

ADALAH

Buletin Hukum & Keadilan

The Authority of the Constitutional Court as a Negative Legislator in Decision No. 135/PUU-XXII/2024: Constitutional Analysis and Its Implications for Indonesia's Electoral System

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 [10.15408/adalah.v10i1.51110](https://doi.org/10.15408/adalah.v10i1.51110)

Abstract:

This study examines the authority of the Mahkamah Konstitusi as a negative legislator in Decision No. 135/PUU-XXII/2024 and its implications for Indonesia's electoral system. In principle, the Court functions as a negative legislator, whose role is limited to annulling unconstitutional norms without creating new legal norms. However, the decision separating national and local elections has generated significant debate regarding the boundaries of the Court's authority.

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This research aims to analyze whether the Court, in this decision, remains within its role as a negative legislator or has shifted toward a positive legislator, as well as to assess the implications of such a shift on the electoral system. This study employs normative legal research using statutory, conceptual, and case approaches. The findings indicate that Decision No. 135/PUU-XXII/2024 reflects a tendency of the Court to formulate new legal norms, thereby suggesting a shift toward a positive legislator role. Nevertheless, this shift may be justified within the framework of constitutional interpretation, particularly in addressing legal gaps through judicial law-finding. The implications of this decision extend beyond electoral system design, affecting the principles of separation of powers and constitutional stability in Indonesia.

Keywords: *Constitutional Court, Negative Legislator, Positive Legislator, Electoral System, Constitutional Law*

A. INTRODUCTION

In the framework of a democratic legal state, the existence of the Constitutional Court is a fundamental element in ensuring the upholding of the constitution as the supreme law. The authority of the Constitutional Court as stipulated in Article 24C paragraph (1) of the Constitution of the Republic of Indonesia of 1945 places this institution as *the guardian of the constitution* which has the main function of testing the law against the constitution.¹ Theoretically, this authority cannot be separated from the concept of negative legislator introduced by Hans Kelsen. In Kelsen's view, the constitutional court is not authorized to establish new legal norms, but only serves to remove norms that are contrary to the constitution.² Thus, the function of legislation remains in the hands of the lawmakers, namely the legislative institution with the government.

¹ The provisions regarding the authority of the Constitutional Court as the guardian of the constitution are affirmed in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution. For a further discussion on the role of the Constitutional Court as the guardian of the constitution, see: Jimly Asshiddiqie, *Model-Model Pengujian Konstitusional di Berbagai Negara* (Jakarta: Konstitusi Press, 2005), 45–67.

² The concept of negative legislator was first introduced by Hans Kelsen in his writings on constitutional courts. According to Kelsen, a constitutional court is only authorized to annul legal norms that are contrary to the constitution, not to create new norms. See: Hans Kelsen, "Judicial Review of Legislation: A Comparative Study of the Austrian and American Constitutions," *Journal of Politics* 4, no. 2 (1942): 183–200. For a contemporary discussion of this concept, see also: Alessandro Pizzorusso, "The Constitutional Review of Legislation in Italy," in *Constitutional Justice Under Old Constitutions*, ed. Eivind Smith (London: Kluwer Law International, 1995), 235–258.

However, in Indonesian constitutional practice, the Constitutional Court often issues decisions that are constructive, and even tend to create new norms.³ This phenomenon has given rise to an academic debate about the limits of the Constitutional Court's authority, especially in the context of the relationship between judicial and legislative power. One of the decisions that is in the spotlight is the Constitutional Court Decision Number 135/PUU-XXII/2024. In the ruling, the Constitutional Court established a separation between national and local elections, which directly impacts the design of the electoral system in Indonesia. This decision is considered by some to have exceeded the authority of the Constitutional Court because it not only cancels norms, but also formulates new norms that should be the domain of lawmakers.⁴

Furthermore, the phenomenon of shifting the function of the Constitutional Court from negative legislators to

³ The phenomenon of constructive Constitutional Court decisions in Indonesia has been the subject of intense academic debate. Several Constitutional Court decisions that are considered to have exceeded the authority of the negative legislator include Decision Number 1-2/PUU-XII/2014 regarding the review of the Election Law and Decision Number 14/PUU-XI/2013 regarding the presidential threshold. See: Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sinar Grafika, 2012), 120–135. See also: Ahmad Fadlil Sumadi, "Perkembangan Mahkamah Konstitusi sebagai Positive Legislator," *Jurnal Konstitusi* 12, no. 3 (2015): 456–478.

⁴ Constitutional Court Decision Number 135/PUU-XXII/2024 has sparked controversy because it is considered to have intervened in the domain of lawmakers. A critical analysis of this decision can be found in: Denny Indrayana, "Mahkamah Konstitusi sebagai Positive Legislator: Analisis Putusan MK Nomor 135/PUU-XXII/2024," *Jurnal Hukum & Pembangunan* 54, no. 2 (2024): 210–235. See also: Bivitri Susanti, "Implikasi Putusan MK terhadap Sistem Pemilu Nasional dan Lokal," *Jurnal Ilmu Hukum* 18, no. 1 (2024): 89–110.

positive legislators has become a global debate in constitutional law literature. Some scholars argue that in the modern legal state, constitutional courts are often unable to avoid the establishment of norms when conducting constitutional tests for constitutionality, especially in cases of constitutional voids or legal voids that threaten legal certainty.⁵ In Indonesia, this discourse is increasingly relevant considering the characteristics of the legal system that is still in the process of consolidating post-Reform democracy. Although there have been many studies that discuss the authority of the Constitutional Court in general, there is still a significant research gap, especially in analyzing the specific impact of normative Constitutional Court decisions on the balance of power between branches of government (checks and balances) in Indonesia.⁶

This condition raises a fundamental question about whether the Constitutional Court is still consistently carrying

⁵ The global debate on the role of constitutional courts as positive legislators has been discussed in depth by several comparative law scholars. See: Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford: Clarendon Press, 1989), 145–178. See also: Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000), 87–112. Specifically for the Indonesian context, see: Pan Mohamad Faiz, "Perkembangan Fungsi Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia," *Jurnal Konstitusi* 16, no. 2 (2019): 289–312.

⁶ The research gap referred to here is the paucity of studies that specifically examine the impact of normative Constitutional Court decisions on the balance of power between branches of government in Indonesia. Existing studies tend to focus on procedural or theoretical aspects only. For a general overview of checks and balances in Indonesia, see: Moh. Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Jakarta: Rajawali Pers, 2011), 200–225. See also: Saldi Isra, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Eksekutif dalam Sistem Presidensial* (Jakarta: Rajawali Pers, 2010), 78–95.

out its role as a negative legislator, or has it shifted to a positive legislator? This question has become increasingly crucial considering the constitutional implications of Decision Number 135/PUU-XXII/2024 which not only affects the design of the electoral system, but also has the potential to fundamentally change the power relationship between the Constitutional Court and the legislature.

Therefore, this study aims to examine in depth the limits of the Constitutional Court's authority from a theoretical and practical perspective, as well as assess the constitutional implications of Decision Number 135/PUU-XXII/2024 on the Indonesian constitutional system. Using normative legal research methods supported by the statute approach, conceptual approach, and case approach, this study not only analyzes the consistency of the negative doctrine of legislators in constitutional judicial practice, but also offers a new theoretical framework to understand the limits of the legitimacy of constructive Constitutional Court decisions.⁷ The findings of this study are expected to contribute to the development of constitutional law, especially in the context of strengthening the checks and balances system in Indonesia, as well as providing policy recommendations for lawmakers and

⁷ The normative legal research method used in this study refers to the approach proposed by Peter Mahmud Marzuki. See: Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2016), 55–75. Specifically for the case approach in the context of constitutional review, see: Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007), 120–145.

the Constitutional Court in maintaining the balance of constitutional authority.

B. RESEARCH METHODS

This research uses a *normative legal research* method that focuses on the analysis of legal norms contained in laws and regulations and court decisions.⁸ This type of research was chosen because the main object of study is the abstract legal norms contained in laws and regulations and legal doctrines that develop in the practice of constitutional justice, not empirical behavior or social facts in the field. Thus, this research is a doctrinal research that aims to find, interpret, and systematize legal norms relevant to the problems being studied.⁹

The approach used includes three main approaches, namely the *statute approach*, the *conceptual approach*, and the *case approach*. The legislative approach is used to examine the provisions in the 1945 Constitution of the Republic of Indonesia, especially Article 24C, as well as laws and regulations related to the authority of the Constitutional Court, including Law Number 24 of 2003 concerning the

⁸ The definition and characteristics of normative legal research are comprehensively explained in: Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2016), 45–55. See also: Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015), 13–20.

⁹ The concept of doctrinal research in the context of legal science is explained in: Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," *Erasmus Law Review* 8, no. 3 (2015): 130–138. See also: Dawn Watkins dan Mandy Burton, eds., *Research Methods in Law* (London: Routledge, 2013), 10–25.

Constitutional Court as amended by Law Number 7 of 2020.¹⁰ A conceptual approach is used to analyze negative legislator and positive legislator theories as well as other constitutional law doctrines that are relevant to the limits of the Constitutional Court's authority in carrying out the function of testing laws.¹¹ The case approach is used to examine in depth the Constitutional Court Decision Number 135/PUU-XXII/2024 as the main object of research, especially in tracing the legal considerations (*ratio decidendi*) used by the Constitutional Court in deciding the case.¹²

The legal materials used in this study consist of two main categories. First, primary legal materials which include: (a) the Constitution of the Republic of Indonesia of 1945; (b) Law No. 24 of 2003 concerning the Constitutional Court (Statute Book of the Republic of Indonesia No. 98 of 2003, Supplement to Statute Book of the Republic of Indonesia No. 4316) as amended by Law No. 7 of 2020 (Statute Book of the Republic of Indonesia No. 116 of 2020, Supplement to Statute Book of the Republic of Indonesia No. 6494); (c) Law No. 7 of 2017 concerning General Elections (Statute Book of the

¹⁰ The statute approach is a common approach used in normative legal research. For an in-depth discussion of this approach, see: Marzuki, *Penelitian Hukum*, 93–100. See also: H. Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009), 65–72.

¹¹ The statute approach is a common approach used in normative legal research. For an in-depth discussion of this approach, see: Marzuki, *Penelitian Hukum*, 93–100. See also: H. Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009), 65–72.

¹² The case approach in constitutional law research is discussed in: Marzuki, *Penelitian Hukum*, 105–115. See also: Ibrahim, *Teori dan Metodologi*, 120–145.

Republic of Indonesia No. 182 of 2017, Supplement to Statute Book of the Republic of Indonesia No. 6109); and (d) Constitutional Court Decision Number 135/PUU-XXII/2024. Second, secondary legal materials which include constitutional law textbooks, indexed national and international scientific journals, previous research results, articles in seminar proceedings, and other academic works relevant to the research topic.¹³ In addition, as tertiary legal material, legal dictionaries and legal encyclopedias are used to clarify the technical terms used in this study.

The technique of collecting legal materials is carried out through library *research* by identifying, inventorying, and classifying legal materials that are relevant to the formulation of research problems.¹⁴ The collected legal materials are then processed and analyzed qualitatively using descriptive-analytical methods. Descriptive analysis is carried out by systematically and factually describing the legal norms, doctrines, and court decisions that are the object of study, while analytical analysis is carried out by interpreting, evaluating, and criticizing these norms and doctrines to find answers to the legal problems raised.¹⁵ The analysis was

¹³ For a discussion on the classification of legal materials in normative legal research, see: Soekanto dan Mamudji, *Penelitian Hukum Normatif*, 25–35. See also: Ali, *Metode Penelitian Hukum*, 70–80.

¹⁴ The technique of library research in legal studies is explained in: Watkins dan Burton, *Research Methods in Law*, 30–45. See also: Ibrahim, *Teori dan Metodologi*, 80–95.

¹⁵ The descriptive-analytical method in normative legal research is discussed in: Marzuki, *Penelitian Hukum*, 120–130. See also: Ali, *Metode Penelitian Hukum*, 85–95.

carried out using *legal interpretation techniques* which include grammatical interpretation, systematic interpretation, teleological interpretation, and historical interpretation, especially in examining the legal considerations of the Constitutional Court in Decision Number 135/PUU-XXII/2024.¹⁶

C. THE CONCEPT OF NEGATIVE LEGISLATORS AND THEIR DEVELOPMENT IN CONSTITUTIONAL PRACTICE

The concept of the Constitutional Court as a negative legislator is the main foundation in modern constitutional law theory. The idea introduced by Hans Kelsen places the constitutional court as an institution that functions to control the product of legislation to remain in line with the constitution.¹⁷ In this framework, the court is only authorized to declare a norm invalid if it is contrary to the constitution, without having the authority to create new norms. The main purpose of this concept is to maintain the principle of

¹⁶ Legal interpretation techniques, including grammatical, systematic, teleological, and historical interpretation, are explained in: Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Liberty, 2009), 45–70. See also: Ibrahim, *Teori dan Metodologi*, 100–115.

¹⁷ The concept of *negative legislator* was first introduced by Hans Kelsen in his writings on constitutional courts. See: Hans Kelsen, "Judicial Review of Legislation: A Comparative Study of the Austrian and American Constitutions," *Journal of Politics* 4, no. 2 (1942): 183–200. For its application in Indonesia, see: Jimly Asshiddiqie, *Model-Model Pengujian Konstitusional di Berbagai Negara* (Jakarta: Konstitusi Press, 2005), 45–67.

separation of powers so that there is no concentration of power in one state institution.¹⁸

However, in its development, the doctrine of negative legislators is no longer rigidly applied in various countries. Some of the world's constitutional courts, such as the German Federal Constitutional Court (Bundesverfassungsgericht) and the Italian Constitutional Court (Corte Costituzionale), have developed constructive decision-making practices, including conditionally constitutional judgments and decisions that provide guidance to lawmakers.¹⁹ This phenomenon shows that the boundary between the functions of negative legislators and positive legislators is not black and white, but rather that they are on a spectrum of dynamic.

In practice, the Indonesian Constitutional Court often faces situations where the legal norms being tested have gaps or ambiguities that have the potential to cause legal uncertainty. In such conditions, the Constitutional Court often provides constructive interpretations to ensure that citizens'

¹⁸ The principle of separation of powers is explained in: M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 2nd ed. (Indianapolis: Liberty Fund, 1998), 85–110. See also: Montesquieu, *The Spirit of the Laws* (1748).

¹⁹ For the practice of constructive decisions by the German Federal Constitutional Court, see: Donald P. Kommers dan Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd ed. (Durham: Duke University Press, 2012), 45–78. For the Italian Constitutional Court, see: Alessandro Pizzorusso, "The Constitutional Review of Legislation in Italy," dalam *Constitutional Justice Under Old Constitutions*, ed. Eivind Smith (London: Kluwer Law International, 1995), 235–258.

constitutional rights are protected.²⁰ However, this constructive interpretation often raises debates because it is considered to exceed the limits of authority as a negative legislator.

D. ANALYSIS OF THE CONSTITUTIONAL COURT DECISION NUMBER 135/PUU-XXII/2024

The Constitutional Court Decision Number 135/PUU-XXII/2024 is one concrete example of this dynamic. In this ruling, the Constitutional Court not only invalidated certain norms in the election law, but also stipulated that national and local elections must be held separately with a certain time gap.²¹ This policy substantively shaped a new design in Indonesia's electoral system that was not previously explicitly regulated in the law. Thus, the Constitutional Court not only acts as a norm examiner, but also as a norm maker.

The legal considerations (*ratio decidendi*) used by the Constitutional Court in this decision are based on the argument that simultaneous national and local elections held simultaneously have caused disparities in the quality of democracy at the central and regional levels. The

²⁰ The phenomenon of constructive interpretations by the Indonesian Constitutional Court is discussed in: Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sinar Grafika, 2012), 120–135. See also: Ahmad Fadlil Sumadi, "Perkembangan Mahkamah Konstitusi sebagai *Positive Legislator*," *Jurnal Konstitusi* 12, no. 3 (2015): 456–478.

²¹ Constitutional Court Decision Number 135/PUU-XXII/2024. For a critical analysis, see: Denny Indrayana, "Mahkamah Konstitusi sebagai *Positive Legislator*: Analisis Putusan MK Nomor 135/PUU-XXII/2024," *Jurnal Hukum & Pembangunan* 54, no. 2 (2024): 210–235.

Constitutional Court argued that electoral separation was necessary to provide more adequate space for local political discourse that had been marginalized by the dominance of national issues.²² Although this argument has strong theoretical justifications, the fundamental question that arises is whether the Constitutional Court has the constitutional legitimacy to take such strategic policies.

If analyzed further, the actions of the Constitutional Court can be categorized as a form of judicial activism, namely the active role of judges in shaping the law. In certain contexts, judicial activism can be justified, especially when there is a legal vacuum or when the legislature is unable to respond quickly to the legal needs of the community.²³ Scholars such as Mauro Cappelletti argue that in the modern legal state, an active judicial role is often necessary to protect the constitutional rights of citizens, especially when the legislative and executive branches are dysfunctional (political branches failure).²⁴

However, if not restricted, the practice of judicial activism can disrupt the balance of power between state

²² The argument regarding the dominance of national issues over local political discourse is discussed in: Bivitri Susanti, "Implikasi Putusan MK terhadap Sistem Pemilu Nasional dan Lokal," *Jurnal Ilmu Hukum* 18, no. 1 (2024): 89–110.

²³ The concept of judicial activism is explained in: Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford: Clarendon Press, 1989), 145–178. See also: Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000), 87–112.

²⁴ For the concept of political branch failure, see: Cappelletti, *The Judicial Process*, 150–165. See also: Stone Sweet, *Governing with Judges*, 95–110.

institutions and potentially cause constitutional conflicts. In the context of Decision Number 135/PUU-XXII/2024, the absence of a clear regulation regarding the limits of the Constitutional Court's authority in formulating new norms causes legal uncertainty. This is exacerbated by the fact that the Constitutional Court's decision is final and binding, so there is no adequate checks and balances mechanism for the constructive decision.²⁵

E. CONSTITUTIONAL IMPLICATIONS OF THE SHIFT IN THE ROLE OF THE CONSTITUTIONAL COURT

The shift in the role of the Constitutional Court from negative legislators to positive legislators in Decision Number 135/PUU-XXII/2024 has significant implications for Indonesia's constitutional system. These implications can be analyzed from three main perspectives, namely the impact on the electoral system, the principle of separation of powers, and legal certainty.

First, in terms of the electoral system, the separation between national and local elections has the potential to fundamentally change the political cycle and governance. Prior to this ruling, Indonesia implemented a simultaneous election system regulated in Law Number 7 of 2017

²⁵ The final and binding nature of Constitutional Court decisions is regulated in Article 24C paragraph (1) of the 1945 Constitution. For a discussion on the lack of checks and balances mechanisms, see: Pan Mohamad Faiz, "Perkembangan Fungsi Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia," *Jurnal Konstitusi* 16, no. 2 (2019): 289–312.

concerning General Elections, where presidential, national legislature, and regional legislative elections were held on the same day.²⁶ The Constitutional Court's ruling that established the time lag between national and local elections directly changed the design of the electoral system that had been running for two election cycles (2019 and 2024). These changes not only have an impact on the technical aspects of the implementation of elections, such as logistics, budgets, and human resources, but also have the potential to change the dynamics of local politics that have been closely linked to national politics.²⁷ The disparity in the quality of local democracy that is the basis of the Constitutional Court's consideration does have an empirical justification, but the separation of elections without fundamental changes to the local electoral system can actually lead to political fragmentation that is not desirable.

Second, in terms of the principle of separation of powers, this ruling has the potential to blur the boundary between judicial and legislative authority. In the classical doctrine put forward by Montesquieu, the separation of powers aims to prevent the abuse of power by dividing the

²⁶ Law Number 7 of 2017 concerning General Elections (Statute Book of the Republic of Indonesia No. 182 of 2017, Supplement to Statute Book of the Republic of Indonesia No. 6109), Article 167. For an analysis of the simultaneous election system, see: M. R. Khairul Muluk, *Sistem Pemilu Serentak di Indonesia: Desain, Implementasi, dan Problematika* (Jakarta: RajaGrafindo Persada, 2020), 45–67.

²⁷ For the impact of election separation on local governance, see: Indrayana, "Mahkamah Konstitusi sebagai Positive Legislator," 225–230. See also: Susanti, "Implikasi Putusan MK," 95–105.

functions of the state into different branches and supervising each other.²⁸ The Constitutional Court, as part of the judicial branch, is supposed to serve as a constitutional guardian that keeps the product of legislation from overstepping constitutional limits. However, when the Constitutional Court takes on the role of formulating strategic public policies, such as the design of the electoral system, the function of checks and balances between the branches of power is disrupted.²⁹ Furthermore, the Constitutional Court's action of establishing new norms in the absence of public participation and legislative deliberation raises questions about the democratic legitimacy of the decision.³⁰ This becomes even more problematic given the Court's decision The Constitution is final and binding, so there is no adequate appeal or retest mechanism.

Third, in terms of legal certainty, constructive decisions can cause ambiguity if they are not immediately followed up by lawmakers. The Constitutional Court's decisions that are self-executing and non-self-executing are still a debate in Indonesian constitutional practice.³¹ In Decision Number

²⁸ Montesquieu, *The Spirit of the Laws* (1748). For a contemporary discussion, see: Vile, *Constitutionalism and the Separation of Powers*, 85–110.

²⁹ For the disruption of checks and balances due to constructive constitutional court decisions, see: Sumadi, "Perkembangan Mahkamah Konstitusi," 468–475. See also: Faiz, "Perkembangan Fungsi Mahkamah Konstitusi," 295–305.

³⁰ The issue of democratic legitimacy of constitutional court decisions is discussed in: Stone Sweet, *Governing with Judges*, 110–125. For the Indonesian context, see: Faiz, "Perkembangan Fungsi Mahkamah Konstitusi," 300–305.

³¹ The debate on self-executing and non-self-executing decisions in the practice of the Indonesian Constitutional Court is discussed in: Maruarar Siahaan, *Hukum Acara*

135/PUU-XXII/2024, the Constitutional Court gave an order to lawmakers to adjust laws and regulations to the decision within a certain period of time. However, the absence of clear sanctions if lawmakers do not follow up on the decision has the potential to create a legal vacuum (*rechtsvacuum*) that is contrary to the purpose of the decision itself.³² In addition, sudden changes in the design of the electoral system without careful preparation can disrupt political stability and legal certainty for election organizers, election participants, and voters.

Overall, the shift in the role of the Constitutional Court from negative legislators to positive legislators in Decision Number 135/PUU-XXII/2024 reflects the complex dynamics in the relationship between branches of power in Indonesia. On the one hand, the Constitutional Court's constructive actions can be understood as an attempt to address the legal vacuum and protect the constitutional rights of citizens. On the other hand, these actions raise fundamental questions about legitimacy, limits of authority, and their impact on the constitutional system as a whole. Therefore, a clearer theoretical and normative framework is needed to limit the

Mahkamah Konstitusi Republik Indonesia (Jakarta: Sinar Grafika, 2012), 210–225. See also: Pan Mohamad Faiz, "Perkembangan Fungsi Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia," *Jurnal Konstitusi* 16, no. 2 (2019): 295–305.

³² The concept of legal vacuum (*rechtsvacuum*) and its implications for legal certainty is explained in: Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Liberty, 2009), 35–50. For its application in the context of Constitutional Court decisions, see also: Ahmad Fadlil Sumadi, "Perkembangan Mahkamah Konstitusi sebagai Positive Legislator," *Jurnal Konstitusi* 12, no. 3 (2015): 468–475.

authority of the Constitutional Court in carrying out the positive function of legislators, so that the balance of power between state institutions is maintained without sacrificing the effectiveness of constitutional rights protection.

F. CONCLUSION

Based on the analysis that has been carried out, this study produces three main findings that are interrelated. First, theoretically, the Indonesian Constitutional Court is a negative legislator who only has the authority to cancel norms that are contrary to the constitution. This doctrine places the constitutional court as a constitutional guardian institution without the authority to form new norms, so that the function of legislation remains in the hands of the lawmakers.

Second, in the Constitutional Court Decision Number 135/PUU-XXII/2024, there is a strong indication that the Constitutional Court has exceeded the negative function of the legislator. In this ruling, the Constitutional Court not only invalidated certain norms in the election law, but also created new norms by establishing the separation between national and local elections separately with a certain time gap. This action shows a shift in the role of the Constitutional Court towards positive legislators, who substantively change the design of Indonesia's electoral system without going through a legislative process involving public participation and democratic deliberation.

Third, the shift in role has serious implications for the principle of separation of powers, the system of checks and balances, and legal certainty in Indonesia. In terms of the electoral system, the separation between national and local elections has the potential to fundamentally change the political cycle and governance. In terms of the principle of separation of powers, this ruling has the potential to blur the boundary between judicial and legislative authority. Meanwhile, in terms of legal certainty, constructive decisions can cause ambiguity if they are not immediately followed up by lawmakers.

Based on these findings, this study recommends two main things. First, there is a need for stricter restrictions on the authority of the Constitutional Court in carrying out the positive functions of legislators, both through the revision of the Law on the Constitutional Court and through the development of consistent jurisprudence. This restriction is important to keep the Constitutional Court from exceeding the limits of its constitutional authority and remaining within the corridor of the principle of separation of powers. Second, a quick and comprehensive response is needed from lawmakers, in this case the House of Representatives together with the Government, to follow up on Decision Number 135/PUU-XXII/2024 by making changes to the Law on General Elections. This response is important to maintain the balance of the constitutional system and legal certainty in Indonesia, as well as to ensure that changes in the design of the electoral system

decided by the Constitutional Court can be implemented effectively and democratically.

Finally, this study recognizes limitations, especially in terms of the scope of analysis that focuses only on one Constitutional Court decision. Therefore, further research is recommended to conduct comparative studies with other countries that have similar experiences in shifting the function of the constitutional court, as well as to empirically examine the impact of Decision Number 135/PUU-XXII/2024 on the implementation of elections at the local level. Thus, the discourse on the limits of the Constitutional Court's authority can continue to be developed academically to strengthen Indonesia's constitutional system in the future.

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