

Research Article

An Inconsistent Corrective Path: The Constitutional Court's Role as a Positive Legislator in Designing Indonesia's Simultaneous Elections

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Abstract: This research examines the design of simultaneous elections in Indonesia as its main research object, a crucial discourse spurred by the persistent inefficiencies of a separated election model that produced divided governments. The discourse is marked by the shifting jurisprudence of the Constitutional Court (MK). The primary problem addressed is the Court's jurisprudential inconsistency, which creates significant legal uncertainty for election organizers and political actors. Therefore, the objective of this research is to critically analyze the evolution of the Court's rulings on this matter and their impact on its shifting role into a positive legislator. This study employs a normative-juridical method, focusing on the doctrinal analysis of primary legal materials, particularly the series of relevant Constitutional Court rulings. The analysis reveals an inconsistent jurisprudential journey, starting from an activist stance that imposed a five-ballot simultaneous model through Ruling 14/PUU-XI/2013, with the aim of strengthening the presidential system. Then, in response to the systemic chaos and humanitarian costs of the 2019 election, the Court retreated to an "open legal policy" doctrine in Ruling 55/PUU-XVII/2019, exhibiting judicial self-restraint by deferring the choice of an alternative model to the legislature. Finally, it abandoned this position in a final interventionist decision, Decicion 135/PUU-XXII/2024, which stipulated a specific model separating national and regional elections. The main finding confirms that this latest ruling positions the MK as a positive legislator, significantly overstepping its traditional judicial authority. It is concluded that although the final ruling substantively produces a more rational election design, its inconsistent formation process has fundamentally undermined the principles of legal certainty and the balance of powers, thereby creating a problematic precedent for the future of Indonesia's constitutional governance.

Keywords: Constitutional Court; Election Design; Jurisprudential Inconsistency; Legal Certainty; Positive Legislator

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1. Introduction

The post-Reformation era of 1998 marked a fundamental transformation in Indonesia's political system, a crucial turning point that steered the nation from the grip of an authoritarian order towards a dynamic and challenging democratic experiment. This drastic change was not an event that occurred in a vacuum, but rather the culmination of Indonesia's accumulated historical experience with elections, which has been fraught with ups and downs. Since the proclamation of independence, Indonesia's journey of electoral democracy has gone through various phases. Its most promising starting point was the 1955 General Election, which is remembered to this day as the most democratic election of the early independence era. The election was held to elect members of Parliament and the Constituent Assembly with a high level of participation and multi-party competition, reflecting the vibrant ideological pluralism within society at the time.[1]

However, these democratic hopes dimmed and entered a long period of stagnation during the New Order era. For more than three decades, the elections held routinely every five years served more as a political ritual to perpetuate and legitimize the existing power, rather than as a free, fair, and meaningful contest.[2] The political system was designed to ensure absolute victory for the Golongan Karya (Golkar), the regime's political vehicle, through various engineered mechanisms such as the "floating mass" policy which prohibited political activities at the village level, the fusion of political parties into just two non-dominant competitors, and the mobilization of the bureaucracy and security forces.[3] In the New Order's state architecture, popular sovereignty was not realized directly but was collectively represented through the People's Consultative Assembly (MPR). This institution, whose composition was heavily influenced by elements loyal to the executive—including representatives from the military and appointed functional groups—became the highest state body, which in practice was tasked with reappointing the same president without clear term limits.[4]

The wave of reform in 1998, triggered by a multidimensional crisis, fundamentally challenged this entire systemic structure. The primary demand of the reformers was a comprehensive amendment to the 1945 Constitution to dismantle the centralistic and absolute power structure. The culmination of this struggle was realized in a series of amendments to the 1945 Constitution between 1999 and 2002, which radically transformed the form of power in Indonesia. The most crucial shift was the transfer of sovereignty from the hands of the MPR to the hands of the people. The authority to elect the national leaders, the President and Vice President, was revoked from the MPR and given directly to the entire Indonesian populace through the principle of "one person, one vote." Along with this fundamental change, to ensure that an unlimited accumulation of power would never happen again, the president's power was strictly limited to only two terms of office, for a maximum total of ten years, to prevent the return of authoritarianism. This direct election model, later enshrined in Article 6A of the 1945 Constitution, essentially changed the source of power's legitimacy. The elected president no longer owed their mandate to the political elite in parliament, but instead obtained a strong mandate and legitimacy directly from the entire Indonesian people.

To institutionalize the spirit of reform into a solid legal framework, the constitutional framework for holding elections was then comprehensively affirmed in Article 22E of the 1945 Constitution. This article became the new foundation for the entire electoral process in Indonesia. It not only adopted the previously known universal electoral principles—Direct, General, Free, and Secret (Luber)—but also added two new crucial principles: Honest and Fair (Jurdil). The addition of "Jurdil" was a direct response to the traumatic experience of elections during the New Order era, which were considered rife with fraud and injustice.[5]

Nevertheless, election practices in the early to mid-post-Reformation era were not necessarily simultaneous. In the 1999 General Election during the transitional leadership of President B.J. Habibie, the election was held only to elect legislative members, while the President (Abdurrahman Wahid, and later Megawati Soekarnoputri) was still chosen by the MPR. A not-fully-simultaneous election model then became the standard in the era of the first direct presidential elections. This was the case during the two terms of Susilo Bambang Yudhoyono's (SBY) administration, who was elected through the 2004 and 2009 elections, as well as in the 2014 election that brought Joko Widodo to power. During that time, Indonesia implemented a model where legislative elections (for the DPR, DPD, DPRD) were held several months earlier than the presidential and vice-presidential elections. This design proved to create various forms of inefficiency. In terms of cost, the state had to bear a dual budget burden to organize two national-scale elections in a single year. However, a more crucial inefficiency lay in the political aspect. This model encouraged the formation of pragmatic and transactional political coalitions after the legislative elections, rather than coalitions based on ideological similarity. This consistently resulted in a divided government, where the elected president did not have solid majority support in parliament.[6] Consequently, the government often experienced policy gridlock, as it had to constantly negotiate and compromise with political forces in the DPR whose agendas and interests differed. This political inefficiency later became one of the main arguments for pushing for a change towards a fully simultaneous election design.

Seeing this problem, the Constitutional Court (MK) established elections as a routine five-year agenda, a constitutional mechanism to ensure a regular and predictable circulation of power. However, one of the most significant innovations of Article 22E paragraph (2) was the formulation of the election as a "package" to simultaneously elect people's representatives at various levels, from the House of Representatives (DPR), the Regional Representative Council (DPD), the President and Vice President, to the Regional Legislative Councils (DPRD).[7] This integrated approach, later known as the "simultaneous election," essentially aimed to increase efficiency and align the political agendas between the elected executive and legislative branches. Nevertheless, this seemingly simple formulation did not specify the technical model for its simultaneous implementation, thus opening a wide space for interpretation and ultimately making the issue of simultaneous election design a subject of the most dynamic discourse, debate, and even legal disputes among academics and practitioners to this day.

The establishment of this routine five-year election agenda is a direct mandate from the post-amendment 1945 Constitution, aimed at ensuring the regular circulation of power. However, it was within this established five-year cycle that a fundamental change occurred, not through the legislative process in parliament, but through a judicial intervention in the Constitutional Court's Ruling Number 14/PUU-XI/2013. This ruling stemmed from a petition that challenged Law Number 42 of 2008 concerning the Presidential Election, with the main goal of strengthening the presidential system. The petitioner's reason was that the separated election model consistently produced a divided government, forcing the president to build fragile transactional coalitions, which led to governmental inefficiency. By holding legislative and presidential elections simultaneously, it was hoped that a "coattail effect" would be created, resulting in more solid parliamentary support for the elected president.[8] The Court's ruling, which accepted this reasoning, fundamentally changed Indonesia's election design, which not only impacted the political landscape but also directly increased the technical complexity of its administration, which in turn demanded readiness and integrity from the entire existing institutional architecture of elections.

To guarantee the integrity and quality of electoral democracy, the institutional framework for elections is also regulated in detail in Article 22E. The Constitution explicitly distinguishes participation channels, where political parties are the sole contestants for the election of DPR and DPRD members, while candidates for DPD members come from individual channels.[9] The main pillar of this framework is the General Elections Commission (KPU), which by Article 22E paragraph (5) is designed as a body that is national, permanent, and independent. The autonomy constitutionally mandated for the election organizer serves as a crucial safeguard to maintain impartiality, prevent the intervention of power, and ultimately ensure that the election results have legitimacy and public trust.[10]

The main pillar of this framework is the General Elections Commission (KPU), which by Article 22E paragraph (5) is designed as a body that is national, permanent, and independent. The autonomy constitutionally mandated for the election organizer functions as a crucial shield to maintain independence, prevent the intervention of power, and ultimately guarantee that election results possess legitimacy and public trust.[11] This was a design that the KPU was obliged to implement, and it bore the burden during the 2013-2019 election stages. The burden included problems with regulations, logistics, and human resources. This ranged from the obligation to draft thousands of pages of complex technical regulations for a newly implemented election model, managing massive-scale logistics for five types of ballot papers distributed to over 800,000 polling stations, to recruiting and training millions of ad-hoc organizers amidst high political polarization. From the voter's perspective in 2019, the technical complexity of being faced with five large ballot papers containing tens to hundreds of candidate names proved to create disorientation. This not only lowered the quality of voters' rational choices but also contributed to the high number of invalid ballots, especially for the legislative elections, whose process is more complex than the presidential election.[12] In aggregate, there were 17,503,970 invalid ballots for the DPR RI election alone, equivalent to 11.1% of the total votes, a figure that far exceeds any reasonable tolerance threshold in a democratic election. This condition created a representation deficit resulting from systemic failure.

The 2019 general election, besides burdening voters and causing fatalities, also proved to create massive systemic inefficiencies. From a managerial aspect, the required budget was around IDR 25 trillion, one of the most expensive in the world, to finance a gigantic logistics operation.[13] This included the procurement and distribution of five different types of ballot papers for 192.8 million voters on the Final Voters List (DPT), meaning the KPU had to print, fold, and send nearly one billion ballot papers to 810,329 polling stations across the archipelago. The manual vote-counting process at polling stations, which often lasted late into the night or even the next day, was followed by a multi-tiered result recapitulation process (*rekapitulasi berjenjang*) from the village/sub-district level up to the national level. This long and exhausting process not only took up to 35 days for the final results to be determined but also opened wide loopholes for data entry errors, manipulation, and result disputes. The culmination of this complexity was manifested at the Constitutional Court, which had to examine and decide on 261 cases of General Election Result Disputes (PHPU) for the legislature, not including the presidential election dispute.[14] This massive wave of disputes became quantitative proof of how technical complexities at the polling station level directly implicated legal uncertainty at the national level, thereby eroding the principles of efficiency and legal certainty in elections.

Historically, the problematic design of the 2019 Election actually originated from the Constitutional Court's own jurisprudence through Ruling Number 14/PUU-XI/2013. This ruling was initiated with the aim of consolidating the presidential system in Indonesia. The legal logic constructed by the Court at that time was that separate legislative and presidential elections tended to create a divided government, where the elected president did not have majority support in parliament, which ultimately led to governmental ineffectiveness. By holding the elections simultaneously, it was hoped that there would be an alignment of choices between the executive and the legislature through the "coattail effect," which would form a solid government-supporting coalition from the outset.[15] Therefore, this ruling became the legal foundation for the implementation of the five-ballot paper election model.

However, the humanitarian tragedy and technical complexities of the 2019 Election forced the Constitutional Court to evaluate and rethink its jurisprudence. This response was manifested in Constitutional Court Ruling Number 55/PUU-XVII/2019. In its considerations, the Court implicitly acknowledged that the simultaneity design implemented in 2019 had serious negative impacts, especially regarding the burden on organizers and the complexity for voters. As a solution, the Court did not annul the concept of simultaneity itself but instead presented five alternative models of simultaneity that it deemed equally constitutional. These models varied, ranging from a total separation between national elections (DPR, DPD, President) and regional elections (Pilkada), to various other combinations considered more rational. However, the Constitutional Court did not take the final step of stipulating one specific model from the five alternatives it offered. In a move demonstrating judicial self-restraint, the Court handed over the authority to choose among these options to the lawmakers (the President and the DPR). The Court adhered to the open legal policy doctrine, where its role is to guard the fences of constitutionality, while the selection of concrete policies within those fences is the domain of political institutions. Thus, at this point, the Court affirmed that as long as the model chosen by the legislature was within the constitutional corridor it had outlined, it was a legitimate political decision.[16]

The culmination of this jurisprudential development, which dramatically changed the direction of election law policy, was the Constitutional Court Ruling Number 135/PUU-XXII/2024. In this ruling, the Court explicitly abandoned the judicial self-restraint it had shown in Ruling No. 55/PUU-XVII/2019. Instead of letting lawmakers choose among various constitutional models, the Court took an interventionist step by stipulating one specific model. The Court decided that for the 2029 Election and onwards, election simultaneity must be designed by separating the national-level elections (to elect the President-Vice President, DPR members, and DPD members) from the regional-level elections (to elect Governors, Regents, and Mayors along with Provincial and Regency/City DPRD members), which would be held several months later. This ruling became a culminating point that not only corrected the 2019 Election model but also directly shaped a new electoral architecture in Indonesia.[17]

This ruling clearly answers the question regarding the Court's jurisprudential inconsistency and its role as a positive legislator. The inconsistency lies in the withdrawal of the open legal policy doctrine that was previously upheld in Ruling No. 55/PUU-XVII/2019. Whereas the Court previously stated that the choice of model was the legislature's authority, it now asserted that the national-regional separation model is the only and most rational constitutional interpretation, thereby taking over the authority it had previously delegated. The Court's move—no longer just annulling a norm but formulating a new legal norm in the form of a specific election design—definitively positions it as a positive legislator. The implications for the principle of separation of powers are highly significant; the Court is considered to have exceeded its judicial authority (*ultra vires*) and intervened in the legislative domain, thus blurring the line between the judicial and legislative powers that are pillars of a state under the rule of law.[18]

Thus, the main thesis of this analysis can be stated firmly. Although Constitutional Court Ruling No. 135/PUU-XXII/2024 substantively produces a more rational election model, this ruling was born from a problematic jurisprudential inconsistency and marks a shift in the Court's role to a positive legislator that exceeds its judicial authority, thereby creating serious implications for Indonesia's constitutional order. The positive substance of the ruling—the assumption of a more manageable and humane election—cannot negate the fundamental problem in its creation process. The Court's shifting stance in viewing its own authority could potentially create future legal uncertainty and set a precedent where the Court can "take over" the legislative role at any time if deemed necessary. This could ultimately delegitimize the democratic legislative process and disrupt the balance between state institutions as regulated in the constitution.

2. Literature Review

Theory of Legal Certainty

The Theory of Legal Certainty is one of the three fundamental values of law identified by Gustav Radbruch (alongside justice and utility). This theory posits that the law must be clear, consistent, accessible, and predictable so that citizens can reliably use it as a guide for their conduct and be protected from arbitrary state action.

This concept encompasses several essential elements: (1) Clear and Public Rules: Laws and regulations must be formulated clearly and be publicly promulgated so that everyone

can be aware of them. (2) Non-Retroactivity: The law cannot be applied retroactively to punish actions that were not illegal at the time they were committed. (3) Consistent Application: Law enforcement bodies must apply the law consistently to all similar cases. (4) Stability: The law should not be changed too frequently, allowing society to plan for the future based on existing rules. In essence, legal certainty aims to create order and predictability within society, where everyone knows what is permissible and what is prohibited, as well as the legal consequences of their actions.

Theory of Separation of Power

The Theory of Separation of Powers, a constitutional doctrine famously articulated by Montesquieu, aims to prevent the abuse of power by dividing state authority into three distinct and independent branches.

These three branches of government are: (1) The Legislative Branch: Tasked with making laws (in Indonesia, this function is carried out by the DPR and the President). (2) The Executive Branch: Tasked with implementing and enforcing laws (in Indonesia, this is carried out by the President and their administration). (3) The Judicial Branch: Tasked with adjudicating violations of the law and interpreting statutes (in Indonesia, this is carried out by the Supreme Court, the Constitutional Court, and the judiciary bodies beneath them).

In addition to this separation, the theory is complemented by a system of checks and balances, where each branch is given some authority to control or limit the actions of the others, ensuring no single branch becomes too dominant. Within this framework, the judiciary—particularly the Constitutional Court—is ideally meant to function as a negative legislator. Its primary constitutional role is not to create law, but to act as a guardian of the constitution by striking down legislation that is inconsistent with it, thereby checking the power of the legislative branch.

Positive and Legislatice Legislator

This is not a formal theory but rather a concept describing the functions of a Constitutional Court in judicial review. Negative Legislator This is the classic and ideal role of a Constitutional Court. As a negative legislator, the Court's authority is limited to annulling, repealing, or declaring invalid a norm within a statute that is found to be unconstitutional. The Court acts as an "eraser" of unconstitutional norms but is not empowered to write new ones in their place. Positive Legislator This describes a more active and often controversial role. As a positive legislator, the Court does not merely strike down existing norms but also actively creates new legal norms through its rulings. This occurs when the Court offers a new interpretation that is prescriptive or formulates a specific policy that the government and legislature must follow. In this capacity, the Court is seen as acting like a "writer" that fills a legal vacuum or even creates new policy, a role traditionally reserved for the legislative branch.

3. Materials and Method

This research employs a normative-juridical legal method that focuses on the analysis of legal norms, principles, and doctrines through the examination of primary and secondary legal materials. Primary materials include the constitution, relevant laws, and rulings of the Constitutional Court (MK), while secondary materials consist of relevant academic literature.

As an analytical foundation, three main theoretical frameworks are used. First, the Theory of Legal Certainty is used to evaluate how the Constitutional Court's jurisprudential inconsistency in designing simultaneous elections impacts legal predictability and stability. Second, the Theory of Separation of Powers is applied to analyze whether the Court's actions remain within its judicial boundaries or have intervened in the legislative domain. Third, the concept of the Constitutional Court as a positive legislator is used to identify the mechanism by which the Court not only annuls laws (*negative legislator*) but also actively creates new legal norms, which has implications for the two preceding theories.

4. Results and Discussion

The birth of the Constitutional Court (MK) is one of the most important and monumental outcomes of Indonesia's post-1998 constitutional reform agenda. Its existence was not an idea that emerged suddenly but was the result of a long historical debate. The idea of judicial review had actually been proposed during the formulation of the 1945 Constitution by the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI), where Mohammad Yamin suggested it. However, the idea was rejected by Soepomo on the grounds that Indonesia did not strictly adhere to the principle of separation of powers and out of concern that judges would lack the political sensitivity to assess laws.[19] The absence of this mechanism during the Old Order and New Order eras resulted in the absolute supremacy of parliament and the executive, where the constitutionality of a law could not be challenged. Amidst the euphoria of democratization post-1998, a collective awareness emerged to build a stronger checks and balances mechanism to ensure the constitution would no longer be easily disregarded by political power. The culmination of this was through the Third Amendment to the 1945 Constitution of the Republic of Indonesia in 2001, where Indonesia officially adopted the Constitutional Court (MK) as the guardian of the constitution and the sole interpreter of the constitution.

The authorities of the Constitutional Court, which are regulated in detail in Article 24C of the 1945 Constitution and later discussed more rigidly through Law No. 24 of 2003 on the Constitutional Court (which has been amended several times), specifically include four authorities and one obligation. Its four authorities are: first, to review laws against the 1945 Constitution, which is its main function in maintaining the hierarchy of legislation; second, to decide on disputes over the authority of state institutions whose powers are granted by the 1945 Constitution, serving as a constitutional "referee" between high state institutions; third, to decide on the dissolution of political parties, a crucial authority in safeguarding the corridors of democracy; and fourth, to decide on disputes over the results of general elections (PHPU), making it the last bastion for electoral justice. In addition, the Constitutional Court has one obligation, which is to issue a ruling on the opinion of the House of Representatives (DPR) regarding alleged violations of law by the President and/or Vice President, such as treason, corruption, or other disgraceful acts, which is one of the key stages in the impeachment mechanism.[20] The presence of the Constitutional Court with this set of fundamental tasks definitively marks Indonesia's entry into the family of modern states under the rule of law that places the constitution as the supreme law of the land.

In carrying out its role, the Constitutional Court is theoretically positioned as a negative legislator. This paradigm, popularized by Hans Kelsen, states that the authority of this

judicial body is limited to annulling or invalidating norms in laws that conflict with the constitution, not creating new legal norms. As explained in Article 24C paragraph (1) of the 1945 Constitution, one of its duties is to adjudicate at the first and final level with final and binding decisions to review laws against the Constitution. However, in its development, the Court's rulings have often sparked debate as to whether it has shifted to becoming a positive legislator by formulating new policies through its interpretations.[21] Furthermore, although Indonesia's legal system does not rigidly adhere to the principle of stare decisis (binding precedent) like in common law systems, jurisprudential consistency remains an important pillar for upholding legal certainty and institutional legitimacy. Changes or inconsistencies in rulings without strong reasoning can erode public trust and undermine the supremacy of the constitution itself.[22]

On the other hand, the debate over the design of electoral systems is at the core of political science studies. The theory of electoral system design explains that no single system is perfect; every choice of model is a trade-off between various, sometimes conflicting, objectives. These objectives include (1) Representation, ensuring that the people's votes are fairly converted into seats in parliament; (2) Governability, forming a stable government capable of making policies; (3) Accountability, which links representatives to their constituents; and (4) Simplicity, so that it is easily understood by voters and managed by organizers. The choice to prioritize one objective, such as governability, may come at the expense of the level of representation, and vice versa.[23]

In the early period of reform, the electoral system was regulated with a separated model, the legal basis of which was Law No. 12 of 2003 and Law No. 23 of 2003 and their amendments. Under this legal framework, the legislative general election (Pileg) was held first to fill seats in the DPR, DPD, and DPRD. The results of the vote or seat acquisition by political parties from the legislative election were then used as the basis to meet the presidential threshold requirement for nominating presidential candidates, a provision explicitly regulated in the presidential election law.

As a result of the separated model regulated in these laws, Indonesia's political landscape was colored by problematic dynamics when viewed from the theory of electoral design. This system tended to fail in achieving the objective of effective governance. After the legislative election results were announced, an intensive process of political bargaining began to form coalitions to nominate presidential and vice-presidential candidates. This practice often encouraged the formation of coalitions that were not based on ideological platform similarities but on short-term electoral interest calculations. This system then became the background for various legal challenges to the Constitutional Court, which culminated in monumental rulings that drastically changed Indonesia's electoral architecture.

The expansion of this problem is actually rooted in the evolution of the presidential election system itself in the earliest days of reform. In the 1999 Election, although the legislative election was democratic, the presidential election process was still entirely in the hands of the People's Consultative Assembly (MPR). This practice, which produced President Abdurrahman Wahid (Gus Dur) and later Megawati Soekarnoputri through elite political maneuvering, proved to be fragile.² The legitimacy of a president who was highly dependent on the configuration of power in parliament made him vulnerable to political obstruction and even impeachment, as experienced by Gus Dur.[24] In response to this

systemic fragility, the amendments to the 1945 Constitution radically changed the mechanism by mandating the direct election of the president by the people. The 2004 Election thus became the first historical moment for the Indonesian people to directly elect their leader. However, this moment was also the starting point of a new problem. While it successfully resolved the issue of indirect legitimacy, its separated implementation design between the legislative and presidential elections gave rise to a series of complex derivative issues, so that the solution to one problem unknowingly opened a Pandora's box of new problems that would become the turning point for Indonesian elections for the next decade.[25]

The jurisprudential trail of the Constitutional Court regarding the design of simultaneous elections is a narrative full of paradigmatic shifts. This journey began with high constitutional optimism, continued with an admission of implementation failure, and ended with a judicial intervention that fundamentally contradicted its own previous stance. The starting point of the Court's intervention was Ruling Number 14/PUU-XI/2013, which was based on the review of several articles in Law Number 42 of 2008 concerning the Election of the President and Vice President. The petitioners challenged several articles, namely Article 3 paragraph (5), Article 9, and Article 111 paragraph (1) of Law No. 42 of 2008. In this ruling, the Court displayed a very strong conviction that the five-ballot simultaneous election model was the best constitutional interpretation to cure the chronic diseases of the state system. The primary *ratio decidendi*, or legal reasoning, centered on one goal: strengthening the presidential system of government. The Court argued that the separated election model tended to create a divided government, forcing the elected president to build fragile transactional coalitions. By unifying the elections, the Court believed it would create a "coattail effect" that would encourage alignment between the executive and the legislature, thereby producing a stable and solid government from the outset. At this point, the Court did not present this model as one of several alternatives, but as a definitive solution.[26]

However, the optimism of that ruling clashed harshly with the reality of the 2019 Election's implementation, which resulted in fatalities and was marked by technical complexities. This crisis forced the Court to undertake a rethinking, which was manifested in Ruling Number 55/PUU-XVII/2019. Here, the Court implicitly began to show "doubt" and acknowledged the fundamental weaknesses of the five-ballot model. As a way out, the Court did not annul the concept of simultaneity but instead presented five alternative models that it deemed equally constitutional. These alternatives included, among others, (1) a total separation between national elections (to elect the President, DPR, and DPD) and regional elections (simultaneous *Pilkada* to elect regional heads and DPRD); or (2) a separation between elections for the executive branch (President and Regional Heads) and elections for legislative bodies at all levels. Nevertheless, the Court refused to choose one of the models and "threw the hot potato" into the legislative domain. Taking refuge behind the open legal policy doctrine, the Court argued that the choice among the various constitutional models was the authority of the lawmakers (DPR and the President), not a judicial prerogative. This was a moment when the Court consciously adopted a position of judicial self-restraint.[27]

This stance of self-restraint was then completely abandoned in Ruling Number 135/PUU-XXII/2024. The *ratio decidendi* of this latest ruling shifted drastically from strengthening the presidential system to technical rationality and protecting the human rights

of election organizers. The main argument now focused on the need to simplify the election to reduce the workload of polling station officials (KPPS), make it easier for voters, and increase process efficiency. Based on these considerations, the Court established a new model—the separation of national and regional elections—as the only model that must be implemented. The contrast with the 2013 ruling is sharp; the goal of strengthening the presidential system now seems subordinated to overcoming the adverse impacts created by the 2013 solution itself. The most crucial question is: Why did the Court now take over the role that in 2019 it explicitly declared as an open legal policy? By stipulating a specific model, the Court directly contradicted its own stance in Ruling 55/2019, a very clear act of jurisprudential inconsistency, most likely due to perceiving legislative inertia in responding to the election crisis.[28]

The Constitutional Court's step in Ruling No. 135/PUU-XXII/2024, by specifically choosing and establishing the model of separating national and regional elections, constitutes a crucial paradigmatic leap. Through this ruling, the Court is no longer merely performing its classic function as a negative legislator whose job is only to annul unconstitutional norms. Instead, the Court has actively designed a new model and made it the only legitimate option. By dictating a detailed electoral architecture—separating the election of the president/DPR/DPD from the election of regional heads/DPRD—the Court has essentially made a policy choice that it had previously, in Ruling 55/2019, explicitly acknowledged as the domain of lawmakers. This action is no longer merely an annulment but an act of active legislation that formulates a new legal norm.

This judicial arrogance directly castrates the democratic process and shows an institutional misunderstanding of the nature of public policymaking. The legislative process is intentionally designed as an arena full of discourse, negotiation, and political compromise because laws must reflect the diverse will of the people. The legislative body has mechanisms for this, such as public hearings, work visits, and absorbing aspirations. In contrast, the Constitutional Court operates in a relatively sterile space, isolated from such public discourse; its considerations are limited to the legal arguments of the parties in court. By short-circuiting this entire democratic process, the Court not only creates a serious legitimacy deficit but also imposes a technocratic solution without undergoing public testing and adequate socio-political consideration—a potential recipe for creating a policy that is flawed in its implementation.[29]

The Court's new role as a legislator is absolutely reinforced by the final and binding nature of its decisions, as mandated by the 1945 Constitution. When a Constitutional Court ruling is issued, it instantly becomes positive law with a force equivalent to a statute, and it cannot even be changed by a statute itself. This creates an acute legitimacy paradox: a norm formulated by a non-democratic institution (the MK) has a higher and more permanent legal force than a law made by hundreds of democratically elected representatives. This finality freezes the democratic process and locks in a policy design that might prove to be no longer relevant in the future. This final nature means that the election "design" crafted by nine constitutional justices cannot be challenged, reviewed, or changed through the ordinary legislative process. As a result, this judicial product effectively becomes a petrified law (*lex petra*), which binds the state to implement it without any room for political negotiation. It is this final and binding nature that serves as the strongest justification for declaring that the

Court, in this case, has fully transformed into a super legislator whose product is even more powerful than that of the ordinary legislature.[30]

Constitutional Court Ruling No. 135/PUU-XXII/2024 not only creates a theoretical debate but also gives rise to imperative juridical consequences for the law-making institutions. With the establishment of a new election model that separates national and regional elections, the DPR (House of Representatives) and the President now bear the constitutional obligation to revise or form new laws to implement the ruling. The Court has set a firm deadline, which is before the commencement of the 2029 Election stages, practically meaning this legislation must be completed by mid-2027 at the latest. This deadline is crucial to provide legal certainty for election organizers (KPU and Bawaslu) in designing the stages, budget allocation, and technical regulations, as well as for political parties and election candidates to prepare their strategies. Failure to meet this deadline will create a dangerous legal vacuum and potentially disrupt the entire 2029 Election cycle.

The implications of this ruling are systemic and affect a number of strategic laws in the political and governmental fields. An initial identification shows that there are at least three main laws that must be fundamentally revised, including:[31]

Law Number 7 of 2017 concerning General Elections (the Election Law) Revision of this law is the most urgent. The regulations regarding the schedule and stages of the five-ballot simultaneous election must be completely overhauled to accommodate a separate national election schedule. This will affect the allocation of polling days, campaign periods, vote recapitulation, and the resolution of national election result disputes. Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors (the Pilkada Law) This law must be harmonized with the new schedule. The concept of a "National Simultaneous Regional Head Election" that has been the reference needs to be redesigned to align with its implementation several months after the national election. Regulations concerning the end of the term of office for regional heads from the 2020 Pilkada and the appointment of acting regional heads also need to be reviewed. Law concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional Legislative Councils (the MD3 Law) Potential revisions to this law relate to the synchronization of the filling and term of office of legislative members, especially if there are technical changes related to inaugurations and institutional functions due to the new election schedule.

Facing the complexity of revising these various interconnected laws, the idea of using an Omnibus Law approach or a Codification of Election Law emerges as the most rational and efficient legislative solution. Rather than conducting partial revisions on each law separately—a process prone to overlap, time-consuming, and potentially creating new inconsistencies—the formation of a single master election law becomes a strategic solution. Through this codification method, all legal norms regarding presidential elections, legislative elections, regional head elections, election organizers, and election law enforcement can be integrated into a single, comprehensive, and harmonious text. This approach will not only simplify the regulatory framework but also ensure that all mandates of the Constitutional Court Ruling 135/2024 can be implemented coherently and holistically, thereby creating a more solid and legally certain election law system.

Beyond the juridical implications, the most crucial political impact of this election schedule shift is the emergence of a vacuum of definitive regional heads on a massive scale and for a very long duration. This policy cumulatively results in 541 regions—comprising 27 provinces, 415 regencies, and 99 cities—being led by Acting (Pj.) regional heads whose terms of office ended in 2022, 2023, and 2024. The simultaneous appointment of such a massive number of acting heads effectively places the majority of local governments in Indonesia under the control of non-democratic officials. The duration of the acting heads' terms, potentially exceeding 2.5 years, fundamentally changes their status from mere temporary fillers of a vacuum to medium-term government administrators, creating a democratic anomaly on a scale unprecedented in modern Indonesian history.

Juridically, an acting regional head has strategic limitations based on the Pilkada Law, such as a prohibition on transferring civil servants or making regional expansion policies. This will result in hampering regional development. However, these restrictions can be set aside with written permission from the Minister of Home Affairs, which *de facto* grants them authority nearly equivalent to that of a definitive regional head. The fundamental difference lies in the source of accountability: if a definitive regional head is accountable to the people, then an acting head is fully accountable to the central government. This condition directly creates a serious democracy deficit at the local level, betraying the spirit of regional autonomy and blunting the supervisory function of the DPRD. Furthermore, it can cause a misalignment between the National Medium-Term Development Plan (RPJMN) and the Regional Medium-Term Development Plan (RPJMD), as an acting head tends to implement policies aligned with the central government's priorities and risks neglecting programs in the RPJMD that were based on the vision and mission of the previous definitive regional head.

In addition to considering the simultaneity of acting heads for provincial or regency/city regions, the central government also needs to think about extensions or other mechanisms for the Level I or Level II DPRD. In the legislative realm, if they were to be replaced by acting officials, the number would be enormous and would cause extraordinary political turmoil. In Indonesia's constitutional history, the extension or shortening of the terms of legislative officials has occurred before. The first was during the Guided Democracy period, when President Soekarno, through the Presidential Decree of July 5, 1959, dissolved the DPR resulting from the 1955 Election and formed the Mutual Cooperation House of Representatives (DPR-GR), whose members were all appointed by the President. In this case, there was an extension and creation of legislative terms in a non-democratic manner under executive control. Conversely, the second precedent occurred in the early Reformation era, where the term of DPR members for the 1997-2002 period was cut short to accelerate the implementation of a more democratic 1999 Election. If the DPR-GR precedent was an anti-democratic intervention, the 1999 Reformation precedent was an action aimed at restoring and accelerating democracy.

From the perspective of political parties, this new design forces them to completely recalibrate their strategies. With two large, separate yet proximate electoral "arenas" in the same year, political parties must devise a highly complex dual strategy. In the first half of the year, all resources will be focused on winning the national election contest. Immediately after, they must quickly shift their focus to face hundreds of Pilkada contests. This will

significantly affect the allocation of financial resources, candidate selection, and the dynamics of coalition-building, which could be very different between the national and regional levels.

5. Conclusion

The analysis of the evolution of the Constitutional Court's jurisprudence concerning the design of simultaneous elections reveals a fundamental dilemma between the substantive outcome and the judicial process. As the main thesis proposed in this journal, the Constitutional Court's Ruling No. 135/PUU-XXII/2024 did indeed succeed in resolving the practical problems that arose from the humanitarian tragedy and technical chaos of the 2019 Election. By establishing a model that separates national and regional elections, this ruling substantively created a system that is more rational, humane, and manageable. However, this positive achievement came at a high price, as it has created a problematic jurisprudential precedent regarding the role of the Constitutional Court in Indonesia's constitutional system.

The fundamental problem lies in the significant jurisprudential inconsistency and the clear shift in the Court's role to that of a positive legislator. This trail of inconsistency is evident from three key rulings. In Ruling 14/2013, the Court, with full conviction, established the five-ballot simultaneous model as the best constitutional interpretation for strengthening the presidential system. However, after its implementation proved problematic, the Court, through Ruling 55/2019, withdrew by stating that the choice of election model was within the realm of the lawmakers' open legal policy, while offering five alternatives without choosing one. This stance of judicial self-restraint was then completely abandoned in Ruling 135/2024, in which the Court, in an interventionist move, took over the legislative role and stipulated one specific model—an act that directly contradicted its own position in 2019.

Ultimately, this change in election design, despite its positive substance, has sacrificed two main pillars of the rule of law: the principle of legal certainty and the separation of powers. The inconsistency in the Court's interpretation has eroded legal certainty, where the pendulum of authority can swing from judicial self-restraint to judicial activism without clear benchmarks. More seriously, by acting as a positive legislator, the Court has blurred the line of separation of powers and intervened in the legislative domain. Although the intention was good, a process that exceeds constitutional authority leaves a wound on the constitutional order and opens a dangerous precedent for further judicial intervention in the future.

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