



Juridical Review of Regional Head Election Campaigns in Universities

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Abstract

The prohibition in the Regional Head Election campaign has actually been regulated in Article 69 letter i of Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. In line with the time, there was an application for judicial review of the article a quo in which the Plaintiffs argued that they suffered constitutional losses. The constitutional judge granted the Petitioners' petition in its entirety through the Constitutional Court Decision Number 69/PUU-XXII/2024. The purpose of this study is to analyze and describe the *ratio decidendi* of the constitutional judge who granted the Petitioners' petition in its entirety along with the legal consequences of the Regional Head Election campaign in higher education. The type of research used in this research is normative juridical research with a research approach, namely a statute approach, case approach, and conceptual approach. The legal materials used are primary, secondary, and tertiary legal materials. The results of this study show that constitutional judges use historical (original) interpretation. However, the existence of the decision a quo actually creates a norm conflict with Article 8 paragraph (1) of Law Number 12 of 2012 concerning Higher Education. In addition, there are also violations of the principles stipulated in Article 3 of Law No. 12 of 2012, namely the principle of benefit, the principle of virtue, and the principle of responsibility. There are suggestions from researchers as a form of recommendation, namely the Constitutional Court needs to encourage the House of Representatives as the legislator to immediately revise the Regional Head Election Law to ensure legal certainty and also emphasize the importance of protecting the academic community from the potential influence of practical politics in the university environment and the House of Representatives needs to immediately revise the Pilkada Law to be in line with the Constitutional Court Decision No. 69/PUU-XXII/2024.

Keywords: Campaign, Constitutional Court Decision, Higher Education, Regional Head Elections.

INTRODUCTION

Historically, the existence of Regional Head Elections (hereinafter referred to as Pilkada) is the result of a shift in the concept of power from centralization to decentralization after the 1998 reform marked by the presence of regional autonomy and also regulated in the 1945 Constitution (hereinafter referred to as the 1945 Constitution) considering that regional autonomy is considered important to answer the democrati-

zation demands of the community with the hope of managing their own households.¹ This is in line with the thoughts of Mohammad Hatta, who stated that autonomous government is one aspect of the implementation of democracy.² In other words, democracy is concerned with the granting of the power to govern as well as safeguarding against the abuse of that power in the hope that it can be exercised with accountability. Therefore, the existence of Pilkada is an important specter to support the sustainability of regional autonomy.³

According to General Election Commission Regulation Number 2 of 2024 concerning the Campaign for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, the Pilkada has been set for Wednesday, November 27, 2024. Each candidate for regional head prepares a strategy to attract voters, especially during the campaign from September 25 to November 23, 2024. Even so, regional head candidates must pay attention to the prohibitions stipulated in the implementation of the campaign. The prohibition is contained in Article 69 of Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. One of the prohibitions stipulated in Article 69 letter i of Law Number 1 Year 2015 is the prohibition of using places of worship and places of education in campaigning. The original intent of the norm is to maintain neutrality and suppress the potential for interest requirements. However, the prohibition has actually been displaced due to a judicial review to the Constitutional Court (hereinafter referred to as MK) through the issuance of MK Decision Number 69/PUU-XXII/2024.

Based on Hans Kelsen's *stufenbau* theory, the law must be systematic and tiered. The meaning of systematic here is that the law is arranged from general to specific with a picture like an inverted pyramid with a layered and hierarchical structure.⁴ Legal norms that are arranged in general are abstract through *grundnorm* so as to give birth to views along with legal ideals that give birth to the constitution as a fundamental norm of the state.⁵ Meanwhile, the legal norms below will be concrete and operative. Thus, in this theory, a norm must not contradict the norms above it. The norm must be objective, must have a relationship with the formula that makes the norm enforceable. That is why the role of the Constitutional Court is needed so that later the norms in the law can be subjected to judicial review if they are contrary to the 1945 Constitution with the hope that the legislation can be harmonious without any clash of

¹ Dicky Eko Prasetyo, "Sejarah Dan Eksistensi Pembentukan Peraturan Daerah," *Sol Justicia* 5, no. 2 (2022): 151.

² Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas*, 5th ed. (Jakarta: Gramedia, 2015).

³ Syaiful Bahri, "An Anomaly in Political Recruitment: The Logic of Cross Candidacy in 2020 Jambi Provincial-Local Election," *Politicon: Jurnal Ilmu Politik* 4, no. 1 (2022): 111-138.

⁴ Adam Ilyas Dicky Eko Prasetyo, "Judicial Activism Dalam Pengujian Konstitusionalitas Undang-Undang Ratifikasi," *NEGARA HUKUM* 13, no. 2 (2022): 258.

⁵ Dicky Eko Prasetyo, Muh. Ali Masnun, and Hananto Widodo, "Affirmative Action for Persons with Disabilities to Ensure the Right to Be Elected in General Elections," *Nusantara Science and Technology Proceedings* 1, no. 1 (May 2, 2025): 205-210, <https://nstproceeding.com/index.php/nusciencetech/article/view/1350>.

norms and in line with the existing *rechttidee*.⁶ In addition, this also aims to protect the constitutional rights of citizens by providing space to claim their constitutional rights. Although the Constitutional Court is intended for citizens to be able to file a lawsuit for their constitutional losses, there are provisions for citizens to be declared to have clear legal standing so that the submitted petition can be accepted and heard by constitutional judges as stipulated in Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court.

The permissibility of Pilkada campaigns using university premises as a result of Constitutional Court Decision Number 69/PUU-XXII/2024 stems from an application on May 31, 2024 from Sandy Yudha Pratama Hulu as Applicant I and Stefanie Gloria as Applicant II. The application was received by the Registrar of the Constitutional Court with a Deed of Submission of the Applicant's Application (AP3) Number 63/PUU/PAN.MK/AP3/05/2024 and as of July 4, 2024 registered in the Electronic Constitutional Case Registration Book numbered 69/PUU-XXII/2024. In the petition, the applicant argued that they suffered a loss from the provisions of Article 69 letter i of Law Number 1 Year 2015, which was contrary to Articles 28C paragraph (1) and 28D paragraph (1) of the 1945 Constitution. Petitioner I argued that the existence of the article caused the life of research and activism carried out by Petitioner I during the lecture period to be obstructed due to the limitation of Petitioner I to hear and critically examine the ideas of regional head candidates. Meanwhile, Petitioner II felt disadvantaged because he saw the potential for closed information about the ideas of regional head candidates in the academic dialog space which would certainly affect the choice of Petitioner II who was a novice voter. Through their petition, the Petitioners as students requested that the panel of judges grant the Petitioners' petition in its entirety so that the loss due to the absence of opportunities for the academic community to test candidates for regional heads so as to cause legal uncertainty in the legal regime of Pilkada would not occur considering the equality between the Election and Pilkada regimes as in Constitutional Court Decision No. 85/PUU-XX/2022. Thus, the panel of judges in Constitutional Court Decision No. 69/PUU-XXII/2024 granted the Petitioners' petition in its entirety.

By allowing campaigns in educational institutions, there is the potential to only invite or approve the desired candidate, which can trigger conflict. According to Prof. Jimly Asshiddiqie in his speech at Lambung Mangkurat University on June 15, 2016, the campus is prohibited from becoming a place for political activities, especially campaigns, because it must be neutral or sterile from practical politics. In addition, the issuance of the a quo decision creates a conflict of norms because based on the provisions of Article 8 paragraph (1) of Law Number 12 of 2012 concerning Higher Education, it has been regulated that universities must uphold academic freedom, freedom of academic pulpit, and scientific autonomy coupled with the principle of independ-

⁶ A'an Efendi Dyah Ochtorina Susanti, "Pancasila Dalam Teori Jenjang Norma Hukum Hans Kelsen," *Legislasi Indonesia* 18, no. 4 (2021): 518.

ence. In this regard, the author is interested in conducting research on the considerations of judges and the legal consequences of the decision a quo.

RESEARCH METHOD

The type of research used in this research is normative juridical research with a research approach in the form of a statute approach, case approach, and conceptual approach. In collecting legal materials to support research, the legal material collection technique used is to conduct a literature study of relevant legal materials. The analysis technique used describes the problems studied based on legal materials, both primary, secondary, and tertiary legal materials, which will then be processed to be discussed and described with a deductive mindset. The research is prescriptive in nature where later the author shows arguments regarding the results of the research.⁷

ANALYSIS AND DISCUSSION

A. Legal Considerations Of Constitutional Judges In The Decision of The Constitutional Court Number 69/PUU-XXII/2024

As a *rechtstaat* state, Indonesia uses the 1945 Constitution as the highest constitution.⁸ The constitution is a source of making rules and is very important in constitutional life. There are 2 things that must be considered when making a constitution to make it more sustainable, namely⁹:

- a). It is general in nature and contains principles so that in the future it can better accommodate new developments in society over a long period of time;
- b). Contain provisions related to how constitutional amendments are contained in the constitution itself with provisions and conditions that will certainly be more difficult than amending the law.

Therefore, the presence of the Constitutional Court is a support in maintaining the mandate of the constitution so that it continues to run properly as the guardian of democracy, the protector of the citizen's constitutional rights, the final interpreter of the constitution, and the protector of human rights.¹⁰ The authority of the Constitu-

⁷ Maalikatussofa Masnun, Muh. Ali, Prasetio, Dicky Eko, "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, no. 3 (2025): 372-384.

⁸ Dicky Eko Prasetio Adam Ilyas Felix Ferdin Bakker, "Membangun Moralitas Dan Hukum Sebagai Integrative Mechanism Di Masyarakat Dalam Perspektif Hukum Progresif," *Mimbar Keadilan* 14, no. 2 (2021): 128-138.

⁹ Hananto Widodo Dicky Eko Prasetio, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 1 (2022): 2.

¹⁰ Hendrik Salmon and John Tumba Jacob, "The Role of Law and Human Rights in the Formation of State Institutions: A Comparative Study of Indonesia and Nigeria," *Jurnal Suara Hukum* 7, no. 1 (April 23, 2025): 218-244, <https://journal.unesa.ac.id/index.php/suarahukum/article/view/38591>.

tional Court is further regulated in Article 24C paragraph (1) of the 1945 Constitution, which reads as follows:

“The Constitutional Court has the authority to hear cases at the first and last instance and its decision is final to test laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes over the results of general elections.”

In the article, one of the authorities possessed by the Constitutional Court is to examine laws against the 1945 Constitution at the first and last level which is final and binding. According to Wheare, there are two types of decisions in the constitutional review process, namely giving new meaning to the text of the constitution and decisions that result in the invalidation of articles or all provisions of the law being tested. For example, in Constitutional Court Decision No. 008/PUU-II/2004 which changed the textual meaning of the constitution on the phrase “able spiritually and physically” with “must be in a healthy condition spiritually and physically”.

The issuance of Constitutional Court Decision Number 69/PUU-XXII/2024 ahead of the 2024 Pilkada has become a polemic. In the verdict, the constitutional judges granted the Petitioners' request in its entirety. The Court did a positive legislator by adding a new norm to Article 69 letter i of Law Number 1 Year 2015 with the phrase “exempted for universities that get permission from the person in charge of the university or other designation and attend without election campaign attributes”. Therefore, this indicates that there is a practice of judicial activism carried out by the Court in deciding Constitutional Court Decision Number 69/PUU-XXII/2024. In today's disruptive era, candidates collaborate campaigns by maximizing not only physical campaigns, but also technology-based online campaigns. An example is campaigning through mass media. In addition to being cheaper, campaigning with technology can be an effective way because it can reach many people.¹¹ This method is often used to attract new voters or the younger generation. However, campaigns function as a means of informing the public about the candidate's vision and mission so that people can pay attention to the message given by the candidate, efforts to achieve goals by igniting public awareness and opinions on certain issues, and building a positive image of the candidate.

Violations can occur during the campaign period until the quiet period. These violations can be in the form of criminal offenses such as the use of state facilities, the involvement of children, money politics, and the destruction and removal of campaign

¹¹ Dicky Eko Prasetyo Tinambunan, Hezron Sabar Rotua, “Meme: Upaya Rekonsiliasi 4.0 Dalam Pemilihan Umum 2019,” *Masalah-Masalah Hukum* 49, no. 1 (2020): 61.

props or administrative violations such as not reporting regarding the implementation of the campaign. Therefore, in the implementation of the campaign, a controlling function is needed. This function is carried out not only by the community, but also the General Election Supervisory Agency (Bawaslu) which is tasked with supervising from the preparation period to the implementation period as mandated in Article 22B of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government in Lieu of Law Number 1 of 2014 concerning Elections of Governors, Regents and Mayors into Law.¹² Integrity is something that is needed by Bawaslu in supervising and handling Pilkada issues, especially during the campaign period, considering that many violations occur during this period. In addition, Bawaslu also needs to think about strategies to avoid potential Pilkada violations so that good public participation is realized, people's freedom of choice is fulfilled, and candidates can fight in a healthy manner.

In the book "Judge in Democracy" by Aharon Barak, he explains that judicial activism is a form of judicial discretion that arises from the complexity of a problem that must be resolved by the court.¹³ In essence, constitutional judges along with the times in some cases can carry out judicial activism, which is a form of response and adaptation of the Constitutional Court to social needs by developing the principles contained in the constitution with existing decisions in order to implement constitutional values progressively.¹⁴ However, when viewed from the Constitutional Court Decision Number 69/PUU-XXII/2024, it would be better if the constitutional judges in deciding the a quo case continue to walk on the path of negative legislators by not creating new norms given the separation of powers in Indonesia.

Note that separation of powers is usually used for horizontal division of powers, while division of powers is reserved for vertical division of powers.¹⁵ The vertical division of power is the division of power between the center and the regions, while the horizontal division of power is the legislature, the executive and the judiciary. When viewed in terms of judicial restraint, there is a doctrine of separation of powers between the legislature, executive and judiciary to support the system of checks and balances. Here, the Constitutional Court is actually not authorized to create new

¹² Dicky Eko Prasetyo Hananto Widodo, "Penataan Kewenangan KPU Dan Bawaslu Dalam Melakukan Pengawasan Dan Menangani Sengketa Proses Pemilu," *Perspektif Hukum* 21, no. 2 (2021): 17-38.

¹³ Abin Rifa Aldani, Ali Abdurrahman, and Lailani Sungkar, "The Application of Judicial Activism in the Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding the Age Requirements for Presidential and Vice Presidential Candidates in Relation to the Theory of Legal Purpose," *KRTHA BHAYANGKARA* 18, no. 3 (December 23, 2024): 587-595, <https://ejurnal.ubharajaya.ac.id/index.php/KRTHA/article/view/3231>.

¹⁴ Dicky Eko Prasetyo, "Judicial Activism Dalam Pengujian Konstitusionalitas Undang-Undang Ratifikasi."

¹⁵ Dicky Eko Prasetyo, "Ius Constituendum Legal Standing Bagi WNA Terkait Proses Judicial Review Di Mahkamah Konstitusi Dalam Perspektif HAM," *Hunila* 2, no. 1 (2023): 125-138.

norms because it is not a legislative body.¹⁶ Although there are reasons for open legal policy, the Constitutional Court must still see the impact of the creation of a new norm. If the impact of the new norm will have a negative tendency and violate morality, then it would be better to reject the use of open legal policy.

Initially, the birth of the prohibition on the use of educational institutions as election campaign venues as Article 69 letter i of Law Number 1 Year 2015 was based on considerations of neutrality in higher education and to avoid polarization that causes conflict of interest. This can arise because political activities in the campus environment can be used as a means of *aji mumpung* by political parties in competing so that there is clearly the potential for conflict of interest which will actually confuse the academic world. Voters will also no longer hesitate to show their partisanship in the campus environment. In addition, the limitation of Pilkada campaigns in universities also considers the number of Civil Servants in the campus area who are required to maintain neutrality by referring to Article 24 of Law Number 20 of 2023 concerning State Civil Apparatus. Therefore, to minimize the occurrence of conflict, the prohibition of campaigns in educational places is then regulated in Article 69 letter i of Law Number 1 Year 2015. It is these fears that have led to the prohibition of educational institutions as places to campaign for both elections and local elections. Also, if bad practices such as polarization, conflict of interest, or money politics enter the place of education, it is clear that the academic world will become disgraced and have a negative impact on political and academic dynamics.¹⁷ Despite being one of the pillars guarding democratic values, universities have always been careful not to harm academic freedom and an independent and neutral academic pulpit. The implementation of democracy must adhere to the principles of democracy.

According to Robert A. Dahl, the principles in question include¹⁸: (i) there is a principle of equal rights and no distinction between people, (ii) effective participation, which means that there are processes and equal opportunities for people to express their preferences in the decisions taken, (iii) there is understanding to show that the people understand the decisions taken by the state, including the bureaucracy, (iv) the existence of final control exercised by the people, it shows that the people as citizens

¹⁶ and Ebrima Sarr Mendy, Ousu, "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia," *Journal of Indonesian Constitutional Law* 2, no. 1 (2025): 1-22.

¹⁷ Dicky Eko Prasetyo, Muh. Ali Masnun, and Noviyanti Noviyanti, "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, no. 1 (January 31, 2025): 176-196, <https://ejournal.ung.ac.id/index.php/jalrev/article/view/26999>.

¹⁸ Spiros Makris, "Robert Dahl: Democracy De-Territorialized," in *Global Encyclopedia of Territorial Rights* (Cham: Springer International Publishing, 2024), 1-8, https://link.springer.com/10.1007/978-3-319-68846-6_392-1.

have a special opportunity to make decisions and are implemented through a political process which can be accepted and satisfy various parties, (v) Inclusiveness to provide a sign that shows that sovereignty is in the hands of all the people. Democracy as one of the substances of autonomy which is rich in dynamics should not be ignored and must be framed with participatory policies for citizens including the academic community which has a controlling function for the democratic process to minimize political decay.

In deciding Constitutional Court Decision Number 69/PUU-XXII/2024, constitutional judges used constitutional interpretation. Interpretation is one of the processes that must be taken by the court in order to obtain certainty about the meaning and meaning of statutory law as argued by Satjipto Raharjo.¹⁹ Therefore, the court is considered to have the supremacy to interpret, including the Constitutional Court in interpreting the constitution. In practice, this method of interpretation is used by judges to conduct *rechtsvinding* or legal discovery so that judges are not only limited by the formulation of written norms.²⁰ In addition, judges also have the freedom to choose and use methods of constitutional interpretation that are believed to be correct. The methods include²¹:

1. Grammatical Interpretation

Interpretation is done by emphasizing textual to find out the meaning of the provisions of a norm.

2. Doctrinal Interpretation

Interpretation is carried out by relying on a system of precedents or judicial practice.

3. Historical Interpretation

Also called original interpretation, which is an interpretation based on the history of the provisions in the constitution. In this interpretation, there are two types of historical interpretation, namely the interpretation of the history of the law with the intention of seeing the meaning intended by the legislator when making the relevant law and the interpretation of legal history.

¹⁹ Dicky Eko Prasetyo, "Rekonstruksi Subjectum Litis Pembubaran Partai Politik Sebagai Perlindungan Hak Politik Warga Negara," *Sol Justitia* 5, no. 1 (June 21, 2022): 18-37, <https://ojs.ukb.ac.id/index.php/sol/article/view/474>.

²⁰ Noviyanti Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, "Discrimination Related to Labour Age Limitation in Indonesia : A Human Rights and Comparative Law Perspective," *Suara Hukum* 6, no. 2 (2024): 228-254.

²¹ Vicki C. Jackson, "Holistic Interpretation and the Interdependence of Constitutional Structures and Rights: An Essay in Honor of Cheryl Saunders," *Comparative Constitutional Studies* 2, no. 2 (December 31, 2024): 196-217, <https://www.elgaronline.com/view/journals/ccs/2/2/article-p196.xml>.

4. Structural Interpretation

This interpretation is also called systematic interpretation. Interpretation in this method is related to other laws and regulations so that no law stands alone because it has a relationship.

5. Sociological Interpretation

Sociological or theological interpretation refers to the meaning of the existence of laws based on the goals and needs of society.

6. Ethical Interpretation

Interpretation refers to the judge in interpreting must refer to the principles of justice and moral commitments that have been outlined in the constitution.

In the context of Constitutional Court Decision No. 69/PUU-XXII/2024, the constitutional judges used historical interpretation (original) seeing that the Court considered the existence of Constitutional Court Decision No. 65/PUU-XXI/2023 which allowed election campaigns in educational places. In addition, historically, elections have been equated with regional elections. Looking at Constitutional Court Decision Number 69/PUU-XII/2024, the Plaintiffs actually argue in their positives that currently distinguishing between the election and regional election regimes is no longer relevant, which is coherent with the Constitutional Court Decision Number 85/PUU-XX/2022 in which the court has changed its stance by equating the two regimes of elections and regional elections. The Court considers that elections and local elections are *de facto* and *de jure* organized by the same institution. In addition, the principles of implementing democratic elections such as the principles of direct, general, free, secret, honest, and fair as stated in Article 22E paragraph (1) of the 1945 Constitution are also grasped in the implementation of *Pilkada* with the same voting rights as elections. According to Schumpeter, democracy is an institutional procedure for achieving political decisions to gain power in order to create decisions through competitive struggles in order to get people's votes.²² Also, in terms of resources and financing, it will be more efficient if in practice the elections and regional elections are merged into the same regime without having to form two different organizing institutions.

For the applicant, the provisions in the General Election must also be harmonized in the Regional Election, including regarding the election campaign, especially

²² Virginia Rebeca Tulung Marde Christian Stenly Mawikere, Maison Immanuel Daud, Sudiria Hura, Grace Natalia Birahim, "Religions, Religious Moderation and Community Development and the Role of Higher Education to Strengthen It," *International Journal of Education, Information Technology and Others* 6, no. 3 (2023): 5-24.

in Constitutional Court Decision Number 65/PUU-XXI/2023 which has allowed campaigns in educational places as long as they obtain permission from the person in charge of the university and do not wear campaign attributes. Along with the addition of norms in Article 69 letter i of Law Number 1 Year 2015 due to the issuance of Constitutional Court Decision Number 69/PUU-XII/2024, the question arises regarding the addition of new norms a quo will be arranged in the Election Law or the Higher Education Law?. The author argues that the addition of the norm a quo would be better drafted into the revision of the Pilkada Law because the Petitioners in their petition tested Article 69 letter i of Law Number 1 Year 2015 which clearly regulates Pilkada. In addition, if the addition of the norm a quo is included in the revision of the Higher Education Law, it will be too risky because basically the arrangements related to higher education will be related to universities and academics so that revising the Pilkada Law will be more rational than revising the Higher Education Law.

B. Legal Consequences of The Decision of The Constitutional Court Number 69/PUU-XXII/2024 on Election Campaigns In Universities

Looking at Article 5 paragraph (1) of the General Election Commission Regulation Number 13 of 2024, the campaign in its implementation is the implementation of political education carried out responsibly. However, in the context of campaigns in higher education, the political education in question must not conflict with the principle of independence adopted by each campus. Therefore, the implementation of campaigns in universities is actually irrelevant to do even though universities are considered to be a place of education that is considered mature. Article 8 paragraph (1) of Law Number 12 of 2012 concerning Higher Education states:

“In the implementation of education and the development of science and technology, academic freedom, freedom of academic pulpit, and scientific autonomy apply.”

Based on the article, universities in organizing education and developing science and technology (IPTEK) must apply academic freedom, freedom of academic pulpit, and scientific autonomy.

The implementation of academic freedom and freedom of academic pulpit must be free from practical political elements. This is reinforced by the explanation of Article 8 paragraph (1) of Law Number 12 of 2012 concerning Higher Education which states:

“What is meant by ‘academic’ in “academic freedom” and “freedom of academic pulpit” is something that is scientific or theoretical in nature developed in Higher Education and free from the influence of practical politics.”

Based on the explanation of the norm formulation, it is clear that universities must maintain their neutrality by being free from the influence of practical politics. Although it is only explained in the explanation of the formulation of the norm, Law Number 12 Year 2011 has regulated that the explanation is a means to clarify the norm in the body so that although the explanation of the article is not a norm, it contains the formulation of the norm. Thus, the explanation of the article a quo has emphasized that universities must be free from the influence of practical politics so that there is clearly a clash of rules that creates a conflict of norms between Constitutional Court Decision Number 69/PUU-XXII/2024 and Article 8 paragraph (1) of Law Number 12/2012 on Higher Education.

It should be said that while looking at the positive impacts, campaign activities in educational settings also need to be mindful of the negative impacts. If the negative impact will cause more new problems, then it would be wiser if the regulation is not approved and opposed to its implementation. Moreover, the issuance of Constitutional Court Decision Number 69/PUU-XXII/2024 has certainly caused a lot of opposition. The permissibility of Pilkada campaigns in universities basically undermines the basis for not allowing campaigns in this environment. The purpose of higher education as a noble place to create human quality in order to advance the nation's civilization can potentially turn into a place of political competition, especially for political parties due to the polarization caused by the practice of approving political campaigns. Although the a quo decision has guaranteed that there will be no polarization and everything depends on how the campus behaves, it does not deny that the potential for conflict of interest tendencies due to polarization on campus can still occur.

The KPU has actually tried to anticipate polarization by regulating it in General Election Commission Regulation Number 13 of 2024 concerning the Election Campaign for Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors. Article 57 paragraph (3) of the General Election Commission Regulation Number 13 of 2024 regulates that Pilkada campaigns in universities in their implementation must not interfere with their functions and designations and are prohibited from involving children.²³ In addition, campaigns in universities can also only be implemented during the weekend, which is around Saturday and/or Sunday with the method of limited meetings or face-to-face meetings and dialogs as stated in Article 58 of the General Election Commission Regulation Number 13 of 2024. However, the anticipatory efforts outlined through these legal products are not necessarily

²³ Sandy Mulia Arhdan, Yuslim, and Khairul Fahmi, "Penegakan Hukum Terhadap Pelanggaran Netralitas Aparatur Sipil Negara Dalam Pilkada Serentak 2020 Di Sumatera Barat," *Unes Law Review* 7, no. 1 (2024).

able to clean up the fraudulent practices that occur when campaigns in universities occur.

Students have several functional roles, namely as agents of change, social control, iron stock, and moral force.²⁴ With the role of existing functions, students are often targeted as easy targets by unscrupulous politicians to infiltrate the academic world in order to attract votes at election time. It is not surprising that there are anomalies in some student organizations where there are unscrupulous politicians who support with a mutualism system, namely unscrupulous politicians will be willing to spend money on student organizations related to bartering vote support to unscrupulous politicians. With the addition of allowing campaigns in higher education, the actions of unscrupulous politicians will be easier to achieve their personal interests. As a result, the academic world becomes a means to take the votes of the academic community in a way that is not fair and actually creates conflict of interest in it.

By allowing campaigns in the academic environment, it certainly has the potential to violate the principles stipulated in Article 3 of Law Number 12/2012, such as violating the principle of benefits because higher education is actually oriented towards the advancement of civilization and the welfare of mankind, not the decline of civilization and welfare through polarization and conflicts of interest that exist in higher education. One example is the indiscriminate installation of campaign props in the higher education environment that actually disrupts academic activities and public facilities, as happened in several regions in Indonesia, where campaign props were installed on green lanes, trees, markets, and other public facilities that should be for the public interest.²⁵ Then, the principle of virtue is also a principle that is violated because the existence of this principle functions so that later higher education can bring goodness to the academic community, society, nation and state. For example, if the person in charge of the university gives a campaign permit only to one candidate for regional head and does not apply the principles of fairness, openness, and proportionality, then this violates the principle of benevolence. It is also appropriate that the principle of responsibility is still implemented in accordance with the Tri Dharma and realizes academic freedom and freedom of academic pulpit as mandated in Article 8 paragraph (1) of Law Number 12/2012 which in its explanation confirms that in realizing academic freedom and freedom of academic pulpit must be free from practical political elements. The real case of violation of the principle of responsibility that occurs

²⁴ M. Adib Nur Huda Dicky Eko Prasetyo, "Urgensi Pembelajaran Moderasi Beragama Dalam Pelajaran Sejarah Kebudayaan Islam Di Mts Yaspira Ngambon Bojonegoro Jawa Timur," *Sang Guru* 1, no. 1 (2022): 30.

²⁵ R M Sukmariningsih, "Constitutional Rights in Election: Lesson from the Indonesia Election," *Sch Int J Law Crime Justice* 7956, no. 2016 (2021): 446-450, https://saudijournals.com/media/articles/SIJLCJ_47_446-450.pdf.

is the absence of strict sanctions for campaign violations in universities so that violations can be repeated without clear accountability, such as what happened because of the legal vacuum related to sanctions for campaign violations on campus. This means that this legal vacuum actually creates new problems with the birth of legal uncertainty.

The practice of freeing campuses from practical political elements in realizing academic freedom and freedom of academic pulpit is basically intended to maintain a stable and neutral internal situation so as not to cause chaos. Not to mention, the existence of the decision *a quo* actually creates new conflicts. Not only is it contrary to Article 8 of Law Number 12 of 2012, but the decision also contradicts Article 28C paragraph (1) of the 1945 Constitution which reads:

“Everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education and to benefit from science and technology, arts and culture, in order to improve the quality of their lives and for the welfare of mankind”

Through the sound of the article *a quo*, there are juridical consequences for citizens including students to obtain the right to education that can improve their quality of life. However, how can students and the academic community improve their quality of life if the internal university is exposed to the influence of practical politics? Of course it will be difficult to improve the quality of life if the academic world is polarized.

Although the Pilkada campaign scheme in universities will be held every Saturday and/or Sunday, of course, this does not mean that it will not interfere with the educational process. The campaign will still interfere with the process of self-development of students who are forged to improve the quality of life and should be focused on science without practical political intervention so that it can be said that the actual implementation of the Constitutional Court Decision Number 69 / PUU-XXII / 2024 which is supported by its regulation in the General Election Commission Regulation Number 13 of 2024 will not be effective and irrelevant if it is still implemented. In addition, the majority of the academic community during the weekend prefer to rest, hold a ceremony, or gather with family by utilizing their vacation time. As a result, the potential for the academic community to come to the Pilkada campaign at the campus location will tend to be small. Again, the use of the argument that the Pilkada campaign in universities is a form of providing political education basically cannot also be accepted considering that basically, not all regions have universities, both public and private. Thus, this matter actually clarifies the potential for inequality in the provision of political education in each region through the Pilkada campaign which actually results in injustice and even jealousy with other regions that cannot carry out Pilkada

campaigns in universities. In essence, the implementation of Pilkada campaigns for any reason can be carried out in other places besides universities. If the focus of targets other than students is the academic community who are non-civil servants, then regional head candidates can hold campaigns in locations that do not conflict with the law, but by inviting the academic community so that the purpose of providing vision, mission, programs, along with political education can be carried out peacefully without conflict. Universities do not have to be the object of the location for conducting electoral competition campaigns because it can have a domino effect.

Also, when maintaining campaigns in universities, there is also the potential for injustice for one of the regional head candidates in its implementation. The potential for wavering principles of independence and impartiality can occur with the campus affiliating by only accepting one particular candidate and then making access difficult for other candidates. This results in inequality and the elimination of campaigning opportunities by disadvantaged regional head candidates. Also, if you look at the General Election Commission Regulation Number 13 of 2024, there are no norms governing sanctions for universities that are proven guilty and convincing of committing fraud by affiliating with one of the regional head candidates. Pilkada campaigns in universities are vulnerable to being infiltrated by political interests that have domino effects such as dividing the academic community, decreasing the quality of academic freedom and academic pulpit, and even the level of public trust in universities can also disappear.

According to Tom Ginsburg, democratic backsliding is also characterized by academic freedom being attacked because authoritarian governments tend to see universities as a threat that breeds criticism or movements to oppose the government that can hinder political interests.²⁶ Many governments have restricted civic space and weakened public oversight of the executive, leading to a decline in democracy and a deterioration in the rule of law. For example, there was state intervention to change the higher education system in Hong Kong, in Hungary there were restrictions on liberal institutions such as the Central European University because they were considered incompatible with national values, or the mass dismissal of more than 6,000 academics after the failed coup in Turkey in 2016. These events imply that political interests can be infiltrated in higher education. Therefore, the policy of limiting politically active activities, especially related to electoral elections, will be better if it is carried out considering the impacts that can be caused and avoiding the dominance of practical politics in the higher education environment.

²⁶ Tom Ginsburg, "Academic Freedom and Democratic Backsliding," *Journal of Legal Education* 71, no. 2 (2022): 238-259.

In the context of higher education, students as part of the youth will be a suitable target to be given political education, but with a note through an academic approach without having to bump into the rules or principles of higher education that have been determined. Youth have an active role as a moral force, social control, and agent of change in all aspects of national development as stipulated in Article 16 of Law Number 40 of 2009 concerning Youth. This is in line with Martadinata's opinion that one of the most important components of society that can play a greater role in the development and progress of Indonesia is youth and students.²⁷ In other words, the way of providing political education by means of Pilkada campaigns in higher education is not necessary and can be ruled out because there are other approaches that are more relevant to protecting universities from polarization, which can be in a way that triggers critical reasoning such as providing material in courses, open discussions that are educative and egalitarian, simulating democracy through elections for student organizations on campus such as the Student Executive Board, Student Consultative Assembly, and Student Association which were previously followed by candidate debates, or providing campus programs that aim to support political education so that the goal of scientific-based critical political awareness can be realized. Through political education that is neutral and independent, of course the political awareness that is built will be more rational and students can develop a better understanding of political dynamics to encourage active participation to oversee the democratic process.

CONCLUSION

The Constitutional Court Decision Number 69/PUU-XXII/2024 has changed the Court's stance to allow Pilkada campaigns in universities. Although the permissibility of Pilkada campaigns in universities in Constitutional Court Decision Number 69/PUU-XXII/2024 has regulated the provisions by obtaining permission from the person in charge of the university and attending without campaign attributes, of course this is still contrary to what has been regulated in Article 8 of Law Number 12 of 2012 concerning Higher Education. The quo decision reflects the practice of judicial activism by adding a new norm. In fact, there is a separation of powers that must be inspired by each institution, including the Constitutional Court. Judicial restraint is an important matter that must be guided so that there is no overlapping of authority between institutions and checks and balances are maintained. By allowing campaigns in the academic environment, it certainly has the potential to violate the principles stipulated in Article 3 of Law Number 12/2012, namely the principle of benefit, the principle of virtue, and the principle of responsibility. In deciding Constitutional Court Decision Number 69/PUU-XXII/2024, constitutional judges used constitutional interpretation. Constitutional judges used historical interpretation (original) seeing that the

²⁷ L. A. Grazhdankina, "Legal Education As a Means of Preventing Reckless Criminality," *Higher School Companion*, no. 4 (2022): 22-28.

Court considered the existence of previous decisions that allowed election campaigns in educational places.

Pilkada campaigns in higher education are vulnerable to being infiltrated by political interests that cause domino effects such as dividing the academic community, decreasing the quality of academic freedom and academic pulpit, and even the level of public trust in higher education can also disappear. The purpose of higher education as a noble place to create human quality to advance the nation's civilization can potentially turn into a place of political competition, especially for political parties due to the polarization caused by the practice of approving political campaigns. As a result, the academic world becomes a means to take the votes of the academic community in a way that is not fair and actually creates a conflict of interest in it. The use of the argument that the Pilkada campaign in universities is a form of providing political education is basically unacceptable considering that basically, not all regions have universities, both public and private. Thus, this matter actually clarifies the potential for inequality in providing political education in each region through the Pilkada campaign route which actually results in injustice and even jealousy with other regions that cannot carry out Pilkada campaigns in universities. Therefore, the policy of limiting politically active activities, especially related to electoral elections, will be better if it is carried out considering the impacts that can be caused and avoiding the dominance of practical politics in the university environment.

The recommendations for this research are: (i) The Constitutional Court needs to encourage the DPR as the legislator to immediately revise the Pilkada Law to ensure legal certainty and also emphasize the importance of protecting the academic community from the potential pressure and influence of practical politics in the university environment, (ii) as an address, the DPR needs to immediately revise the Pilkada Law to be in line with Constitutional Court Decision Number 69/PUU-XXII/2024 and prioritize the principles of General Principles of Good Governance (AUPB). Rules regarding the imposition of sanctions for universities and/or regional head candidates who are proven to have committed fraudulent acts are equally important to be included. As a lawmaker, the House of Representatives needs to look at the drafting techniques in Law No. 12/2011 and Law No. 15/2019 jis. Law Number 13 of 2022.

REFERENCES

Aldani, Abin Rifa, Ali Abdurrahman, and Lailani Sungkar. "The Application of Judicial Activism in the Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding the Age Requirements for Presidential and Vice Presidential Candidates in Relation to the Theory of Legal Purpose." *KRTHA BHAYANGKARA* 18, no. 3 (December 23, 2024): 587-595.

<https://ejurnal.ubharajaya.ac.id/index.php/KRTHA/article/view/3231>.

Arhdan, Sandy Mulia, Yuslim, and Khairul Fahmi. "Penegakan Hukum Terhadap Pelanggaran Netralitas Aparatur Sipil Negara Dalam Pilkada Serentak 2020 Di Sumatera Barat." *Unes Law Review* 7, no. 1 (2024).

Bahri, Syaiful. "An Anomaly in Political Recruitment: The Logic of Cross Candidacy in 2020 Jambi Provincial-Local Election." *Politicon : Jurnal Ilmu Politik* 4, no. 1 (2022): 111-138.

Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, Noviyanti. "Discrimination Related to Labour Age Limitation in Indonesia : A Human Rights and Comparative Law Perspective." *Suara Hukum* 6, no. 2 (2024): 228-254.

Dicky Eko Prasetyo, Adam Ilyas. "Judicial Activism Dalam Pengujian Konstitusionalitas Undang-Undang Ratifikasi." *NEGARA HUKUM* 13, no. 2 (2022): 258.

Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker. "Membangun Moralitas Dan Hukum Sebagai Integrative Mechanism Di Masyarakat Dalam Perspektif Hukum Progresif." *Mimbar Keadilan* 14, no. 2 (2021): 128-138.

Dicky Eko Prasetyo, Hananto Widodo. "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 1 (2022): 2.

Dicky Eko Prasetyo, M. Adib Nur Huda. "Urgensi Pembelajaran Moderasi Beragama Dalam Pelajaran Sejarah Kebudayaan Islam Di Mts Yaspira Ngambon Bojonegoro Jawa Timur." *Sang Guru* 1, no. 1 (2022): 30.

Dyah Ochtorina Susanti, A'an Efendi. "Pancasila Dalam Teori Jenjang Norma Hukum Hans Kelsen." *Legislasi Indonesia* 18, no. 4 (2021): 518.

Ginsburg, Tom. "Academic Freedom and Democratic Backsliding." *Journal of Legal Education* 71, no. 2 (2022): 238-259.

Grazhdankina, L. A. "Legal Education As a Means of Preventing Reckless Criminality." *Higher School Companion*, no. 4 (2022): 22-28.

Hananto Widodo, Dicky Eko Prasetyo. "Penataan Kewenangan KPU Dan Bawaslu Dalam Melakukan Pengawasan Dan Menangani Sengketa Proses Pemilu." *Perspektif Hukum* 21, no. 2 (2021): 17-38.

Jackson, Vicki C. "Holistic Interpretation and the Interdependence of Constitutional Structures and Rights: An Essay in Honor of Cheryl Saunders." *Comparative Constitutional Studies* 2, no. 2 (December 31, 2024): 196-217. <https://www.elgaronline.com/view/journals/ccs/2/2/article-p196.xml>.

Latif, Yudi. *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas*. 5th ed. Jakarta: Gramedia, 2015.

Makris, Spiros. "Robert Dahl: Democracy De-Territorialized." In *Global Encyclopedia of Territorial Rights*, 1-8. Cham: Springer International Publishing, 2024. https://link.springer.com/10.1007/978-3-319-68846-6_392-1.

- Marde Christian Stenly Mawikere, Maison Immanuel Daud, Sudiria Hura, Grace Natalia Birahim, Virginia Rebeca Tulung. "Religions, Religious Moderation and Community Development and the Role of Higher Education to Strengthen It." *International Journal of Education, Information Technology and Others* 6, no. 3 (2023): 5-24.
- Masnun, Muh. Ali, Prasetio, Dicky Eko, Maalikatussofa. "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis." *Novum: Jurnal Hukum* 12, no. 3 (2025): 372-384.
- Mendy, Ousu, and Ebrima Sarr. "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia." *Journal of Indonesian Constitutional Law* 2, no. 1 (2025): 1-22.
- Prasetio, Dicky Eko. "Ius Constituendum Legal Standing Bagi WNA Terkait Proses Judicial Review Di Mahkamah Konstitusi Dalam Perspektif HAM." *Hunila* 2, no. 1 (2023): 125-138.
- — —. "Rekonstruksi Subjectum Litis Pembubaran Partai Politik Sebagai Perlindungan Hak Politik Warga Negara." *Sol Justicia* 5, no. 1 (June 21, 2022): 18-37. <https://ojs.ukb.ac.id/index.php/sol/article/view/474>.
- — —. "Sejarah Dan Eksistensi Pembentukan Peraturan Daerah." *Sol Justicia* 5, no. 2 (2022): 151.
- Prasetio, Dicky Eko, Muh. Ali Masnun, and Noviyanti Noviyanti. "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective." *Jambura Law Review* 7, no. 1 (January 31, 2025): 176-196. <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/26999>.
- Prasetio, Dicky Eko, Muh. Ali Masnun, and Hananto Widodo. "Affirmative Action for Persons with Disabilities to Ensure the Right to Be Elected in General Elections." *Nusantara Science and Technology Proceedings* 1, no. 1 (May 2, 2025): 205-210. <https://nstproceeding.com/index.php/nuscientech/article/view/1350>.
- Salmon, Hendrik, and John Tumba Jacob. "The Role of Law and Human Rights in the Formation of State Institutions: A Comparative Study of Indonesia and Nigeria." *Jurnal Suara Hukum* 7, no. 1 (April 23, 2025): 218-244. <https://journal.unesa.ac.id/index.php/suarahukum/article/view/38591>.
- Sukmariningsih, R M. "Constitutionality Rights in Election: Lesson from the Indonesia Election." *Sch Int J Law Crime Justice* 7956, no. 2016 (2021): 446-450. https://saudijournals.com/media/articles/SIJLCJ_47_446-450.pdf.
- Tinambunan, Hezron Sabar Rotua, Dicky Eko Prasetio. "Meme: Upaya Rekonsiliasi 4.0 Dalam Pemilihan Umum 2019." *Masalah-Masalah Hukum* 49, no. 1 (2020): 61.