

JUDICIAL ACTIVISM IN INDONESIA CONSTITUTIONAL COURT: The Adjudication of Regional Election Disputes

Adithiya Diar*

Faculty of Law, University of Adiwangsa Jambi
Jl. Sersan Muslim RT.24 Kelurahan Thehok, Kecamatan Jambi Selatan, Jambi, Indonesia
Email: adithiyad@gmail.com

Beny Saputra

Department of Legal Studies, Central European University (CEU)
1100, Quellenstrasse 51, Vienna, Austria

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Abstract: In resolving disputes over regional head election results, the Constitutional Court often takes legal steps by postponing the application of the vote margin threshold. In addition, the Court makes judicial reasoning to harmonize various interpretations among election organizers. This study aims to identify the reasons for the deferment of the threshold application and to examine the Constitutional Court's judicial reasoning in handling this dispute. Using normative legal research methods with a conceptual, statutory, and case-based approach, this study concludes that the Constitutional Court has set aside the vote margin threshold in extraordinary cases, particularly in cases involving procedural violations or candidates' ineligibility to advance as participants. This is evident in election disputes from 2016 to 2025. Another conclusion is that the Constitutional Court's use of judicial reasoning aims to resolve legal ambiguity and prevent inconsistencies in the application of election norms among stakeholders. The findings of this study carry significant strategic implications for both election organisers and lawmakers. This study contributes to the understanding of how the Constitutional Court's judicial activism shapes electoral justice and the need for legislative harmonization.

Keywords: Constitutional Court, Judicial Activism, Regional Head Election Result Disputes, Threshold

Abstrak: Dalam menyelesaikan sengketa hasil pemilihan kepala daerah, Mahkamah Konstitusi kerap mengambil langkah hukum dengan menunda penerapan ambang batas selisih suara. Selain itu, Mahkamah menggunakan penalaran hukum untuk menyelaraskan berbagai penafsiran di kalangan penyelenggara pemilu. Penelitian ini bertujuan untuk mengidentifikasi alasan-alasan yang melatarbelakangi penundaan penerapan ambang batas tersebut, sekaligus mengkaji praktik penalaran hukum yang dilakukan oleh Mahkamah Konstitusi dalam menangani sengketa ini.

Dengan menggunakan metode penelitian hukum normatif dengan pendekatan konseptual, pendekatan undang-undang, dan pendekatan kasus, penelitian ini menyimpulkan bahwa Mahkamah Konstitusi telah mengesampingkan ambang batas selisih suara dalam perkara luar biasa, terutama terkait pelanggaran prosedur atau ketidaklayakan calon untuk maju sebagai peserta. Hal ini dapat dilihat dalam sengketa pemilu dari tahun 2016 hingga 2025. Kesimpulan lainnya adalah penggunaan penalaran hukum oleh Mahkamah Konstitusi bertujuan untuk mengatasi ambiguitas hukum guna mencegah inkonsistensi penerapan norma pemilu oleh para pemangku kepentingan. Temuan penelitian ini membawa implikasi strategis yang signifikan, baik bagi penyelenggara pemilu maupun pembuat undang-undang. Studi ini memberikan kontribusi pada pemahaman tentang bagaimana aktivisme yudisial oleh Mahkamah Konstitusi membentuk keadilan pemilu serta kebutuhan akan harmonisasi legislasi.

Kata Kunci: Ambang Batas, Judicial Activism, Perselisihan Hasil Pemilihan Umum Kepala Daerah, Mahkamah Konstitusi

Introduction

Democracy, as a system of governance embraced by nearly all modern nations, has evolved significantly alongside dynamic developments in state structures and the global political landscape.¹ However, Democracy in developing countries does not always function as developed countries imagine.² In this context, the Constitutional Court serves an essential role in safeguarding democratic principles by ensuring that legislative enactments and governmental actions adhere to the constitutional framework and reflect the collectively agreed-upon social contract.³ This aligns with the establishment of the Constitutional Court,

which is intended to address constitutional practice issues for which no mechanism existed before its establishment.⁴ As it fulfills its duties under the Constitution, the Constitutional Court seeks to adhere to its institutional vision, which is, in essence, to uphold the Constitution and realize a state of law and democracy grounded in a moral and civilized national life.⁵ In this regard, Jimly Asshiddiqie emphasized that the creation of the Constitutional Court mandated by the third amendment to the 1945 Constitution represents a critical step toward refining Indonesia's democratic governance system and reinforcing the doctrine of the separation of powers (*trias politica*).⁶ One of the Constitutional Court of the Republic of

¹ Carles Boix, "Democracy, Development, and the International System," *American Political Science Review* 105, no. 4 (2011): 809–28, <https://doi.org/DOI: 10.1017/S0003055411000402>.

² Milada Anna Vachudova, "Populism, Democracy, and Party System Change in Europe," *Annual Review of Political Science* 24 (2021): 471–98, <https://doi.org/10.1146/annurev-polisci-041719-102711>.

³ Lee Epstein, Olga Shvetsova, and Jack Knight, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Law & Society Review* 35, no. 1 (2001): 117–63, <https://doi.org/DOI: 10.2307/3185388>.

⁴ Lech Garlicki, "Constitutional Courts versus Supreme Courts," *International Journal of Constitutional Law* 5, no. 1 (January 1, 2007): 44–68, <https://doi.org/10.1093/icon/mol044>.

⁵ Luís Roberto Barroso, "Counter-majoritarian, Representative, and Enlightened: The Roles of Constitutional Courts in Democracies," *The American Journal of Comparative Law* 67, no. 1 (June 17, 2019): 109–43, <https://doi.org/10.1093/ajcl/avz009>.

⁶ S H Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Sinar Grafika, 2021).

Indonesia's leading authorities is to adjudicate disputes arising from the results of regional head elections (*PHPU Kada*). The exercise of this authority has evolved through a distinctive legal and institutional journey.⁷ Initially, the enactment of Law Number 22 of 2007 on General Election Administration expanded the definition of "election", thereby incorporating regional head elections into the broader electoral regime.⁸ A year later, in 2008, the Constitutional Court began exercising its authority over *PHPU Kada* cases. With the subsequent enactment of Law Number 10 of 2016 on Regional Head Elections, this authority was transformed into a temporary mandate, pending the establishment of a special election court. However, in 2022, through Decision Number 85/PUU-XX/2022, the Constitutional Court annulled the provisions in Law Number 10 of 2016 that mandated the creation of such a special court. Consequently, the Constitutional Court continues to hold jurisdiction over disputes concerning regional election results, including those arising from the 2024 elections and beyond, until a new regulatory framework is established. In line with the Constitutional Court's evolving role, the adjudication of

disputes over regional election results has also undergone significant development. The procedural regulations governing regional head election disputes have continually adapted in response to the KPU's conduct of regional elections.⁹ Since the Court first ruled on disputes over regional election results in 2008, and up to the anticipated 2025 cases, the Constitutional Court has issued no fewer than ten Constitutional Court Regulations providing procedural guidelines for adjudicating such disputes.¹⁰ This progression reflects the Court's strong commitment to fulfilling its mandate as the guardian of democracy.¹¹ As the guardian of democracy, the Constitutional Court often encounters legal provisions that are insufficient to address the complexity of issues arising in resolving disputes over regional election results, particularly following the enactment of Law Number 10 of 2016. In such circumstances, the Court tends to adopt a judicial activism approach as a response to these legal inadequacies, aiming to realize substantive justice.¹² This approach considers not only the legal text but also the underlying values and broader purposes of the law for the benefit of society.¹³

⁷ Syailendra Anantya Prawira. "Election Violation and Election Law Enforcement in the General Election in Indonesia." *Jurnal Hukum Volkgeist*, 4(1), (2019):2534. <https://doi.org/10.35326/volkgeist.v4i1.424>

⁸ Hasni, H., Bachri, S., & Fatmawati, St. "Analysis of Law Enforcement on Crime of Regional Head Elections in South Konawe Regency." *Al- Adl*, 14(2), (2021): 161. <https://doi.org/10.31332/aladl.v14i2.2656>

⁹ Terrence Lyons, "Post-Conflict Elections and the Process of Demilitarizing Politics: The Role of Electoral Administration," *Democratization* 11, no. 3 (June 1, 2004): 36–62, <https://doi.org/10.1080/1351034042000238167>.

¹⁰ Arifki Budia Warman et al., "From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (December 2023): 161–83, <https://doi.org/10.1832>

[6/Ijtihad.V23I2.161-184.](https://doi.org/10.1832)

¹¹ Novendri M Nggilu et al., "The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards," *Journal of Law and Legal Reform* 6, no. 2 (2025):159–92, <https://doi.org/https://doi.org/10.15294/jllr.v6i2.20888>.

¹² Kukuh Pramono Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing The Best Interests of The Child With A Focus on Residency," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 245–66, <https://doi.org/10.18592/SJHP.V23I2.12278>.

¹³ John Sampe, Rosa Ristawati, and Be Hakyou, "The Guardian of Constitution: A Comparative Perspective of Indonesia and Cambodia," *Hasanuddin Law Review* 9, no. 2 (2023):211–32, <https://doi.org/http://dx.doi.org/10.20956/halrev.v9i2.4627>.

This stance aligns with Indonesia's legal system, which does not strictly adhere to the *freie Rechtslehre* doctrine (judges are free to create law) nor to legalism (*legisme*, where judges are mere executors of the law). Instead, Indonesia adopts the *rechtsvinding* doctrine (a synthesis of both), which holds that the law binds judges while retaining discretion to interpret and develop it as necessary.¹⁴ Accordingly, in cases of legal vacuum, judges are required to engage in legal discovery (*rechtsvinding*) to fill normative gaps and uphold justice.¹⁵ Judicial activism is closely associated with judges' active role in interpreting and discerning legal principles through their rulings in pursuit of justice.¹⁶ In simple terms, judicial activism can be understood as the proactive engagement of judges or the judiciary in legal proceedings.¹⁷ This approach may be applied across various branches of the judiciary, including civil, criminal, and administrative law, depending on the nature of the case.¹⁸ The term "judicial activism" was first introduced by Arthur Schlesinger in the January 1947 issue of *Fortune* magazine. It is generally used in contexts in which judges are

seen as creating legal norms or establishing new legal standards through their decisions, a process commonly referred to as "judges making law." Brian Galligan defines judicial activism as the exercise of control or influence by the judiciary over political and administrative institutions.¹⁹ Meanwhile, Black's Law Dictionary describes judicial activism as: "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent."²⁰ The practice of judicial activism originates in progressive legal thought, which emphasizes *interessenjurisprudenz*, the view that legal rules should not be interpreted solely through formal-logical reasoning but instead assessed against the law's broader purposes.²¹ This approach is rooted in the understanding that the fundamental aim of law is to protect and fulfil society's real needs and interests. Progressive legal theory contributes to innovative interpretations of the law while still recognizing the authority

¹⁴ Adi Syahputra Sirait et al., "The Contestation of Legal Foundations in the Resolution of Islamic Economic Disputes in Religious Courts," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (September 2024): 271–88, <https://doi.org/10.24090/MNH.V18I2.11934>.

¹⁵ Harifin A Tumpa, "Penerapan Konsep Rechtsvinding Dan Rechtsschepping Oleh Hakim Dalam Memutus Suatu Perkara," *Hasanuddin Law Review* 1, no. 2 (2015): 126–38, <https://doi.org/https://doi.org/10.20956/halrev.v1i2.90>.

¹⁶ Saiful Risky et al., "Political Configuration of Electoral System Law in Indonesia from State Administration Perspective," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 2023): 119–30, <https://doi.org/10.24090/VOLKSGEIST.V6I1.7940>.

¹⁷ Bagus Surya Prabowo, "Menggagas Judicial Activism Dalam Putusan Presidential Threshold Di Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 1 SE-Articles (March 28, 2022): 73–96, <https://doi.org/10.31078/jk1914>.

¹⁸ Gillian E Metzger, "Ordinary Administrative Law as Constitutional Common Law," *Columbia Law Review*, 2010, 479–536, <https://www.jstor.org/stable/27806624>.

¹⁹ Brian Galligan, "Judicial Activism in Australia BT -," in *Judicial Activism in Comparative Perspective*, ed. Kenneth M Holland (London: Palgrave Macmillan UK, 1991), 70–89, https://doi.org/10.1007/978-1-349-11774-1_5.

²⁰ Hasyim Sofyan Lahilote et al., "Judicial Digitalization in Central Indonesia: A Study of E-Court and E-Litigation Implementation in Courts," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 2 (2024): 315–32, <https://doi.org/10.18592/SJHP.V24I2.13879>.

²¹ Geofani Miltthree Saragih, Mirza Nasution, and Eka N A M Sihombing, "Judicial Review by the Constitutional Court: Judicial Activism vs. Judicial Restraint in the Perspective of Judicial Freedom," *Jurnal Konstitusi* 22, no. 1 SE-Articles (March 1, 2025): 39–65, <https://doi.org/10.31078/jk2213>.

of existing legal norms. In this context, judges who adhere to progressive legal thinking are guided not only by statutory provisions but also by conscience and a sense of justice in adjudicating cases.²² The paradigm of progressive law characterizes legal interpretation as dynamic and responsive to society's ever-evolving needs, underscoring the necessity of law's continuous adaptation to ensure and protect in a changing world.²³ In the practice of judicial activism, judges often assume a role that empowers them to evaluate and engage with political, social, and economic policies. In formulating their decisions, judges may at times develop legal rules commonly referred to as "judges making law, based on their individual perspectives. Such rulings are generally viewed as manifestations of judicial activism undertaken within the broader framework of realizing justice, as mandated by Article 5(1) of Law Number 48 of 2009 on Judicial Power.

This provision affirms that judges have an inherent responsibility to pursue justice in the discharge of their judicial duties actively. This obligation is further supported by Article 10(1) of the same law, which prohibits courts from refusing to examine, adjudicate, or decide a case on the ground that no law exists or that the law is unclear. This reinforces the application of the legal maxim *ius curia novit*, meaning "the court knows the law, a principle that presumes judges possess knowledge of the law necessary to render decisions, even in the absence of explicit legal provisions.²⁴ Judicial activism has two opposing views: one sees it as essential for protecting human rights, while the other criticises it as an overreach of judicial power into the

legislative or executive domains. In this article, judicial activism refers to judges' creation of new norms through their interpretations of legal provisions, particularly in resolving disputes over regional election results at the Constitutional Court. This activism is evident in the Court's handling of conflicts under the Regional Head Election Law from 2016 to 2025. Differences in interpretation of the law between election organizers and participants led the Court to temporarily set aside threshold requirements, which it justified by citing frequent electoral fraud that prevented candidates from meeting the threshold to file a petition contesting the results of the regional head general election. By doing so, the Court has developed new legal interpretations, prompting a critical discussion of the balance between formal legal requirements and substantive justice.

Many studies have examined judicial activism, but most have focused on the Constitutional Court's authority to review statutes in light of the 1945 Constitution. Nevertheless, academic analyses of judicial activism in regional election result disputes (PHPU Pilkada) also exist, including Zainal Arifin Mochtar's study, *Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes*, published in May 2025. In contrast to that research, the present study investigates the Constitutional Court's judicial activism in resolving disputes over regional head election results (PHPU Kada) explicitly during the 2016–2025 period. This research is more empirical and case-oriented, emphasising the Court's practice of

²² Scott L Cummings, "The Social Movement Turn in Law," *Law & Social Inquiry* 43, no. 2 (2018): 360–416, <https://doi.org/DOI: 10.1111/lsi.12308>.

²³ Marilang Marilang, "Menimbang Paradigma Keadilan Hukum Progresif," *Jurnal Konstitusi* 14, no. 2 SE-Articles (November 2, 2017): 315–31, <https://doi.org/10.31078/jk>

1424.

²⁴ Simon Butt, "Constitutional Court Decisions on the Judicial Independence of Other Indonesian Courts," *Constitutional Review* 9, no. 2 (2023): 247–75, <https://doi.org/10.31078/consrev922>.

setting aside vote-margin thresholds, its legal discovery processes, and its construction of new standards to realize substantive justice. Accordingly, the current study broadens the scope of prior scholarship by adopting a more sector-specific, decision-based analytical approach. Based on the above background, this study aims to analyze the application of the practice of disregarding the threshold requirements in the settlement of regional head election result disputes (PHPU Kada) by the Constitutional Court during the 2016–2025 period, as an effort to achieve substantive justice in the process of resolving regional election disputes. In addition, this study seeks to identify and examine the Constitutional Court's judicial activism in adjudicating PHPU Kada cases during 2016–2025, including the legal considerations underlying its decisions. In this regard, the present study formulates two main research questions:

1. How did the Constitutional Court apply the disregard of vote-margin thresholds in PHPU Kada during the 2016–2025 period, and what were the legal grounds and implications for electoral justice?
2. How does the Constitutional Court apply the practice of judicial activism in PHPU Kada during the 2016–2025 period?

Method

This study employs a Doctrinal legal research method.²⁵ Using secondary research materials and a case study approach. This research was conducted to identify legal rules, principles, and doctrines that address its research questions. The secondary data consist of primary, secondary, and tertiary legal materials obtained through library research.

²⁵ The doctrinal legal research method is a traditional and widely used approach in legal research, focusing on the identification, interpretation, and application of legal rules through an exhaustive review of literature, case law, and legislation.

The primary legal materials include statutory regulations relevant to this study, such as the 1945 Constitution, Law Number 10 of 2016, and other related legislation governing the Constitutional Court's authority to resolve disputes over regional election results. Secondary legal materials include legal doctrines, textbooks, law journals, commentaries on court decisions, and research findings and scholarly works. Tertiary legal materials serve to provide clarification and support for the primary legal materials, in the form of legal dictionaries and encyclopaedias. Data were collected through content analysis of written documents and library sources. Because this study focuses on decisions reflecting judicial activism, the researcher reviewed the Constitutional Court's rulings on regional head election disputes from 2016 to 2025. Each decision was examined in detail, including the verdict, legal considerations, and the ruling itself. Subsequently, the researcher identified decisions that exhibited characteristics of judicial activism. To optimize this research, a descriptive-analytical method is employed to describe existing policies and analyze the challenges of implementing judicial activism within these policies. By combining these approaches, this study seeks to examine the issues addressed in the research questions comprehensively.

Result and Discussion

The practice of disregarding the threshold requirements in the settlement of PHPU Kada during the 2016–2025 period

Since the enactment of Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulation instead of Law Number 1 of 2014 on the Election of

Mkhululi Nyathi, "Re-Asserting the Doctrinal Legal Research Methodology in the South African Academy: Navigating the Maze," *South African Law Journal* Vol. 140, No. 2 (2023): 365-386, <https://doi.org/10.47348/SALJ/v140/i2a5>.

Governors, Regents, and Mayors into Law (Regional Election Law), the Constitutional Court resumed its legitimacy in resolving regional election result disputes. This authority had previously been suspended in 2014, following the issuance of Government Regulation No. 1, which was later enacted as Law No. 1 of 2015. The continued validity of this legitimacy also has implications for the procedural law governing the Constitutional Court's authority to resolve disputes over regional election results, particularly with respect to the formal threshold for submitting a petition to the Court. The threshold provisions are stipulated in Article 158, paragraphs (1) and (2) of the Regional Election Law, as illustrated in the table below:

Table 1. Threshold for Filing Election Result Disputes for Governor and Vice Governor Elections

No	Number of Province Population	Threshold
1	<2.000.000	2%
2	>2.000.000 – 6.000.000	1,5%
3	>6.000.000 – 12.000.000	1%
4	>12.000.000	0,5%

Note: processed from Article 158 paragraph (1) of the Regional Election Law.

Table 2. Threshold for Filing Election Result Disputes for Regent/Mayor and Vice Regent/Vice Mayor Elections.

No	Number of Regency/City Population	Threshold
1	<250.000	2%

2	>250.000 – 500.000	1,5%
3	>500.000 – 1.000.000	1%
4	>1.000.000	0,5%

Note: processed from Article 158 paragraph (2) of the Regional Election Law

The threshold provision in Article 158 of the Regional Election Law has played a pivotal role in shaping the direction of regional head election result dispute proceedings. It establishes that petitioners' legal standing in disputes over regional election results is not solely based on their status as officially declared candidate pairs by the KPU, but also on their ability to meet the electoral threshold stipulated in Article 158. This aligns with Heru Widodo's explanation in his book *Hukum Acara Sengketa Pemilukada: Dinamika di Mahkamah Konstitusi*, where he notes: "The right to file an objection is limited to candidate pairs who meet a specific margin of vote difference, ranging from 0.5% to 2% depending on the population size of the electoral region. Candidate pairs beyond this margin, although officially registered, are deemed *personae miserales* (legally incapable of acting) and thus lack the standing to participate as parties in the court proceedings of simultaneous regional election disputes."²⁶

This was clearly demonstrated during the Constitutional Court's initial application of Article 158 in 2016, when it reviewed the results of the 2015 regional elections. The Constitutional Court received 152 cases disputing the results of regional head general elections.²⁷ Of these, only three were granted, five were rejected, six were withdrawn, and 138 were declared inadmissible. Most inadmissible cases were dismissed for the

²⁶ Stefanus Hendrianto, *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes* (Routledge, 2018), <https://doi.org/https://doi.org/10.4324/9781315100043>.

²⁷ MKRI.id, "Rekapitulasi Perkara Perselisihan Hasil Pemilihan Umum Kepala Daerah," mkri.Id, 2025. <https://www.mkri.id/perkara/rekapitulasi-perkara/phpkada>.

petitioners' failure to meet the formal threshold requirement. It is important to note that all cases that failed to meet the threshold set out in Article 158 of Law Number 10 of 2016 were examined during the dismissal phase, before the substantive hearing. As a result, in every instance where a petition did not meet the threshold, the Constitutional Court ruled the case inadmissible, thereby precluding it from proceeding to the evidentiary stage. The application of the threshold requirement continued in the adjudication of the cases in 2017. Out of 60 cases submitted to the Constitutional Court, 51 were declared inadmissible, six were rejected, and only three were granted.²⁸ More than half of the inadmissible cases were dismissed because the petitioners failed to meet the eligibility threshold. However, during the 2017 regional election result disputes, the Constitutional Court, in several decisions, departed from a strict application of procedural law by applying Article 158 of the Regional Election Law on a case-by-case basis. This means that in some instances, the Court deferred its consideration of the threshold requirement as a formal prerequisite until the final ruling. This shift was reflected in several landmark decisions, including Decision No. 14/PHP.BUP-XV/2017 dated 3 April 2017, Decision No. 42/PHP.BUP-XV/2017 dated 4 April 2017, Decision No. 50/PHP.BUP-XV/2017 dated 3 April 2017, and Decision No. 52/PHP.BUP-XV/2017 dated 26 April 2017. In these rulings, the Court demonstrated a willingness to temporarily set aside the application of Article 158 of Law Number 10 of 2016, provided that the conditions set out in its legal reasoning were met. Therefore, the Constitutional Court will consider the application of Article 158 of Law Number 10 of 2016 on a case-by-case basis. The cases that can override the threshold in the decisions above can be described as follows:

1. Decision No. 14/PHP.BUP-XV/2017 (Tolikara Regency, Papua)

In this case, the KPU Tolikara General Election Commission refused to follow the recommendation of the local Election Supervisory Committee, citing procedural errors and late submission as legal flaws. However, the Constitutional Court found that the 2017 regional election process in Tolikara, including vote counting and recounting, was legally defective, primarily due to the General Election Commission's failure to act on a lawfully valid recommendation from the Election Supervisory Committee. Accordingly, the Court held that Article 158 of Law Number 10 of 2016 (vote margin threshold) could not be immediately applied and that the threshold issue would be considered in the final decision.

2. Decision No. 42/PHP.BUP-XV/2017 (Puncak Jaya Regency, Papua)

The Puncak Jaya General Election Commission failed to count votes from six districts during the 2017 election, violating electoral laws. The Constitutional Court ruled that the vote recapitulation in General Election Commissions Decree No. 14/2017 was legally invalid. Thus, the vote margin threshold under Article 158 could not be used as a basis to assess the petitioner's legal standing. The threshold issue would instead be evaluated alongside the case's merits.

3. Decision No. 50/PHP.BUP-XV/2017 (Kabupaten Intan Jaya, Provinsi Papua)

In this case, the Constitutional Court stated that there had not yet been a definitive decision by the Intan Jaya Regency General Elections Commission (KPU) regarding the Determination of the Recapitulation of Vote Count

²⁸ Mkri.id.

Results and the Results of the 2017 Intan Jaya Regent and Deputy Regent Election. Therefore, there was no object of dispute as referred to in Article 157 paragraph (4) of Law No. 10 of 2016.

The Court found that there had been an extraordinary event or force majeure during the recapitulation of vote count results for the 2017 Intan Jaya Regent and Deputy Regent Election, which caused a delay in issuing the Decree on the Recapitulation of Vote Count Results and the Determination of the Elected Regent and Deputy Regent Candidates in the 2017 Intan Jaya Election. As a result, this situation created a sense of injustice and legal uncertainty, which could cause unrest among the public due to the absence of a determination of the candidates for the elected Regent and Deputy Regent positions.

4. **Decision No. 52/PHP.BUP-XV/2017 (Kepulauan Yapen Regency, Papua)**

The Kepulauan Yapen General Election Commissions ignored a directive from the national General Election Commissions to revoke a local decision cancelling a candidate's nomination.

The Constitutional Court deemed this a serious insubordination that undermined electoral integrity. Therefore, the Court refrained from applying the vote-margin threshold in determining the petitioner's legal standing under Article 158 to prevent this from becoming a negative precedent in future elections.

The four rulings above represent a new procedural approach adopted by the Constitutional Court in disputes over regional head election results, particularly in

cases that annul Article 158 of Law Number 10 of 2016. Beginning in 2017, the Constitutional Court began to handle some instances by deferring the application of Article 158, the vote margin threshold, from the preliminary stage to the final decision, thereby allowing it to examine the substance of the case. These cases set a precedent for resolving subsequent disputes over regional election results. A similar approach was used in 2018, when the Court received 72 disputes regarding the results of petitions for regional head general elections. Of these, two were granted, six were rejected, one was withdrawn, and two were dismissed. The remaining 61 cases (over 80%) were deemed inadmissible, primarily because the petitioners failed to meet the legal standing requirement under Article 158, and no exceptional circumstances justified departing from the threshold. Nonetheless, the Court also relied on past rulings to justify exceptions. This is reflected in Decision No. 71/PHP.BUP-XVI/2018 concerning the Paniai Regency election dispute, which involved a similar situation to that in Decision No. 14/PHP.BUP-XV/2017 concerning Tolikara Regency.

The cases described above illustrate that the Constitutional Court has primarily focused on procedural justice, often overlooking other factors that may affect the outcome of regional elections.²⁹ This approach has drawn criticism, especially from legal practitioners who mockingly refer to the Constitutional Court as merely a "Calculator Court".³⁰ Some legal scholars have also accused the Court of distorting democracy and neglecting substantive justice by rigidly applying vote-margin thresholds, without considering the underlying facts or legal arguments that gave rise to the dispute. In response, the

²⁹ Mkri.id, "MK Penegak Keadilan Substantif," mkri.Id, 2010, <https://www.mkri.id/index.php?page=web.Berita&id=4113&menu=2>.

³⁰ Nano Tresna Arfana, "Aswanto: MK Bukan Mahkamah Kalkulator," mkri.id, 2020, <https://www.mkri.id/index.php?page=web.Berita&id=16719>.

Constitutional Court adopted a more activist approach, beginning with the 2021 disputes over the regional election results. In this context, judicial activism refers to the Court taking a more proactive role by issuing rulings that go beyond existing legal norms or precedents. This extension constitutes a judicial legal innovation aimed at achieving substantive justice in resolving election disputes.³¹ In 2021, the Constitutional Court received 153 petitions related to regional election disputes. Of these, 20 were granted, 14 were rejected, seven were withdrawn, four were deemed outside the Court's jurisdiction, and two were dismissed. Additionally, 104 cases were declared inadmissible.³² Despite these rejections, the Court continued to invoke three justifications for bypassing the vote-margin threshold used in prior election-dispute resolutions. One such case was No. 84/PHP.BUP-XIX/2021, involving the election dispute for Yalimo Regency, which mirrored previous cases like No. 71/PHP.BUP-XVI/2018 and 14/PHP.BUP-XV/2017. In the following decisions, the Court took new considerations to override the vote margin threshold:

1. **Decision No. 84/PHP.BUP-XIX/2021** on the election dispute for Nabire Regency, Papua (2020). The Court found discrepancies between the actual population and the voter list and, accordingly, declared the election results invalid because they were based on an inaccurate voter list.
2. **Decision No. 132/PHP.BUP-XIX/2021** on the election dispute for Boven Digoel Regency, Papua (2020). The Court questioned the eligibility of candidate Yusak Yaluwo based on inconsistencies in meeting the required five-year waiting

period following a criminal conviction. This led the Court to reject the vote tally as the basis for applying the threshold under Article 158 of Law No. 10/2016.

3. **Decision No. 133/PHP.BUP-XIX/2021** on the election dispute for Sabu Raijua Regency, East Nusa Tenggara (2020). The Court noted that one candidate was a U.S. citizen with a valid U.S. passport, raising concerns about eligibility under Article 158(2)(a) of Law No. 10/2016, which influenced the Court's consideration of the case.

In 2024, the General Election Commissions conducted simultaneous regional elections in 545 provinces and regencies across Indonesia. Of the 315 election disputes filed, only 40 (12.7%) proceeded to trial, and 26 (8.25%) petitions were granted. Most cases (237; 75.24%) were dismissed as inadmissible, 29 (9.21%) were withdrawn, 8 (2.54%) were dismissed for expiration of the petition, and 6 (1.90%) were outside the Court's jurisdiction. Of the decisions granted, 24 cases instructed the General Election Commission in the respective regions to conduct a re-vote. Additionally, in one case, the Constitutional Court ordered the General Election Commission to recalculate the vote tally in Case No. 305/PHPU.BUP-XXIII/2025 regarding the Puncak Jaya election dispute. In Case No. 274/PHPU.BUP-XXIII/2025 regarding the Jayapura election dispute, the Constitutional Court directed the General Election Commissions to amend the decision on the 2024 Jayapura Regency election results. During the examination of disputes arising from the 2025 regional elections, the Constitutional Court added new cases that

³¹ Satrio Alif Febriyanto, "Judicial Activism MK Dalam Putusan Dismissal Perselisihan Hasil Pilkada 2024," *hukumonline.com*, 2025, <https://www.hukumonline.com/berita/a/judicial-activism-mk-dalam-putusan-dismissal-perselisihan-hasil-pilkada-2024-lt67bdf23241c58>.

³² MKRI.id, "Rekapitulasi Perkara Perselisihan Hasil Pemilihan Umum Kepala Daerah," *mkri.id*, 2025. <https://www.mkri.id/perkara/rekapitulasi-perkara/phpkada>.

could override the vote margin threshold. The following cases illustrate this:

1. **Decision No. 02/PHPU.BUP-XXIII/2025** (Pasaman Bupati and Deputy Bupati election, 2024): There was a special incident in which one of the candidate pairs never openly and honestly stated to the public that the person concerned was a former convict, as regulated in Article 7 paragraph (2) letter g of Law 10/2016. Therefore, the Constitutional Court postponed the validity of Article 158 of Law 10/2016.
2. **Decision No. 05/PHPU.WAKO-XXIII/2025** (Banjarbaru Mayor and Deputy Mayor election, 2024): The election involved only a single candidate, but the General Election Commission did not provide a blank column on the ballot, which conflicted with the procedure for a single-candidate election. The Constitutional Court identified uncertainty in the voting process and concluded that the petitioner's legal standing could not be fully considered. Thus, the Constitutional Court deferred the application of the threshold requirements under Articles 157 and 158 of Law No. 10/2016.
3. **Decision No. 70/PHPU.BUP-XXIII/2025** (Serang Bupati and Deputy Bupati election, 2024): The Constitutional Court identified an exceptional circumstance where a violation occurred, involving a massive, systematic, and structured election violation, undermining the fairness of the election. The involvement of the Minister of Villages and his relation to one of the candidates led to the deferral of the threshold application under Article 158 of Law No. 10/2016.
4. **Decision No. 195/PHPU.BUP-XXIII/2025** (Kutai Kartanegara Bupati and Deputy Bupati election, 2024): The Constitutional

Court noted an issue concerning a candidate who may not have fulfilled the two-term requirement for the position, as stipulated in Article 7(2)(n) of Law Number 10 of 2016. If true, this would constitute an extraordinary circumstance allowing the deferral of the threshold requirement under Article 158 (2) (c) of Law Number 10 of 2016.

These cases illustrate the conditions under which the Constitutional Court may disregard the vote margin threshold as a formal legal requirement, as applied in the 2017, 2021, and 2024 dispute decisions. These conditions include:

- a. The General Election Commission is ignoring recommendations from the Election Supervisory Committee to conduct a re-vote, despite the legal basis.
- b. The General Election Commissions are proceeding with the election results despite discrepancies in vote tallying at the district level.
- c. The General Election Commission's failure to act on directives from the central, provincial, and Election Supervisory Agency.
- d. The candidacy of a former convict who does not meet the eligibility requirements.
- e. Invalid voter lists exceeding the actual population in the area.
- f. A candidate holding U.S. citizenship disqualifies them from registration as a regional candidate.
- g. Massive, structured election violations by a candidate.
- h. Doubts regarding the fulfilment of the two-term requirement for candidates.
- i. Uncertainty in the voting and counting process that undermines the election's integrity.

The practice of judicial activism in PHPU Kada during the 2016–2025 period at the Constitutional Court

In this discussion, the practice of judicial activism in PHPU Kada during the 2016–2025

period at the Constitutional Court will be divided into two parts, namely: (1) the Regional Head Election Results Dispute Case Number 132/PHP.BUP-XIX/2021, which serves as a follow-up to the implementation of the 2020 regional elections; and (2) Judicial Activism in the 2025 Regional Election Case, as a follow-up to the implementation of the 2024 regional elections.

The author argues that judicial activism was not implemented until 2021. This did not occur in 2016, when the 2015 regional head election regime was implemented, during which the Constitutional Court's authority was temporary.

1. Practice of Judicial Activism in Regional Head Election Results Dispute Case Number 132/PHP.BUP-XIX/2021.

In at least one case that may have overridden the threshold for filing disputes over regional head election results in 2021, the Constitutional Court engaged in judicial activism. This is evident in the Constitutional Court Decision No. 132/PHP.BUP-XIX/2021, concerning the 2020 election dispute for the Regent and Deputy Regent of Boven Digoel, Papua. The case concerned Article 7(2)(g) of Law No. 10/2016, which stipulates that a final court decision must not have convicted candidates for the position of regional head and, if they are former convicts, must openly disclose their criminal records. This provision sparked controversy during the regional elections.³³ It is also important to note that Article 7 paragraph (2) letter g of Law No. 10/2016, which was central to this case, became an issue due to differences in opinion or interpretation between the Indonesian General Election Commission and its lower-level offices as election organizers, and the election supervisory body, namely the Indonesian Election Supervisory Agency (*Bawaslu*) and its subordinate offices. These differences concerned the implementation of

the provisions of Article 7 paragraph (2) letter g of Law No. 10/2016, as further regulated in Article 4 paragraph (1) letter f and paragraph (2a) of General Election Commission Regulation Number 1 of 2020. This occurred even though the Constitutional Court had already ruled on the constitutionality of Article 7 paragraph (2) letter g of Law Number 10 of 2016 in Decision No. 56/PUU-XVII/2019, dated 11 December 2019, in a judicial review of the Regional Election Law against the 1945 Constitution of the Republic of Indonesia.

In case Number 56/PUU-XVII/2019, the Court, in its legal considerations, stated that: "the waiting period must be reinforced for former prisoners who will nominate themselves as regional head candidates as per the legal considerations in Constitutional Court Decision Number 4/PUU-VII/2009. Likewise, regarding the length of the deadline, the Court also remains consistent by referring to the legal considerations of Constitutional Court Decision Number 4/PUU-VII/2009, namely that regional head candidates who have completed their criminal period are required to wait 5 (five) years to be able to nominate themselves as regional head candidates, except for regional head candidates who commit criminal acts of negligence and political crimes in the sense of an act which is declared a criminal act in positive law simply because the perpetrator has a different political view from the regime in power." With such legal considerations, the Constitutional Court in its decision stated that Article 7 paragraph (2) letter g of the Regional Election Law is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as having passed the period of 5 (five) years after the former convict has finished serving a prison sentence based on a court decision which has permanent legal

³³ Alasman Mpesau, "Diskursus Atas Mantan Terpidana Sebagai Calon Kepala Daerah," *Jurnal*

Hukum Saraswati 6, no. 1 SE- (March 30, 2024): 560–77, <https://doi.org/10.36733/jhshs.v6i1.8814>.

force; In Decision No. 56/PUU-XVII/2019, the Constitutional Court, in its legal considerations, stated that a waiting period must be reinstated for former convicts seeking to run for regional head positions, as previously outlined in Decision No. 4/PUU-VII/2009.³⁴ The Court maintained consistency in the duration of this waiting period, affirming that individuals must wait five years after completing their prison sentence before becoming eligible to run, except in cases involving negligence or political crimes, defined as acts criminalized solely for holding views that differ from those of the ruling regime.³⁵ Based on these considerations, the Court ruled that Article 7(2)(g) of the Regional Election Law is unconstitutional and conditionally unenforceable unless interpreted to include a five-year waiting period following the completion of a sentence, as determined by a final and binding court decision. It reads:

Candidates for Governor and Candidates for Vice Governor, Candidates for Regent and Candidates for Vice Regent, as well as Candidates for Mayor and Candidates for Vice Mayor, as referred to in paragraph (1), must fulfill the following requirements:

- g. (i) have never been convicted based on a court decision that has obtained permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more, except for convicts who commit criminal acts of negligence and political crimes in the sense of an act that is declared a criminal act in positive law only because the perpetrator has a political view that is different from that of the regime in power;*
- (ii) for former convicts, a period of 5 (five) years has passed after the former convict*

has completed serving a prison sentence based on a court decision that has permanent legal force and has honestly or openly announced the background of his identity as a former convict; and (iii) not be a repeat offender.

The interpretation of Article 7(2)(g) of Law Number 10 of 2016, as set out in Constitutional Court Decision No. 56/PUU-VII/2009, continues to present challenges in its implementation, particularly regarding the commencement of the five-year waiting period for former convicts seeking to run in regional elections. In Case No. 132/PHP.BUP-XIX/2021, the Indonesian General Election Commission held that the five-year period should begin after the convict has fully completed their sentence and no longer has any legal or administrative ties with the Ministry of Law and Human Rights, except in cases involving former drug traffickers or sexual offenders against children, as specified in the Elucidation of Article 7(2)(g). In contrast, the Election Supervisory Agency interpreted the term “former convict” as referring to someone who is no longer physically serving time in prison. Under the Election Supervisory Agency’s interpretation, a person granted parole may already qualify as a former convict. Due to differences in interpretation among election authorities and, in the interest of legal certainty, the Constitutional Court engaged in judicial activism in Case No. 132/PHP.BUP-XIX/2021 to clarify the meaning and application of Article 7(2)(g) of the Regional Election Law. The Court, in its legal consideration of decision Number 132/PHP.BUP-XIX/2021, stated:

“That because in practice there are still different opinions or interpretations found,

³⁴ I Gede Widhiana Suarda et al., “Debating Political Rights: The Revocation of Former Convicts’ Rights to Be Elected in Indonesian Elections,” *Lentera Hukum* 12, no. 1 (2025). <https://doi.org/10.19184/ejlh.v12i1.52923>

³⁵ Musyafiatun Musyafiatun, “Pencalonan Mantan Narapidana Sebagai Anggota Legislatif Perspektif Fikih Siyasah,” *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 02 (2015): 561–87, <https://doi.org/10.15642/ad.2014.4.02.561-587>.

in case in the a quo case, namely between the General Election Commission and Election Supervisory Agency, regarding the meaning of former convicts as stipulated in Article 7 paragraph (2) letter g of Law 10/2016, the implementation of which is regulated in the provisions of Article 4 paragraph (1) letter f and paragraph (2a) PKPU 1/2020. Furthermore, Article 7 paragraph (2) letter g of Law 10/2016 has been decided by The Court in Constitutional Court Decision Number 56/PUU-XVII/2019, dated 11 December 2019, stated that a former convict is someone who has finished serving a "prison sentence".

As for the Constitutional Court Decision Number 56/PUU-XVII/2019, the use of the word "prison" in the a quo decision is intended by the Court to prevent other interpretations with other types of crimes, considering that in Article 10 of the Criminal Code, there is not only one type of crime. The Court only emphasizes 1 (one kind of crime, namely imprisonment, so that in its decision, the Court mentions imprisonment, because if the Court, in its Constitutional Court Decision Number 56/PUU-XVII/2019 only mentions "criminal" then it will potentially give rise to interpretations of other main crimes, namely the death penalty, imprisonment, fines and imprisonment. It can even be interpreted as additional punishment, namely, the revocation of certain rights, the confiscation of certain goods, and the announcement of the judge's decision. Thus, the phrase "imprisonment" was chosen because the Court's decision was directed at persons serving prison sentences for crimes punishable by more than five years, not at other crimes covered by Article 10 of the Criminal Code.

Therefore, in making this decision, the Court must also reaffirm that "finished serving a prison sentence," as referred to in Constitutional Court Decision Number 56/PUU-XVII/2019, means a convict who

has served his sentence in accordance with the court's decision. In other words, for a convict who is serving a criminal term either in a correctional institution or on parole (outside a correctional institution), in principle, this is only related to the technicalities or procedures for serving his sentence. Thus, for prisoners granted conditional release, even if they are no longer in a correctional institution, their legal status remains that of a convict. "It's the same with convicts who are sentenced to probation, even though the person concerned is not actually serving a sentence in a correctional institution, his status remains as a convict until the probation period ends, as stated by the judge's decision."

According to the author, although the Constitutional Court in Case No. 132/PHP.BUP-XIX/2021, based on Decision No. 56/PUU-XVII/2019, the Court expanded the interpretation of the term "convict" as used in Article 7(2)(g) of the Regional Election Law. Traditionally, a "convict" refers to an individual serving a sentence in a correctional facility following a final court verdict. However, in this decision, the Constitutional Court broadened the definition also to include individuals granted parole, even if they are no longer physically in prison. This reinterpretation constitutes judicial activism by the Constitutional Court in the adjudication of the 2021 Regional Head Election Result Dispute case.

2. Judicial Activism in the 2025 Regional Head Election Case.

Judicial activism by the Constitutional Court was also evident in the 2025 Regional Head Election dispute resolution. This approach was applied in several cases to avoid inconsistencies in the interpretation of the legal norms governing regional head elections, whether arising between election organizers and participants or among the organizers themselves. This was reflected in the following decisions:

a. Case Number 02/PHPU.BUP-XXIII/2025

The Constitutional Court Decision Number 02/PHPU.BUP-XXIII/2025 pertains to the dispute over the 2024 Pasaman Bupati and Deputy Bupati election. In the legal considerations of this decision, the panel of judges stated that, to revalue and present a leader who is clean, honest, and has integrity, specific guidelines or limitations, as requirements for nomination, as determined by laws and regulations, must be met in their entirety by each candidate without exception. Furthermore, these limitations exist solely to ensure voters' rights and freedoms in electing a regional head who is sufficiently competent, honest, and impartial.

The honesty of prospective Election Participants is demonstrated at the time of registration. Therefore, with respect to the administrative requirements for nomination, prospective election participants must complete the documents accurately and truthfully, as integrity is one of the criteria for election participants. Related to the requirements in question, there is a requirement never to have committed a reprehensible act as evidenced by a police record certificate [*vide* Article 7 paragraph (2) letter i of Law 10/2016]. In this regard, the police record certificate serves as evidence that the applicant has never committed a reprehensible act. Thus, in this decision, the Constitutional Court carried out judicial activism by interpreting reprehensible acts as in Article 7 paragraph (2) letter i of Law 10/2016, which is measured from the issuance of a police record certificate.

b. Case Number 05/PHPU.WAKO-XXIII/2025

The Constitutional Court Decision Number 05/PHPU.WAKO-XXIII/2025 pertains to the dispute over the 2024 Banjarbaru City Mayor and Deputy

Mayor election. In this case, the Court identified circumstances distinct from those in other instances, prompting it to exercise judicial activism by interpreting the term "other disturbances" in Article 120(1) of Law Number 1 of 2015.

This activism began with a petition filed by the South Kalimantan Archipelago Vision Study Institute against the General Election Commission of Banjarbaru City, acting as the Respondent. The Petitioner argued that although two candidate pairs initially contested the election, Candidate Pair 1: Lisa Halaby Wartono and Candidate Pair 2: Muhammad Aditya Mufti Arifin-Said Abdullah, the candidacy of Pair 2 was annulled by the Respondent through the General Election Commission of Banjarbaru Decree Number 124 of 2024. This left only one candidate pair, turning the election into a single-candidate contest.

According to the Petitioner, under Article 54C paragraph (1)(e) and paragraph (2) of the Regional Election Law, elections with only one candidate pair must be conducted with a ballot that includes two columns: one for the candidate pair and one blank column, allowing voters to either support or reject the sole candidate. The Petitioner also referenced Constitutional Court Decisions Number 100/PUU-XIII/2015 and 14/PUU-XVII/2019 to support this interpretation. The Respondent, however, rejected these claims, arguing that Article 54C did not govern the legal consequences of canceling a candidate pair in a two-candidate contest. Furthermore, they highlighted logistical and legal issues if the election were postponed or the ballot papers reprinted with a blank column, particularly given that the cancellation occurred fewer than 20 days before the voting day. In its judgment, the Constitutional Court concluded that the unique situation, with only one candidate

pair remaining fewer than 29 days before the election, constituted "other disturbances" under Article 120 paragraph (1). The Court thus ruled that the election should have been postponed to allow time for appropriate ballots to be printed. The Court also stated that the stages and simultaneity of the 2024 regional elections could be set aside in exceptional circumstances where such action is legally justifiable. In this ruling, the Court reinterpreted the term "other disturbances" in Article 120 (1) of the Regional Election Law to encompass specific unforeseen conditions, thereby demonstrating judicial activism.

c. **Case Number 195/PHPU.BUP-XXIII/2025**

Another instance of judicial activism in the 2025 regional head election results dispute was observed in Constitutional Court Decision Number 195/PHPU.BUP-XXIII/2025, delivered during a public plenary session on Monday, February 24, 2025. In this case, the Court adopted a progressive interpretation of candidate eligibility requirements, specifically regarding the two-term limit for regents under Article 7 paragraph (2)(n) of the Regional Election Law.

The petition in the 2024 Kutai Kartanegara Regent and Deputy Regent election was submitted by Candidate Pair Number 3, Dendi Suryadi and Alif Turiadi, against the Kutai Kartanegara Regency General Election Commission. The Petitioners contended that Candidate Number 1, Drs. Edi Damansyah, M.Si, was ineligible to run, having already served two terms as Regent—once as acting (Plt) and once as definitive Regent. In response, the Respondent argued that Edi Damansyah's tenure should be counted only from his official inauguration as definitive Regent on February 14, 2019, and not from when he started serving as acting Regent on

October 10, 2017. The Relevant Party (Candidate 1) also cited Constitutional Court Decision Number 2/PUU-XXII/2023 and other related legal instruments, arguing that acting roles do not count toward the two-term limit, notably if the appointment lacks the definitive status mandated by law.

The Constitutional Court found it necessary to revisit and emphasize the interpretation of Article 7 paragraph (2)(n) concerning term limits. The Court reaffirmed that serving in an acting capacity does not necessarily count toward the two-term limit unless specific legal and formal conditions are met. Thus, the Court ruled that Edi Damansyah's candidacy was legally valid.

d. **Case Number 313/PHPU.BUP-XXIII/2025**

The Constitutional Court case has attracted significant public attention. This happened in the case of the Dispute over the Results of the 2024 North Barito Bupati and Deputy Bupati election.

The Constitutional Court disqualified both pairs of candidates for Bupati and Bupati Regent of North Barito, both Candidate Number 1 (H. Gogo Purman Jaya, S.Sos., and Drs. Hendro Nakalelo, M.Si.) and Candidate Pair for Regent and Deputy Regent Number 2 (Akhmad Gunadi Nadalsyah, S.E., B.A., and Sastra Jaya) from participating in the 2024 Election for Bupati and Bupati Regent of North Barito. The Constitutional Court found that the two pairs had been legally and convincingly proven to have engaged in money politics.

This decision constitutes judicial activism because the Constitutional Court holds that any act of money politics that undermines the integrity of general elections is not justifiable. As a consequence, the purity/cleanliness of the vote is an absolute principle that

cannot be negotiated, and violations of it cannot be tolerated. Therefore, the Constitutional Court considers that money politics will be measured using the TSM parameter, which is not only guided by the quantity of money politics, but must also be considered in terms of the quality or weight of the violations regarding the practice of money politics, which significantly determines the electability of candidate pairs.

From the foregoing discussion, the Constitutional Court's decision to adopt a judicial activism approach is an essential step toward remedying violations of the democratic process. This is to ensure that elections remain integral to democracy. Democracy and the electoral process are inseparable. The Constitutional Court's practice of legal breakthroughs to achieve substantive justice is categorized as judicial activism. On the one hand, it is needed to protect democracy. However, it also has its challenges. The Constitutional Court, in several cases concerning regional head election disputes, was progressive, making legal breakthroughs to examine systemic, widespread violations in local elections.³⁶ Based on the discussion of the Constitutional Court's practice of *judicial activism* in resolving regional head election disputes (PHPU Kada) during the 2016–2025 period, several steps must be taken by both the legislature and the election management bodies to ensure that the performance of their constitutional duties proceeds more effectively and does not continually depend on judicial correction through Constitutional Court rulings. For the legislature, the first essential step is to harmonise and comprehensively revise the regulations governing regional head elections. The provisions within Law No. 10 of 2016 and its

implementing rules often give rise to multiple interpretations, particularly concerning candidate eligibility, deadlines for submitting disputes, and the determination of violations that are structured, systematic, and massive in nature. Legislators must review these provisions to prevent legal vacuums that compel the Constitutional Court to engage in *judicial activism* as a corrective measure. Furthermore, the legislature must also follow up on Constitutional Court decisions in a normative manner. Many rulings, such as Decision No. 56/PUU-XVII/2019 and Decision No. 132/PHP.BUP-XIX/2021, have provided constitutional interpretations of norms that should promptly be adopted into statutory law. Delays in implementing these rulings only prolong legal uncertainty and invite the Court to assume an active, corrective role through interpretive means. In addition, the legislature should establish a periodic evaluation mechanism to assess the effectiveness of electoral norms. The House of Representatives (DPR), together with the government, should create an evaluative forum during each election period to determine whether existing regulations remain consistent with the principles of substantive justice and sound electoral democracy. In this context, legislators must ensure that the regulations they produce not only provide legal certainty but also leave room for substantive justice, thereby reducing the need for judicial activism to remedy the weaknesses of positive law.

Meanwhile, for electoral management bodies such as the General Elections Commission and the Election Supervisory Board, an essential step is to standardise the interpretation of electoral norms. Differences in interpretation between these two institutions, such as in the 2021 Boven Digoel case concerning the status of a “former

³⁶ Zainal Arifin Mochtar. “Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral

Disputes.” *Constitutional Review*, Vol 11, Number 1, (2025): 36-62. <https://doi.org/10.31078/consrev1112>

convict" and the five-year waiting period, have often been a source of disputes brought before the Constitutional Court. Therefore, election organisers must adopt a unified set of guidelines based on the Constitutional Court's official interpretations to ensure consistent implementation in practice. Vertical and horizontal coordination among the different levels of election organisers must also be strengthened to prevent policy disharmony between the central, provincial, and district/city KPU offices. Beyond harmonising interpretations, enhancing the legal capacity of election administrators is also imperative. Officials of KPU and Bawaslu must understand not only technical aspects but also the constitutional implications of Constitutional Court rulings that affect electoral administration. Continuous legal training and guidance will help them make decisions consistent with the principles of electoral justice. On the other hand, Bawaslu must also strengthen its monitoring system and early-detection mechanisms to address potential structured, systematic, and massive violations. Data-driven oversight and public participation can serve as effective instruments to prevent disputes before they reach the Constitutional Court.

Finally, inter-institutional synergy is equally vital. A consultative forum comprising the DPR, the Government, the KPU, and Bawaslu is necessary to align constitutional rulings with electoral management practices. Such a forum could function as a legal and political communication platform to prevent normative gaps, minimise interpretive discrepancies, and proactively anticipate potential electoral disputes. Through these measures, it is expected that *judicial activism* will no longer serve merely as a corrective response to systemic weaknesses but will evolve into a constructive component of the legal order, thereby strengthening the principles of substantive justice and constitutional democracy in Indonesia.

Conclusion

The Constitutional Court may override vote-margin thresholds in exceptional cases where the integrity of the electoral process is at stake, and the final vote outcome could be affected. Such conditions include: (1) the KPU fails to implement the recommendation of the Regional Election Supervisory Committee to conduct a re-vote, even though trial findings establish the legal soundness of the recommendation; (2) the KPU does not comply with applicable laws and regulations and disregards the vote count results at the sub-district/district level, proceeding directly to the recapitulation of results at the regency/city level; (3) the KPU failure to act upon formal communications and recommendations from the National and Provincial Election Commissions as well as the Election Supervisory Agency constitutes a serious breach of duty and insubordination; (4) candidate pairs include former convicts who do not meet the eligibility requirements stipulated in electoral legislation; (5) the final voter list is legally flawed, with the number of registered voters exceeding the actual population in the area; (6) candidate pairs include foreign nationals who do not meet the citizenship requirement to register as regional head candidates; (7) there is evidence of structured, systematic, and massive election violations committed by one of the candidate pairs; (8) there are legitimate concerns regarding the eligibility criteria, particularly the two-term limit for candidates seeking re-election as regional heads; and (9) there is uncertainty surrounding the voting and vote-counting process, raising doubts about the validity of the election outcome. Judicial activism has marked the Court's approach from 2021 to 2025, reflecting a proactive stance in ensuring substantive justice. This method addresses legal ambiguities and prevents inconsistent application of electoral norms by various stakeholders. Moreover, without judicial activism, the Constitutional Court cannot adjudicate violations of the

regional head elections that were not resolved at the previous stage.

These findings carry strategic implications for both election organisers and lawmakers. For election organisers, namely the KPU and the Bawaslu, the Constitutional Court's practice of judicial activism underscores the importance of institutional coordination in interpreting and applying electoral law. Differences in the interpretation of provisions in Law Number 10 of 2016 often give rise to legal uncertainty. Therefore, it is essential to develop joint interpretive guidelines and conduct regular training on the Constitutional Court's jurisprudence to ensure consistent application of electoral norms and to strengthen institutional integrity in the administration of elections. For lawmakers, these findings underscore the need to revise and harmonise Law Number 10 of 2016 to incorporate the Constitutional Court's evolving jurisprudence. Legislators should also institutionalise the principle of substantive electoral justice to reduce reliance on judicial intervention as a corrective mechanism and to strengthen a more coherent and sustainable electoral legal framework.

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