

IMPLICATIONS OF THE CONSTITUTIONAL COURT'S DECISION ON THE SEPARATION OF NATIONAL AND LOCAL ELECTIONS FOR INDONESIAN ELECTION LAW POLITICS

Alasman Mpesau^{1*}, Ruslan².

¹Universitas Muhammadiyah Kendari, Indonesia

²College of Economics 66 Kendari, Indonesia

E-mail: asman.sultra@yahoo.com

Received : 01 January 2026

Accepted : 10 February 2026

Revised : 15 January 2026

Published : 28 February 2026

Abstract

Constitutional Court Decision Number 135/PUU-XXII/2024 separates national and local elections with a specific time interval, having implications for the Indonesian electoral system and electoral law policy. This study aims to normatively analyze the impact of this decision on the principle of election simultaneity, transition of terms of office, and future electoral law design. The method used is normative legal research with a legislative approach, case studies, conceptual and comparative studies of the democratic transitions of Germany and South Africa. The results show that Constitutional Court Decision 135 reflects the approach of judicial activism and living constitution, and does not conflict with the 1945 Constitution of the Republic of Indonesia. This separation of elections requires legal reform through harmonization of the Election Law and Regional Elections with an Omnibus Law approach. In addition, it is necessary to refine the electoral system towards a mixed-member proportional model to be more representative and democratic. This decision is an important foundation for reforming electoral law politics that is constitutional, adaptive, and responsive to the dynamics of Indonesian democracy.

Keywords: *Constitutional Court Decision; Election Separation; Election Law Politics; Judicial Activism; Election System*

INTRODUCTION

Indonesia, as a country based on law that adheres to a constitutional democratic system, has made General Elections (Pemilu) the main instrument in realizing people's sovereignty. Elections function as a means to elect representatives of the people and heads of state directly by the people, as well as a mechanism for monitoring and accountability of political power. In practice, Indonesia's electoral system is constantly undergoing dynamics and reforms in line with political, social, and legal developments. One current issue that has become a key topic of discussion in electoral system reform is the distinction between national and local elections, which is directly related to Indonesia's electoral law. Constitutional Court Decision No. 135/PUU-XXII/2024 (hereinafter referred to as MK Decision No. 135) marked a turning point in this discourse. This decision affirmed that national elections, which include the election of the President and Vice President, the House of Representatives (DPR), and the Regional Representatives Council (DPD), can be separated from local elections, which include the election of regional heads and members of the Regional People's Representative Council (DPRD). This separation is recommended with a certain time gap, namely a minimum of two to two and a half years. According to the Constitutional Court, the separation of schedules is intended to simplify the election process, improve the quality of democracy, and reduce the heavy burden that voters, election organizers, and political parties have had to bear simultaneously in simultaneous elections.

The Court's considerations also reflect a desire to create a more focused election process, one in which voters are not burdened with multiple choices at once, which often leads to voter fatigue and a decline in the quality of political participation. Furthermore, separating national and local elections is considered to strengthen the accountability and legitimacy of government at various levels, as voters have the opportunity to delve deeper into the different issues at each election level. However, Constitutional Court Decision No. 135 also raises various legal and political implications. One of these is the potential for non-compliance with Article 22E paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which stipulates that elections are held every five years to elect members of the DPR, DPD, President and Vice President, and DPRD. The separation of national and local

elections could lead to the interpretation that the five-yearly schedule no longer takes place simultaneously, which has the potential to trigger legal uncertainty and violate the basic principles of elections as stipulated in the constitution. On the other hand, the House of Representatives (DPR), as the lawmaker, also questioned the Constitutional Court's authority in this ruling. They argued that the decision to separate elections should fall within the realm of open legal policy within the legislature, not within judicial authority. This decision is seen by some as a form of expansion of the Court's constitutional authority, which could shift the balance of power between state institutions in the Indonesian constitutional system.

Nevertheless, the Constitutional Court's decision, which is final and binding, must be respected as applicable law and binding on all parties. The term "final" indicates that no other legal action can be taken against the decision, while "binding" means the decision applies generally, not just to the parties involved in the case. Therefore, the implementation of this decision is a shared responsibility of stakeholders, including the President and the DPR, which have the authority to form laws as regulated in Articles 4, 5, and 20 of the 1945 Constitution of the Republic of Indonesia. In this context, the legal politics of elections becomes highly relevant for analysis. Legal politics is state policy in determining the direction, substance, and social goals through specific laws in society, including the formation and implementation of electoral systems. The aim of electoral law policy is to establish an electoral system that is democratic, fair, effective and based on legal certainty. With the separation of national and local elections through the Constitutional Court's ruling, the country is faced with the challenge of redesigning the electoral system and adjusting legislation to align with constitutional principles and the objectives of national legal policy. Therefore, this research is crucial to thoroughly examine the implications of the Constitutional Court's ruling on the separation of national and local elections for electoral legal policy in Indonesia. This study will reveal how these changes impact the electoral legal system normatively, institutionally, and practically, and how the state should respond to these dynamics by establishing legal policies that are constitutional, democratic, and responsive to the needs of the community. Based on this background, this study examines the constitutional implications of Constitutional Court Decision Number 135/PUU-XXII/2024 concerning the separation of national and local elections on the formation and direction of electoral law politics in Indonesia, particularly in relation to the principle of election simultaneity, the design of the electoral system, and the need for constitutional and adaptive electoral regulatory reform to the dynamics of democracy. This study aims to normatively analyze the constitutional implications of Constitutional Court Decision Number 135/PUU-XXII/2024 on electoral law politics in Indonesia, by examining its influence on the principle of election simultaneity, the direction of electoral law formation, and the need for reform of electoral regulations to realize a democratic, representative, and constitutionally compliant electoral system.

METHOD

This study uses a normative legal research method that focuses on the study of positive legal norms, legal principles, and court decisions as the primary sources of analysis. The approaches used include a legislative approach to examine the legal regulations for elections and regional elections, a case approach with an emphasis on Constitutional Court Decision Number 135/PUU-XXII/2024, and a conceptual approach to understand the theory of legal politics, judicial activism, and living constitution. The research data are sourced from secondary data consisting of primary legal materials, including the 1945 Constitution of the Republic of Indonesia, laws governing elections and regional elections, and Constitutional Court decisions, and secondary legal materials in the form of legal textbooks, scientific journal articles, and expert opinions. Data analysis techniques are carried out qualitatively through systematic and argumentative interpretation and review of legal documents to assess the consistency of Constitutional Court decisions with constitutional principles and their implications for the direction of electoral law politics in Indonesia. This research is expected to provide an argumentative basis for future renewal and reform of election law.

RESULTS AND DISCUSSION

1. The Position of the Constitutional Court's Judicial Review in Legal Disparities

The Constitutional Court has a strategic position in the Indonesian state system as an institution that guards the constitution, exercising judicial power and is tasked with upholding the principle of constitutional supremacy. One of the main functions of this Court is to conduct judicial review or testing of laws against the 1945 Constitution. This function is not only as a normative oversight tool, but also as part of the checks and balances mechanism in the constitutional democratic system. Judicial review is a means of controlling the dominance of legislative and executive powers, as well as ensuring that the resulting legal products do not deviate from constitutional principles.

Indonesia as a country based on law places the constitution as the highest law. Therefore, the Constitutional Court is at the forefront in ensuring that all government activities comply with the basic values of constitutionalism. This becomes even more important when the legislative process in practice is often influenced by compromise and short-term political interests. It is in this context that judicial review by the Constitutional Court becomes corrective and balancing in the dynamics of national law formation. Constitutional Court Decision No. 135 is an important milestone demonstrating the active role of the Constitutional Court in regulating electoral law. In the decision, the Constitutional Court stated that the implementation of national and local elections must be separated, and no longer held simultaneously as stipulated in the Election Law and the Regional Election Law, but must be separated starting in 2029. This decision was based on an evaluation of the simultaneous elections which were deemed to cause administrative burdens, work fatigue for organizers, and obscure local issues due to the dominance of national issues. This decision reflects that the Court is not only carrying out its judicial function alone, but is also involved in the redesign of the electoral political system.

However, this decision actually creates a significant legal gap. The separation of election schedules will have an impact on extending the terms of office of regional heads and DPRD members without direct elections, which is textually contrary to Article 22E paragraph (1) of the 1945 Constitution concerning the implementation of elections every five years. This creates tension between the principle of the finality of Constitutional Court decisions and the principle of popular sovereignty. This phenomenon illustrates what in legal theory is known as counter-majoritarian difficulty, namely the dilemma when a judicial institution overturns the decision of a democratically elected legislative institution, thus giving rise to debate regarding the legitimacy and limits of the power of judicial review itself. In facing these problems, the Constitutional Court applies a judicial activism approach, namely the active role of judges in interpreting the constitution and even forming new legal norms to realize substantive justice. This approach differs from the conservative approach, which focuses solely on text. Judicial activism allows judges to read the constitution dynamically, adapting to the social context and challenges of the times. This approach can be found in the idea of a living constitution, namely the view that the constitution is a living document that must be able to adapt to the needs of modern society. In practice, this approach encourages judges to create laws to promote systemic reform when legislators fail to do so.

Constitutional Court Decision No. 135 can also be understood as a realization of the concept of law as a tool of social engineering as put forward by Roscoe Pound, which provides a basis for understanding that law has a transformative function towards the social and political structure of society. By separating the election process, the Constitutional Court consciously intervened in the electoral political system to make it more efficient, just, and representative. This perspective is reinforced by Satjipto Rahardjo's progressive legal ideas, which prioritize humanitarian values, substantive justice, and the courage to transcend legal texts for the benefit of the wider community. Through this decision, the Constitutional Court, besides being an agent of change to the electoral system which is considered to have created structural burdens and potential electoral injustice, also serves as a symbol of correction to the political-legal stagnation allowed by the lawmakers.

It should be noted that prior to Decision No. 135, the Court had repeatedly signaled to lawmakers through Decisions No. 16/PUU-XIX/2021, No. 55/PUU-XVII/2019, and No. 37/PUU-XIX/2019 to reformulate the design of the national election system. However, these signals were not seriously followed up by the legislature and executive, which have open legal policy space. The inability of lawmakers to optimally carry out their functions led the Court to assume responsibility for this reform through judicial review. However, the successful implementation of this ruling depends on the preparedness of the legal system and election administration. Without comprehensive legal arrangements regarding the transition period and implementation schedule, the separation of elections has the potential to create legal chaos, create loopholes for conflicts of interest, and create a crisis of political legitimacy. Therefore, synchronization between the Court's ruling and its implementing regulations is necessary to ensure the objectives of the separation of elections are achieved effectively and prevent further legal distortions.

Thus, judicial review by the Constitutional Court in the context of Decision No. 135 reflects the Court's role as a protector of the constitution and an agent of legal system transformation. Judicial review is no longer merely a formal review mechanism, but has evolved into an instrument for systemic change in stagnant political policies. In this regard, the Constitutional Court demonstrates that it can be a catalyst for reform and a guardian of the direction of Indonesian democracy, ensuring it remains aligned with the principles of justice, constitutional supremacy, and the values of the rule of law. Decision No. 135 of the Constitutional Court is not only a legal decision, but also a judicial political statement that the constitution must be the primary guideline for all state actions, including the implementation of electoral democracy.

2. Politics Law of Simultaneous Elections

The legal policy of simultaneous elections in Indonesia is a manifestation of the direction of state policy in organizing the general election system as a means of implementing people's sovereignty. Elections as an instrument of democracy are not merely a technical electoral activity, but are an integral part of the design of the government system. Therefore, legal politics has a strategic position in determining how elections are planned, implemented, and directed to strengthen the state system, especially the presidential system adopted in the 1945 Constitution. Legal politics as formulated by thinkers such as Sudarto and Mahfud MD demonstrates that legal policy is not merely a normative product, but reflects the ideology and direction of legal development desired by the state. In the context of elections, legal politics determines normative choices, such as the format of simultaneous elections, the types of positions elected, the stages of implementation, and the relationships between organizing institutions. Legal politics in simultaneous elections concerns not only *ius constitutum* (applicable law), but also reflects *ius constituendum* (aspired law) and *ius operatum* (law in implementation). so that policies regarding elections must always be evaluated in terms of legality, effectiveness, and relevance to the goals of democracy.

Simultaneous elections have become a significant legal and political issue since the issuance of Constitutional Court Decision No. 14/PUU-XI/2013, which stated that legislative and presidential elections cannot be held separately. This decision emphasized the importance of holding simultaneous elections as a form of strengthening the presidential system. The constitutional arguments developed by the Constitutional Court rested on the principles of government effectiveness, political stability, and strengthening the people's direct mandate to the executive leadership. Thus, this decision became the starting point for the birth of Law No. 7 of 2017 concerning Elections, which regulates the simultaneous elections, namely the election of the President and Vice President, members of the House of Representatives (DPR), the Regional Representative Council (DPD), and the Regional People's Representative Council (DPRD), which are held on the same voting day. The 2019 Simultaneous Elections marked the first full implementation of simultaneous legal policies. In practice, the implementation of simultaneous elections faced serious challenges, particularly in technical and administrative aspects. The complexity of the five-box election causes a very heavy workload on election organizers, namely the Sub-district PPK, Sub-district PPS and KPPS, which results in many officers experiencing exhaustion to the point of death. This shows a gap between normative design and operational capacity in the field.

This situation gave rise to criticism of the simultaneous election model used, which resulted in a lawsuit against Article 167 paragraph (3) and Article 347 paragraph (1) of the Election Law which was then submitted to the Constitutional Court, which resulted in Constitutional Court Decision No. 55/PUU-XVII/2019. Although the Constitutional Court rejected the application, in its ruling and considerations, the Constitutional Court provided a new interpretation of the concept of simultaneous elections. The Constitutional Court stated that simultaneous elections do not always have to be five boxes, and provided six models of simultaneous elections that are considered constitutional, including the separation between national and local elections with the principle of substantive simultaneity maintained. This decision shows that legal politics in simultaneous elections is dynamic and opens up space for improving election designs based on empirical evaluation. Unfortunately, follow-up to this decision through a revision of the Election Law, which was included in the 2019 National Legislation Program, failed to materialize. Discussions on the revision were ultimately halted and removed from the legislative priority list in March 2021. This demonstrates the weak alignment between constitutional decisions, practical needs on the ground, and the political response of lawmakers. As a result, the 2024 election will revert to the five-box simultaneous voting system adopted in 2019 without significant regulatory reforms.

The implementation of the 2024 Simultaneous Elections reaffirms the importance of evaluating legal politics during simultaneous elections. Several key issues have resurfaced, such as the rampant practice of vote buying, the misuse of social assistance for electoral gain, weak political party cadre development, and minimal meaningful public participation. This demonstrates that legal politics has not yet fully created a healthy democratic ecosystem. The existing system tends to be procedural and does not encourage substantive democracy. An evaluation of the 2024 Election implementation indicates the need for political and legal reform, including revisions to the Election Law, strengthening election organizers and supervisory institutions, developing election information and technology systems, and improving public political education. The legal policy for simultaneous elections in the future must be designed with the principles of inclusivity, effectiveness, and democratic sustainability in mind. Simultaneity is not only about cost and time efficiency, but also must guarantee the quality of election results and strengthen a stable and accountable presidential system. Thus, the legal policy surrounding simultaneous elections in Indonesia stands at a crucial juncture between progress and challenges. Synergy between legal decisions, political will, and civil society support is needed to reconstruct a fairer, more rational, and more democratic election policy.

Simultaneous elections should not be merely a symbol of administrative efficiency, but rather a manifestation of respect for genuine popular sovereignty.

3. Ius Constituendum Simultaneous Elections

The formulation of future election legislation demands an integrated and comprehensive approach, especially following the issuance of Constitutional Court Decision No. 135 which separates national and local elections starting in 2029. The Omnibus Law model is a strategic choice in unifying and reforming the Election Law and Regional Elections into a single regulation that is codified, consistent, and harmonious. Omnibus Law is a legislative method that combines various cross-sectoral and thematic regulations into one main law, to simplify, streamline, and strengthen the effectiveness and certainty of law in the state system.

In the new Omnibus Law-based legislative design, a dedicated chapter on the electoral system is needed. To date, regulations on the electoral system have been scattered only in an inexplicable manner within the separate Election and Regional Election Laws, without a unified legal structure that comprehensively and fundamentally outlines the ideal form and design of the electoral system. In the new structure, the electoral system chapter will serve as the backbone, explaining the type of electoral system used, its basic principles, vote counting methods, and the technical mechanisms of implementation. This answers criticism of the open proportional system, which has been considered half-hearted and tends not to reflect the personal representation of voters' choices. The mixed-member proportional (MMP) electoral system is considered a more ideal system because it combines the advantages of the district system and the proportional system, ensuring balanced regional representation and political representation.

The need for a legal framework for elections is further reinforced by the heavy administrative and technical burdens posed by the five-box elections, which were previously held simultaneously in 2019 and 2024. The separation between national and local elections is not simply a matter of timing, but also of strengthening the organizing structure and enhancing the effectiveness of public participation. National elections will focus on the election of the President and Vice President, the House of Representatives (DPR), and the Regional Representative Council (DPD), while local elections will cover the Governor, Regent/Mayor, and the Provincial and Regency/City DPRD. This separation must be clearly outlined in new legislation as part of the long-term election design. The implementation scheme for this election separation has been formulated as follows:

Table: Implementation Scheme for Separation of National and Regional Simultaneous Elections

Grouping of Election Implementation	Types of Elections	Current Term of Office	Next Election
National Election	President	2024-2029	2029
	DPR	2024-2029	2029
	DPD	2024-2029	2029
Regional Elections	Governors, Regents, and Mayors	2025-2031	2031
	Provincial DPRD	2024-2031	2031
	Regency/City DPRD	2024-2031	2031

Under this pattern, national elections would be held every five years, starting in 2029, 2034, and so on, with local elections held two years later (2031, 2036, and so on). This separation would allow for a sharper electoral focus, resource efficiency, and a balanced strengthening of local and national democracy. To support the effectiveness of this model, a synchronized recruitment schedule for election organizers is required, not taking place in the middle of the election phase. Election organizers must be recruited simultaneously before the election phase begins to ensure independence and organizational consolidation from the outset. This is crucial because effective election administration depends on the readiness and capacity of the organizers. The following is a schedule for election organizer recruitment and implementation stages:

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Table: Election Organizer Recruitment Timeline and Stage Schedule

Levels Organizer	Recruitment Deadline Must Be Completed	End of Term of Office	National Election Implementation Time	Local Election Implementation Time
The Indonesian General Elections Commission (KPU) and the Indonesian Elections Supervisory Agency (Bawaslu)	April 2027	April 2032	August 2027-June 2029	December 2030-June 2031
KPU and Bawaslu Provinces and Districts/Cities	July 2027	July 2032	August 2027-June 2029	December 2030-June 2031

Under this scheme, all members of the General Elections Commission (KPU) and the Elections Supervisory Agency (Bawaslu) at all levels have served their full terms before the election begins. This avoids the potential for institutional disruption that typically occurs when recruitment is conducted mid-term. In the context of the transition, provincial/district/city KPU and Bawaslu commissioners serving in 2023 and 2024 will have their terms shortened to align with the 2027–2032 schedule. However, these terms will not count as one term, allowing them to still participate in the selection process for the next term, in accordance with the principles of fairness and sustainability. Arranging terms of office during the transition period is a legally valid step and has historical precedent. In the context of Indonesian history, terms of office have been extended and shortened several times, such as the 1955 elections, which were extended until 1977, and the 1997 elections, which were accelerated to make way for the 1999 reform elections. Furthermore, the appointment of Acting Regional Heads to fill vacancies before the 2024 simultaneous regional elections is also a form of institutional adaptation during the transition period. Therefore, the creation of a new design through the Omnibus Law involving adjustments to terms of office is a legal and historical step that can be taken to ensure certainty and sustainability of the system.

In a comparative context, the experiences of democratic transitions in other countries provide a relevant perspective. The experience of post-apartheid South Africa demonstrates that a successful transition to democracy is determined by effective power management mechanisms. The Transitional Executive Council (TEC) was established as an interim body to oversee the governance of the country before the first multiracial elections in 1994. The TEC functioned to create a conducive political climate, control the security forces, and ensure the election process was fair, peaceful, and inclusive. The TEC played a significant role in preventing a power vacuum and building trust between groups previously divided by apartheid policies. The first multiracial elections subsequently resulted in a democratic government led by Nelson Mandela, marking the success of a peaceful and legitimate political transition. A similar experience was seen in Germany's post-reunification transition. The process of unifying East and West Germany required complex adjustments to political, legal, and economic systems. To maintain legitimacy, Bundestag elections were held in two stages. The first stage was free elections in East Germany in March 1990, which established a new parliament as a representative of the people and a basis for unification negotiations. The second stage was joint elections in December 1990, following official reunification in October 1990, which united all Germans under a single parliamentary system. This two-stage mechanism was crucial to ensure a smooth transition, allowing the eastern region to adjust, and maintaining political stability in the reunification of the long-divided country.

From these two experiences, it can be understood that the transition period is always in a condition of “organized uncertainty” where institutional stability and democratic legitimacy must be maintained to prevent a power vacuum. In theory, there are two models of transition: a top-down transition driven by the ruling elite, and a bottom-up transition driven by popular pressure. In the Indonesian context, this transition more closely resembles the top-down model, driven by constitutional decisions, but still requires public participation for democratic legitimacy. Larry Diamond emphasizes that a successful transition is determined by a consensus on the rules of the game, credible institutions, a democratic political culture, and strong popular participation. These four elements form the foundation for the formation of a new electoral law system. Thus, the formulation of future election legislation through an Omnibus Law approach will not only simplify regulations but also serve as an instrument for long-term democratic strengthening. The creation of a dedicated chapter on the electoral system, the synchronization of terms of office and the recruitment of election officials, and the lessons learned from the transitions in South Africa and Germany demonstrate that Indonesia has the opportunity to design a more comprehensive, effective, and sustainable

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electoral system. These reforms will strengthen the presidential system through focused national elections and strengthen local democracy through more relevant regional elections, resulting in substantive democratic consolidation that is adaptive to the challenges of the times.

CONCLUSION

Constitutional Court Decision No. 135/PUU-XXII/2024, which separates national and local elections with a time interval of two to two and a half years, is a manifestation of the implementation of judicial power in order to uphold the principle of the supremacy of the constitution through an approach of judicial activism and a living constitution. This decision emphasizes the Constitutional Court's role not only as a guardian of the constitution, but also as an agent of legal reform responsive to the dynamics of democracy. The separation of elections is aimed at simplifying election administration, improving the quality of democracy, and reducing the technical and administrative burden on election organizers, without deviating from the principle of the five-year election period as guaranteed by the constitution.

The constitutional implications of this ruling include adjustments to the terms of office of regional heads and members of the Regional People's Representative Council (DPRD), filling positions through acting officials during the transition period, and the need for a comprehensive reconstruction of the electoral legal framework. From a legal and political perspective, this ruling demands harmonization and codification of the Election Law and the Regional Election Law through an Omnibus Law approach, by placing the electoral system within a single, integrated arrangement. Furthermore, the implementation of a mixed-member proportional system is seen as a more representative alternative to address the weaknesses of the open proportional system. Therefore, Constitutional Court Decision Number 135/PUU-XXII/2024 can be positioned as a strategic starting point for reforming Indonesian electoral law towards a more democratic, efficient, and equitable system in line with current developments and societal needs.

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