THE FORERUNNER OF THE CONSTITUTIONAL COURT: THE DEVELOPMENT OF AUTHORITY IN ELECTION DISPUTES TO THE DISCOVERY OF NEW LEGAL PRINCIPLES

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ABSTRACT

Indonesia has a state institution to examine laws and regulations, namely the Constitutional Court. The Constitutional Court, in its development has the authority to decide PHPU. The purpose of the research is to discuss and analyze the legal rules formed from the Constitutional Court's decision. This research uses historical and conceptual approaches. As a result, the forerunner of the establishment of the Constitutional Court is the need of the Indonesian people for a state institution that tests laws against customary law, and Islamic law, to the idea of testing laws against the constitution and other laws and regulations. This authority then develops and extends to the scope of General Elections because elections are a form of democracy. As a state of law, Indonesia is obliged to run an ideal democracy. Then, several new legal principles emerged in the Constitutional Court's decision regarding the decision to review the law and the decision to dispute the election results. The new legal principles are substantive justice overriding procedural justice; protection of citizens' constitutional rights; and non-discrimination. Meanwhile, new legal principles related to PHPU cases are material truth over formal truth; the court can cancel decisions in the democratic process; protection of citizens' constitutional rights; and the principle of paying attention to the development of society.

Keywords: Constitutional Court; Judicial Review; Election Dispute; New Legal Principles in Constitutional Court Decision; Democracy.

INTRODUCTION

Legislation always lags behind the faster development of society. Therefore, the statement het recht hinkt achter de feiten aan, meaning that the law follows the events backwards, seems relevant. Judges solve concrete problems faced with the reality of legal norms that must be interpreted. Sometimes, the rules are unclear, vague, conflicting, outdated, or unjust.

Judges resolve cases using written and unwritten law. If the judge determines the law in the decision and then other judges follow it continuously, it will become jurisprudence or judge's law. This decision also becomes a source of law in the future.

The prevalence of this phenomenon also occurs in the Constitutional Court, although with a different character. The Constitutional Court is a court whose decisions are final and binding. The Constitutional Court's decision implies the non- binding of a law that the state previously had the power to enforce. The Constitutional Court's decision also applies by itself without the need for coercion. The Constitutional Court's decision is binding on everyone in the country.

Constitutional Court judges interpret two legal norms simultaneously, namely constitutional and statutory norms, to make decisions. Therefore, constitutional court decisions are crucial in addition to written regulations, not only in the ruling, but also in the constitutional interpretation.

The essential factor of a decision (ratio decidendi) becomes a guideline in the future on the same matter. The previous racio decidendi also binds Constitutional Court judges to create legal certainty. However, Constitutional Court judges can also depart from this ratio decidendi if there is a new basis for constitutionality or the demands of future societal developments.

This research aims to discuss and analyse the legal rules formed from the Constitutional Court's decisions, not only in cases that are granted, but also conditionally unconstitutional, conditionally constitutional, and even decisions that reject applications, especially those related to General Election disputes.

The authority of the Constitutional Court to decide disputes over election results (Disputes over General Election Results or *Perselisihan Hasil Pemilihan Umum* (PHPU) of the Legislature and PHPU of the President and Vice President, as well as PHPU of Regional Heads), examining concrete cases, the Constitutional Court made many legal breakthroughs, both material and formal law. In this paper, the author classifies the Constitutional Court's decisions into five groups, namely: (1) related to voting rights and requirements for exercising voting rights; (2) related to election participants and candidate requirements; (3) related to the election system, vote counting and determination of elected candidates; (4) related to election organizers; and (5) related to the mechanism for resolving violations and PHPU.

For example, in relation to the right to vote and the requirements to exercise the right to vote, the author presents the ratio decidendi that the regulation of restrictions on the right to be elected as a member of the legislature based on different political beliefs is discriminatory. The decision has a message that there should be no discrimination regarding the right to vote and be elected.

In addition, the author also presents legal concepts formed by the Constitutional Court in adjudicating PHPU cases. The legal concept in the PHPU case decision does not only apply to the case that is decided, but becomes the next reference.

RESEARCH METHODS

This research uses a historical approach and conceptual approach. The historical approach traces the history of legal institutions, thus helping researchers understand the philosophy of legal rules over time and their development (Marzuki, 2022, p. 166). Meanwhile, the conceptual approach is an approach taken when what is found is a general meaning and must build concepts to become a reference in the research. Researchers depart from the views and doctrines that develop in law to build concepts (Marzuki, 2022, p. 178). This research uses primary and secondary legal materials. Primary legal materials are the 1945 Constitution of the Republic of Indonesia. Secondary legal materials are books, journals, reports, websites, theses, dissertations, proceedings, and other scientific articles relevant to the research issue. This research aims to discuss and analyze the legal rules formed from the Constitutional Court's decision. Then, the author will present new legal principles in the Constitutional Court's decision.

RESULT AND DISCUSSION

The Emergence of the Idea of Constitutionality Testing of Laws

The Third Amendment to the 1945 Constitution established the Constitutional Court, which is a judicial body with the power to hear cases at both the initial and final stages. The Court's decisions are final and ensure that laws comply with the Constitution. It is also responsible for resolving disputes over the jurisdiction of state institutions and political party dissolution. Furthermore, the Court is required to decide on the House of Representatives or DPR's opinion regarding alleged violations by the President and/or Vice President, per the Constitution. Lastly, the Court is empowered to settle disputes arising from general elections.

The main authority of the Constitutional Court is to test laws against the Constitution or what is known as testing the constitutionality of laws (judicial review). In addition, it also has the authority to decide disputes over election results.

About the Constitutional Court's authority to test constitutionality, some literature explains that the Constitutional Court is based on the thinking of Hans Kelsen (Asshiddiqie, 2008, p. 486). Kelsen explained that the constitution is the highest law of the national legal system which is also the source of validity of legal norms below it. To uphold the constitution, it is necessary to guarantee that the rules under the constitution do not conflict with the constitution. Therefore, there is a need for a judicial institution that is tasked with testing the constitutionality of legal products and has the authority to cancel if the legal product is contrary to the constitution.

This authority can be given to ordinary courts, but their decisions are limited to refusal to apply legal norms that are considered unconstitutional. If there is a constitutional court itself, then its authority includes the cancellation or elimination of norms so that they cannot be implemented by other state organs (Asshiddiqie, 2008, p. 157).

In the development of law in the United States, judicial review is a manifestation of the system of checks and balances adopted by the constitution. This principle is built on the separation of powers, so none of the three, namely the judiciary, executive or legislature, has full power (Levy, 2005, p. 2).

The Constitutional Court has been established in countries in democratisation and transitioning from an authoritarian regime to a democratic state. This is because the country has received guarantees of fundamental rights and constitutional rights and limits the power of state organs. This guarantee is implemented in the form of demands on the state, so that the state Field can truly enjoy the constitution (Asshiddiqie, 2008, p. 108).

The Constitutional Court was first established as an independent institution in Austria through the 1920 Constitution. The establishment process involved the Austrian constitutional reform body (Chancellery), and Hans Kelsen was one of its members. This Constitutional Court became the first Constitutional Court in the world and, in the context of judicial review, is known as the Kelsenian Model (Asshiddiqie, 2005, p. 108).

In establishing a democratic state, there are three main requirements: the end of the authoritarian regime, the establishment of a democratic regime, and the consolidation of the new regime. The Constitutional Court is also a manifestation of the principle of a democratic state based on law (Subekti, 2008, p. 57).

At this stage, the existence of the Constitutional Court can be seen as a manifestation of the principle of a democratic state based on law. Although democracy is theoretically designed to achieve government by the people, in practice it often evolves into governing or making public policy based on the majority vote through representative institutions. Although majority opinion does not always represent the truth, it should not contradict the will of the people (general agreement) as reflected in the constitution. The majority's will must not violate the rights of the minority guaranteed by the constitution.

Therefore, democracy needs to be limited so that it does not justify abuse of power or threaten the essence of democracy itself. Within this framework, judicial review is considered a rational and necessary restriction as an integral part of a democratic system (Subekti, 2008, p. 57). Democracy is a form of government in which people hold power, either directly or through elected representatives. It is based on the principles of equality and freedom, where every citizen has the right to participate in the political decision-making process. In a democratic system, the government is accountable to the people and operates according to the rule of law. The constitution protects citizens' fundamental rights and freedoms, and there are regular free and fair elections to ensure that the people's will is reflected in the choice of their representatives.

In Indonesia, constitutionality testing of laws has already existed in the discussion of the 1945 Constitution of the Republic of Indonesia by the Indonesian Independence Preparation Investigation Board (BPUPKI) because at that time, Moh Yamin, as a member of BPUPKI said

The Supreme Court should be able to test laws against Customary Law, Islamic Law, and the Constitution.
Although Soepomo rejected Yamin's opinion due to certain restrictions such as the power of the Supreme Court to compare laws only exists in systems adhering to the trias politica, the Constitution at that time did not adhere to it; judicial review which raises pros and cons; Austria and Czechoslovakia, as comparative countries, the Supreme Court does not carry out judicial review but special courts and if held, in Indonesia there are no experts so it is considered that there is no time; and the Supreme Court's proposal to compare laws against Customary Law is not clear and will become the substance of material law regulated in law.

Long story short, Yamin disagreed with Soepomo and developed throughout the state administration. Because Yamin disagreed with Soepomo's views, the discussion about the authority of the Supreme Court in examining the law was suspended. In fact, until the session of the Preparatory Committee for Indonesian Independence (PPKI) stipulated the 1945 Constitution, the debate on judicial review was no longer pursued. The 1945 Constitution, later ratified, only detailed two articles in Chapter IX on Judicial Power. Article 24(1) states, "Judicial power shall be exercised by a Supreme Court and other judicial bodies according to law." Paragraph (2) states, "The composition and powers of the judicial bodies shall be regulated by law." Article 25 states, "The conditions for becoming and being dismissed as a judge shall be determined by law."

In the RIS Constitution, the Supreme Court had the authority to decide judicial review cases but was limited to testing State Laws against the RIS Constitution (Soemantri, 1986, p. 25). Then the discussion of judicial review was reopened in the As Hoc II Committee of the Provisional People's Consultative Assembly (MPRS) recommending that Mam have this authority, but it was not accepted because the institution guarding the constitution and the authority to test it was the MPR (Lev, 1990, p. 402).

The concept of judicial review emerged during discussions on the Judicial Power Bill, which was later passed as Law No. 14/1970 on the Principles of Judicial Power. At the time, the Indonesian Judges Association (IKAHI) proposed that the Supreme Court should have the authority to review laws in accordance with the Constitution. However, the proposal was not accepted because it was considered part of the substance of the constitution. Finally, the authority of judicial review was given to the Supreme Court in a limited manner, namely only to test laws and regulations under the law against the law (MD, 2007, p. 96).

In 1992, the then Chief Justice of the Supreme Court, Ali Said, stated that granting the Supreme Court the right of review was a balanced move, considering that the Supreme Court is one of the critical elements in a democratic framework. While the President and the Parliament are responsible for making and enacting laws, the Supreme Court is responsible for testing their validity. This concept is based on the principle of checks and balances (MD, 1999, p. 96). However, this statement has not received a positive response from the drafters of the law.

Subsequently, during the reformation period, demands for change also alluded to the idea of judicial review because it was needed. Along with constitutional changes in the period 1999-2002, the authority to review laws against the 1945 Constitution was given to the MPR as stipulated in Article 5 paragraph (1) of MPR Decree Number III/MPR/2000 on the Source of Law and the Order of Legislation. However, it is not a judicial review but a legislative review because it is carried out by the MPR, which is not a representative institution. Then it developed into the establishment of the Constitutional Court in Indonesia.

In an article in the Journal of Synthesis, May - June 1999 edition, Moh. Mahfud MD put forward 7 (seven) proposals for material changes to the 1945 Constitution, one of which was the expansion of the rights of the Supreme Court in the form of judicial review. However, if it is burdensome, then the Constitutional Court should be established (Yusuf & Basalim, 2000, p. 71).

Initially, three institutional options were considered, namely the MPR, the Supreme Court, or the Constitutional Court. Giving authority to the MPR was considered no longer relevant because the MPR is no longer the highest institution and its members are not experts in law and the constitution. Granting authority to the Supreme Court was also not approved because the Supreme Court claimed that it had too many tasks to carry out, especially in examining and deciding cases that were its competence. Finally, it was agreed that the authority to review laws against the 1945 Constitution would be exercised by an independent institution, namely the Constitutional Court, as one part of the judicial power system, although initially there was debate about whether the Constitutional Court was an independent institution or just part of another institution (Safa'at, 2010, p. 7).

The idea of establishing a Constitutional Court to review laws against the 1945 Constitution has been met with pros and cons. However, the idea was actually accepted during the second amendment process of the 1945 Constitution in 2000. The evidence is the agreement in the Commission A meeting of the 2000 MPR Annual Session (MD, 2011, p. 132).

Based on this description, the existence of the Constitutional Court was initially motivated by the need for a mechanism for testing laws and regulations against the constitution. The authority is owned by judges, either through ordinary courts or special courts. This has been appropriate from a theoretical and practical perspective in various other countries.

The Emergence of the Idea of Dispute Resolution of Election Result Cases

The authority of the Constitutional Court in the 1945 Constitution is a structuring of institutional relations and democratic institutions based on the principle of the rule of law, not interests and political forces that cause uncertainty or instability. This is a concrete manifestation of the implementation of a democratic state based on law, which has the consequence of the constitutionalisation of democratic politics (Pildes, 2004, p. 10).

The authority of the Constitutional Court in deciding PHPU stems from the understanding that elections are instruments of democracy. Democracy is a forum for competition to gain power from the people through the electoral process (Mukhtarrija, Handayani, & Riwanto, 2017, p. 645) If there are violations or mistakes in its implementation, the election must be resolved legally. The Constitutional Court has the authority to resolve legally at the national level (Palguna, 2007, p. 401), it has been from the beginning that deciding PHPU is one of the authorities referred to other authorities that will be regulated by law.

As discussed in the context of the establishment of the Constitutional Court (MK), when the 1945 Constitution was amended, the main authority that was originally to be given to the Court was the authority of judicial review, particularly in testing the validity of laws against the Constitution.

Other powers currently possessed by the Constitutional Court were initially to be formulated as additional powers regulated by law, including the authority to decide on PHPU However, it has been a topic of discussion since the beginning that deciding PHPU is actually one of the additional authorities that will be regulated by law.

This opinion was expressed by Soetjipto (F-UG) during the 41st PAH plenary meeting on 8 June 2000. Soetjipto proposed that the Constitutional Court should have the authority to review laws, as well as the additional authority to hear disputes between the central and regional governments, the dissolution of political parties, and disputes in the implementation of general elections. In this view, the term "disputes in the implementation of elections" is used, which has a broader meaning than disputes over election results.

The results of the Expert Team presented in the 17th PAH meeting also received responses from PAH I. Pataniari Siahaan (F-PDI Perjuangan) gave his response so that the authority of the Constitutional Court is explained precisely in order to avoid the formulation of additional authority that may be given by law, considering that the Constitutional Court handles constitutional and political issues that must be clearly defined in the constitution.

Pataniari Siahaan's opinion was confirmed in the second session of the meeting. Pataniari suggested that deciding election disputes should be one of the powers of the Constitutional Court. The Constitutional Court in other countries also has the final authority over election results.

Opinions on the authority of the Constitutional Court (MK) in deciding General Election disputes re-emerged in the 36th meeting of the Ad Hoc Committee I of the People's Consultative Assembly (PAH I BP MPR) in 2001, which had an agenda of further discussion related to Chapter IX articles 24 and 25 on Judicial Power. Asnawi Latief (F-PDU) once again proposed the authority of the Constitutional Court to resolve election disputes and other aspects related to elections. This view has a broader meaning because the authority of the Constitutional Court is proposed not only limited to deciding "election disputes" but also includes "others related to elections".

In the end, the discussion process regarding the authority of the Constitutional Court gave birth to the provisions of Article 24C paragraph (1) of the 1945 Constitution which states: "The Constitutional Court has the authority to hear cases at the first and last instance and its decision is final to test laws against the Constitution, decide disputes over the authority of State institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes over the results of general elections."

The process of amending the 1945 Constitution shows two main reasons why the authority to decide General Election cases was given to the Constitutional Court (MK) and not to the Supreme Court (MA). First, because elections are considered an instrument of democracy regulated in the constitution, so there needs to be a guarantee of constitutionality in its implementation. Therefore, the Constitutional Court as a constitutional judicial institution is considered more appropriate than the Supreme Court. Second, the authority to decide election cases is more related to political, c o n s t i t u t i o n a l , and constitutional issues.

the establishment of state institutions regulated by the constitution. Therefore, this authority is appropriately part of the authority of the Constitutional Court as an administrative judicial institution. Over time, the authority of the Constitutional Court in deciding PHPU is not only related to determining the numbers of election results obtained by election participants, but also related to the quality of the implementation of elections.

The Presence of the Constitutional Court as an Electoral Tribunal

Article 24C of the 1945 Constitution states that the authority of the Constitutional Court (MK) includes "testing laws against the Constitution" and "deciding disputes about the results of General Elections (Pemilu)". Regarding the authority to decide cases of PHPU, further explanations are found in various laws, such as Law Number 24 of 2003 which has been amended by Law Number 8 of 2011 concerning the Constitutional Court, as well as other related laws such as Law Number 48 of 2009 concerning Judicial Power, and laws governing General Elections for members of the DPR, DPD, DPRD, President and Vice President, as well as Regional Head and Deputy Regional Head elections.

The emergence of legal issues related to the formulation of the authority to "decide disputes about election results" is the extent of the scope of this authority, especially if it is related to the development of the Constitutional Court's decisions in PHPU cases. Is this authority only related to vote counting errors or does it also involve the entire election process.

At the beginning of the establishment of the Constitutional Court, the understanding of the scope of this authority was limited to disputes over the results of vote counts determined by election organisers that could affect the acquisition of seats or the victory of candidates. Disputes were limited to the issue of counting errors that harmed certain election participants. This opinion, for example, was conveyed by I Dewa Gede Palguna, who stated that the Constitutional Court's authority was related to errors in the counting of votes determined nationally, as long as it affected the election of a candidate or pair of candidates, or affected the acquisition of seats for political parties (Palguna, 2007, p. 400).

Even so, in the discussion, there was no view that recognised the limitation of the scope of the authority of the Constitutional Court (MK) in deciding cases of PHPU only on the issue of vote counting results as a result of counting errors committed by the organiser of the General Election (Election).

From the context of the sentences contained in the three opinions above, although the terms "dispute over the results of the General Election" or "the results of the General Election" are used, there is no implication that the authority is limited to disputes over the calculation of results only. In fact, according to Ramlan Surbakti's opinion above, the scope of the authority of the Constitutional Court (MK) is broader because its decisions are expected to be based not only on legal considerations, but also consider political aspects.

The term "election dispute" or "election dispute" was the most widely used term during the discussion of the 1945 Constitutional Amendment, including by Soetjipto, Jimly Asshiddiqie (Expert Team), and Asnawi Latief. The following uses the term "election dispute".

The use of the term General Election (Election) dispute in the three views above does not bind the authority of the Constitutional Court (MK) only to disputes over the calculation of results. In fact, because the term used is "dispute" without the word "result," it can be interpreted that its scope includes all types of disputes that arise in the various processes and stages of elections, not limited to the calculation of results.

The third term introduced was "conflict" in elections, which was presented by Frans F. H. Matrutty. The use of the term conflict certainly has a broader meaning. The limitation explained by Matrutty is all conflicts that are not under the authority of the Supreme Court (MA) and cannot be resolved.

Based on the analysis provided, it has been determined that the Constitutional Court's jurisdiction in resolving PHPU cases extends beyond disputes related to vote counting that could affect the election outcome, as outlined in the 1945 Constitution. The Constitutional Court was established as a constitutional judicial institution to safeguard the constitution in all matters within its purview, underscoring the fact that its authority to resolve disputes over election results, as stated in Article 24C paragraph (1) of the 1945 Constitution, is fundamentally centered on assessing the constitutionality of the election process.

At the Law level, at least three different terms are used, namely disputes over election results, objections to the determination of election results, and disputes over vote counting results. The differences in the use of these terms are described as follows:

1. Law Number 12 Year 2003 on Legislative Elections: Disputes over election results
2. Law Number 23 Year 2003 on Presidential Elections: Objection to the Determination of Election Results
3. Law Number 24 Year 2003 on the Constitutional Court: Disputes over election results
4. Law Number 32 Year 2004 on Local Government: Objection to the Determination of Election Results
5. Law No. 10/2008 on Legislative Elections: Disputes over election results
6. Law No. 12/2008 on Amendments to the Local Government Law: Dispute over vote counting results
7. Law No. 42/2008 on Presidential Elections: Objection to the determination of election results
8. Law No. 48/2009 on Judicial Power: Disputes over election results
9. Law Number 8 Year 2011 on the Amendment of Constitutional Court Law: Dispute over election results
10. Law No. 8/2012 on Legislative Elections: Disputes over election results

Based on the normative construction in several laws and regulations, the authority of the Constitutional Court (MK) in deciding disputes over PHPU is limited to the vote count and the determination of the final election results. Suppose there is an objection or disagreement between the election organiser and the election participants. In that case, the Constitutional Court decides based on the correct calculation, whether it comes from the calculation of the applicant, the Constitutional Court itself, or states that the

calculation of the General Election Commission (KPU) is correct.

However, this construction has weaknesses related to efforts to realise democratic elections, the function of the Constitutional Court, and the perspective of progressive law. Firstly, elections involve various stages, and limiting the authority of the Constitutional Court to vote counting is not in accordance with the democratic principles of elections. Second, theoretically-normatively and historically, the Constitutional Court should perform its function as the guardian of the constitution and the final interpreter of the constitution, but this restriction does not support this role. Third, if the PHPU is considered a mathematical court, the Constitutional Court will find it difficult to carry out its function in upholding law and justice if there are violations in the previous stages that violate human rights and democratic principles.

New Legal Principles in Constitutional Court Decisions on Judicial Review and Elections

Many decisions from the Constitutional Court (MK), both in law review cases and PHPU, have become a reference for the parties involved in the case. In fact, these decisions have become a consideration for the Constitutional Court in deciding the next law review or PHPU case. These decisions have developed into jurisprudence because they contain legal findings that create new principles in Election Law.

The law was made in accordance with the will of the people as a whole, but it was impossible to achieve this because at the level of the law-whose content is concrete and must be implemented-the content is difficult to decide unanimously. In fact, many members of the representative bodies do not represent the voice of the people. For this reason, most laws are enacted on the majority principle, and fundamental rights must be guaranteed that cannot be violated even with a majority vote. Hence the idea of nomocracy with one of its main elements being the supremacy of the constitution. The term 'supreme' is assumed to embody the agreement of the whole people, not the majority.

1. New Legal Principles in Constitutional Court Decisions Related to Judicial Review

From the perspective of progressive law, the Constitutional Court's decision in the Election Law review case has fulfilled the characteristics of the progressive law paradigm. There are three main paradigms in progressive law, namely (1) law is for humans, (2) refusing to maintain the status quo in law, and (3) paying great attention to the role of human behaviour in law.

The principle of "law for all" is exemplified in various Constitutional Court decisions, including Number 011-017/PUU-I/2003, Number 102/PUU-VII/2009, Number 04/PUU-VII/2009, and Number 22-24/PUU-VI/2008. In particular, the Court's ruling in Number 011-017/PUU-I/2003 reinstated the right to vote for former members of the banned organization PKI and those involved in the G30S/PKI, effectively eliminating the discrimination that had been present since the New Order era. As a legal ruling, the Constitutional Court's decision was aimed at protecting human rights and preventing discrimination without due process.

The next decision that strengthened the "law for people" paradigm was Constitutional Court Decision No. 102/PUU-VII/2009. This decision confirmed that the right to vote and be elected are protected by the constitution and cannot be revoked for administrative reasons, such as not being registered in the Permanent Voters List or *Daftar Pemilih Tetap* (DPT). This decision was made to ensure the fulfilment of the right to vote and the right to be elected that is threatened due to administrative issues.

Furthermore, Constitutional Court Decision No. 04/PUU-VII/2009 also affirms that legal regulations may not deprive a person of their rights forever because of a criminal offence they have committed. This decision is based on the argument that the prohibition against a person convicted of a criminal offence carrying a prison sentence of five years or more is contrary to the principle of equality before the law.

Meanwhile, Constitutional Court Decision No. 22-24/PUU-VI/2008 restores the meaning of a person's choice to determine the particular candidate who wins the most votes as the elected candidate. By giving voters the opportunity to choose a candidate, that choice must be respected by determining the elected candidate based on the highest number of votes. If the determination of elected candidates is based on serial numbers, this means that it inhibits the people's right to vote according to their preferences. The serial number mechanism also ignores the level of political legitimacy of elected candidates based on the highest number of votes.

Second, the paradigm of "refusing to maintain the status quo" in law is evident in all decisions that grant the petition. In fact, the rejection of the status quo can be seen in decisions that are considered "surprising" because they differ from the mainstream of dominant opinions. An example can be found in Constitutional Court Decision Number 011-017/PUU-I/2003, which restored political rights to former PKI members or individuals directly or indirectly involved in the G30S/PKI. In addition, Constitutional Court Decision Number 04/PUU-VII/2009 provides an opportunity for former convicts to become candidates for elected positions. Similarly, Constitutional Court Decision Number 17/PUU-VI/2008 provides an opportunity for individual candidates in Regional Head Elections. Third, the paradigm of "paying great attention to human behaviour in law" is seen in the Court's decisions that are anticipatory of the possibility of human behaviour that could violate the principles of elections.

In addition, there is also Constitutional Court Decision Number 81/PUU-IX/2011 which confirms that the principle of honesty and fairness in elections can only be realised if the election organiser cannot be intervened or influenced by any party. Therefore, the election organisers cannot be handed over to the government or political parties, because they are potentially and vulnerable to being influenced or used by various interests. Then, from the perspective of legal objectives, the Constitutional Court's decisions above have fulfilled the aspects of justice, certainty, and expediency. Some decisions tend to focus more on one

objective, while there is also one decision that fulfils more than one legal objective.

Based on the decisions in law review cases above, the following legal principles can be abstracted:

a. The principle of substantive justice prioritises substantial over procedural justice.
This principle can be seen in decisions regarding the use of ID cards, the voting rights of former PKI members, and the voting rights of ex-convicts.
b. Principles of protection of citizens' constitutional rights
This principle is also reflected in the decisions regarding the use of ID cards, the voting rights of former PKI members, and the voting rights of ex-convicts above. This principle is manifested in the content of decisions that restore the constitutional rights of citizens violated by certain provisions of the law.

c. Principle of nondiscrimination
This principle is found in decisions regarding individual candidates in local elections, the right of non-parliamentary political parties to nominate candidates for local elections, the requirement for the resignation of incumbent candidates in local elections, and the requirements for political parties as election participants.

2. New Legal Principles in Constitutional Court Decisions Related to Election Results Disputes

The Court's decisions have indeed changed legal tensions by providing new interpretations. This approach is taken on the basis of the establishment of the Constitutional Court, which aims to maintain the supremacy of the constitution and safeguard democracy, especially in the era of reform consolidation, where democracy needs to be maintained in accordance with the constitution. In addition, the constitution also reflects the spirit of protecting human rights and the constitutional rights of citizens.

From a progressive law perspective, the Court's decisions in PHPU cases show the spirit of progressive law, which includes liberation from the types, ways of thinking, principles, and theories that have been used before, as well as liberation from the dominant law enforcement culture that is considered to hamper legal efforts to solve problems.

The Court's decisions fulfil the characteristics of progressive law. First, the progressive legal character that "aims for human welfare and happiness so that it views the law as always in the process of becoming (law in the making)". This can be seen in the Constitutional Court's decision that ordered a re-vote for voters who had not exercised their voting rights because they did not receive a summons (Constitutional Court Decision Number 116/PHPU.D-VIII/2010). This character can also be seen in the decision which states that "no one should benefit from irregularities and violations committed by themselves, and no one should be harmed by irregularities and violations committed by others".

Second, the character of progressive law that is "sensitive to changes that occur in society, both locally, nationally and globally". PHPU decisions that are responsive to changes in society are decisions related to the stages of the Aceh regional election (Constitutional Court Decision Number 108/PHPU.D-IX/2011). In addition, there are Constitutional Court decisions that adjust to the conditions of society, such as the decision that legalised the use of the noken system in Papua in the implementation of voting (Constitutional Court Decision Number 47-81/PHPU.A-VII/2009).

Third, the progressive legal character that "rejects the status quo when it causes decadence, an atmosphere of corruption and is very detrimental to the interests of the people, giving rise to resistance and rebellion that leads to progressive interpretation of the law". A decision that reflects this character is the Constitutional Court's decision to disqualify a candidate who was not honest about his identity and had been convicted in the South Bengkulu Regency Election case (Constitutional Court Decision Number 57/PHPU.D-VI/2008).

In addition, there are decisions that explicitly sanction disqualification due to violations that are not only systematic, structured, and massive, but also carried out by means of terror and intimidation that violate the right to security of citizens. This can be seen in the Constitutional Court's decision regarding the PHPU of the Regional Head in West Kotawaringin Regency (Constitutional Court Decision Number 45/PHPU.D-VIII/2010).

Based on the PHPU case decisions above, the following legal principles can be abstracted:

a. The Principle of Material Truth Overcomes Formal Truth
The purpose of the justice system is to seek material truth as the basis for upholding substantive justice. Formal legal and procedural rules are established to ensure the existence of material truth and achieve substantive justice. Therefore, when material truth is obstructed by formal truth, material truth must take priority over formal truth. This can be seen in PHPU decisions that reveal violations of the constitutionality of the election, which clearly affect the election results, although according to the normative construction, they are not included in the category of disputes over election results. The Constitutional Court makes decisions by considering these violations, especially those that are systematic-structured-massive or serious-significant in adjudicating and deciding cases. Another example is seen in a case of violation of the principle of honesty where a candidate, although formally qualified as a candidate and elected, did not meet the material requirements because he had been convicted. As a result, the Constitutional Court cancelled the validity of the candidate and the results of the election.

b. Decisions in the democratic process can be overturned by the court

In line with the principles of democracy and nomocracy that apply in a law-based democracy, the implementation of the democratic process is governed by the rule of law. The rule of law is made to ensure that the goals and principles of law and democracy itself can be achieved. Thus, democratic processes that violate the goals and principles of law and democracy can be declared invalid through legal decisions, especially court decisions. This can be seen in the decisions of the Constitutional Court, which overturned the decisions of the General Election Commission (KPU) and the Regional Election Commission (KPUD) if there were violations of the constitutionality of the holding of elections, both related to candidates, the election process, and the non- compliance of election organizers with court decisions.

c. Principles of Protection of Citizens' Constitutional Rights
Citizens and the state are connected through the process of elections. Elections serve as a recognition of citizens' rights and can only be regarded as democratic if they ensure the protection of citizens' rights, particularly in the political arena. Therefore, the implementation of elections must not violate or disregard citizens' constitutional rights. In such instances, it is the responsibility of the court to safeguard and reinstate the violated constitutional rights. These constitutional rights comprise the right to vote, the right to contest for office, the right to nominate candidates, and the right to exercise these rights without any fear. In essence, these constitutional rights encompass the freedom to vote, the opportunity to be a candidate, and the ability to propose candidates, without any apprehension in exercising these rights.

d. The Principle of Taking into Account the Development of Society
By paying attention to the characteristics of progressive law which includes elements of historical and sociological jurisprudence, the Constitutional Court (MK) pays attention to and considers the development of society in resolving PHPU cases. Thus, the Constitutional Court's decision can be in accordance with public justice and be able to overcome problems that arise in society. Attention to community developments can include recognition of applicable customary laws, such as the recognition of Noken as an election method in Papua. Decisions that pay attention to developments in society can be identified in decisions related to the use of ID cards and passports, internal disputes between candidates, and Constitutional Court decisions related to the stages of Regional Head Elections (Pemilukada) in Aceh that provide legal solutions to problems that arise.

The democratic process is governed by the rule of law, and decisions violating the principles of law and democracy can be declared invalid through legal decisions, especially court decisions. The court's responsibility is to safeguard and reinstate the violated constitutional rights of citizens. The Constitutional Court pays attention to and considers the development of society in resolving PHPU cases.

CONCLUSIONS AND SUGGESTIONS

Based on the description in this paper, it can be seen that the idea of testing the constitutionality of laws is thought to have originated from the thinking of Hans Kelsen. Then in its development, Indonesia realized that there needed to be a state institution that tested laws against customary law, Islamic law, until it came to the idea of testing laws against the constitution and other laws and regulations. The authority of the Constitutional Court then extends to PHPU which is not only mathematical, but also substantial. Because elections are an instrument of democracy and as a democratic state of law, there must be a guarantee that elections run according to the rules of the rule of law and democracy, then Article 24C of the 1945 Constitution of the Republic of Indonesia confirms it. In its development, a new development of electoral law principles emerged in the decision to review the law and the decision to dispute the election results. The new legal principles are substantive justice overriding procedural justice; protection of citizens' constitutional rights; and non-discrimination. Meanwhile, new legal principles related to PHPU cases are material truth over formal truth; decisions in the democratic process can be canceled by the court; protection of citizens' constitutional rights; and the principle of paying attention to the development of society.

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