945 Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, hereinafter UUD 1945).¹ This provision is not merely a declarative statement of state identity but a binding normative command that subordinates all exercise of state power to established legal mechanisms.

However, the dynamics of the 2024 Regional Head Elections (Pilkada) exposed a fragility in this legal order. A profound disruption to legal certainty occurred through the issuance of Supreme Court Decision No. 23/P/HUM/2024 (Putusan Mahkamah Agung). In this decision, the Supreme Court granted a judicial review request against Regulation of the General Election Commission (PKPU) No. 9 of 2020. The Court fundamentally reinterpreted Article 7 Paragraph (2) letter e of Law No. 10 of 2016 concerning Regional Elections. Whereas the prevailing interpretation and regulatory practice had firmly established that the minimum age for candidates (30 years for Governor) must be

¹ Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi : Perspektif Baru tentang "Rule of Law and Rule of Ethics" & Constitutional Law and Constitutional Ethics*, Sinar Grafika, Jakarta, 2017.

met at the time of candidate determination (penetapan calon), the Supreme Court shifted this temporal benchmark to the time of inauguration (pelantikan). This judicial intervention precipitated a crisis of certainty. By moving the eligibility benchmark to "inauguration"—an event that occurs months after the election and is subject to administrative scheduling variables—the Supreme Court introduced a layer of indeterminacy into the eligibility verification process. This decision was widely perceived as a departure from the text of the law and a disruption to the ongoing electoral stages. The resulting legal chaos necessitated the intervention of the Constitutional Court (Mahkamah Konstitusi), which, through Decision No. 70/PUU-XXII/2024, reaffirmed the original interpretation,² thereby restoring the "registration" benchmark.

The phenomenon of judicial inconsistency in Indonesia has been the subject of extensive academic scrutiny. First, recent scholarship deeply analyzes the complex legal framework for resolving election violations in Indonesia, emphasizing that electoral justice is vital as a guarantee of legal certainty, yet enforcement faces persistent challenges due to strict time limits and weak coordination among agencies. While this prior research provides an excellent foundation for understanding horizontal coordination difficulties, the current study diverges by isolating the vertical, apex-level friction between courts.³ Second, recent constitutional studies by scholars such as Indra, Saragih and Muhtar have highlighted the structural dualism of judicial review in Indonesia.⁴ These scholars argue that the bifurcated system inevitably leads to conflicting norms, a dynamic further analyzed by Sumodiningrat regarding the Supreme Court and Constitutional Court interpreting the same statutory provisions

² Putusan Mahkamah Konstitusi 70/PUU-XXII/2024 tentang Pengujian Materiil Undang-Undang Nomor 10 Tahun 2016 tentang Perubahan Kedua atas Undang-Undang Nomor 1 Tahun 2015 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati dan Walikota menjadi Undang-Undang.

³ Ali Umar Harahap et al., *Legal Framework For Resolving Election Violations in Indonesia: Towards Electoral Justice*, Indonesian Journal of Criminal Law Studies, Vol.10, No.2 (2025).

⁴ Mexasai Indra, Geofani Milthree Saragih and Mohamad Hidayat Muhtar, *Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang terhadap Undang-Undang Dasar 1945 di Indonesia*, Jurnal Konstitusi, Vol.20, No.2 (2023).

differently.⁵ Third, recent studies on electoral justice highlight how inconsistent judicial decisions regarding candidacy requirements severely erode public trust, invoking doctrines such as the Purcell Principle to argue against late-stage judicial interventions in active electoral rules.⁶ Furthermore, scholars analyzing the recent Constitutional Court Decision Number 60/PUU-XXII/2024 note the profound impact of judicial intervention on democratic participation and constitutional law landscapes.⁷ However, these existing studies primarily focus on structural aspects or political representation. There remains a significant gap regarding the specific administrative anomaly of "inauguration-based" eligibility through the lens of Lex Certa and bureaucratic logic.

The legal turbulence surrounding the 2024 elections is not an isolated administrative error but a symptom of deeper institutional friction. As noted by Hufron, the post-MK Decision 60/2024 landscape has been marked by a struggle for interpretive supremacy between the judiciary's two apex courts. This friction threatens the core of Electoral Justice, which Harahap argue must function as a rigid guarantee of legal certainty rather than a fluid mechanism of political accommodation.⁸

This study seeks to fill this gap by providing a nuanced analysis of Supreme Court Decision No. 23/P/HUM/2024. Unlike previous research that may view this merely as a political maneuver, this article analyzes the decision as a case study in systemic legal uncertainty. It posits that the Supreme Court's decision was not merely an alternative interpretation but a fundamental violation of the administrative logic required for democratic elections. By contrasting this decision with the corrective ruling of the Constitutional Court (Decision No. 70/PUU-XXII/2024), this study highlights the critical role of the Constitutional Court in acting as the "guardian of the logic of democracy." The novelty of this

⁵ Aprilian Sumodiningrat, *Strengthen Constitutional Court's Decision As Political Legal Perspective In Legislative Branch*, Jurnal Konstitusi, Vol.20, No.2 (2023).

⁶ Rahmat Muhajir Nugroho, Sobirin and Reyhan Gymnastiar, *Judicial Activism vs. Electoral Justice: The Overlooked Purcell Principle in Indonesia*, Jurnal Hukum Ius Quia Iustum, Vol.32, No.2 (2025).

⁷ Hufron et al., *Regional Head Election Post-MK Decision Number 60/PUU-XXII/2024 in The Constitutional Law Landscape*, Jurnal Ilmiah Hukum LEGALITY, Vol.33, No.1 (2025).

⁸ Ali Umar Harahap et al., *Legal Framework For Resolving Election Violations in Indonesia: Towards Electoral Justice*, Indonesian Journal of Criminal Law Studies, Vol.10, No.2 (2025).

research lies in its detailed deconstruction of the temporal variables in candidacy requirements and its assertion that legal certainty in elections is contingent upon the fixity of pre-election eligibility benchmarks.

While existing literature extensively analyzes the structural dualism of judicial review in Indonesia, a significant gap remains regarding the specific "temporal indeterminacy" created when eligibility benchmarks are shifted post-facto. This study isolates this indeterminacy as a unique threat to democratic integrity. Based on this background, the problem formulations of this research are: 1) How does the reinterpretation of candidacy age limits by the Supreme Court create systemic legal uncertainty? 2) What is the corrective role of the Constitutional Court in maintaining the logical sequence of the democratic process?

This research employs a normative juridical methodology (yuridis normatif), also known as doctrinal legal research. This method is appropriate for analyzing the coherence of legal norms, court decisions and statutory provisions. The research is conducted by examining the internal logic of the law and the consistency of judicial reasoning against constitutional principles.

Two approaches are utilized to dissect the research problem:

- a. Statutory Approach (Pendekatan Perundang-undangan): This involves a comprehensive review of the hierarchy of laws governing regional elections, specifically analyzing the text of the 1945 Constitution, Law No. 10 of 2016 and the contested KPU Regulations. The analysis focuses on the "ratio legis" (legal reasoning) behind the age requirement provisions.
- b. Conceptual Approach (Pendekatan Konseptual): This study operationalizes Lex Certa as a benchmark of "foreseeability," evaluating whether candidate requirements were defined clearly enough for individuals to foresee their legal eligibility at the time of registration. "Open Legal Policy" is operationalized as a jurisdictional boundary to identify when judicial interpretation encroaches upon the primary legislative domain of the DPR. The evaluation criteria for the court decisions include: 1) Procedural synchronization with electoral stages; 2) Compliance with the principle of equal treatment; and 3) Impact on administrative finality. This research is

limited to the jurisdictional friction in the 2024 Pilkada context to ensure an objective doctrinal focus.

The study relies on a curated selection of primary and secondary legal materials:

- a. Primary Legal Materials: The 1945 Constitution (UUD 1945); Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors; Law No. 48 of 2009 concerning Judicial Power; Law No. 24 of 2003 concerning the Constitutional Court; Supreme Court Decision No. 23/P/HUM/2024; and Constitutional Court Decision No. 70/PUU-XXII/2024.
- b. Secondary Legal Materials: Authoritative academic books, articles from accredited scientific journals and legal dictionaries. These materials provide the theoretical context for the analysis.
- c. The collected legal materials were analyzed qualitatively. The technique involves a syllogistic deduction method: establishing the major premise (constitutional principles of legal certainty), identifying the minor premise (the facts and reasoning of the Supreme Court decision) and drawing a conclusion regarding the constitutionality and validity of the Court's interpretation.

B. RESULTS AND DISCUSSION

1. The Structural Architecture of Judicial Power and Review

Article 24 Paragraph (1) of the UUD 1945 affirms that judicial power is independent and possesses the authority to enforce law and justice. Paragraph (2) of the same article delineates the bifurcation of this power into two apex courts: the Supreme Court (Mahkamah Agung - MA) and the Constitutional Court (Mahkamah Konstitusi - MK). The application of the separation of powers and the checks and balances mechanism is vital to ensure that state institutions, including the judiciary, operate strictly within their constitutional boundaries.⁹

⁹ Tohadi and Dian Eka Prastiwi, *Rekonstruksi Hukum dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang terhadap Putusan Mahkamah Konstitusi sebagai Mekanisme Checks and Balances*, Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, Vol.11, No.1 (2022).

The Supreme Court, established at the republic's founding, serves as the court of cassation and maintains oversight over the general judiciary. Crucially, Article 24A Paragraph (1) grants the Supreme Court the authority to review regulations below the level of an Act (*peraturan perundang-undangan di bawah undang-undang*) against Acts (*undang-undang*). This is known as the right of material review (*Hak Uji Materiil*). Conversely, the Constitutional Court, established in 2003, is vested with the authority to review Acts against the Constitution (UUD 1945), as stipulated in Article 24C Paragraph (1). This structure, while theoretically distinct, creates a "grey zone" in the hierarchy of norms. A regulation (such as a KPU Regulation) is drafted to implement an Act (the Election Law). If the Supreme Court interprets the Election Law differently than the Constitutional Court (which interprets the Constitution), a conflict of norms ensues.

As Martitah observes, the MK has evolved from a "negative legislator" (annulling laws) to a "positive legislator" (creating new norms through conditional constitutionality).¹⁰ This expansion of the MK's role often places it on a collision course with the MA, particularly when the MA exercises its review power expansively. The case of the gubernatorial age limit is the quintessential example of this structural friction.¹¹ However, Sulastris warn that without such corrective mechanisms, the judiciary risks losing its legitimacy as the guardian of the constitution. The conflict suggests a need for an "Institutional Integrity" overhaul to prevent the weaponization of judicial review.¹² Conceptually, an "Institutional Integrity Overhaul" refers to the integrity of institutions defined as the correct functioning and "fitness for purpose" of a public administration system¹³. In

¹⁰ Martitah, *Mahkamah Konstitusi dari Negative Legislature ke Positive Legislature*, Konstitusi Press, Jakarta, 2023.

¹¹ Dian Agung Wicaksono and Faiz Rahman, *Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia*, *Constitutional Review*, Vol.8, No.2 (2022).

¹² Dewi Sulastris et al., *Institutional Integrity and Challenges in the Indonesian Constitutional Court Institution*, *Jurnal Media Hukum*, Vol.32, No.1 (2025).

¹³ Hugh Breakey, Timothy Cadman and Charles Sampford, *Conceptualizing Personal and Institutional Integrity: The Comprehensive Integrity Framework in The Ethical Contribution of Organizations to Society*, Emerald Group Publishing Limited, Bingley, 2015.

the Indonesian context, this integrity is paramount for the judiciary to function as an autonomous entity free from political interference, as its legitimacy is tied to its consistency in executing constitutional responsibilities¹⁴. Practically, the MA's reinterpretation in 2024 created administrative gridlock for the General Election Commission (KPU); when a court reinterprets statutory benchmarks mid-cycle, it creates an "overlapping administrative paradox" where obeying the court necessitates violating the sequential logic of the Election Law¹⁵. The following table summarizes the divergent authorities that contributed to this conflict:

Table 1. Comparison of Judicial Review Authorities in the Context of the 2024 Elections

Feature	Supreme Court (Mahkamah Agung)	Constitutional Court (Mahkamah Konstitusi)
Constitutional Basis	Article 24A UUD 1945	Article 24C UUD 1945
Object of Review	Regulations below Acts (e.g., PKPU, Perpres)	Acts (Undang-Undang)
Benchmark of Review	Acts (Undang-Undang)	The Constitution (UUD 1945)
Nature of Decision	Final, No Judicial Review (PK) allowed (PERMA 1/2011)	Final and Binding (<i>Erga Omnes</i>)
Role in 2024 Case	Interpreted Law 10/2016 to favor	Interpreted Law 10/2016 to favor

¹⁴ Dewi Sulastri et al., *Institutional Integrity and Challenges in the Indonesian Constitutional Court Institution*, Jurnal Media Hukum, Vol.32, No.1 (2025).

¹⁵ Mangara Maidlando Gultom, *Analisis Yuridis Terkait Penentuan Syarat Usia Calon Kepala Daerah dan Calon Wakil Kepala Daerah: Studi Kasus atas Putusan Mahkamah Agung Nomor 23P/HUM/2024*, Jurnal De Jure, Vol.16, No.2 (2024).

"Inauguration"

"Registration"

Source: Primary data, 2026 (Edited)

Author's Review of Table 1: The data presented in the table starkly illustrates the profound structural vulnerability inherent in Indonesia's dual review system. Because the Supreme Court's constitutional benchmark of review is the Act itself, it inherently possesses the tremendous power to dictate the functional, everyday statutory interpretation when reviewing the lower regulations that actually govern the operations of state bodies. However, because the Constitutional Court ultimately holds the supreme authority to judge the Act against the absolute standards of the Constitution, the Constitutional Court theoretically holds ultimate interpretive supremacy, creating an overlapping administrative paradox during electoral stages.

a. Deconstructing Supreme Court Decision No. 23/P/HUM/2024

In May 2024, the Supreme Court issued Decision No. 23/P/HUM/2024, granting a petition filed by the Partai Garuda.¹⁶ The petitioners challenged Article 4 Paragraph (1) letter d of KPU Regulation No. 9 of 2020. This regulation stipulated that candidates for Governor must be at least 30 years old "at the time of candidate determination" (sejak penetapan calon). The petitioners argued that this contradicted Law No. 10 of 2016, which only mentions the age requirement without explicitly defining the "cutoff date".¹⁷ The Court's Reasoning: The Supreme Court accepted the petitioner's argument, relying on several key ratio decidendi:

- 1) Legal Vacuum and Open Policy: The Court argued that Law No. 10 of 2016 does not explicitly state when the age requirement must be met. Therefore, interpreting it to apply at "candidate determination" was a limitation imposed by the KPU without statutory basis.
- 2) Inconsistency of Precedent: The Court noted that in 2010, KPU regulations allowed age to be calculated at the time of registration. The shift to "determination" in 2020 was viewed as inconsistent administrative behavior that prejudiced potential candidates.

¹⁶ Putusan Mahkamah Agung Nomor 23P/HUM/2024.

¹⁷ Indonesia, *Undang-Undang tentang Perubahan Kedua atas Undang-Undang tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota menjadi Undang-Undang*, UU No.10 Tahun 2016, LN Tahun 2016 No.194, TLN No.6072.

3) Expansion of Rights: The Court posited that calculating age at "inauguration" provides a wider opportunity for younger citizens to participate. They argued that if a candidate turns 30 after registration but before inauguration, they should not be disqualified. This was framed as protecting the "original intent" of youth participation. Thus the ratio decidendi of the Supreme Court in this case emphasized the necessity of providing opportunities for the younger generation to participate in the political process. From this perspective, fixed age restrictions at the nomination stage are considered a potential violation of individual political rights and a human rights barrier that unjustly excludes capable individuals based solely on their age.¹⁸

Critique: The Creation of Uncertainty While the Court's intention to expand participation may appear democratic, the decision introduced a profound violation of Legal Certainty. By shifting the benchmark to "inauguration," the Court anchored eligibility to a variable, future administrative event.

- 1) Temporal Indeterminacy: The date of inauguration is not fixed in the Election Law. It is determined by the term expiry of the incumbent and the schedule of the Ministry of Home Affairs. In the case of simultaneous elections, inauguration dates can be delayed or accelerated due to election disputes (sengketa hasil).
- 2) The Validation Paradox: If the KPU were to follow this ruling, they would have to validate a candidate who is 29 years old at the time of registration, based on the assumption that they will be 30 by the time of inauguration. If the inauguration is moved earlier (e.g., to synchronize terms), the candidate would become retroactively ineligible after winning. This creates a "conditional candidacy" that is anathema to the principle of *Lex Certa*. This concept aligns with what Raden describes as a violation of "Fairness with Integrity,"

¹⁸ Yensi Prasilia et al., *Ratio Decidendi of Supreme Court Decision No. 23 P/HUM/2024 on Judicial Review of Age Requirements for Candidates for Governor*, Journal of Law, Politic and Humanities, Vol.5, No.3 (2025).

where the rules of the game must be knowable ex ante.¹⁹ Furthermore, treating the age requirement as a flexible variable subject to "Open Legal Policy" contradicts the findings of Al-Fatih, who posits that judicial interpretation of open policy cannot override the fundamental requirement of legal certainty (*Lex Certa*).²⁰

This decision exemplifies what legal scholars describe as "judicial legislation" that ignores administrative realities. By prioritizing an abstract "expansion of rights," the Supreme Court compromised the operational integrity of the election.

b. The Constitutional Court's Corrective Role: Decision No. 70/PUU-XXII/2024

Following the uproar caused by the Supreme Court's decision, the issue was brought before the Constitutional Court. In Decision No. 70/PUU-XXII/2024, the MK was asked to review the constitutionality of Article 7 Paragraph (2) letter e of Law No. 10 of 2016 to settle the interpretive dispute. The Constitutional Court decisively rejected the "inauguration" interpretation. The MK held that the requirement of "minimum age" is a condition for becoming a candidate, not just for holding office. Therefore, logically and systematically, the requirement must be met during the candidacy process.

The Constitutional Court's Rationale:

- 1) Systematic Interpretation: The Court examined the electoral stages: Registration -> Administrative Research -> Determination of Candidates. The Court reasoned that eligibility is the "gatekeeper" of the election. A person cannot pass the "Determination" gate if they do not meet the criteria at that moment. Validating an ineligible person on the hope they will become eligible later invalidates the screening process.

¹⁹ Sahran Raden, *The Theory of Fairness with Integrity in Indonesia's Electoral Justice System*, *Fiat Justisia: Jurnal Ilmu Hukum*, Vol.18, No.2 (2024).

²⁰ Sholahuddin Al-Fatih, *Interpretation of Open Legal Policy by the Constitutional Judges in Judicial Review of Parliamentary Thresholds*, *Diponegoro Law Review*, Vol.6, No.2 (2021).

2) Comparative Consistency: The Court highlighted that for all other public offices (Legislative Members, President), age requirements are consistently applied at the point of candidate determination (Daftar Calon Tetap). Creating a special exception for regional heads based on "inauguration" would create an unjustified anomaly in the electoral system.

3) Legal Certainty (Article 28D): The Court explicitly stated that the "inauguration" benchmark creates uncertainty. If the requirement is tethered to a movable date, it creates a "moving goalpost" that violates the candidate's right to fair legal certainty.

The "Final and Binding" Effect: As stipulated in Article 24C Paragraph (1) of the UUD 1945 and reinforced by Article 10 of Law No. 8 of 2011, the Constitutional Court's decision is final and binding (*erga omnes*).²¹ This means it binds not only the parties but all state institutions, including the Supreme Court.²² Consequently, the MK decision effectively overruled the MA decision. The MK clarified that the norm of Law No. 10 of 2016 is constitutional only if interpreted as applying at the time of candidate determination. Analyzing the post-decision landscape, legal experts assert that the Supreme Court decision holds a lower hierarchical position when utilized as a basis for forming regulations or as legal jurisprudence compared to the final and binding nature of the Constitutional Court's interpretation.²³ Thus, systematic interpretation of electoral stages is required to ensure that candidacy remains a rigorous 'gatekeeper' status rather than a conditional post-facto probability²⁴. However, a critical exploration of the Constitutional Court's role reveals concerns regarding 'interpretive hegemony,' as the

²¹ Indonesia, *Undang-Undang tentang Perubahan atas Undang-Undang tentang Mahkamah Konstitusi*, UU No.8 Tahun 2011, LN Tahun 2011 No.82, TLN No.5256.

²² Ismail Hasani, Halili and Vishalache Balakrishnan, *Undelivered Constitutional Justice? Study on How the Decisions of the Constitutional Court of the Republic of Indonesia Are Executed*, Jurnal Civics: Media Kajian Kewarganegaraan, Vol.19, No.1 (2022).

²³ Oktafiani Zendrato and Ardilafiza, *Position of the Supreme Court Decision Number 23 P/HUM/2024 after the Constitutional Court Decision Number 70/PUU-XXII/2024*, Supremasi Hukum: Jurnal Penelitian Hukum, Vol.34, No.1 (2025).

²⁴ Anfal Kurniawan, *Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024 tentang Syarat Usia Calon Kepala Daerah*, Semarang Law Review, Vol.5, No.2 (2024).

transition from a negative to a positive legislator risks shifting the balance of power toward the judicial branch²⁵. Critics argue that without clear regulatory boundaries, the Court actively shapes policy norms without a participatory legislative process, potentially undermining the principle of separation of powers.²⁶

c. Theoretical Implications: Preserving the Logic of Democracy

The conflict between these two decisions serves as a potent case study for the theory of Electoral Justice. As posited by Antoni Putra, the Constitutional Court functions as the guardian of the constitution's substantive values.²⁷ In this instance, the substantive value was the logic of the democratic process itself. If the Supreme Court's view had prevailed, it would have established a dangerous precedent where eligibility is detached from the screening process. This would be akin to allowing a student to graduate university before passing their final exams, on the condition that they promise to pass them before the graduation ceremony. Such logic undermines the meritocratic and verification-based nature of public office eligibility. This conflict reflects the fragility of 'democratic consolidation' in Indonesia, which according to theory, requires a professional bureaucracy and adherence to the rule of law to reach a maturation phase²⁸. To preserve moral legitimacy, judicial review must safeguard the 'democratic preconditions' that make participation meaningful, serving as a Dworkinian shield for individual rights against majoritarian tyranny.²⁹

²⁵ Muhammad Alief Farezi Efendi, Muhtadi and Ahmad Saleh, *Positive Legislature Decisions by the Constitutional Court: Putusan Positive Legislature oleh Mahkamah Konstitusi*, Jurnal Konstitusi, Vol.20, No.4 (2023).

²⁶ Al Fadillah Walduda'ini, Idzam Fautanu and Lutfi Fahrul Rizal, *Kritik Hukum terhadap Peran Positive Legislature Mahkamah Konstitusi dalam Pengujian Undang-Undang*, JIHP: Jurnal Ilmu Hukum, Humaniora dan Politik, Vol.4, No.5 (2024).

²⁷ Antoni Putra, *Sifat Final dan Mengikat Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang*, Jurnal Yudisial, Vol.14, No.3 (2022).

²⁸ Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, The Johns Hopkins University Press, Baltimore, 1996.

²⁹ Prisilia Kornelia Moonik, *Indonesian Constitutional Court's Moral Legitimacy: A Dworkinian Rights-Based Defense*, Padjadjaran Jurnal Ilmu Hukum, Vol.12, No.1 (2025).

Furthermore, the establishment of a coherent electoral judicial framework is crucial to upholding the rule of law and ensuring that electoral disputes are resolved with absolute legal certainty.³⁰ It suggests that the Supreme Court, in exercising its review of regulations, acts in a vacuum, isolated from the broader constitutional implications of its decisions. The Constitutional Court's decision serves as a reassertion of the Hierarchy of Norms. By anchoring the age limit to a fixed, verifiable date (Determination), the MK restored the objective nature of the election. The decision aligns with the global best practices where candidacy requirements are treated as "barrier to entry" conditions that must be satisfied *ex ante* (before the race), not *ex post* (after the win).

C. CONCLUSION

This study concludes that the judicial dualism in Indonesia remains a potent source of legal instability. The theoretical contribution of this research lies in isolating "temporal indeterminacy" as a specific threat to the Rechtsstaat, demonstrating that without a fixed point in time for eligibility, the law ceases to be an informative guide for behavior. To prevent recurrence, this study recommends a realistic constitutional reform: the DPR should initiate a formal amendment to Article 24 of the 1945 Constitution to consolidate all material judicial review authority under a "one-roof" system at the Constitutional Court. This structural integration is the only definitive method to ensure a unified and consistent interpretation of the hierarchy of norms.

³⁰ Made Widyarini Kusuma Wicitra, Wijayanto and Nunik Retno Herawati, *The Urgency of Establishing an Electoral Judicial Institution as an Effort to Strengthen the Electoral System in Indonesia*, PERSPEKTIF: Jurnal Ilmiah Sosial dan Politik, Vol.13, No.2 (2024).

REFERENCES

Books

- Asshiddiqie, Jimly. 2017. *Peradilan Etik dan Etika Konstitusi : Perspektif Baru tentang "Rule of Law and Rule of Ethics" & Constitutional Law and Constitutional Ethics*. (Jakarta: Sinar Grafika).
- Breakey, Hugh, Timothy Cadman and Charles Sampford. 2015. *Conceptualizing Personal and Institutional Integrity: The Comprehensive Integrity Framework in The Ethical Contribution of Organizations to Society*. (Bingley: Emerald Group Publishing Limited).
- Linz, Juan J. and Alfred Stepan. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. (Baltimore: The Johns Hopkins University Press).
- Martitah. 2023. *Mahkamah Konstitusi dari Negative Legislature ke Positive Legislature*. (Jakarta: Konstitusi Press).

Publication

- Al-Fatih, Sholahuddin. *Interpretation of Open Legal Policy by the Constitutional Judges in Judicial Review of Parliamentary Thresholds*. Diponegoro Law Review. Vol.6. No.2 (2021).
- Efendi, Muhammad Alief Farezi, Muhtadi and Ahmad Saleh. *Positive Legislature Decisions by the Constitutional Court: Putusan Positive Legislature oleh Mahkamah Konstitusi*. Jurnal Konstitusi. Vol.20. No.4 (2023).
- Gultom, Mangara Maidlando. *Analisis Yuridis Terkait Penentuan Syarat Usia Calon Kepala Daerah dan Calon Wakil Kepala Daerah: Studi Kasus atas Putusan Mahkamah Agung Nomor 23P/HUM/2024*. Jurnal De Jure. Vol.16. No.2 (2024).
- Harahap, Ali Umar et al.. *Legal Framework For Resolving Election Violations in Indonesia: Towards Electoral Justice*. Indonesian Journal of Criminal Law Studies. Vol.10. No.2 (2025).
- Hasani, Ismail, Halili and Vishalache Balakrishnan. *Undelivered Constitutional Justice? Study on How the Decisions of the Constitutional Court of the Republic of Indonesia Are Executed*. Jurnal Civics: Media Kajian Kewarganegaraan. Vol.19. No.1 (2022).
- Hufron et al.. *Regional Head Election Post-MK Decision Number 60/PUU-XXII/2024 in The Constitutional Law Landscape*. Jurnal Ilmiah Hukum LEGALITY. Vol.33. No.1 (2025).
- Indra, Mexasai, Geofani Milthree Saragih and Mohamad Hidayat Muhtar. *Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang terhadap Undang-Undang Dasar 1945 di Indonesia*. Jurnal Konstitusi. Vol.20. No.2 (2023).
- Kurniawan, Anfal. *Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024 tentang Syarat Usia Calon Kepala Daerah*. Semarang Law Review. Vol.5. No.2 (2024).
- Moonik, Prisilia Kornelia. *Indonesian Constitutional Court's Moral Legitimacy: A Dworkinian Rights-Based Defense*. Padjadjaran Jurnal Ilmu Hukum. Vol.12. No.1 (2025).

- Nugroho, Rahmat Muhajir, Sobirin and Reyhan Gymnastiar. *Judicial Activism vs. Electoral Justice: The Overlooked Purcell Principle in Indonesia*. Jurnal Hukum Ius Quia Iustum. Vol.32. No.2 (2025).
- Prasilia, Yensi et al.. *Ratio Decidendi of Supreme Court Decision No. 23 P/HUM/2024 on Judicial Review of Age Requirements for Candidates for Governor*. Journal of Law, Politic and Humanities. Vol.5. No.3 (2025).
- Putra, Antoni. *Sifat Final dan Mengikat Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang*. Jurnal Yudisial. Vol.14. No.3 (2022).
- Raden, Sahran. *The Theory of Fairness with Integrity in Indonesia's Electoral Justice System*. Fiat Justisia: Jurnal Ilmu Hukum. Vol.18. No.2 (2024).
- Sulastrri, Dewi et al.. *Institutional Integrity and Challenges in the Indonesian Constitutional Court Institution*. Jurnal Media Hukum. Vol.32. No.1 (2025).
- Sumodiningrat, Aprilian. *Strengthen Constitutional Court's Decision As Political Legal Perspective In Legislative Branch*. Jurnal Konstitusi. Vol.20. No.2 (2023).
- Tohadi and Dian Eka Prastiwi. *Rekonstruksi Hukum dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang terhadap Putusan Mahkamah Konstitusi sebagai Mekanisme Checks and Balances*. Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional. Vol.11. No.1 (2022).
- Walduda'ini, Al Fadillah Walduda'ini, Idzam Fautanu and Lutfi Fahrul Rizal. *Kritik Hukum terhadap Peran Positive Legislature Mahkamah Konstitusi dalam Pengujian Undang-Undang*. JIHHP: Jurnal Ilmu Hukum, Humaniora dan Politik. Vol.4. No.5 (2024).
- Wicaksono, Dian Agung and Faiz Rahman. *Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia*. Constitutional Review. Vol.8. No.2 (2022).
- Wicitra, Made Widyarini Kusuma, Wijayanto and Nunik Retno Herawati. *The Urgency of Establishing an Electoral Judicial Institution as an Effort to Strengthen the Electoral System in Indonesia*. PERSPEKTIF: Jurnal Ilmiah Sosial dan Politik. Vol.13. No.2 (2024).
- Zendrato, Oktafiani and Ardilafiza. *Position of the Supreme Court Decision Number 23 P/HUM/2024 after the Constitutional Court Decision Number 70/PUU-XXII/2024*. Supremasi Hukum: Jurnal Penelitian Hukum. Vol.34. No.1 (2025).

Legal Source

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 8 Tahun 2011 tentang Perubahan atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi. Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82. Tambahan Lembaran Negara Republik Indonesia Nomor 5256.
- Undang-Undang Nomor 10 Tahun 2016 tentang Perubahan Kedua atas Undang-Undang tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota menjadi Undang-Undang. Lembaran Negara Republik Indonesia Tahun 2016 Nomor 194. Tambahan Lembaran Negara Republik Indonesia Nomor 6072.
- Putusan Mahkamah Agung Republik Indonesia Nomor 23 P/HUM/2024.

Putusan Mahkamah Konstitusi Republik Indonesia Nomor 70/PUU-XXII/2024.

