Strengthening the Constitutional Court’s Authority to Adjudicate on Disputes Regarding the Result of Regional Head Election In Indonesia: an Urgency to Clarify the Constitutional Framework

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Abstract
Since the Constitutional Court is the guardian of democracy and the constitution, it is responsible for ensuring that elections in Indonesia are held in a democratic manner. The power rotation process must be carried out calmly and collectedly, without any significant breaches of people’s fundamental rights or acts of violence. The instrument of authority is a necessary component for the Constitutional Court to achieve all of the goals stated in the text. The functioning of the Constitutional Court’s authority to resolve disputes relating to the outcomes of Indonesia’s regional head elections will be further examined in this research. Then, in order to determine the necessary treatments, a worldwide comparison of the increasing symptoms with those of other countries will be carried out. The research methodology used is doctrinal legal study using a comparative constitutional research strategy. The findings demonstrated the weakness of the Constitutional Court’s authority to resolve disputes over the outcomes of regional head elections. It was observed that there were three distinct interpretations of the norms that formed the basis for legitimacy, which resulted in progressive changes to this authority. The Republic of Indonesia’s 1945 Constitution’s ambiguous normative framework for regional head elections has led to ongoing interpretations. It is really unique in light of the fact that the constitutions of 43 of 72 unitary nations in the world fully regulate election procedures and the course of
dispute settlement in the event of a dispute. In fact, they specifically mention in one or more of the Constitutional Court’s complete authority articles the nature of authority and the scope of elections. It is imperative to promptly establish the precedent with clear legal politics declaring that regional head elections are elections in order to guarantee that the Constitutional Court hears the majority of cases.

I. Introduction

One of the honorable and vital pillars of a state’s organization is judicial power. Its presence is meant to serve as a pillar supporting the ideas of the rule of law, authority restraint, power separation, and the role of checks and balances. According to Bagir Manan, upholding people’s rights and exercising control over the use of force is fundamental to the concept of judicial authority. To achieve this, the development of fair and independent judicial institutions is a necessary first step.

To perform the duties of judicial power, authority instruments are installed in every judicial institution. C. F. Strong divided power into two categories: unqualified application of legislative laws and categorized interpretation of legislative laws. The first pattern is frequently associated with judicial organizations designed to settle political matters related to the constitution (court of norm). The second paradigm is usually used to courts that are tasked with addressing specific citizen conflicts as a result of establishing norms (court of justice).

The Indonesian constitution governs the judicial authority system. Under Article 24 paragraph (2) of the Republic of Indonesia’s 1945 Constitution, the Supreme Court, its subordinate judicial bodies, and the Constitutional Court normally exercise judicial jurisdiction. This implies that the two courts that represent the greatest degree of judicial authority are the Constitutional Court and the Supreme Court. The Constitutional Court performs its judicial functions as a court of norms, despite the fact that the Supreme Court is a court of justice with last word.

The duties, principles, and authority of the Constitutional Court are expressly outlined in Article 24C, paragraphs (1) through (6) of the 1945 Constitution. The judiciary established by the constitution has four powers and one duty. I Dewa Gede Palguna emphasized that this text acts as the cornerstone of the Fundamental Court, defending the fundamental rights of individuals and acting as a bulwark for democracy and the constitution. The Constitution of 1945 does not, however, completely eliminate the
obligations and powers of the Constitutional Court.

The 1945 Constitution’s Article 24C paragraph (1), which explicitly includes the authority to settle disputes over election results, becomes difficult when one takes into account the processes of democracy in different locations. The original goal of the Constitutional Court was to arbitrate conflicts arising from the results of elections for the positions of vice president, president, and members of the council. However, when governors, regents, and mayors appointed following reform are also directly elected by their communities, constitutional problems develop. The ongoing disagreement has permeated academics’, practitioners’, and policymakers’ theoretical conceptual domains.

The argument over who has the right to settle disagreements resulting from the outcomes of regional head elections is becoming more and more common. Divergent viewpoints about the eligibility of regional head elections as an electoral system give rise to the conflict. The election is not an electoral system according to constitutional law as it is based on Article 18 paragraph (4) of the 1945 Constitution rather than Article 22E paragraph (2). However, there are many similarities between them in terms of the basic concepts, the people involved, the managerial approaches, and law enforcement.

The use of adjudication venues as a means of resolving disputes stems from the weak drafting of constitutional rules pertaining to the jurisdiction of the Constitutional Court and regional head elections. The Constitutional Court removed the Supreme Court’s judicial competence with the issue of Decision Number 72-73/PUU-II/2004. The outcomes of regional head elections were among the objectum litis on which the Constitutional Court pondered and made rulings. Soon after, on May 19, 2014, the Constitutional Court issued a verdict declaring null and illegal the ability to settle disagreements over the results of regional head elections.

In an effort to unify judicial power under a specialized body, this legislation removes the Constitutional Court’s ability to resolve disagreements about the outcomes of regional head elections. However, it wasn’t until the end of 2022 that the anticipated judicial body was given a basic rundown of the organization’s makeup, duties, and jurisdiction. The same circumstances that had been started since mid-2023 also interfered mutatis mutandis in preparation for the concurrent elections that are slated for 2024. The Constitutional Court decides that the ongoing ambiguity makes it impractical to have a distinct judicial institution, as stated in Decision Number 85/PUU-XX/2022. As a result,

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2 Sekretariat Bersama Kodifikasi Undang-Undang Pemilu, ‘Policy Brief [03]: Pemilihan Kepala Daerah Adalah Pemilu’ (Jakarta, 2017), Hlm. 2-3.

3 See Legal Consideration of the Petitioner’s Petition Paragraph Number 6 in Constitutional Court Decision Number 72-73/PUU-II/2004 Dated March 22nd, 2005.

4 Refer to the Constitutional Court’s Decision Number 97/PUU-XI/2013, Dated May 19, 2014, Legal Consideration Paragraph [3.12.3].

the Constitutional Court regains authority.6

The Indonesian state does not yet have a clear design for the duties, tenets, and operations of the constitutional court, which the erratic authority regulation reflects. This is a very worrying issue since the constitutional court is crucial to demonstrating that the constitution is paramount and acts as the cornerstone of a democratic state of law. Andrew Harding clarifies that "States that have created constitutional courts have done so largely because they see the courts as a necessary guardian of democratic institutions, constitutionalism, and fundamental right." 7 This implies that as defenders of democracy, constitutionalism, and each person’s fundamental rights, constitutional courts play a crucial role.

A correct idealization of the Constitutional Court’s role as a state judicial weapon is necessary for the establishment of a democratic legal state. It may be beneficial to examine successful constitutional court systems throughout the world using perspective-broadening comparative analysis. The parallels and contrasts between state administration and the constitution may have an impact on findings that are presented as patterns, trends, models, or classifications. This article’s analysis is restricted to the constitutional court’s authority regulation for the resolution of disputes involving regional head election results. The following are the two research topics: First, what are the mechanisms by which Indonesia’s Constitutional Court settles challenges pertaining to the results of regional head elections?

2. Research Method
Normative legal research is the method used for this investigation. Normative legal research is grounded in norms to which the state may impose obligations, participation in Das Sollen’s world of need, and the creation of goods that are the result of normative legal research. This research employed both the legislative and comparative methodologies in the interim. This suggests that all regulations be examined to find normative challenges initially, and then by comparing with other countries, trends, patterns, models, and specific categories are discovered. 8

Secondary data gathered from primary, secondary, and tertiary legal sources or materials is necessary. The primary legal materials are constitutional texts from various countries and judicial rulings. Secondary legal materials are published text documents such as books, journal articles, papers, manuscripts, and agency or organization reports. Tertiary legal materials include legal dictionaries, legal encyclopedias, and news and

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6 The ruling is included in Constitutional Court decision number 85/PUU-XX/2022. The date is September 29th, 2022.
7 The fundamentals of constitutional courts are covered in Andrew Harding’s Constitution Brief (Stockholm: Institute for Democracy and Electoral Assistance, 2017), HL 2.
legal magazines.

The method of data collection used to get research data was document study. The first step in the implementation process is to compile a list of the necessary books. After that, go to the library, either in person or online. Then, arrange the books according to themes, then go through and study them to obtain the information you want.

In order to prepare the acquired data for analysis, it will first be processed. Processing data involves the following steps:
1. First verification to make sure all required information has been obtained.
2. Sorting and validation to ensure that its legitimacy is assured.
3. Data categorization or clustering according to study subject
4. Designating the data portion that will be referenced.

The data will be presented as tables, graphs, and narratives following processing. The goal of properly presenting data is to make analysis easier. In this study, the descriptive analytical approach was used. The strategy is designed to provide an explanation and rationale for the study results in order to identify the primary issue in a comprehensive manner, which will serve as the basis for developing the best possible countermeasure.  

3. Results and Discussion

The Dynamics of the Constitutional Court's Authority in regard to the Settlement of Regional Head Election Results in Indonesia

The Rule of Law (UK), the Rechtsstaat (Germany), and the Etat de droit (France) are unmistakably the foundations of the constitutional paradigm known as the "rule of law." The core principle of the rule of law, as emphasized by George Fletcher, is that justice and righteousness are part of the law and ought to be respected by the state and its citizens, not simply because they have been codified into legislation. Law is a concept that is intertwined with legitimacy and legality in addition to normative laws. George Holland Sabine asserts that as law is the corpus of information that individuals possess, citizens’ roles are intrinsically related to both its creation and enforcement.  

Upon thorough examination, it has been shown that the rule of law is unable to completely isolate the primacy of norms (nomocracy) from popular sovereignty (democracy). The ideas of the contemporary state of law, democratic state of law, and law-based democratic state emerged from such a paradigm. Examples of these include the rule of law, the limitation of authority, the protection of human rights, and a free and impartial court fundamental principles. The constitution provides a tangible expression of these ideas, which are the result of the state's intellectual ideal coming to fruition.

8 Nitaria dkk Angkasa, Metode Penelitian Hukum Sebagai Suatu Pengantar (Lampung: Laduny, 2019), Hlm. 56.
The fundamental principles and standards that formed the basis for the creation of the state apparatus are fundamentally contained in the Constitution. Parlin M. Mangunsong argues that the Constitution is a little more significant. This implies that the Constitution is at the top of a nation’s legal system. In essence, it gives all other legislative directives and orders that officials implement when conducting official business a sense of legality.

Creating a detailed blueprint for the establishment of a sovereign state is the primary goal of a constitution. Wheare, K. C. “The very minimum, and that minimum to be the rule of law,” This description of the content material lacks clarity about which provisions of the constitution must be recognized as reference norms and which vice versa. On the other hand, Miriam Budiardjo has stated that one of the most significant aspects of the state that must be managed by the constitution is its organization. This addresses the hierarchies, power dynamics, and modes of communication found in governmental organizations.11

The Constitution’s main goal is to offer comprehensive and stringent control of the fundamental constitutional organs. Erwin Chemerinsky affirms this position, saying that “the Constitution creates a national government and divides power among the three branches.” The phrase “three branches of power” refers to Charles-Louis de Secondat, baron de La Brède et de Montesquieu’s theory of the division of powers (trias politica). Saldi Isra went on to expand it according to its functions, designating the judicial branch as its monitor over its creation and execution, the legislative branch (the parliament) as its creator, and the executive branch (the president) as its executor.12

The judicial branch, run by judicial institutions, entered a new phase when the idea of establishing a constitutional court (verfassungsgerichtshof) began to arise after the 19th century. Alec Stone Sweet explains that “... a constitutionally established, independent organ of the state whose central purpose is to defend the normative superiority of the constitutional law within the juridical order.”.13 According to Alec Stone Sweet, the aim of establishing the constitutional court is to maintain the normative superiority of the constitution in the juridical order. The primary instrument of authority utilized to realize these ideals is the constitutional review of the law against the basic provisions as contained in the constitution.14

Concurrently, constitutional courts play a significant role in democratizing the constitutional system. According to Simon Butt, one approach is to handle the adjudication role in cases involving disagreements over election outcomes. In Indonesia,

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13 Jimly Asshiddiqie, Model-Model Pengujian Konstitusional Di Berbagai Negara (Jakarta: Sinar Grafika, 2010), Hlm. 49-54.
the Constitutional Court also has a strategic purpose. The intention is to ensure a smooth transition of leadership by providing guardianship and facilitating the process.

By design, the Constitution places the Constitutional Court at the pinnacle of judicial authority, with the capacity to settle disagreements about election outcomes. According to the 1945 Constitution’s Article 24C, paragraph (1), this authority has been formally established. "The Constitutional Court has the power to hear cases at the first and final levels, with decisions that are final, to test laws for constitutionality, to decide disputes regarding the legitimacy of state institutions whose authority is given by the Constitution, to order the dissolution of political parties, and to decide disputes regarding the results of elections," states the text of the relevant article. As a result, the Constitutional Court's jurisdiction to consider disputes of election results has been granted constitutional legitimacy.

The notion of the Constitutional Court's authority to hear cases involving disputes over election results was discussed and considered during the 35th Plenary meeting of PAH I MPR RI in 2001. The primary subject of debate about Chapter IX, paragraphs 24 and 25, and judicial authority was the agenda item for the September 25, 2001, meeting. Disagreements regarding election results will be brought before the basic Court, as agreed upon by the conference attendees and the expert team, because the issue impacts citizens' basic rights and democracy. In agreement, Jimly Asshiddiqie notes that legal politics make sense given the Constitutional Court's original intent to uphold democracy and the rule of law.

The laws that are enacted under the 1945 Constitution reinforce the concepts that it outlines so clearly. Article 12 letter d of Law Number 4 of 2004 respecting Judicial Power grants the Constitutional Court the competence to resolve challenges pertaining to election results. Furthermore, Law Number 24 of 2003’s Article 10 paragraph (1) letter d pertaining to the Constitutional Court has the same set of criteria. Both underline that the Constitutional Court was originally intended to be a state governance court with the power to settle issues pertaining to democracy, including those arising from election outcomes.

Disagreements over election results were limited to selecting the President, Vice

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14 See Article 24C, paragraph (1) of the 1945 Constitution of the Republic of Indonesia.
15 See State Gazette of the Republic of Indonesia of 2004 Number 8, Supplement to State Gazette of the Republic of Indonesia Number 4358, for information on Article 12 letter d of Law Number 4 of 2004 about Judicial Power.
16 See State Gazette of the Republic of Indonesia of 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, for further details on Article 10 paragraph (1) letter d of Law Number 24 of 2003 about the Constitutional Court.
President, and members of the House of Representatives when they were created. Meanwhile, another result of local democracy expanding is direct elections for regional leaders. According to Hamdan Zoelva, direct elections for regional chiefs at the regency/city level were conducted on June 01, 2005 in Kutai Kartanegara Regency, East Kalimantan, and on June 05, 2005 in Cilegon City, Banten, Pekalongan City, and Kebumen Regency, Central Java. Direct provincial elections were held in North Sulawesi on June 20, 2005, not too long after.

The introduction of direct regional head elections has raised questions about the judiciary’s appropriateness as a forum for decision-making in the event of a dispute over the result, at the very least. The Constitutional Court has ruled on matters concerning election results from vote counts as the guardian of democracy, although it is not equipped to consider complaints concerning the results of regional head elections. The argument goes that the authority granted by the 1945 Constitution and the laws that implement it is contingent upon the results of elections. However, Regional Government Law Number 32 of 2004’s Article 106 paragraph (1) gives the Supreme Court the authority to hear citizen complaints and resolve legal disputes.

Because of the deadlock in the normative framework, the issue of jurisdiction over disagreements over regional election results is still unclear. The 1945 Constitution’s narrow definition of the Constitutional Court’s authority has been considerably changed. Fakhris Lutfianto Hapsoro and Ismail contend that the 1945 Constitution may be read in a way that permits it to adapt as a living constitution in reaction to social developments. However, the reality reveals that this approach has actually made the authority of the Constitutional Court unstable (instability of the constitutional court’s power).

One of the powers that keeps shifting and moving through the Constitutional Court is the resolution of disagreements over the outcomes of regional head elections. The Constitutional Court’s decision and the unstable and ever-changing ratio decidendi are the primary causes of this instability. Judges of the Constitution were inconsistent from 2005 to 2022. The following table, which illustrates choices, years, and significant changes, provides a succinct summary:

<table>
<thead>
<tr>
<th>Decisions</th>
<th>Years</th>
<th>Fundamental Changes</th>
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<tbody>
<tr>
<td>Constitutional Court</td>
<td>March 22nd, 2005</td>
<td>Constitutional Authority</td>
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<tr>
<td>Decision Number 72-73/PUU-II/2004</td>
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<tr>
<td>Constitutional Court</td>
<td>May 19th, 2014</td>
<td>Specialized Authority for regional</td>
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<tr>
<td>Decision Number 97/PUU-XI/2013</td>
<td></td>
<td>head elections</td>
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<tr>
<td>Constitutional Court</td>
<td>September 29th, 2022</td>
<td>Constitutional Authority</td>
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<tr>
<td>Decision Number 85/PUU-XX/2022</td>
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Table 1. Dynamics of the Authority to Settle Disputes over Regional Head Election Results

The three rulings the Constitutional Court has issued, which are shown in the table, demonstrate how ambiguous and undefined the authority is to evaluate objections to
regional head election results. Such circumstances are inherently linked to differences in opinion over regional head elections that qualify for inclusion in the general election system or regional government. The Constitutional Court has the competence to interpret the Constitution largely through teleological and futuristic means since, as declared by its justices, regional head elections are, in a material sense, general elections. The election will be seen as a local government problem in the meantime, and the Constitutional Court will lose its jurisdiction when constitutional judges are more likely to use methodical and linguistic

The Constitutional Court’s incorrect rulings, which do not apply mutatis mutandis, have an effect on legislation and regulations that need to be revised. With Decision No. 72-73/PUU-II/2004, the Constitutional Court modified three statutes once more. Regional head elections had to be declared as elections, according Law Number 22 of 2007’s Article 1 Point 4 regulating General Election Organizers. The Constitutional Court will temporarily assume judicial jurisdiction from the Supreme Court, as stated in Article 236C of Law Number 12 of 2008, the Second Amendment to Law Number 32 of 2004 concerning Regional Government.  

With the publication of Constitutional Court Decision Number 97/PUU-XI/2013, the process of developing legislative guidelines for the expansion of the meaning of general elections quickly came to a stop. The ruling divided the system of general elections from regional head elections. The further notion that logically arises from this is the instruction to establish a distinct court for elections to regional heads of state. Based on these decisions and Ratio Decindi, Law Number 10 of 2016 alters Law Number 1 of 2015 to specify an alternative government rule for Law Number 1 of 2014, which lays out the processes for choosing governors, regents, and mayors.  

The legal politics of establishing a special court for regional head elections are inextricably linked to the pros and cons. R. Nazriyah noted that the idea has numerous advantages and disadvantages. The advantages will be in terms of effectiveness and efficiency of case handling time and expenses if case handling is envisioned in stages under the Supreme Court. However, the disadvantage is that case resolution is not

17 The State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076, contains information on judicial power. Law Number 48 of 2009, paragraph 29 paragraph (1) letter e, addresses this. See State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898, for further information on Article 157 paragraphs (1) through (3) of the Law.

18 For information on Article 157 paragraphs (1) through (3) of Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 regarding the Stipulation, see State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898.

19 Regarding judicial power, see Law Number 48 of 2009, paragraph 29 paragraph (1) letter e, State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076.
optimal due to the lack of capacity and practical experience and the potential for horizontal conflict in the judicial locus. 20

Following the publication of Constitutional Court Decision Number 97/PUU-XI/2013, the development of legal standards pertaining to the expansion of the meaning of general elections came to an abrupt end. The ruling divided the system of general elections from regional head elections. The order to establish a special court for regional head elections is the supplementary notion that follows logically from this. These rulings and Ratio Decindi serve as the foundation for the provisions found in Law Number 10 of 2016, which amends Law Number 1 of 2015 in a way that specifies a substitute government regulation for Law Number 1 of 2014, which establishes the procedures for electing governors, regents, and mayors.

It is impossible to undervalue the significance of constitutional interpretation as a component of the ratio decidendi and judgment made by the Constitutional Court. The rationale stems from the fact that the decision made by the Constitutional Court is, in theory, final and enforceable. According to Ni’matul Huda, the fundamental idea of the term is that it applies to all institutions and citizens equally and becomes legally binding as soon as it is declared in a plenary assembly (erga omnes). This implies that, regardless of how the constitution is interpreted, once it has been established by a judgment of the Constitutional Court, it is enforceable as a legal standard and needs to be complied with by all parties, just like any other legislation.

The 1945 Constitution affirms the Constitutional Court’s authority to settle disputes over regional head election results

Over time, the paradigm of constitutional democracy has grown and taken root in global constitutional practice. According to Janedjri M. Gaffar, the authority must be formed and controlled on the basis of the people’s will as expressed in the constitution. 21 The existence of a constitution containing the command and limitation of power, as well as the protection of individuals’ fundamental rights, will automatically bind the power to rule. Tom Ginsburg and Aziz Z. Huq agree that constitutional democracy can only be claimed to remain alive if at least three essential elements remain functioning effectively, namely: 22

1. People’s involvement in the configuration, actualization, and evaluation of government through free and fair elections and other democratic means.
2. A counterbalancing force operating outside of the government has a position and consequently applies pressure.
3. Individual freedom, associational freedom, the right to free speech, and the impartiality of law enforcement are all guaranteed.

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The establishment of the Constitutional Court is a complementing instrument that is entirely a holistic unity of constitutional democracy in its application in various countries. John Ferejohn and Pasquale Pasquino reveal that the Constitutional Court, in terms of institutional structure, is not the only model in the world, not least in the form of a Constitutional Tribunal or Constitutional Council. The three models are functionally the same in carrying out the obligations of a constitutional court to resolve any constitutional issues that arise. The Constitutional Court was purposefully founded to achieve two primary goals (magna intentio), namely, to enforce the constitution, protect human rights, and preserve democracy.

The obligations and roles of the Constitutional Court are vital to the survival of constitutional democracy. The Constitutional Court has an obligation to uphold democratic principles and constitutional boundaries in political contestation, since it is the principal representation of the people's will. An balance between the dominance of nomocracy and democratic turbulence must be established as the indication. The execution of the election process in a way that upholds each person's fundamental rights in the most honest, fair, and integrity-conscious manner is unquestionably the desired result.

The Constitutional Court, in carrying out its central duties and functions in electoral contestation, is certainly equipped with idiosyncratic authority. This kind of authority is directly derived from it, given that the constitution is the primary organ of the state. The variety of authority can at least be reflected in the 72 constitutions of unitary states that are scattered around the world. In the pattern or model shown in the following figure, there are 43 of which can be seen:

25 The unitary state is the primary point in determining which countries' constitutions will be compared. It is due to the fact that the unitary state is a form of state that allows for national and local elections. Both election designs will be associated with the Constitutional Court's authority as the major focus variable.
26 The data listed in the figure comes from the provisions of the authority of the Constitutional Court as stipulated in 43 constitutions of unitary states in the world. The full details include the constitutions of Albania, Algeria, Angola, Armenia, Azerbaijan, Benin, Bulgaria, Burkina Faso, Burundi, Chad, Equatorial Guinea, Guinea, Haiti, Iran, Cambodia, Cameroon, Kazakhstan, Lebanon, Libya, Liechtenstein, Lithuania, Madagascar, Mali, Malta, Mauritania, Moldova, Mongolia, Montenegro, Mozambique, Niger, France, Central African Republic, Democratic Republic of Congo, Romania, Sao Tome and Principe, Senegal, Serbia, Cyprus, Slovakia, Syria, Togo, Zambia and Zimbabwe.
Variations in the authority of the Constitutional Court in the world in guarding democratic elections can be seen in the figure. Certainly, all of these authorities are legitimized in the constitutional sketch. Bulgaria even expressly states in its constitution that powers cannot be changed or suspended by law. The norm can be found in Article 149 paragraph (2) of the Constitution of the Republic of Bulgaria “No authority of the Constitutional Court shall be vested or suspended by law.”.  

The Constitutional Court’s authority, which is so diverse when classified, falls into at least two main models. Some of them are monitoring models, while others are dispute resolution models. The first model is the manifestation of at least 13 Constitutional Courts in the world. Meanwhile, the remaining 26 Constitutional Courts have a tendency towards the second model.

The monitoring model emphasizes the Constitutional Court’s involvement in the overall flow of elections. The Constitutional Court is tasked with ensuring that the electoral process is orderly and does not contradict the legal framework or the principles of democracy. The instruments of authority that are accompanied by such a task include verifying specified prerequisites, reviewing implementation, and announcing the outcomes. In addition, there are also other authorities in the form of confirmation and/or validation of

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27 Refer to paragraph (2) of Article 149 of the 1991 Bulgarian Constitution, as amended until 2015.
28 Thirteen nations have Constitutional Courts that meet the requirements for the authority-based monitoring approach. These include Equatorial Guinea, Iran, Libya, Lithuania, Mali, Moldova, Mongolia, Romania, Azerbaijan, Benin, Burundi, Burundi, Chad, and Equatorial Guinea.
29 There are 26 nations with Constitutional Courts that are eligible for the authority-based conflict settlement mechanism. These include France, the Central African Republic, the Democratic Republic of the Congo, Sao Tome and Principe, Senegal, Serbia, Cyprus, Slovakia, Togo, Zambia, Zimbabwe, Haiti, Cambodia, Cameroon, Kazakhstan, Lebanon, Liechtenstein, Madagascar, Malta, Mauritania, and Montenegro.
election results, such as in Azerbaijan, Iran, Mali, Moldova, Mongolia, and Romania.

The Constitutional Court is only employed as an adjudicative body when the conflict is thought to be harmful to candidates running for office, which makes the dispute settlement approach significantly different. It takes on a more passive role, only reacting to objections or complaints that are grounded on fraud and other significant breaches. It is necessary for the Constitutional Court to investigate and determine whether or not any of these claims is true. The ruling of the Constitutional Court needs to be made public as soon as possible to avoid interfering with the final judgment, which will be made later.

The Constitutional Court’s authority with regard to election disputes has very diverse arrangements. The majority of them formed a centralized pattern, delegating authority to the Constitutional Court to address electoral disputes.  

However, at least three countries apply the tiered concept by giving the Constitutional Court authority as far as appellate resolution is concerned. The complementary authority that is usually embedded is also the announcement of the definitive result after all disputes have been decided, for example, in the countries of Algeria, Cameroon, Madagascar, Mauritania, Central African Republic, Democratic Republic of Congo, and Senegal.

The authority model of the Constitutional Court is not entirely inflexible; it bifurcates into a model of monitoring and resolving conflicts. There are differences between the two, as demonstrated by Burkina Faso, Mozambique, Nigeria, and Syria. These nations undoubtedly possess elements of authority that are components of the conflict settlement and monitoring frameworks. Up to ratification and the publication of the final outcome, the Constitutional Court in place is duly empowered to carry out verification, monitoring, dispute settlement, and appeal.

Both national and local elections are included in the scope of elections that fall under the authority jurisdiction of the Constitutional Court. National elections are held to choose the President and/or Vice President, as well as members of parliament. The people have the right to freely, secretly, and independently choose their representatives to fill seats in the National Assembly, Senate, Assembly of Leadership Experts, Islamic Consultative Assembly, Seimas, and State Headquarters. In a manner similar to this, the public may participate in municipal elections for mayors, regional heads, and representatives to the Municipal Council and Regional Assembly.

Upon examination of 43 of the 72 constitutions of unitary nations around the globe, it is evident that the Constitutional Court possesses a variety of powers. Indonesia is among the nations that errs more on the side of the dispute settlement model when it comes to the

30 For the first and last time in 23 countries. These are Angola, Armenia, Bulgarian, Guinea, Haiti, Cambodia, Cameroon, Kazakhstan, Lebanon, Liechtenstein, Madagascar, Malta, Mauritania, Montenegro, France, Central African Republic, Democratic Republic of Congo, Senegal, Serbia, Cyprus, Slovakia, Togo and Zimbabwe.

31 The Constitutional Court was intended to have appellate jurisdiction over electoral matters in a number of different nations. Among them are Zambia, Sao Tome & Principe, and Algeria.
1945 Constitution's architecture of authority. The 1945 Constitution's Article 24C, paragraph (1) makes it quite evident that the only exercise of power is the settlement of election disputes. However, there is still ambiguity regarding the scope of the election of such authority.

Elections that might be the subject of a constitutional court challenge usually involve local and national elections. When discussing the scope of elections, the bulk of them have been specifically mentioned in Article 22E, paragraph (2) of the 1945 Constitution. The election of the President and Vice President, the House of Representatives, and the Regional House of Representatives is what is being considered in this context. This indicates that the selection of regional leaders comes under the purview of elections that are beyond the purview of the 1945 Constitution.

One of the subjects of issues that fall under the Constitutional Court's jurisdiction based on constitutional interpretation is regional head elections. The axiom was last validated and/or upheld in Constitutional Court Decision Number 85/PUU-XX/2022. Put another way, as evidenced by its rulings, the Constitutional Court has increased the scope of its own jurisdiction through constitutional interpretation. It's interesting to note that this growth has led to new differences across Asian constitutional courts.

There are more variations and varieties in the world outside of being unique to the Asian continent. Five additional countries, including Indonesia, have Constitutional Courts with jurisdiction that extends to municipal elections. Burkina Faso and Sao Tome and Principe control elections for Regional Assemblies, whereas Equatorial Guinea only allows contests for Local Corporations. While the power to choose mayors, council chairs, and chairs of territorial self-government units rests with Slovakia and Zambia.

One of the African nations that has given the Constitutional Court authority to settle issues pertaining to the election of Council Chairpersons and final-level mayors is Zambia. Christopher Phiri approved the plan as well, recognizing that the Constitutional Court—the cornerstone of democracy that is still based on upholding and defending individual rights—could assist in supervising municipal elections. The examination mechanism will be initiated at the ad hoc local election tribunal formed by the Supreme Court’s chief justice. If the dispute has not been settled, the Constitutional Court will make its decision on it with permanent legal force at the appeal level.

The most evident distinction between Zambia and Indonesia is the extent of their approaches to conflict resolution. Indonesia planned for the Constitutional Court to be the

32 See Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia.
33 See Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia.
35 The right to run for office in Zambia: Is it a way to protect the “educated” class? Christopher Phiri, Journal of African Law 66, no. 3 (2022): Hlm. 438
36 See Zambia’s 1991 Constitution, with Amendments through 2016, Article 159, paragraphs (1) through (5).
only authority able to make decisions and settle disputes over the results of head elections held in the area. Conversely, Zambia sees the Constitutional Court solely as an appeal court that hears cases and makes rulings. This suggests that an ad hoc local election tribunal, which maintains constitutional primacy, was established by Zambia’s top justice of the Supreme Court.

Unitary states have demonstrated the need of keeping the scope of elections and the authority of the Constitutional Court within constitutional bounds. Their legal system generally distinguishes between the purview of national and local elections. While national elections stand alone in one chapter since they elect the President and/or Vice President and members of parliament, local elections are only used to fill positions in the chapter on local government. Expanding the electoral sphere under the Constitutional Court’s jurisdiction gradually is the most rational course of action.

Indonesia should further emphasize that regional head elections are inside the 1945 Constitution’s ambit and are overseen by the Constitutional Court as a means of resolving disputes. However, in order to take into account the changing national legal politics and cutting-edge collective worldview, its formulation and systematics must be updated. The terms "democratically elected" in Article 18 paragraph (4) and the general election scope in Article 22E paragraph (2) of the 1945 Constitution, which are the source of ambiguity about the Constitutional Court’s authority, must be reconciled.

It is standard constitutional practice to enlarge and contract the jurisdiction of the Constitutional Court. According to Fitra Arsil, constitutional interpretation is the approach that is most frequently used since it is more adaptable in meeting real demands. To offer legal clarity as to whether or not it is a part of the Constitution, that interpretation must, in the end, be validated and endorsed by the Constitution itself. 37 R. William Liddle continued, saying that democratic processes and clear legal structures will eventually be crucial to the consolidation of constitutional democracy. 38

4. Conclusion

Changes in the allocation of authority are directly linked to the Constitutional Court’s decision-making process when it comes to issues pertaining to regional head elections. Records indicate that the power was de jure transferred to the Constitutional Court from the Supreme Court, the Regional Election Judicial Entity, at least three times. Authority instability is a result of both the shifting interpretations of constitutional judges and the ambiguity of criteria within the framework of the 1945 Constitution. Consequently, the objective of attaining local democratization via efficient adjudication has come to a standstill, and the nature of the institution of regional head conflict settlement is now obscure. The Constitutional Court’s exclusive source of power is the 1945 Constitution. Of the seventy-two unitary states in the world, forty-three always follow it.

38 Crafting Indonesian Democracy, by R. William Liddle (Bandung: Mizan, 2001), p. 28.
To internalize and legitimize norm building, the 1945 Constitution's clauses (4), 22E paragraph (2), and 24C paragraph (1) must be the primary focus of modifications. This ensures that constitutional democracy is firmly entrenched and local election fairness is completely achieved, enabling the Constitutional Court to confidently carry out its duties.

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