



 sciendo

BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 3 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:3 (2022): 62-74
DOI: 10.2478/bjlp-2022-002005

Limitation of the Authority of the Supreme Court in Examining the Constitutional Court Regulation concerning the Election of Regional Heads

Ahmad Siboy

Faculty of Law, Universitas Islam Malang, Malang, Indonesia

Corresponding author Email: siboysalman@unisma.ac.id

Sholahuddin Al-Fatih

Faculty of Law, University of Muhammadiyah Malang, Indonesia

Received: August 06, 2022; reviews: 2; accepted: November 05, 2022.

Abstract

The review by the Supreme Court/Mahkamah Agung (MA) of the Constitutional Court Regulation/Peraturan Mahkamah Konstitusi (PMK) concerning Regional Head Elections has the potential to make the dispute resolution process at the Constitutional Court without legal certainty considering that the Supreme Court may annul a PMK even though PMK is being used as a basis for conducting the judicial process. This research starts from three questions. Namely, how are the dynamics of the Supreme Court's authority in testing the laws and regulations; why is it necessary to limit or exclude the testing of PMK regarding Pilkada; and how is the design of PMK test exception by the MA. It is normative juridical research with a conceptual, legislation, and philosophical approach. The results of the study state that the Supreme Court is an institution that can conduct a judicial review of PMK even though PMK itself is not included in the hierarchy of laws and regulations in Indonesia, but to provide legal certainty, prevent conflicts of interest and overlapped decisions between judicial institutions, PMK regarding Pilkada must be excluded from the object of the material test by the Supreme Court. The design options that can be done are (i) time limitation; namely the limitation where the application for judicial review of PMK is limited by the time when it can and cannot be requested for a judicial review. (ii) PMK is equated with Government Regulation in Lieu of Law regarding its position and validity period. (iii). Testing on PMK uses a route other than judicial review.

Keywords

Authority, Examination, Regulation of the Constitutional Court.

Introduction

The Supreme Court / *Mahkamah Agung* (MA) is the institution authorized to examine the legislation under the law against the law.¹ If referring to the hierarchy of laws and regulations in Article 7 paragraph (1) of Law / *Undang-Undang* (UU) Number 12 of 2012 as amended by Law Number 15 of 2019 concerning the Establishment of Legislations, then the material object of the law that can be requested for judicial review is (judicial review) to the Supreme Court are Government Regulations / *Peraturan Pemerintah* (PP), Presidential Regulations / *Peraturan Presiden* (Perpres), Provincial Regulations, and Regency/City Regional Regulations. The trial by the Supreme Court is based on the principle of *lex superiori deroget lex priori*.²

However, the Supreme Court has also tested the types of laws and regulations not included in the hierarchy in its development. Legislation not included in the hierarchy of laws and regulations is regulated in Article 8 of Law Number 12 the Year 2011 concerning Pembdetermine Legislation. Namely, the regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution, or a commission of the same level established by law. or the Government on the orders of the Act, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent.

The examination carried out by the Supreme Court of the types of laws and regulations that are not included in the hierarchy of laws and regulations is certainly a process of testing carried out by extending the authority of the Supreme Court. Namely, the Supreme Court tests a type of legislation not explicitly stated by the constitution as the Supreme Court's absolute competence. The Supreme Court seems to be a judicial institution based on a legal vacuum regarding the institution authorized to examine laws and regulations outside the hierarchically structured legislation so that people who feel aggrieved by a provision in the legislation can apply for a judicial review the Supreme Court.

When the Supreme Court has expanded its authority to examine the types of legislation outside the hierarchical structure, the regulations relating to the election of regional heads, especially the Constitutional Court Regulation concerning the Settlement of Disputes over the Results of the Regional Head Election / *Pemilihan Kepala Daerah* (Pilkada) become objects that can be requested for judicial review to the Supreme Court. The regulation of the Constitutional Court / *Peraturan Mahkamah Konstitusi* (PMK) regarding the procedural law for resolving

¹ Jose Manuel Sánchez Patrón, 'The Criminal Prosecution of Illegal Fishing and the Jurisdiction of Spanish Courts', *Marine Policy*, 143 (2022), 105209 <<https://doi.org/10.1016/j.marpol.2022.105209>>.

² G. Montanari Vergallo and M. Gulino, 'End-of-Life Care and Assisted Suicide: An Update on the Italian Situation from the Perspective of the European Court of Human Rights', *Ethics, Medicine and Public Health*, 21 (2022), 100752 <<https://doi.org/10.1016/j.jemep.2022.100752>>.

disputes over the results of the Regional Head Election cannot be avoided from the object of the judicial review authority by the Supreme Court even though the regulation was made by the Constitutional Court / *Mahkamah Konstitusi* (MK) which has an equal position with the Supreme Court. It is because the consideration of who makes the laws and regulations is not a parameter to rule out a type of legislation to be released from testing by the Supreme Court considering that in the testing system of laws and regulations in force in Indonesia, what is used as the testing parameter is the form of the legal product, not who formed it. If the form is a Law/Government Regulation in Lieu of Law (Perpu), it can be tested by the Constitutional Court. Still, if the form is a regulation other than a Law/Perpu, the review is to the Supreme Court.

The Supreme Court's review of the Constitutional Court's Regulation on Regional Head Elections will certainly impact several things. First, the testing process carried out by the Supreme Court can create legal uncertainty regarding the judicial process that takes place at the Constitutional Court, considering that when the Constitutional Court uses PMK as the basis for conducting the trial process for Pilkada cases, at the same time the Supreme Court can cancel PMK.

Second, the Supreme Court's review of PMK will be a process that MK does not recognize on the pretext that the Supreme Court has no authority to examine PMK so that MK will not obey the Supreme Court's decision on PMK testing.

Third, the Constitutional Court can argue that PMK regarding Pilkada is an internal regulation related to the Constitutional Court, considering that the procedural law is a legal arrangement for Pilkada in litigation in the Constitutional Court, not at the Supreme Court or other judicial institutions.³

Research methods

This research uses normative legal research or doctrinal research, while the approaches used are conceptual approaches, statutory regulations, and philosophical approaches. Legal materials consist of primary legal materials such as laws, regulations of the Constitutional Court, and others. Secondary legal materials consist of books and journals, while tertiary legal materials consist of dictionaries. The collection of legal materials is carried out using an internet search, inventory, and classification model. Legal materials analysis techniques are descriptive and prescriptive.

Results and Discussion

Dynamics of Expansion of Authority to Review Legislation by the Supreme Court

Examination of laws and regulations is one form of activity to evaluate or

³ Philipp Meyer, 'Transparency and Strategic Promotion: How Court Press Releases Facilitate Judicial Agenda-Building in Germany', *Public Relations Review*, 48.4 (2022), 102228 <<https://doi.org/10.1016/j.pubrev.2022.102228>>.

correct the provisions of laws and regulations. The testing process of the laws and regulations can be an executive review, legislative review, and judicial review. The scope of norms that can be tested according to Bagir Manan are

1. Normative decisions that contain and are regulatory (*regeling*)
2. Normative decisions that contain and are decisive in nature (*beschiking*)
3. A normative decision that contains and is a verdict/judgment or judgment.⁴

The testing room for the three types of norms provides repressive legal protection for people seeking justice, specifically, citizens who feel aggrieved by the existence of a decision (*beschiking*), a decision (*vonis*), and an arrangement (*regeling*). Through this testing mechanism, people who feel aggrieved have an equal position with the makers of *beschiking*, *vonis*, and *regeling* to fight in defending their respective arguments.

The application process for the examination can be submitted to a judicial institution that has been given the authority to conduct the examination. In Indonesia, the examination of the three types of norms, especially those *regeling*, is given to the Supreme Court (MA) and the Constitutional Court (MK). Both judicial institutions have the authority to conduct tests on all *regeling* (in the form of statutory regulations).

However, MA and MK have different material objects that become their absolute competence in conducting the test. The Supreme Court has the authority to examine statutory regulations under the law, including Government Regulations (PP), Presidential Regulations (Perpres), Provincial Regulations, and Regency/City Regional Regulations. Meanwhile, the Constitutional Court has the authority to examine laws (UU) against the Basic Law (UUD NRI 1945).⁵

Based on the theory of authority, the object of the laws and regulations that can be carried out by the Supreme Court and the Constitutional Court cannot exceed all types of laws and regulations that have been stated explicitly. It means that the provisions that state the object of the authority of each judicial institution (MA and MK) cannot be reduced or increased considering that the addition of a material object by a judicial institution can be declared as an act that can be declared to exceed the authority it has and result in such an act being declared null and void for the sake of the law.⁶

However, in practice, both judicial institutions have expanded their authority through extensive interpretation. Extensive interpretation is carried out on a norm by exceeding the limits of the result of grammatical interpretation. Meanwhile, grammatical interpretation is interpreting the words in the law according to the

4 Ni'matul Huda, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), e07886 <<https://doi.org/10.1016/j.heliyon.2021.e07886>>.

5 Huang-Chih Sung, 'Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China', *Computer Law & Security Review*, 39 (2020), 105461 <<https://doi.org/10.1016/j.clsr.2020.105461>>.

6 P.J.M. Thomas and others, 'A PESTLE Analysis of Solar Home Systems in Refugee Camps in Rwanda', *Renewable and Sustainable Energy Reviews*, 143 (2021), 110872 <<https://doi.org/10.1016/j.rser.2021.110872>>.

rules of language and legal rules of grammar.⁷ Extensive interpretation is a mechanism for expanding meaning that is carried out in understanding a legal norm, or this interpretation does not only look at a grammatical provision of legal norms. From the pattern of applying this extensive interpretation, the Constitutional Court, which was previously only authorized to examine laws (UU) against the Constitution (UUD NRI 1945), added a Government Regulation in Lieu of Law (Perpu) as part of its object of authority so that if there are people who feel aggrieved by a Perpu, they can submit a request for constitutional review to the Constitutional Court such as a request for a constitutional review of the Government Regulation concerning Perpu Corona (Qian & Nair, 2021a).⁸

Meanwhile, the Supreme Court expands its authority over all types of laws and regulations that are not included in the hierarchy of laws and regulations. If it refers to the provisions of Article 24A of the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011 concerning the Establishment of Legislations, the Supreme Court can only examine Government Regulations, Presidential Regulations, and Provincial Regulations and Regency/City Regional Regulations. However, in practice, the Supreme Court has added the types of laws and regulations that can be the object of an application, or a judicial review can be submitted to the Supreme Court. The expansion of authority by the Supreme Court is carried out on all types of laws and regulations, which include regulations set by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution or commission of the same level established by law or by the Government on the orders of the Act, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent (Qian & Nair, 2021b).

The expansion of authority carried out by the Supreme Court becomes something legal. Because, first, the principle of *rech judicakata habertur provitate*. The practice of testing laws and regulations that are not the object of the Supreme Court's authority is a process carried out by the judiciary so that whatever is done by the judiciary, even though it is not following the provisions of the legislation, can be justified. It follows the principle of *rech judicata provitate habertur*. That is, if there are statutory provisions that are contrary to the Court's decision, then the decision of the judiciary will apply or be justified. In this case, the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011 concerning the Establishment of Legislations do not make all types of laws and regulations regulated in Article 8 of Law Number 12 of 2011 not part of the Supreme Court

⁷ Gideon Doron and Assaf Meydani, 'Establishing a Constitutional Court? An Alternative Political Culture Approach – the Israeli Case', *Policy and Society*, 26.4 (2007), 105–24
<[https://doi.org/10.1016/S1449-4035\(07\)70122-4](https://doi.org/10.1016/S1449-4035(07)70122-4)>.

⁸ Jamie McKeown, 'A Corpus-Based Examination of Reflexive Metadiscourse in Majority and Dissent Opinions of the U.S. Supreme Court', *Journal of Pragmatics*, 186 (2021), 224–35
<<https://doi.org/10.1016/j.pragma.2021.10.019>>.

authority. Still, in practice, the Supreme Court states that all laws and regulations. The invitation referred to in Article 8 is his authority or is equivalent to the position of the legislation under the law.

Second, the practice of state administration. Another justification for strengthening the legal basis for the expansion of authority carried out by the Supreme Court is the reason that sources of law can also come from administrative practices.⁹ The Supreme Court has several times conducted judicial reviews of the types of laws and regulations that are not explicitly regulated as the authority of the Supreme Court, such as the Supreme Court judicial review of Ministerial Regulations (Permen),¹⁰ General Election Commission (PKPU) regulations and others. When the testing process carried out by the Supreme Court is accepted and carried out, the constitutional practice carried out by the Supreme Court automatically becomes a source of applicable law, especially in terms of answering legal vacuums regarding the process of testing laws and regulations outside the hierarchy.

The Urgency of Restrictions on Examining Constitutional Court Regulations Regarding Disputes over the Results of Regional Head Elections by the Supreme Court

In general, the regulation regarding the implementation of regional head elections (Pilkada) is regulated in Law Number 10 of 2016 concerning Regional Head Elections. However, the regulation in the law still raises a number of crucial issues, including the inability to predict or predict the dynamics of the regional head elections so that legal vacancies are often found in the court.

The legal vacuum in the implementation of the Pilkada practically requires a legal breakthrough in a short time considering the implementation of the Pilkada is a fast process because each stage of the Pilkada cannot be postponed or postponed considering that delays in one stage of the Pilkada will automatically result in the postponement of the other stages of the Pilkada. It is considering that all stages of the Pilkada have been designed based on time in a row/sequential. Under these conditions and situations, it is challenging to expect normal regulation through changes to the law, considering that the procedure for making changes to the law requires very long legislative processes and procedures and takes a relatively long time. On the basis of these conditions, legal discovery is necessary. In terms of finding the law regarding Pilkada, it always comes from or is carried out by judicial institutions, especially the Constitutional Court.

The Constitutional Court has made various legal breakthroughs in answering the legal vacuum in the case of Pilkada, especially in relation to the settlement of Disputes over Election Results. Several legal breakthroughs made by the

9 Paweł Marcin Nowotko, 'AI in Judicial Application of Law and the Right to a Court', *Procedia Computer Science*, 192 (2021), 2220–28 <<https://doi.org/10.1016/j.procs.2021.08.235>>.

10 John B. Meixner, 'Admissibility and Constitutional Issues of the Concealed Information Test in American Courts', in *Detecting Concealed Information and Deception* (Elsevier, 2018), pp. 405–29 <<https://doi.org/10.1016/B978-0-12-812729-2.00017-3>>.

Constitutional Court were by adding norms (positive legislators) both through decisions and by making Constitutional Court Regulations. The Constitutional Court's legal breakthrough can be seen from the inclusion of prospective pairs of candidates for regional head and deputy regional head as *subjectum letis* of applicants for disputes over election results. The granting of legal standing for prospective regional head candidates by the Constitutional Court is the Constitutional Court's decision that uses an extensive interpretation model.

The Constitutional Court's decision regarding the addition of legal standing must, of course, be included in regulation because if it is only in a decision, then automatically the extension of the legal standing of applicants for disputes over election results is only in the *quo case* or only *in concreto* or cannot be applied to cases involving another considering that the Indonesian legal system does not apply a judicial system of jurisprudence.¹¹ It means that the extension of legal standing carried out by the Constitutional Court through its decision does not automatically apply to other cases; even in other cases, different provisions can be applied, or there is no extension of legal standing.

The expansion of legal standing carried out by the Constitutional Court is not only for prospective regional head candidates but also for election monitoring institutions in regional head elections in an area that is only followed by one pair of candidates or by a single candidate. With the expansion of the parties who have legal standing to become applicants for disputes over election results, the *subjectum letis* in disputes over the results of regional head elections becomes:

- a. Pairs of candidates for Governor and Deputy Governor participating in the Election.
- b. Pairs of candidates for Regent and Deputy Regent or candidates for Mayor and Deputy Mayor participating in the Election.
- c. Domestic election observers registered and accredited by the Provincial KPU/KIP for the election of the Governor and Deputy Governor.
- d. Domestic election observers who are registered and accredited by the Regency/Municipal KPU/KIP for the election of Regents and Deputy Regents or Mayors and Deputy Mayors.¹²

In the provisions of the Constitutional Court Regulation above, it appears that the Court has added an election monitoring agency as a party that can file disputes over the results of the Regional Head Election. The addition by the Constitutional Court was carried out in order to answer the legal vacuum in an election with a single candidate. Because, in the Pilkada with a single candidate, automatically no party can submit a case to the Constitutional Court considering Article 156 of the Pilkada Law states that those who can become case applicants are the losing pairs of candidates. In an election with a single candidate, indeed,

11 Stefano Osella, 'The Court of Justice and Gender Recognition: A Possibility for an Expansive Interpretation?', *Women's Studies International Forum*, 87 (2021), 102493 <<https://doi.org/10.1016/j.wsif.2021.102493>>.

12 Sergio Puig, 'Investor-State Tribunals and Constitutional Courts: The Mexican Sweeteners Saga', *Mexican Law Review*, 5.2 (2013), 199–243 <[https://doi.org/10.1016/S1870-0578\(16\)30024-5](https://doi.org/10.1016/S1870-0578(16)30024-5)>.

there will not be a pair of candidates who can apply to a dispute over the results to the Constitutional Court. Because, in Pilkada with a single candidate, the pair of candidates for regional head/deputy regional head will be faced with an "empty box" so that if the empty box loses, then automatically no party has the legal standing to become a case applicant even though the victory of a single candidate is obtained by cheating and wicked.

However, the addition of a monitoring agency as a party that has legal standing to file a case to the Constitutional Court through a legal product in the form of PMK, then automatically the discovery of law by the Court to answer the legal vacuum can become a legal product that can be applied for judicial review to the Supreme Court because the Supreme Court has carried out administrative practice as a judicial institution that can examine the types of laws and regulations regulated in Article 8 of Law Number 12 of 2011, which also contains a Constitutional Court Regulation.

The expansion of the authority carried out by the Supreme Court to examine the Regulations of the Constitutional Court will cause various problems: First, it triggers the process of resolving disputes over the results of the Regional Head Elections that are not following the process of resolving disputes over the results of the Regional Head Elections which a *speedy trial*. With the availability of a testing room for PMK, which regulates disputes over the results of the Pilkada, it will automatically make parties who feel aggrieved by PMK try to take the judicial review process at the Supreme Court in the hope of giving uncertainty to the judicial process in the Constitutional Court or hindering the process at the Constitutional Court. For example, an area where only one pair of candidates participates in the election (single candidate) is sued by an election monitoring agency because it suspects that the single candidate who wins the Pilkada is indicated to have committed a violation, so on this suspicion, an application is submitted to the Constitutional Court in the hope that the single candidate's victory will be annulled. Meanwhile, the single candidate who won the Pilkada made every effort to defend his victory by stating that the election monitoring agency did not have the legal standing to file a case to the Constitutional Court.¹³ Under these conditions, of course, two judicial processes overlap; namely, the process in the Constitutional Court regarding the dispute over the results submitted by the election monitoring agency and the judicial process in the Supreme Court regarding the legality of the monitoring agency as the applicant for the dispute over the results. In this process, the trial at the Constitutional Court will proceed more slowly because the related parties will file a defense on the pretext of waiting for the Supreme Court's decision on the legal standing of the election monitoring agency as an applicant, considering that if the Supreme Court declares to cancel PMK which is the basis for the election monitoring agency as an applicant for disputes over

13 Adriana A. Dragone Silveira, 'The Role Played by Courts in Promoting Equal Educational Opportunity Reforms: New York and São Paulo Cases', *International Journal of Educational Development*, 87 (2021), 102495 <<https://doi.org/10.1016/j.ijedudev.2021.102495>>.

results then automatically the trial cannot be continued on the pretext that the applicant is a party that does not have legal standing or does not have a constitutional loss from the votes obtained from the regional head elections won by a single candidate.¹⁴ The request of the relevant parties to continue the trial until the Supreme Court's decision regarding the judicial review of PMK will automatically cause the trial process at the Court to not proceed quickly or in line with the principles of the *Pilkada* justice, which is qualified as a speedy trial.

Second, the Constitutional Court Regulation is a type of regulation formed by a high state institution that has an equal position with the DPR, the President, and the Supreme Court itself. From the position of the Constitutional Court, which is equivalent to a high state institution, this will certainly make the review of the Constitutional Court Regulations by the Supreme Court risky with various conflicts of interest considering that it is not only a matter of equal position, but three of the nine constitutional judges are judges who represent the Supreme Court.¹⁵

Third, the Supreme Court's decision on the review of the Constitutional Court Regulations has the potential to be ignored by the Court considering that the Court may argue that the Supreme Court is not authorized to examine the Constitutional Court Regulations because the Constitutional Court Regulations are not included in the hierarchical type of statutory regulations, while the Supreme Court's authority is to examine statutory regulations under laws which include Government Regulations, Presidential Regulations, Provincial Regulations, and City Regency Regulations. If the Supreme Court examines the Regulations of the Constitutional Court, it can automatically be stated that the Supreme Court has practiced state administration that exceeds its authority. In the theory of authority, activity or act that is carried out without the basis of authority is considered null and void by law.¹⁶

Fourth, the review of the Constitutional Court Regulations by the Supreme Court can be seen as an effort by the Supreme Court to reduce and even amputate the Constitutional Court's authority in carrying out its own decisions. The Constitutional Court regulation, which adds parties with legal standing to file cases, is a process of adding authority that begins or begins with the Constitutional Court's decision in adjudicating a case, and the Constitutional Court's decision is then followed up by adding parties who have legal standing to the norm in the Constitutional Court Regulations.¹⁷ In this context, the addition of legal standing

14 Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *BESTUUR*, 10.1 (2022), 68 <<https://doi.org/10.20961/bestuur.v10i1.59098>>.

15 Solomon Rukundo, 'Wikipedia in the Courts: An Examination of the Citation of Wikipedia in Judicial Opinions in Uganda', *Computer Law & Security Review*, 35.5 (2019), 105316 <<https://doi.org/10.1016/j.clsr.2019.03.010>>.

16 Anna Di Ronco and Nina Peršak, 'Regulation of Incivilities in the UK, Italy and Belgium: Courts as Potential Safeguards against Legislative Vagueness and Excessive Use of Penalising Powers?', *International Journal of Law, Crime and Justice*, 42.4 (2014), 340–65 <<https://doi.org/10.1016/j.ijlcj.2014.04.001>>.

17 Amanda M. Alves, Eric Brousseau, and Timothy Yu-Cheong Yeung, 'The Dynamics of Institution Building: State Aids, the European Commission, and the Court of Justice of the European Union', *Journal of Comparative Economics*, 49.3 (2021), 836–59 <<https://doi.org/10.1016/j.jce.2021.02.001>>.

that started from the Constitutional Court's decision is valid in the perspective of authority considering that the Court is a judicial institution authorized to adjudicate disputes over the results of the Regional Head Elections and from the results of the trial the Court finds new facts so that it issues a decision regarding the addition of legal standing. The addition must be understood as part of the effect of the Constitutional Court's authority in adjudicating a case so that if the Constitutional Court's decision is tried to be abolished through tests relating to the addition of legal standing by the Supreme Court, then the Supreme Court will automatically amputate the results of the Constitutional Court's decision in adjudicating a case of dispute over the election results even though The Constitutional Court's decision is final and binding, including the addition of legal standing. The Supreme Court, which in the process of reviewing PMK, then issues a decision canceling the addition of legal standing, then the Supreme Court will automatically be the exact same as not recognizing the Constitutional Court's decision and at the same time not respecting the authority of the Constitutional Court as an institution authorized to adjudicate Pilkada cases considering canceling the Constitutional Court's decision which has been stated in PMK. in the same breath as not acknowledging the Constitutional Court's decision.¹⁸

Fifth, the review of PMK by the Supreme Court has the potential to be carried out at a time when a trial is going on regarding a dispute over election results where the applicant is an election observer. It means that the judicial review process on PMK runs concurrently with the settlement of cases in the Constitutional Court. In a situation like this, there is potential for legal uncertainty.¹⁹ For example, the Supreme Court in adjudicating PMK examination states that PMK regarding the Pilkada does not have binding legal force or is canceled by the Supreme Court, automatically the Pilkada monitoring agency loses its legal standing as a case applicant even though the trial process with the election monitoring agency applicant is currently underway at the Constitutional Court. When referring to the Supreme Court's decision to cancel PMK, the election monitoring agency automatically loses its legal standing as an applicant in the Constitutional Court so that the process at the Constitutional Court must be stopped even though the Court certainly does not want to stop the ongoing trial process.²⁰

Conclusion

The Supreme Court is a judicial institution that has exercised the authority to examine the types of laws and regulations that are included and not included in the hierarchical arrangement of laws and regulations. As a result, the Constitutional

18 Zhiyuan Guo, 'Live Witnesses in Chinese Criminal Courts: Obstacles and Reforms', *International Journal of Law, Crime and Justice*, 62 (2020), 100409 <<https://doi.org/10.1016/j.ijlcrj.2020.100409>>.

19 Ebrahim J. Kermani, 'The U.S. Supreme Court on Victimized Children: The Constitutional Rights of the Defendant versus the Best Interests of the Child', *Journal of the American Academy of Child & Adolescent Psychiatry*, 30.5 (1991), 839-44 <[https://doi.org/10.1016/S0890-8567\(10\)80026-7](https://doi.org/10.1016/S0890-8567(10)80026-7)>.

20 Dietrich Earnhart and Sandra Rousseau, 'Are Lawyers Worth the Cost? Legal Counsel in Environmental Criminal Court Cases', *International Review of Law and Economics*, 60 (2019), 105857 <<https://doi.org/10.1016/j.irle.2019.105857>>.

Court Regulation concerning Pilkada is also part of the object of the judicial review authority by the Supreme Court even though PMK testing by the Supreme Court is so risky with the occurrence of a conflict of interest considering that the three judges of the Constitutional Court (as PMK makers) are from the Supreme Court. Not only that, the process of testing PMK can be carried out at a time when the trial regarding the dispute over the results of the Pilkada in the Constitutional Court is in progress so that if the Supreme Court's decision on PMK judicial review of the Regional Head Elections grants the plaintiff's request, but the court process in the Constitutional Court will also no longer have a legal basis. On the basis of providing legal certainty to the judicial process in the Constitutional Court and the alignment of the decisions of the Supreme Court and the Constitutional Court in the case of Pilkada, it is necessary to limit the authority of the Supreme Court in examining PMK. The design of the limitation of the authority can be done by; (i). PMK regarding Pilkada is excluded from the absolute competence of the Supreme Court, or PMK cannot be judicially reviewed by the Supreme Court. (ii). The process of applying for a judicial review of PMK is regulated at a specific time. Namely, when PMK can be submitted and cannot be submitted, such as PMK cannot be submitted when the Constitutional Court is adjudicating a dispute over the election results. (iii). Testing on PMK is carried out by institutions other than the Supreme Court, and even testing on PMK can be done with a testing model other than a judicial review but through legislative review or executive review mechanisms. (iv). The position and validity period of PMK is the same as the position and enforcement of the Perpu. Namely, PMK can only be canceled or strengthened if there is a change in the law on Pilkada.

References

- Alves, Amanda M., Eric Brousseau, and Timothy Yu-Cheong Yeung, 'The Dynamics of Institution Building: State Aids, the European Commission, and the Court of Justice of the European Union', *Journal of Comparative Economics*, 49.3 (2021), 836–59 <<https://doi.org/10.1016/j.jce.2021.02.001>>
- Doron, Gideon, and Assaf Meydani, 'Establishing a Constitutional Court? An Alternative Political Culture Approach – the Israeli Case', *Policy and Society*, 26.4 (2007), 105–24 <[https://doi.org/10.1016/S1449-4035\(07\)70122-4](https://doi.org/10.1016/S1449-4035(07)70122-4)>
- Dragone Silveira, Adriana A., 'The Role Played by Courts in Promoting Equal Educational Opportunity Reforms: New York and São Paulo Cases', *International Journal of Educational Development*, 87 (2021), 102495 <<https://doi.org/10.1016/j.ijedudev.2021.102495>>
- Earnhart, Dietrich, and Sandra Rousseau, 'Are Lawyers Worth the Cost? Legal Counsel in Environmental Criminal Court Cases', *International Review of Law and Economics*, 60 (2019), 105857 <<https://doi.org/10.1016/j.irl.2019.105857>>
- Guo, Zhiyuan, 'Live Witnesses in Chinese Criminal Courts: Obstacles and Reforms', *International Journal of Law, Crime and Justice*, 62 (2020), 100409

- <<https://doi.org/10.1016/j.ijlcj.2020.100409>>
- Huda, Ni'matul, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), e07886 <<https://doi.org/10.1016/j.heliyon.2021.e07886>>
- Kermani, Ebrahim J., 'The U.S. Supreme Court on Victimized Children: The Constitutional Rights of the Defendant versus the Best Interests of the Child', *Journal of the American Academy of Child & Adolescent Psychiatry*, 30.5 (1991), 839–44 <[https://doi.org/10.1016/S0890-8567\(10\)80026-7](https://doi.org/10.1016/S0890-8567(10)80026-7)>
- McKeown, Jamie, 'A Corpus-Based Examination of Reflexive Metadiscourse in Majority and Dissent Opinions of the U.S. Supreme Court', *Journal of Pragmatics*, 186 (2021), 224–35 <<https://doi.org/10.1016/j.pragma.2021.10.019>>
- Meixner, John B., 'Admissibility and Constitutional Issues of the Concealed Information Test in American Courts', in *Detecting Concealed Information and Deception* (Elsevier, 2018), pp. 405–29 <<https://doi.org/10.1016/B978-0-12-812729-2.00017-3>>
- Meyer, Philipp, 'Transparency and Strategic Promotion: How Court Press Releases Facilitate Judicial Agenda-Building in Germany', *Public Relations Review*, 48.4 (2022), 102228 <<https://doi.org/10.1016/j.pubrev.2022.102228>>
- Mochtar, Zainal Arifin, and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *BESTUUR*, 10.1 (2022), 68 <<https://doi.org/10.20961/bestuur.v10i1.59098>>
- Montanari Vergallo, G., and M. Gulino, 'End-of-Life Care and Assisted Suicide: An Update on the Italian Situation from the Perspective of the European Court of Human Rights', *Ethics, Medicine and Public Health*, 21 (2022), 100752 <<https://doi.org/10.1016/j.jemep.2022.100752>>
- Nowotko, Paweł Marcin, 'AI in Judicial Application of Law and the Right to a Court', *Procedia Computer Science*, 192 (2021), 2220–28 <<https://doi.org/10.1016/j.procs.2021.08.235>>
- Osella, Stefano, 'The Court of Justice and Gender Recognition: A Possibility for an Expansive Interpretation?', *Women's Studies International Forum*, 87 (2021), 102493 <<https://doi.org/10.1016/j.wsif.2021.102493>>
- Puig, Sergio, 'Investor-State Tribunals and Constitutional Courts: The Mexican Sweeteners Saga', *Mexican Law Review*, 5.2 (2013), 199–243 <[https://doi.org/10.1016/S1870-0578\(16\)30024-5](https://doi.org/10.1016/S1870-0578(16)30024-5)>
- Di Ronco, Anna, and Nina Peršak, 'Regulation of Incivilities in the UK, Italy and Belgium: Courts as Potential Safeguards against Legislative Vagueness and Excessive Use of Penalising Powers?', *International Journal of Law, Crime and Justice*, 42.4 (2014), 340–65 <<https://doi.org/10.1016/j.ijlcj.2014.04.001>>

- Qian, C., & Nair, S. M. (2021a). Analyzing Descriptive Writing among Chinese Undergraduates According to Gender. *International Journal of Educational Studies*, 4(1), 17-26. <https://doi.org/10.53935/2641-533x.v4i1.62>
- Qian, C., & Nair, S. M. (2021b). Error Analysis in Descriptive English Writing among Undergraduates in Hunan City University. *Contemporary Research in Education and English Language Teaching*, 3(2), 21-30. <https://doi.org/10.33094/26410230.2021.32.21.30>
- Rukundo, Solomon, 'Wikipedia in the Courts: An Examination of the Citation of Wikipedia in Judicial Opinions in Uganda', *Computer Law & Security Review*, 35.5 (2019), 105316 <<https://doi.org/10.1016/j.clsr.2019.03.010>>
- Sánchez Patrón, Jose Manuel, 'The Criminal Prosecution of Illegal Fishing and the Jurisdiction of Spanish Courts', *Marine Policy*, 143 (2022), 105209 <<https://doi.org/10.1016/j.marpol.2022.105209>>
- Sung, Huang-Chih, 'Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China', *Computer Law & Security Review*, 39 (2020), 105461 <<https://doi.org/10.1016/j.clsr.2020.105461>>
- Thomas, P.J.M., P. Sandwell, S.J. Williamson, and P.W. Harper, 'A PESTLE Analysis of Solar Home Systems in Refugee Camps in Rwanda', *Renewable and Sustainable Energy Reviews*, 143 (2021), 110872 <<https://doi.org/10.1016/j.rser.2021.110872>>