

Judicial Activism and Constitutional Norm Creation in Indonesia's 2024 Elections

Retno Eko Mardani¹, Rengga Kusuma Putra², Fifiana Wisnaeni³,
Aprista Ristyawati⁴, Satriya Nugraha⁵

¹ Fakultas Ilmu Sosial dan Hukum, Universitas Veteran Bangun Nusantara, Sukoharjo, Indonesia

² Fakultas Studi Akademik, Universitas Sains dan Teknologi Komputer, Semarang, Indonesia

^{3,4} Fakultas Hukum, Universitas Diponegoro, Semarang, Indonesia

⁵ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia
retnomardani89@gmail.com

Abstract

This study aims to examine the exercise of judicial activism by the Indonesian Constitutional Court in decisions concerning the 2024 General Election, particularly its contribution to constitutional norm formation and its implications for electoral legal certainty. Employing doctrinal legal research, this study applies statutory, conceptual, and case approaches to selected Constitutional Court decisions that directly affected electoral regulation and raised questions concerning the scope of judicial authority and norm creation. The findings demonstrate that the Court's constitutional interpretation extended beyond the conventional function of a negative legislator by modifying electoral thresholds, candidate eligibility requirements, and the institutional timing of elections. The analysis identifies four cumulative indicators through which constitutional interpretation may evolve into judicial law-making: departure from the ordinary textual meaning of legislation, formulation of standards not expressly established by the legislature, immediate normative consequences, and general binding effect (erga omnes). The novelty of this study lies in developing an integrated conceptual framework that uses these four indicators to distinguish legitimate constitutional interpretation from judicial activism and judicial norm creation within Indonesia's constitutional system. The findings further indicate that judicial activism may strengthen constitutional rights protection and democratic participation when addressing genuine constitutional deficiencies, but excessive intervention may undermine separation of powers, legal certainty, and electoral stability. Accordingly, future constitutional adjudication in electoral matters should be grounded in constitutional text and principles, accompanied by institutional restraint and consideration of the temporal and systemic consequences of judicial intervention.

Keywords: Constitutionality; Constitutional Court; Creation of Legal Norms; Judicial Activism; Legal System

1. INTRODUCTION

The 2024 General Election in Indonesia has generated significant constitutional debates concerning the role of the Constitutional Court (Mahkamah Konstitusi) in shaping electoral governance. As the institution entrusted with safeguarding constitutional supremacy and protecting citizens' constitutional rights, the Constitutional Court possesses the authority to review legislation against the 1945 Constitution. Through this authority, the Court plays a crucial role in ensuring that electoral regulations conform to constitutional principles, democratic values, and the rule of law. However, several Constitutional Court decisions issued before and during the 2024 electoral process have attracted considerable academic and public attention because they not only invalidated statutory provisions but also introduced constitutional interpretations that substantially altered the normative framework governing elections.

Among the most controversial decisions was Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age requirement for presidential and vice-presidential

candidates. The decision generated widespread debate because the Court's interpretation effectively modified the legal requirements for candidacy and produced immediate consequences for the electoral process. Given that Constitutional Court decisions are final and binding (final and binding) and possess *erga omnes* effect, their implications extend beyond the parties involved in litigation and influence the broader legal system. Consequently, these decisions have raised fundamental constitutional questions regarding the limits of judicial authority, the legitimacy of judicial intervention in electoral regulation, and the appropriate relationship between constitutional adjudication and democratic law-making.

The controversy surrounding these decisions reflects a broader constitutional dilemma. On the one hand, constitutional courts are expected to actively protect constitutional rights, preserve democratic integrity, and respond to legal deficiencies that may threaten constitutional governance. On the other hand, excessive judicial intervention in norm formation may challenge the principle of separation of powers and undermine the democratic legitimacy of legislation enacted through representative institutions. This tension becomes particularly significant in electoral matters, where legal certainty and regulatory stability constitute essential requirements for democratic legitimacy.

From a theoretical perspective, the debate concerning the Constitutional Court's role is closely related to discussions on judicial activism and constitutional interpretation. Hans Kelsen originally conceptualized constitutional courts as negative legislators, institutions authorized to invalidate statutory norms inconsistent with the constitution without creating new legal rules. Within this framework, norm formation remains the exclusive competence of democratically elected legislatures. Nevertheless, contemporary constitutional practice demonstrates that constitutional adjudication frequently extends beyond the mere annulment of legal provisions. Through constitutional interpretation, courts may formulate new normative constructions, establish constitutional conditions, or provide legal standards that effectively function as new legal norms.

This phenomenon is commonly described as judicial activism, referring to the proactive role of judges in interpreting constitutional provisions to achieve substantive justice, protect fundamental rights, and address constitutional deficiencies. The concept becomes particularly relevant in constitutional systems characterized by legal uncertainty, regulatory gaps, or rapidly changing political conditions. Furthermore, H.L.A. Hart's theory of the "open texture" of law explains that constitutional language cannot anticipate every future circumstance, thereby requiring judicial interpretation to resolve constitutional disputes. Consequently, judicial activism may function as a constitutional corrective mechanism when legislative responses prove inadequate or delayed. However, judicial activism also raises concerns regarding democratic accountability because judicially created norms are not produced through ordinary legislative processes involving political representation and public participation.

The growing role of constitutional courts in developing legal norms has stimulated extensive scholarly discussion. Existing literature may generally be grouped into three major strands. The first strand focuses on judicial activism and its implications for constitutional governance and institutional balance. Studies within this category primarily examine the impact of Constitutional Court decisions on the principle of checks and balances and the distribution of governmental powers. The second strand discusses the Constitutional Court's position as either a negative legislator or a positive legislator. These studies generally seek to identify circumstances under which the Court may legitimately formulate legal norms through constitutional interpretation. The third strand emphasizes electoral constitutionalism and constitutional politics, particularly the relationship between Constitutional Court decisions and electoral competition, democratic legitimacy, and political interests.

Several important studies illustrate these perspectives. Sulastris examines the implications of Constitutional Court decisions for the principle of checks and balances within Indonesia's constitutional system. While the study provides valuable insight into institutional consequences arising from constitutional adjudication, it does not formulate analytical criteria for distinguishing constitutionally legitimate judicial interpretation from judicial norm creation. Puspita Sari analyzes the Constitutional Court's authority as both a negative legislator and a positive legislator through the examination of a specific judicial review case. Although the study proposes indicators of positive-legislator functions, its analysis remains limited to a single decision and does not evaluate broader patterns of judicial activism in electoral disputes. Meanwhile, Agustini Sih investigates Constitutional Court Decision Number 90/PUU-XXI/2023 from the perspective of constitutional politics and electoral interests. The study successfully demonstrates the political significance of the decision but does not explore its implications for judicial activism or the formation of new legal norms through constitutional adjudication.

Table 1. Comparative Mapping of Previous Studies

Author	Main Focus	Theoretical Approach	Object of Analysis	Main Contribution	Limitation
Sulastris	Constitutional Court and checks and balances	Separation of powers	Various Constitutional Court decisions	Explains institutional implications of constitutional review	Does not establish criteria for distinguishing judicial activism from judicial law-making.
Puspita Sari	Negative and positive	Constitutional review theory	Single Constitutional	Identifies indicators of positive-	Limited comparative analysis and

	legislator functions		Court decision	legislator functions	electoral context	
Agustin ingsih	Constitutional politics of Decision No. 90/PUU- XXI/2023	Constitutio nal politics	Decision No. 90/PUU- XXI/2023	Explains political implications of constitution al adjudication	Does analyze judicial activism and norm formation	not
This Study	Judicial activism and constitutional norm formation during the 2024 Election	Judicial activism, constitution al interpretati on, legislative theory	Multiple Constitutional Court decisions related to the 2024 Election	Formulates conceptual boundaries between constitution al interpretatio n and judicial norm creation	-	

Source: Authors' analysis

The review of previous studies demonstrates that existing scholarship has largely examined judicial activism, constitutional interpretation, electoral constitutional disputes, and the positive-legislator debate as separate themes. Despite providing important insights, these studies have not comprehensively analyzed how Constitutional Court decisions during the 2024 General Election simultaneously reflect judicial activism and generate new legal norms affecting electoral governance. More importantly, there remains no clear analytical framework capable of distinguishing constitutionally legitimate interpretation from judicial law-making within the context of contemporary constitutional adjudication in Indonesia.

This gap is particularly important because the constitutional legitimacy of judicial norm formation remains contested. The absence of conceptual boundaries may generate uncertainty regarding the proper scope of judicial authority, weaken institutional accountability, and create tensions between constitutional supremacy and democratic legitimacy. Accordingly, a more precise conceptual framework is required to evaluate when judicial intervention remains within the legitimate exercise of constitutional review and when it effectively transforms the Constitutional Court into a positive legislator.

The novelty of this article lies not merely in examining controversial Constitutional Court decisions during the 2024 Election but in developing a conceptual framework for distinguishing constitutional interpretation, judicial activism, and judicial law-making within Indonesia's constitutional system. By integrating theories of constitutional adjudication, judicial activism, legislative authority, and constitutional democracy, this study contributes to the theoretical debate concerning the evolving relationship between the

Constitutional Court's functions as guardian of the constitution, negative legislator, and positive legislator. In doing so, the article seeks to provide a clearer analytical basis for evaluating future Constitutional Court interventions in electoral governance and constitutional norm formation.

Building on this research gap, this study examines the evolving constitutional role of the Indonesian Constitutional Court in the context of the 2024 General Election, with particular attention to the relationship between judicial activism, constitutional norm formation, and electoral legal certainty. The study is guided by the premise that the legitimacy of judicial intervention cannot be assessed solely by whether the Court protects constitutional rights, but also by whether its interpretive practices remain within constitutionally legitimate adjudication or effectively assume a norm-making function. The novelty of this study lies in developing an integrated analytical framework that connects the Court's function as guardian of the Constitution, judicial activism, constitutional norm creation, and the implications of judicial intervention for legal certainty and electoral democratic stability. Accordingly, this study aims to: (1) examine the Constitutional Court's role as guardian of the Constitution in the 2024 electoral context; (2) analyze judicial activism through the theoretical distinction between judicial restraint, constitutional interpretation, and judicial law-making; (3) identify and assess the forms and legitimacy of new legal norms generated through Constitutional Court decisions; and (4) evaluate the implications of judicial intervention for legal certainty and the stability of electoral democracy. Through these objectives, the study seeks to establish principled boundaries between legitimate constitutional adjudication and judicial law-making while maintaining a balance between constitutional rights protection, democratic legitimacy, institutional separation of powers, and electoral stability.

2. METHODS

This study employs normative legal research (doctrinal legal research) to examine the constitutionality of Constitutional Court decisions during the 2024 General Election and their implications for constitutional norm formation in Indonesia. The research adopts a statutory approach to analyze constitutional and legislative provisions governing the Constitutional Court and electoral regulations, a conceptual approach to examine theories of judicial activism, negative and positive legislator, constitutional interpretation, and checks and balances, as well as a case approach focusing on selected Constitutional Court decisions related to the 2024 electoral process.

The legal materials consist of primary legal materials, including the 1945 Constitution, Law No. 24 of 2003 on the Constitutional Court as amended by Law No. 7 of 2020, and relevant Constitutional Court decisions, as well as secondary legal materials such as scholarly books, journal articles, expert opinions, and other legal literature. The selected Constitutional Court decisions were chosen based on three criteria: (1) their direct impact on electoral regulations and processes, (2) the existence of constitutional controversy

regarding judicial authority, and (3) indications of judicial interpretation that potentially create or expand legal norms.

Data were analyzed qualitatively using interpretative analysis, doctrinal reasoning, and comparative reasoning. Judicial activism was identified through indicators such as the expansion of constitutional interpretation, the formulation of new constitutional standards, and judicial reasoning that effectively modifies existing regulatory frameworks. The analytical framework employed distinguishes the Constitutional Court's role as a negative legislator from its potential function as a positive legislator in order to assess the legitimacy of constitutional norm creation through judicial decisions.

3. RESULTS AND DISCUSSION

The establishment of the Constitutional Court in Indonesia marks a significant milestone in the country's constitutional history, arising from the need to strengthen the democratic system and uphold the rule of law in the post-reform era. The idea of establishing the Constitutional Court began to emerge alongside the wave of reform that demanded fundamental revisions to the 1945 Constitution of the Republic of Indonesia, particularly regarding oversight of legislative products and the protection of citizens' constitutional rights. The background to the formation of the Constitutional Court is inseparable from past experiences, where Indonesia's constitutional system tended to prioritize parliamentary supremacy without effective oversight mechanisms for the resulting laws. This often created the potential for abuse of power by lawmakers, who disregarded public participation and the rights of the people. Therefore, the Constitutional Court was established as an institution tasked with reviewing the constitutionality of laws, thereby creating a more balanced system of checks and balances within the state structure.

The existence of the Constitutional Court is expected to ensure that the Constitution is implemented responsibly in accordance with the will of the people and the ideals of democracy, and to serve as the primary guardian of the implementation of the principles of the rule of law in Indonesia. Thus, the establishment of the Constitutional Court is a response to the demands for reform and the need for an independent constitutional guardian to ensure the creation of a just, democratic, and socially equitable system of government.

The Constitutional Court holds a position within Indonesia's constitutional system that is explicitly regulated in Article 24(2) and Article 24C of the 1945 Constitution of the Republic of Indonesia, which affirm that judicial power in Indonesia is exercised by the Supreme Court and subordinate courts, as well as the Constitutional Court as an independent judicial authority free from interference by any party. As a state institution, the Constitutional Court plays a central role in maintaining the balance of power among state institutions (checks and balances) and preventing the abuse of power by the executive or legislative branches. Its status as a constitutional court grants it full legitimacy and authority to interpret and uphold the Constitution independently, making the Constitutional Court's decisions final and binding (*erga omnes*) on all citizens and state institutions. This reaffirms that no other institution can overturn or amend the Constitutional Court's decisions, thereby

establishing the Constitutional Court as the highest authority in upholding the Constitution in Indonesia.

3.1 The Constitutional Court as Guardian of the Constitution

The constitutional controversy surrounding the Constitutional Court during the 2024 General Election cannot be understood merely through the classical conception of the Court as a negative legislator. Several strategic decisions issued during the electoral process indicate a significant development in the Court's constitutional function, particularly in relation to constitutional interpretation and the formation of legal norms. While the Constitutional Court was originally designed to invalidate statutory provisions inconsistent with the Constitution, a number of its recent decisions have gone beyond annulment by introducing normative constructions that directly influence electoral regulations and political participation.

This development is particularly evident in Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age requirement for presidential and vice-presidential candidates. Formally, the Court exercised its constitutional review authority under Article 24C of the 1945 Constitution. However, the constitutional reasoning adopted by the Court did not merely assess the constitutionality of the challenged provision. Instead, the Court introduced an additional constitutional qualification by allowing individuals who had held elected regional executive positions to satisfy the candidacy requirement despite not meeting the minimum age threshold stipulated by legislation. As a result, the decision altered the normative structure of the existing legal framework and produced legal consequences extending beyond the immediate dispute.

From a doctrinal perspective, this decision illustrates the distinction between constitutional interpretation and constitutional norm-making. Constitutional interpretation generally aims to clarify the meaning of constitutional provisions without changing the normative content of legislation. Constitutional norm-making, by contrast, occurs when judicial interpretation effectively introduces new legal standards, modifies existing regulatory requirements, or creates legal consequences not expressly provided by the legislature. In such circumstances, the Court no longer functions solely as a negative legislator but assumes characteristics commonly associated with a positive legislator.

To objectively assess whether a Constitutional Court decision reflects judicial activism, this study employs four analytical indicators. *First*, the Court departs from the ordinary textual meaning of statutory provisions and adopts an expansive constitutional interpretation by interpolating new semantic layers beyond the original intent of the lawmakers. Under this framework, the Court utilizes a dynamic interpretation mechanism (living constitution) to dilate the scope of statutory texts by equating age parameters with the institutional standing of elected officials, which effectively reconstructs a static statutory restriction into an adaptive norm for the sake of enforcing substantive justice. *Second*, the decision formulates a new constitutional standard not expressly established by legislation. Within this parameter, the Court goes beyond merely evaluating the constitutionality of a

norm; instead, it proactively establishes a new judicial test or administrative prerequisite previously unaddressed in positive law. This is reflected when the Court introduces a novel regional head candidacy threshold mechanism by transposing metrics from the independent candidate channel, effectively usurping the legislature's open legal policy domain through the creation of a binding judicial precedent. *Third*, the Court imposes normative consequences that alter the operation of existing regulations. Within this parameter, the Court's decrees bypass prospective enforcement or legislative deference; instead, they operate on a self-executing basis, instantaneously modifying procedural frameworks, statutory rights, and legal obligations mid-stride within an ongoing electoral cycle. This structural intervention triggers a disruptive judicial mechanism, as the Court unilaterally curtails the potential for a constitutional dialogue, directly dictating the administrative agenda of election administrators (KPU) and compelling immediate regulatory recalibration to comply with the judicially manufactured legal order. Fourth, the resulting legal norm possesses general applicability and binding force (*erga omnes*) beyond the specific case under review. Within this parameter, the Court dismantles the conventional boundaries of *inter partes* adjudication, asserting its authority as a *de facto* positive lawmaker. The judicially engineered norm operates with absolute horizontal and vertical binding effect throughout the jurisdiction; every administrative threshold or legal qualification formulated by the Court is instantaneously woven into the national statutory fabric. Consequently, this judicial edict binds all legal subjects, state institutions, and political entities, effectively extinguishing any political veto power or subsequent legislative correction by the formal parliament. When these indicators are present simultaneously, constitutional interpretation may be regarded as evolving into judicial law-making.

Applying these indicators to Constitutional Court decisions related to the 2024 General Election demonstrates a broader institutional shift in constitutional adjudication. The Court increasingly relies on substantive constitutional values—such as democratic participation, equality of opportunity, and the protection of constitutional rights—to justify interpretive outcomes that reshape electoral regulations. Such reasoning reflects a purposive and progressive approach to constitutional adjudication rather than a strictly textual review of statutory provisions. Consequently, the Court's role extends beyond reviewing constitutionality toward actively influencing the development of legal norms governing democratic processes.

This institutional transformation has generated two competing constitutional perspectives. Proponents argue that judicial activism is necessary to address legislative deficiencies, constitutional ambiguities, and legal gaps that may threaten democratic governance. Through progressive constitutional interpretation, the Court is able to provide immediate constitutional solutions when legislative responses are unavailable or politically constrained. Conversely, critics contend that judicially created norms risk undermining democratic legitimacy because norm formation constitutionally belongs to representative

institutions. Excessive judicial intervention may therefore blur the constitutional boundaries between adjudication and legislation and weaken the principle of separation of powers.

Accordingly, the constitutional debate arising from the 2024 General Election should not be viewed solely as disagreement over particular judicial outcomes. More fundamentally, it concerns the evolving constitutional identity of the Constitutional Court itself. The central issue is whether the Court's constitutional reasoning remains within the legitimate boundaries of constitutional interpretation or whether it has entered the realm of judicial legislation through the creation of new legal norms. Determining this boundary is essential for maintaining legal certainty, democratic legitimacy, and institutional balance within Indonesia's constitutional system.

3.2 Judicial Activism from a Theoretical Perspective

Within constitutional adjudication, judicial review is generally associated with two competing paradigms: judicial restraint and judicial activism. Judicial restraint emphasizes the limited role of courts in constitutional governance and requires judges to defer, as far as possible, to policy choices made by democratically elected institutions. In contrast, judicial activism permits a more expansive judicial role through constitutional interpretation, particularly when legislation is considered inadequate, ambiguous, or incapable of protecting constitutional rights effectively. In the Indonesian constitutional context, the tension between these two paradigms has become increasingly visible through several Constitutional Court decisions related to the 2024 General Election.

The debate concerning judicial activism is not merely theoretical but has practical significance in determining the constitutional limits of judicial authority. Under Hans Kelsen's classical doctrine, the Constitutional Court functions as a negative legislator, meaning that its authority is confined to reviewing and invalidating statutory provisions that conflict with the Constitution. However, contemporary constitutional adjudication demonstrates that constitutional review frequently involves interpretive reasoning capable of influencing the content of legal norms. Consequently, the critical issue is not whether judges interpret the Constitution, since interpretation is an inherent judicial function, but rather whether such interpretation remains within constitutional adjudication or evolves into judicial law-making.

This distinction can be observed in Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age requirement for presidential and vice-presidential candidates. The Court's constitutional reasoning was primarily based on the principles of equal opportunity in public office, democratic participation, and constitutional rights to political representation. Through this reasoning, the Court concluded that individuals who had served or currently serve in elected regional executive positions could be considered eligible despite not fulfilling the statutory age requirement. The *ratio decidendi* of the decision therefore did not merely interpret the existing legal provision but introduced an additional constitutional qualification that had not previously been stipulated by the legislature. As a result, the

decision effectively altered the normative operation of the existing legal framework governing presidential candidacy.

From a doctrinal constitutional perspective, this case illustrates the transition from constitutional interpretation to constitutional norm-making. Constitutional interpretation generally aims to clarify the meaning of constitutional or statutory provisions without changing their normative structure. Constitutional norm-making, by contrast, occurs when judicial interpretation produces new legal standards, modifies existing legal requirements, or establishes regulatory consequences with general and binding effect (*erga omnes*). In such circumstances, the Court's function extends beyond reviewing constitutionality and begins to resemble the role of a positive legislator.

To objectively assess whether a decision reflects judicial activism, this study employs four analytical parameters. First, the Court adopts an expansive interpretation that departs from the ordinary meaning of statutory provisions. Second, the decision formulates constitutional standards not explicitly provided by legislation. Third, the ruling generates new normative consequences affecting the operation of legal regulations. Fourth, the resulting norm possesses general applicability beyond the specific dispute before the Court. The presence of these indicators suggests that constitutional interpretation has developed into a form of judicial norm creation.

Applying these parameters to several Constitutional Court decisions related to the 2024 General Election reveals a pattern of increasingly substantive constitutional reasoning. Rather than limiting itself to reviewing legislative constitutionality, the Court frequently relies on constitutional principles such as democratic participation, equality before the law, and protection of constitutional rights to justify interpretive outcomes that reshape electoral regulations. This tendency reflects a shift from a purely negative-legislator model toward a more active constitutional role in norm development.

Nevertheless, the legitimacy of such judicial intervention remains contested. Supporters argue that judicial activism is necessary to address constitutional gaps and legislative inaction, particularly when democratic rights are at stake. Critics, however, contend that judicially created norms may undermine democratic legitimacy because law-making authority constitutionally belongs to representative institutions. Consequently, the central constitutional question is not whether the Constitutional Court may engage in constitutional interpretation, but where the boundary should be drawn between legitimate constitutional interpretation and judicial legislation. Determining this boundary is essential for maintaining legal certainty, democratic accountability, and the balance of powers within Indonesia's constitutional system.

Table 1. Constitutional Court Rulings During the 2024 Elections

Court Constitutional Decision	Initial Rules	New Rules
60/PUU-XXII/2024 (Threshold for Regional Elections)	A political party or coalition of parties must hold 20% of the seats in the Regional People's Representative Council or 25% of the valid votes	The Constitutional Court struck down the provision and established new rules (lowering the threshold) based on population size (ranging from 6.5% to 10% of valid votes), similar to the requirements for independent candidates. This ruling takes effect immediately for the 2024 Simultaneous Regional Elections, allowing more candidates to run and reducing the likelihood of a single candidate.
70/PUU-XXII/2024 (Age Requirements for Candidates for Regional Head)	There was some disagreement over whether a candidate's age should be calculated at the time of registration or at the time of inauguration.	The Constitutional Court has established a new rule stipulating that the minimum age requirement for regional head candidates (30 years old for governors, 25 years old for regents and mayors) must be met at the time the Election Commission (KPU) designates the candidate pairs, not at the time of the inauguration. This marks the establishment of a new concrete standard in the 2024 regional election process.

90/PUU-XXI/2023 (Age Requirements for Presidential and Vice-Presidential Candidates)	The Election Law sets the minimum age for presidential and vice-presidential candidates at 40 years old	The Constitutional Court added a new clause: “or has held or is currently holding an office elected through general elections, including regional head elections.” This addition establishes a new rule allowing individuals under the age of 40 to run for office if they have previously served as a regional head.
135/PUU-XXII/2024 (Separation of Elections)	This ruling was issued in response to the complexities of the 2024 simultaneous elections and sets the framework for the future	The Constitutional Court ruled that national elections (for the President, the House of Representatives, and the Regional Representatives Council) and local elections (for regional legislative councils and regional heads) must be held separately, with an interval of 2 to 2.5 years. The Constitutional Court is actively designing a new model for simultaneous elections that differs from the current law, which will be implemented gradually.

Source: Authors’ analysis

As demonstrated in Table 1, “Constitutional Court Rulings During the 2024 Elections,” the selected decisions reveal a consistent pattern of judicial intervention that extends beyond the conventional function of constitutional review. Decision No. 60/PUU-XXII/2024 modified the threshold for regional election candidacy, Decision No. 70/PUU-XXII/2024 established a new temporal standard for fulfilling candidates’ age requirements, Decision No. 90/PUU-XXI/2023 expanded the eligibility requirements for presidential and vice-presidential candidates, and Decision No. 135/PUU-XXII/2024 introduced a new framework for the separation of national and local elections. These rulings demonstrate that

the Court's constitutional reasoning has generated normative consequences that directly affect the content, application, and structure of electoral law. Accordingly, judicial activism in the 2024 electoral context should not be understood merely as an expansive approach to constitutional interpretation, but as a form of judicial intervention capable of producing generally applicable legal standards beyond the immediate dispute. This pattern raises a fundamental doctrinal question concerning the boundary between legitimate constitutional interpretation and judicial norm creation. The following analysis therefore examines more specifically how these judicial interventions have contributed to the establishment and modification of constitutional norms through Constitutional Court decisions.

3.3 The Establishment of New Norms through Constitutional Court Decisions

The constitutional controversy surrounding Constitutional Court decisions during the 2024 General Election cannot be assessed solely through the dichotomy of judicial activism and judicial restraint. More fundamentally, it concerns the extent to which constitutional interpretation may legitimately generate new legal norms. Several Constitutional Court decisions related to the electoral process demonstrate that judicial review no longer functions exclusively as a mechanism for invalidating unconstitutional legislation. Instead, constitutional adjudication increasingly operates as a process of constitutional norm creation through judicial interpretation.

From a doctrinal perspective, constitutional norm creation may be classified into three categories. First, norm substitution, which occurs when the Court replaces an unconstitutional statutory provision with a new constitutional formulation that directly governs legal relations. Second, norm expansion, whereby the Court broadens the scope or meaning of an existing legal norm beyond the legislature's original formulation. Third, conditional norms, where the Court declares a provision constitutional or unconstitutional only under specific interpretative conditions. Although these three forms differ in intensity, each demonstrates judicial influence over the content and operation of legal norms.

The comparative analysis of Constitutional Court decisions during the 2024 General Election indicates that norm expansion and conditional norm-making were the dominant patterns. In Decision Number 90/PUU-XXI/2023, for example, the Court did not merely review the constitutionality of the age requirement for presidential and vice-presidential candidates. Through its constitutional reasoning emphasizing democratic participation and equal opportunity in public office, the Court expanded the normative meaning of eligibility requirements by introducing an additional constitutional qualification not expressly provided by legislation. Similar reasoning patterns can also be identified in other electoral decisions where constitutional principles were used to reshape the practical application of statutory provisions. Consequently, the Court's intervention extended beyond constitutional review and influenced the normative architecture of electoral regulation.

This development raises an important theoretical question regarding whether the Constitutional Court should be regarded as a secondary legislator. Unlike the legislature, the Court does not possess original law-making authority derived from democratic

representation. Nevertheless, when constitutional interpretation consistently produces generally binding norms (*erga omnes*) that alter regulatory outcomes, the Court effectively exercises a derivative norm-producing function. In this sense, the Constitutional Court cannot be equated with the legislature as a primary law-maker, but it may be understood as a secondary legislator whose norm-creating authority emerges through constitutional adjudication rather than political representation.

The phenomenon also relates to the concept of constitutional amendment by interpretation, namely the process through which constitutional meaning evolves through judicial interpretation without formal constitutional amendment procedures. In several Constitutional Court decisions, constitutional provisions concerning democratic participation, equality, and political rights have been interpreted more broadly than their original legislative articulation. Although such developments do not formally amend the Constitution, they reshape the practical meaning and operation of constitutional norms within the legal system. The result is an incremental transformation of constitutional governance through adjudication rather than constitutional revision.

The legitimacy of this practice remains contested within Indonesia's civil law tradition. Classical civil law theory places legislation as the primary source of law and confines judicial institutions to applying and interpreting enacted norms. However, contemporary constitutionalism demonstrates that constitutional courts increasingly participate in normative development through constitutional interpretation. Accordingly, the issue is no longer whether constitutional courts may influence legal development, but whether adequate constitutional limits exist to prevent judicial law-making from displacing democratic legislation. Judicial norm creation remains constitutionally legitimate insofar as it is grounded in constitutional text, constitutional principles, and the protection of fundamental rights rather than judicial policy preferences.

An equally important issue concerns the implementation of Constitutional Court decisions. The effectiveness of judicially created norms depends not only on constitutional legitimacy but also on institutional compliance. The implementation gap identified in several Constitutional Court decisions demonstrates that norm creation alone is insufficient to guarantee legal effectiveness. Delayed legislative responses, political resistance, and administrative constraints frequently hinder the realization of constitutional mandates established through judicial review. Consequently, the implementation gap should not be understood merely as a technical problem of compliance but as an institutional challenge affecting the authority of constitutional adjudication itself. When constitutionally binding decisions are not followed by corresponding legislative or regulatory adjustments, legal uncertainty persists and the practical effectiveness of constitutional review is weakened.

Therefore, the constitutional significance of judicial activism during the 2024 General Election lies not only in the content of individual decisions but also in the broader transformation of the Constitutional Court's institutional role. The increasing use of constitutional interpretation as a mechanism for norm creation indicates a gradual shift from

the classical model of the Court as a negative legislator toward a more active constitutional actor with secondary law-making functions. The challenge for Indonesia's constitutional system is to ensure that such developments remain compatible with democratic legitimacy, the principle of separation of powers, and the fundamental characteristics of a civil law legal order.

3.4 Legal Certainty and the Stability of Electoral Democracy

One of the most influential doctrines in contemporary electoral jurisprudence is the Purcell Principle, developed by the United States Supreme Court in *Purcell v. Gonzalez* (2006). The doctrine generally requires courts to exercise judicial restraint when electoral rules are challenged close to an election. Its underlying rationale is that last-minute judicial intervention may create voter confusion, disrupt election administration, and undermine public confidence in the electoral process. Consequently, courts are expected to consider not only the constitutionality of electoral regulations but also the institutional consequences of altering those regulations during an ongoing election cycle.

Although the Purcell Principle emerged within the American constitutional system, its theoretical significance extends beyond the United States. At its core, the doctrine reflects a broader constitutional concern regarding the balance between legal certainty and constitutional justice. Electoral governance requires stable and predictable rules because election administrators, political parties, candidates, and voters depend upon a consistent regulatory framework. Frequent judicial modifications of electoral norms during an election may jeopardize procedural fairness and generate uncertainty regarding the rules of competition. At the same time, excessive judicial restraint may allow unconstitutional regulations to remain in force and potentially violate fundamental political rights. Therefore, the Purcell Principle should not be understood merely as a procedural doctrine but as a constitutional mechanism for balancing electoral stability against the need for judicial protection of constitutional rights.

The relevance of the Purcell Principle to Indonesia must nevertheless be assessed carefully because important structural differences exist between the constitutional systems of the United States and Indonesia. In the United States, constitutional review is decentralized and exercised through ordinary courts, with the Supreme Court acting as the final judicial authority. By contrast, Indonesia adopts a centralized model of constitutional review in which the Constitutional Court possesses exclusive authority to review legislation against the Constitution. Furthermore, Constitutional Court decisions are final and binding (final and binding) and have general applicability (*erga omnes*), meaning that their normative consequences extend beyond the parties involved in litigation. These institutional differences indicate that the Purcell Principle cannot be transplanted directly into Indonesian constitutional law as a binding doctrine.

Nevertheless, the doctrine remains relevant as a comparative constitutional principle. Rather than being adopted formally, the Purcell Principle may serve as an analytical guideline for evaluating the constitutional appropriateness of judicial intervention in

electoral governance. In this context, the key question is not whether the Constitutional Court may intervene in electoral regulation, since such authority is constitutionally granted under Article 24C of the 1945 Constitution, but rather when and to what extent such intervention should occur. Judicial review conducted immediately before or during critical stages of an election requires greater constitutional justification because its consequences may extend beyond the protection of rights and directly affect electoral administration and democratic stability.

The Constitutional Court's decisions during the 2024 General Election illustrate this dilemma. Several decisions significantly influenced candidate eligibility requirements and the practical operation of electoral regulations. From the perspective of constitutional justice, these decisions were justified through constitutional reasoning emphasizing equality, democratic participation, and the protection of constitutional rights. However, from the perspective of legal certainty, changes to electoral norms during an ongoing electoral process imposed adjustment costs upon election administrators, political actors, and voters. Consequently, the constitutional controversy surrounding these decisions was not limited to the substance of the rulings but also concerned their timing and institutional effects upon electoral governance.

This tension demonstrates that neither legal certainty nor substantive justice can be treated as an absolute constitutional value. A rigid commitment to legal certainty may preserve unconstitutional norms merely to maintain procedural stability. Conversely, unrestricted judicial intervention in pursuit of substantive justice may weaken predictability and undermine confidence in the electoral process. The constitutional challenge therefore lies in developing principled criteria that permit judicial intervention when constitutional rights face substantial harm while simultaneously preserving regulatory stability during elections.

Within this framework, the legitimacy of judicial activism in electoral disputes should be assessed according to several objective criteria. First, judicial intervention must pursue the protection of constitutional rights that would otherwise suffer serious impairment. Second, the constitutional reasoning employed by the Court must be transparent, coherent, and grounded in constitutional text and principles rather than judicial policy preferences. Third, the Court should avoid creating detailed operational rules that constitutionally belong to the legislative domain. Fourth, the Court must consider the potential impact of its decisions upon electoral administration, legal certainty, and democratic stability. These criteria provide a constitutional boundary between legitimate constitutional adjudication and excessive judicial intervention in electoral governance.

Accordingly, the contribution of the Purcell Principle in the Indonesian context does not lie in its direct transplantation into positive law, but in its capacity to illuminate the constitutional limits of judicial review in electoral matters. The doctrine highlights that constitutional adjudication involves not only the correction of unconstitutional norms but also the preservation of institutional stability within democratic governance. In this regard,

the central issue is not whether the Constitutional Court engages in judicial activism, but whether such activism remains compatible with constitutional democracy, the principle of separation of powers, and the need for legal certainty within Indonesia's civil law constitutional system.

4. CONCLUSION

This study demonstrates that Constitutional Court decisions concerning the 2024 General Election reflect a significant form of judicial activism in which constitutional interpretation extends beyond the conventional negative-legislator function and contributes to the formation of binding electoral norms. The analysis of Decisions No. 60/PUU-XXII/2024, No. 70/PUU-XXII/2024, No. 90/PUU-XXI/2023, and No. 135/PUU-XXII/2024 indicates that the Court has not merely invalidated unconstitutional provisions but has modified electoral thresholds, eligibility requirements, and the institutional design of elections through expansive constitutional reasoning. The principal contribution of this study is the formulation of four analytical indicators for identifying the transition from legitimate constitutional interpretation to judicial law-making: departure from ordinary textual meaning, formulation of standards not expressly established by legislation, creation of immediate normative consequences, and general binding effect. These indicators provide a doctrinal basis for assessing the legitimacy and limits of judicial intervention in electoral governance. The findings further imply that judicial activism is constitutionally defensible when directed toward protecting constitutional rights and resolving genuine normative deficiencies, but it requires institutional restraint where judicial intervention substantially determines legislative policy choices. Future constitutional adjudication should therefore maintain a principled balance between constitutional supremacy, rights protection, democratic legitimacy, separation of powers, and electoral legal certainty. The Purcell Principle may provide a comparative reference for assessing the timing and systemic consequences of electoral intervention, without being directly transplanted into the Indonesian constitutional framework.

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