

Restructuring Electoral Cycles: Remedial Calibration and Legislative Discretion in Indonesia's Constitutional Court Decision No. 135/PUU-XXII/2024

Rekonstruksi Siklus Pemilu: Kalibrasi Pemulihan dan Diskresi Legislatif dalam Putusan Mahkamah Konstitusi Nomor 135/PUU-XXII/2024

Satriadi ^{a,1,*}, Lisma ^{a,2}, Lukman Ansar ^{b,3}, Tarmizi ^{c,4}, Sabar Podu ^{b,5}, Wira Kafryawan ^{d,6}, David Aprizon Putra ^{e,7}

^a Institut Agama Islam Negeri Bone, Indonesia

^b Institut Agama Islam Negeri Fattahul Muluk Papua, Indonesia

^c Universitas Islam Negeri Alauddin Makassar, Indonesia

^d School of Culture, History and Language, Australian National University, Australia

^e Prodi Hukum Tata Negara, Fakultas Syariah dan Ekonomi Islam, IAIN Curup, Indonesia

¹ adhysatriadi@gmail.com*; ² lislisma10@gmail.com; ³ lukmanansar04@gmail.com; ⁴ tarmizi88sep@gmail.com;

⁵ sabar.podu@iainfmpapua.ac.id; ⁶ Wira.Kafryawan@anu.edu.au; ⁷ davidaprizonputra@iaincurup.ac.id

* corresponding author

ARTICLE INFO

Article history

Received: 02 April 2026

Revised: 22 May 2026

Accepted: 27 May 2026

Keywords

Remedial calibration,
electoral cycles
legislative discretion
open legal policy
Indonesian Constitutional Court.

ABSTRACT

Constitutional Court Decision No. 135/PUU-XXII/2024 restructures Indonesia's electoral system by separating national and subnational elections and prescribing an interval of between two and two and a half years. This article evaluates the constitutional legitimacy of that intervention through doctrinal constitutional research and functional comparison. It develops a two-level framework distinguishing structural justification from remedial calibration. The analysis finds that the Court had a defensible constitutional basis for separating the two electoral cycles, given concerns relating to popular sovereignty, electoral quality, institutional capacity, political recruitment, and legislative inertia. However, the judgment provides a weaker constitutional and evidential basis for prescribing the precise temporal interval. It does not sufficiently explain why the selected minimum and maximum periods were necessary or why less intrusive remedies preserving greater legislative discretion would have been inadequate. The article argues that open legal policy neither immunises electoral legislation from review nor permits complete judicial displacement of legislative choice. Legitimate constitutional remedies must remain proportionate, evidence-based, and attentive to institutional competence.

This is an open access article under the [CC-BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) license.



1. Introduction

When may a constitutional court redesign electoral institutions without displacing choices constitutionally entrusted to the legislature? Constitutional courts are frequently required to intervene when electoral arrangements undermine representative democracy, impair the effective exercise of political rights, or remain uncorrected because political institutions benefit from the existing rules.¹ Yet the legitimacy of such intervention becomes more difficult to defend when a court moves beyond identifying a constitutional deficiency and prescribes the detailed institutional architecture through which that deficiency must be remedied.² The central issue is therefore not whether constitutional adjudication produces lawmaking effects, which it inevitably does, but how specific and intrusive a judicial remedy may become before it impermissibly restricts legislative discretion.

Decision No. 135/PUU-XXII/2024 of the Indonesian Constitutional Court represents a particularly significant manifestation of this constitutional dilemma. In its ruling, the Court declared Article 167(3) and Article 347(1) of Law No. 7 of 2017 on General Elections, together with Article 3(1) of Law No. 8 of 2015 on Regional Head Elections, to be conditionally unconstitutional unless interpreted in accordance with the constitutional meaning formulated by the Court. Rather than merely invalidating the contested provisions, the Court reconstructed their operative legal meaning by requiring that elections for the President and Vice-President, the House of Representatives (DPR), and the Regional Representative Council (DPD) be conducted simultaneously at the national level, while elections for provincial and municipal representative councils (DPRD) and regional executive offices must be held simultaneously within a period of no less than two years and no more than two-and-a-half years following the inauguration of the nationally elected institutions.³ Consequently, the decision did not simply remove an unconstitutional statutory arrangement; it established a constitutionally binding temporal framework for Indonesia's future electoral system. By prescribing the institutional sequence and timing of elections through constitutional adjudication, the Court moved beyond determining constitutional

¹ D Hanan, T Sulistianing Astuti, dan L W Eddyono, "Electoral Reform Through the Indonesian Constitutional Court: Constitutionality of Presidential Candidacy Threshold in Indonesia," *Jurnal Konstitusi* 22, no. 2 (2025): 260–92, <https://doi.org/10.31078/jk2223>; A Tarnowska, "Constitutional courts and representative democracy- a kelsenian perspective," *Comparative Law Review* 25 (2019): 277–98, <https://doi.org/10.12775/CLR.2019.010>; A Verșeș-Olteanu dan D.-A. Caramidariu, "Safeguarding democracy Constitutional insights from Romania's election annulment," *Diritto Pubblico Comparato ed Europeo* 27, no. 1 (2025): 139–65, <https://doi.org/10.17394/116461>.

² T Sulistyowati dan A Satrio, "Strengthening the legitimacy of the Indonesian constitutional court decision through supermajority requirement: Lesson from the south korean experience," *Revista de Investigacoes Constitucionais* 10, no. 3 (2023), <https://doi.org/10.5380/rinc.v10i3.89341>; T A S Negara et al., "The Confrontational Role of the Constitutional Court's Decisions in the Legislative Process," *International Journal of Criminal Justice Sciences* 17, no. 1 (2022): 185–98, <https://doi.org/10.5281/zenodo.4756099>.

³ Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi No. 135/PUU-XXII/2024," *Mahkamah Konstitusi Republik Indonesia*, 2024.

validity and assumed a more active role in shaping the architecture of democratic governance.⁴

The decision represents an important development in the Court's electoral jurisprudence. In Decision No. 14/PUU-XI/2013, the Court required presidential and legislative elections to be held simultaneously, principally to strengthen the presidential system and reduce transactional political bargaining.⁵ In Decision No. 55/PUU-XVII/2019, the Court clarified that the five-ballot model was not the only constitutionally permissible form of simultaneity. It identified several alternative electoral configurations but expressly left the choice among them to the legislature.⁶ Decision No. 135/PUU-XXII/2024 altered this remedial position. Faced with the legislature's failure to reconsider the existing model, the Court no longer confined itself to defining the constitutional parameters within which the legislature could act. It selected a particular structural model and prescribed the temporal range within which that model must operate.

The decision has consequently generated two analytically distinct constitutional questions. The first concerns structural correction: whether the concentration of national and subnational elections within an excessively compressed electoral cycle produced a constitutionally cognisable defect that justified judicial intervention. The administrative burden imposed on electoral institutions, the complexity faced by voters, the limited capacity of political parties to recruit and prepare candidates, and the difficulty of maintaining meaningful distinctions between national and local political accountability may support the conclusion that the existing arrangement impaired the effective functioning of representative democracy.⁷ Nevertheless, administrative complexity and institutional inefficiency do not by themselves establish a constitutional violation. They become constitutionally relevant only where they can be connected to identifiable constitutional guarantees, including popular sovereignty, meaningful political participation, electoral fairness, and the effective operation of representative institutions.⁸

The second question concerns remedial calibration: even if structural separation was constitutionally justified, whether the Court was also entitled to prescribe a binding interval of between two and two and a half years. The constitutional basis for correcting a defective electoral structure does not necessarily establish the legitimacy of every detail included in

⁴ Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia; Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020.

⁵ F Laksono dan O V Agustine, "Election Design Following Constitutional Court Decision Number 14/PUU-XI/2013," *Constitutional Review* 2, no. 2 (2016): 216–33, <https://doi.org/10.31078/consrev223>.

⁶ M E I Susanto, "FAT COALITION AND CROWN-PRESIDENTIALISM : A CRITICAL REVIEW OF INDONESIA ' S CONCURRENT ELECTIONS," *PETITA* 10, no. 1 (2025): 35–54, <https://doi.org/https://doi.org/10.22373/petita.v10i1.757>.

⁷ S Butt dan F Siregar, "Multilayered Oversight: Electoral Administration in Indonesia," *Asian Journal of Comparative Law* 16, no. S1 (2021): S121–35, <https://doi.org/10.1017/asjcl.2021.32>.

⁸ Saldi Isra, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*, (Jakarta: RajaGrafindo Persada, 2010).

the judicial remedy. A remedy may become excessively prescriptive when its specificity is not required by the constitutional violation, is inadequately supported by institutional or empirical evidence, excludes less intrusive alternatives, or substantially eliminates the legislature's capacity to select among constitutionally permissible policy options.⁹ This distinction is particularly important in areas governed by the Indonesian doctrine of open legal policy, under which choices neither specifically required nor prohibited by the Constitution ordinarily remain within legislative discretion.¹⁰

Existing Indonesian scholarship has extensively examined simultaneous elections,¹¹ the Court's electoral jurisprudence, the consolidation of the presidential system, judicial activism,¹² and the doctrine of open legal policy.¹³ Comparative constitutional scholarship has likewise analysed courts as political-process correctors, constitutional rule-makers in electoral matters, positive legislators, and institutional actors whose interventions may either protect or displace democratic decision-making.¹⁴ Scholarship on constitutional remedies has further demonstrated that the legitimacy of judicial review cannot be assessed exclusively by examining whether a court correctly identifies a constitutional violation; the scope, form, timing, and institutional consequences of the remedy must also be evaluated.¹⁵ However, insufficient attention has been given to whether the constitutional justification for restructuring an electoral system also justifies judicial specification of the precise temporal arrangement through which that restructuring must occur.

This article addresses that gap by developing a two-level framework for evaluating judicial intervention in electoral design. The first level, structural justification, examines whether a constitutionally identifiable defect required judicial correction and whether the

⁹ F Arifin et al., "Open Legal Policy Criteria in the Constitutional Court Decision: An Evaluation and Recommendation," *Padjadjaran Jurnal Ilmu Hukum* 12, no. 2 (2025): 216–33, <https://doi.org/10.22304/2442-9325.1335>.

¹⁰ M Wibowo et al., "The Criticism on the Meaning of 'Open Legal Policy' in Verdicts of Judicial Review at the Constitutional Court," *Constitutional Review* 3, no. 2 (2017): 262–86, <https://doi.org/10.31078/consrev326>.

¹¹ FR Kartabrata, "PENGUATAN PARTAI POLITIK DALAM PEMILIHAN UMUM LEGISLATIF PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 114/PUU-XX/2022," *Jurnal Litigasi* 24, no. 2 (2023): 229–60, <https://doi.org/10.23969/litigasi.v24i2.9860>; Mubarika Rahmayanty dan Irfan Amir, "Juridical Analysis of Implementing the Presidential Threshold in the Presidential Election Of Indonesia," *Jurnal Al-Dustur* 4, no. 1 (2021): 83–107, <https://doi.org/doi.org/10.30863/jad.v4i1.1477>.

¹² R Ardhanariswari et al., "Upholding Judicial Independence through the Practice of Judicial Activism in Constitutional Review: A Study by Constitutional Judges," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (2023): 183–207, <https://doi.org/10.24090/volksgeist.v6i2.9565>.

¹³ Wibowo et al., "The Criticism on the Meaning of 'Open Legal Policy' in Verdicts of Judicial Review at the Constitutional Court."

¹⁴ S Gardbaum, "Comparative political process theory II," *Global Constitutionalism* 14, no. 2 (2025): 219–37, <https://doi.org/10.1017/S2045381724000029>.

¹⁵ Rosalind Dixon dan Po Jen Yap, "Responsive judicial remedies," *Global Constitutionalism* 14, no. 2 (2025): 323–48, <https://doi.org/DOI: 10.1017/S2045381724000200>; N Afesha dan H R Barrett, "Constitutional Remedies for Enforcement of Fundamental Rights in Ethiopia and India: A Comparative Study," *Nordic Journal of Human Rights* 43, no. 3 (2025): 264–81, <https://doi.org/10.1080/18918131.2025.2557116>.

Court possessed a sufficiently determinate constitutional standard for intervening. The second level, remedial calibration, examines whether the remedy was appropriately connected to the identified defect, necessary to secure constitutional compliance, supported by adequate constitutional and evidential reasons, and designed to preserve meaningful legislative choice. This framework avoids treating judicial intervention as either wholly legitimate or wholly illegitimate. A court may be justified in requiring structural change while exceeding the proper limits of its remedial authority in determining the details through which that change must be implemented.¹⁶

Against this background, the article asks two related questions. First, to what extent was the Constitutional Court justified under Article 24C(1) of the 1945 Constitution in requiring the structural separation of national and subnational electoral cycles? Second, was the Court equally justified in prescribing a binding interval of between two and two and a half years, or should the determination of that interval have remained within the legislature's open legal policy?

The article argues that the Court possessed a defensible constitutional basis for requiring the structural separation of national and subnational electoral cycles. The cumulative effects of electoral congestion, institutional overload, weakened political recruitment, and the reduced differentiation of national and local accountability provided constitutionally relevant reasons for intervention. The legitimacy of the decision becomes weaker, however, at the level of remedial calibration. The Constitution does not expressly require an interval of between two and two and a half years, and the constitutional and evidential reasons supporting that precise range are less developed than those supporting structural separation itself. Because the decision operates prospectively and did not respond to an immediate legal vacuum, the Court could have adopted a less intrusive remedy by requiring the legislature to establish separate national and subnational cycles within specified constitutional parameters while preserving legislative authority to determine their precise temporal relationship.

The article makes two principal contributions. First, it demonstrates that the legitimacy of judicial intervention in electoral governance must be assessed separately from the legitimacy of the remedy's degree of specificity. Second, it refines the analysis of open legal policy by showing that legislative discretion is neither wholly immune from judicial review nor automatically displaced once a constitutional deficiency has been established. Judicial correction and legislative discretion may coexist where the court defines the constitutional objective and minimum requirements of reform without unnecessarily prescribing every aspect of institutional design.

¹⁶ Iwan Satriawan, and Tanto Lailam, "Open Legal Policy Dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang." *Jurnal Konstitusi* 16, no. 3 (2019): 559-584.

2. Legal Materials and Methods

This article employs doctrinal constitutional research combined with a functional comparative method to evaluate Constitutional Court Decision No. 135/PUU-XXII/2024 within Indonesia's constitutional framework. The inquiry is normative rather than empirical: it does not measure the actual administrative or political effects of separating national and subnational elections, but examines whether the Court identified a constitutionally cognisable defect and whether the remedy imposed remained within the legitimate boundaries of constitutional adjudication. The primary legal materials comprise the 1945 Constitution; Law No. 24 of 2003 on the Constitutional Court, as amended by Law No. 7 of 2020; Law No. 48 of 2009 on Judicial Power; Law No. 7 of 2017 on General Elections, as amended by Law No. 7 of 2023; the legislation governing regional elections; Constitutional Court Decision No. 135/PUU-XXII/2024; and relevant earlier decisions concerning electoral simultaneity, legislative discretion, and open legal policy. Secondary materials include peer-reviewed articles, scholarly monographs, book chapters, and research reports selected on the basis of their legal authority, scholarly credibility, and direct relevance to constitutional remedies, electoral constitutionalism, institutional competence, and the separation of powers.

The analysis integrates statutory, case-based, conceptual, and functional comparative approaches. The statutory approach examines the constitutional and legislative allocation of authority over judicial review and electoral governance. The case approach reconstructs the constitutional claims, normative and evidential premises, interpretive methods, ratio decidendi, and operative remedy in Decision No. 135/PUU-XXII/2024, while comparing them with the Court's earlier electoral jurisprudence to identify doctrinal continuity or change. The conceptual approach employs constitutional supremacy, open legal policy, separation of powers, institutional competence, and constitutional-remedy theory as evaluative frameworks. Selected jurisprudence from the United States and Germany is used functionally rather than as binding authority: United States cases illuminate the requirement of sufficiently determinate and judicially manageable standards for intervention in electoral disputes, whereas German jurisprudence provides a basis for examining how constitutional defects may be corrected while preserving meaningful legislative responsibility.

The analysis proceeds at two related levels. First, structural justification is assessed by examining whether the challenged electoral arrangement conflicted with an express constitutional requirement, impaired constitutionally protected rights or principles, undermined representative democracy, lacked rational constitutional justification, or remained uncorrected because of legislative inertia, and whether the Court relied on a sufficiently determinate constitutional standard. Second, remedial calibration is evaluated by determining whether the remedy was directly connected to the constitutional defect, necessary to secure constitutional compliance, supported by adequate constitutional and evidential reasons, and proportionate to the problem identified. This assessment also considers the availability of less intrusive alternatives, the existence of an immediate legal vacuum or temporal urgency, the preservation of meaningful legislative choice, and the treatment of transitional consequences. Through textual, systematic, purposive, structural,

and precedential interpretation, the study thus distinguishes the legitimacy of requiring structural electoral reform from the separate legitimacy of judicially prescribing its precise temporal design.

3. Results and Discussion

3.1. Structural Justification for Separating National and Subnational Electoral Cycles

Constitutional Court Decision No. 135/PUU-XXII/2024 represents a significant development in Indonesia's electoral jurisprudence because it restructures, rather than abandons, the constitutional principle of simultaneous elections. The Court required future elections to be organised into two internally simultaneous clusters. The national cluster comprises elections for the President and Vice-President, the House of Representatives (DPR), and the Regional Representative Council (DPD), whereas the subnational cluster comprises elections for provincial and municipal representative councils (DPRD) and regional executive offices. The constitutional significance of the decision therefore lies not merely in the alteration of the electoral calendar, but in the Court's conclusion that separating national and subnational electoral cycles was necessary to safeguard the effective operation of representative democracy and the quality of electoral governance.¹⁷

This conclusion marked a change in the Court's earlier approach to electoral simultaneity. In Decision No. 14/PUU-XI/2013, the Court required presidential and legislative elections to be conducted simultaneously, primarily to strengthen the presidential system, reduce transactional political bargaining, and ensure consistency between electoral mandates. Decision No. 55/PUU-XVII/2019 subsequently clarified that the five-ballot model was not the only constitutionally permissible form of simultaneous elections. Although the Court identified several alternative electoral configurations, it expressly left the choice among those alternatives to the legislature.¹⁸ Decision No. 135/PUU-XXII/2024 moved beyond that restrained position. Faced with the persistence of the existing model and the legislature's failure to meaningfully reconsider the alternatives previously identified, the Court selected a structural arrangement that separated national and subnational elections into distinct electoral cycles.

The Court justified this intervention by identifying a combination of institutional and democratic difficulties arising from the concentration of electoral stages within an excessively compressed period. These difficulties included overlapping electoral processes, the accumulation of administrative burdens on election-management bodies, the complexity faced by voters, and the limited capacity of political parties to conduct recruitment, cadre

¹⁷ Arsul Sani, "Reconfiguring Electoral Design Post-Constitutional Court Decision No. 135/PUU-XXII/2024: Prospects for Meaningful Voter Participation," *Jurnal Konstitusi* 22, no. 4 (2025), <https://doi.org/https://doi.org/10.31078/jk22410>.

¹⁸ A B Fuadi, "Legal Policy for Simultaneous Election Regulations," *Jurnal Konstitusi* 18, no. 3 (2021): 702–23, <https://doi.org/10.31078/jk18310>.

development, and candidate preparation.¹⁹ The Court also considered that the concentration of national and subnational contests weakened the substantive differentiation between national and regional political accountability. Rather than treating electoral simultaneity as a purely chronological requirement, the Court therefore interpreted it functionally by considering whether the institutional arrangement enabled elections to be administered effectively and allowed voters, political parties, and representative institutions to perform their constitutional roles.²⁰

These practical difficulties acquire constitutional significance only when they can be connected to identifiable constitutional norms and principles. Administrative complexity or institutional inefficiency does not, by itself, justify judicially mandated electoral restructuring. In Decision No. 135/PUU-XXII/2024, however, the Court connected the deficiencies of the existing model to popular sovereignty under Article 1(2), democratic regional government under Article 18(4), the principles and administration of elections under Article 22E(1) and Article 22E(5), equality before the law under Article 27(1), and legal certainty under Article 28D(1) of the 1945 Constitution. The constitutional concern was therefore not simply that simultaneous elections were administratively demanding, but that their cumulative effects could impair the conditions required for meaningful political participation, effective representation, electoral fairness, and the proper functioning of institutions responsible for implementing popular sovereignty.

The Court's reasoning is particularly defensible insofar as the concentration of electoral processes affected multiple components of representative democracy simultaneously. Excessive institutional burdens may reduce the capacity of election-management bodies to guarantee the quality and integrity of electoral administration. The complexity of multiple contests may limit the ability of voters to distinguish between national and regional political issues and to evaluate candidates across different levels of government. Similarly, the compressed electoral cycle may constrain political parties' ability to recruit candidates and develop coherent political programmes for national and subnational institutions. Taken cumulatively, these conditions provide a constitutionally relevant basis for concluding that the existing arrangement was not merely inefficient but potentially impaired the effective exercise of popular sovereignty and the representative functions of elections.²¹

¹⁹ F Norman, S Hadiwijaya, dan F E Gunawan, "Preliminary Study: Electronic Counting in Indonesian National Election Using Computer Answer Sheets and DMR Software," in *ACM International Conference Proceeding Series*, 2022, <https://doi.org/10.1145/3557738.3557858>; U Fionna dan F E Hutchinson, "INDONESIA'S 2019 ELECTIONS: A FRACTURED DEMOCRACY?," *Asian Affairs* 50, no. 4 (2019): 502–19, <https://doi.org/10.1080/03068374.2019.1672400>; L Karjoko et al., "Problems of democratic and dignified election in Indonesian simultaneously electoral era," *International Journal of Criminology and Sociology* 9 (2020): 1701–8, <https://doi.org/10.6000/1929-4409.2020.09.193>.

²⁰ Butt dan Siregar, "Multilayered Oversight: Electoral Administration in Indonesia."

²¹ Simon Butt dan Prayekti Murharjanti, "What constitutes compliance? Legislative responses to Constitutional Court decisions in Indonesia," *International Journal of Constitutional Law* 20, no. 1 (1 Januari 2022): 428–53, <https://doi.org/10.1093/icon/moac014>.

Legislative inertia further strengthened, although did not independently establish, the legitimacy of judicial intervention. Decision No. 55/PUU-XVII/2019 had already recognised that several electoral configurations could satisfy the constitutional requirement of simultaneity and had left their selection to the legislature. The absence of meaningful legislative reconsideration allowed the institutional difficulties associated with the existing electoral arrangement to persist. Legislative inaction cannot automatically transfer policymaking authority from the legislature to the judiciary, nor can it justify every form of judicial prescription. Nevertheless, where an earlier constitutional decision has identified permissible alternatives and continuing institutional problems remain unaddressed, legislative inertia may reinforce the justification for judicial action directed at securing minimum constitutional compliance.

Accordingly, the Court possessed a defensible constitutional basis for requiring the structural separation of national and subnational electoral cycles. The intervention was linked to constitutionally cognisable concerns involving popular sovereignty, electoral quality, political representation, institutional capacity, and the effective functioning of political parties and election-management bodies. Moreover, the decision preserved an essential element of the Court's earlier jurisprudence by maintaining the simultaneity of presidential elections with elections for the DPR and DPD. The structural separation can therefore be understood as a constitutionally grounded correction of an electoral arrangement whose cumulative effects had become increasingly difficult to reconcile with the effective operation of representative democracy. This conclusion, however, does not determine whether the Court was equally justified in prescribing a binding interval of between two and two and a half years. The legitimacy of that temporal specification concerns the calibration of the judicial remedy and must be examined separately.

3.2. Remedial Calibration, Open Legal Policy, and the Limits of Judicial Authority

The constitutional justification for separating national and subnational electoral cycles does not necessarily establish the Court's authority to prescribe their precise temporal relationship. As demonstrated in the preceding section, the Court identified constitutionally relevant deficiencies arising from the concentration of electoral processes and therefore possessed a defensible basis for requiring structural reform. The distinct issue at this stage concerns remedial calibration: whether the binding interval of between two and two and a half years was sufficiently connected to the constitutional defect, necessary to secure constitutional compliance, supported by adequate reasoning, and formulated in a manner that preserved meaningful legislative choice. The legitimacy of the decision must therefore be assessed not only by asking whether judicial intervention was justified, but also whether the degree of remedial specificity remained proportionate to the problem identified. This approach is consistent with the theory of responsive judicial remedies, which emphasises that the form and intensity of judicial relief should be calibrated to the nature of the

democratic failure, institutional capacity, and the risk that courts may displace legislative responsibility.²²

Article 24C(1) of the 1945 Constitution authorises the Constitutional Court to review statutes against the Constitution through decisions that are final. This authority cannot reasonably be understood as confining the Court to the mechanical annulment of unconstitutional provisions.²³ Effective constitutional adjudication may require conditional interpretations, suspended declarations of invalidity, transitional arrangements, or other remedies capable of preventing the continuation of constitutional violations. The production of normative consequences through a judicial decision does not, by itself, demonstrate that the Court has usurped legislative power.²⁴ The decisive question is whether the new normative content is indispensable to restoring constitutional compliance or instead resolves policy choices that could reasonably have remained with the legislature. In the Indonesian context, conditional decisions may produce effects resembling statutory amendment without necessarily requiring immediate legislative implementation.²⁵ Accordingly, the conventional distinction between the Court as a negative or positive legislator is less analytically useful than an examination of the necessity, proportionality, and institutional intrusiveness of the remedy imposed.

This distinction is particularly significant under the doctrine of open legal policy. The doctrine ordinarily recognises legislative discretion where the Constitution neither mandates a single policy choice nor prohibits the alternatives available to the legislature.²⁶ Such discretion is not immune from constitutional review. A legislative policy may remain subject to judicial correction where it contradicts an express constitutional command, disproportionately restricts constitutional rights, lacks a rational constitutional basis, or produces arbitrary consequences that undermine representative democracy.²⁷ Nevertheless,

²² Dixon dan Yap, “Responsive judicial remedies”; Robert Leckey, “The Harms of Remedial Discretion,” *International Journal of Constitutional Law* 14, no. 3 (2016): 584–607, <https://doi.org/https://doi.org.proxy.undip.ac.id/10.1093/icon/mow042>.

²³ Bisariyadi, “Referencing International Human Rights Law in Indonesian Constitutional Adjudication,” *Constitutional Review* 4, no. 2 (2018): 249–70, <https://doi.org/10.31078/consrev424>.

²⁴ F Rahman, “Anomaly of Conditional Clause Implementation in Constitutional Review Decision,” *Jurnal Konstitusi* 17, no. 1 (2020): 27–53, <https://doi.org/10.31078/jk1712>; F Rahman, “Application of Conditionally Clauses in a Formal Constitutional Review Decision,” *Jurnal Konstitusi* 19, no. 2 (2022): 381–405, <https://doi.org/10.31078/jk1926>.

²⁵ Butt dan Murharjanti, “What constitutes compliance? Legislative responses to Constitutional Court decisions in Indonesia.”

²⁶ Arifin et al., “Open Legal Policy Criteria in the Constitutional Court Decision: An Evaluation and Recommendation.”

²⁷ B Sinani, “Global Patterns of Constitutional Judicial Review Systems: Two Major Models of Constitutional Judicial Review in the World,” *Juridical Tribune - Review of Comparative and International Law* 14, no. 1 (2024): 155–72, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85186591810&partnerID=40&md5=7b089d36e360ac00bf15450650c2eaab>; K S Aboelazm et al., “THE IMPACT OF JUDICIAL CONSTITUTIONAL COURT REVIEW OF LEGISLATIVE OMISSION ON CONSTITUTIONAL AUTHORITARIANISM,” *Corporate Law and Governance Review* 7, no. 4 (2025): 17–29, <https://doi.org/10.22495/clgrv7i4p2>.

the identification of a constitutional defect does not automatically extinguish the entire sphere of legislative discretion. Indonesian scholarship on open legal policy has similarly demonstrated that the absence of clear doctrinal limits may blur the distinction between the Court's role as a negative legislator and its exercise of positive norm-making authority.²⁸ Once the Court determined that national and subnational elections should be separated, questions concerning the precise interval, administrative sequencing, transitional arrangements, and implementation mechanisms remained matters in which several constitutionally permissible alternatives could plausibly exist.

The central difficulty in Decision No. 135/PUU-XXII/2024 arises from an internal tension in the Court's remedial reasoning. The Court expressly acknowledged that the interval between the two electoral clusters could not be determined "specifically" because electoral timing was inseparable from the technical requirements of the various stages of election administration. It nevertheless proceeded to establish a binding minimum interval of two years and a maximum interval of two years and six months, calculated from the inauguration of the nationally elected institutions. The judgment explains why the interval should commence after the completion of the national electoral process, but it does not provide an equally developed explanation of why twenty-four months constitutes the constitutionally acceptable minimum or why thirty months constitutes the appropriate maximum. This tension indicates that the relevant issue is not merely the existence of remedial authority, but the adequacy of the reasons connecting the constitutional defect to the degree of specificity contained in the remedy.

The institutional experience on which the Court relied supports the need for a meaningful separation between the two electoral clusters, but it does not necessarily justify the precise temporal range prescribed. The proximity of the 2024 national and regional electoral processes provided a basis for identifying accumulated administrative burdens, compressed political recruitment, voter saturation, and an insufficient period in which to evaluate the performance of nationally elected institutions.²⁹ These considerations explain why the two electoral clusters should no longer be conducted within the same year or within an excessively compressed period. However, the judgment does not demonstrate that a shorter or longer interval would necessarily fail to remedy those problems. Nor does it identify constitutional text, institutional simulations, or comparative evidence from which the selected minimum and maximum limits can be derived. The evidential basis for structural separation is therefore stronger than the evidential basis for the specific interval imposed.

²⁸ K.S.L.P. Perbawa, "Open Justice Policy in Constitutional Court Decision and Law in Indonesia," *International Journal of Criminal Justice Sciences* 18, no. 2 (2023): 89–101, <https://doi.org/10.5281/zenodo.4756307>.

²⁹ A Shalihah dan E Huroiroh, "The Optimization of Bawaslu's Role in the 2024 Simultaneous Elections," *Jurnal Konstitusi* 21, no. 3 (2024): 501–17, <https://doi.org/10.31078/jk2139>; A W Samad, Z M Utama, dan E Hermawan, *An Analysis of the Impact of the 2024 Election on Democracy in Indonesia from a Human Resource Management Perspective*, 1180 LNNS Lecture Notes in Networks and Systems 161–83 (2025).

This finding reinforces the proposition that judicial involvement in electoral rule-making must be evaluated not only by reference to its democratic objectives, but also by the existence of standards capable of constraining and directing judicial choice.³⁰

The availability of less intrusive remedies further weakens the necessity of prescribing the interval judicially. The Court could have declared the concentration of the two electoral cycles constitutionally deficient, required the legislature to separate them before the 2029 electoral cycle, and specified constitutional parameters governing the reform, including adequate administrative preparation, meaningful differentiation between national and regional accountability, and sufficient time for political recruitment. It could also have imposed a legislative deadline or required an inclusive and evidence-informed process involving electoral institutions and affected stakeholders. Such an approach would have secured structural compliance while preserving legislative authority to determine the precise interval. A remedial model combining a clear constitutional obligation with legislative discretion over the means of implementation may facilitate institutional dialogue without allowing legislative inertia to continue without consequence.³¹ The Court itself adopted this more restrained approach in relation to transitional arrangements, expressly holding that their formulation belonged to the legislature because of their multiple legal and institutional implications. The decision's differential treatment of the interval and the transitional regime therefore requires stronger justification than the judgment presently provides.

The functional comparative materials further reinforce the need to distinguish legitimate judicial intervention from excessive remedial specification. In *Rucho v. Common Cause*, the United States Supreme Court treated the absence of judicially discoverable and manageable standards as a central reason for declining to adjudicate federal partisan-gerrymandering claims. That decision does not establish that electoral design is categorically immune from judicial review. Rather, it illustrates the need for standards that are sufficiently limited, determinate, manageable, and politically neutral to constrain judicial choice and prevent courts from replacing legislative electoral policy with their own conception of desirable institutional design.³² Comparative scholarship likewise demonstrates that judicial involvement in electoral rule-making may either protect or undermine democratic processes, depending on the institutional design of judicial authority and the manner in which that authority is exercised.³³ German constitutional jurisprudence offers a distinct but complementary insight. In reviewing the 2023 Federal Elections Act, the Federal Constitutional Court examined particular electoral arrangements, preserved those elements it considered constitutional, and corrected the constitutionally defective components while

³⁰ Aziz Huq, "The Entrenchment of Democracy: The Comparative Constitutional Law of Elections, Parties, and Voting" (Cambridge University Press, 2024).

³¹ Dixon dan Yap, "Responsive judicial remedies."

³² SUPREME COURT OF THE UNITED STATES, *Rucho v. Common Cause*, 588 U.S. 684 (2019).

³³ Huq, "Entren. Democr. Comp. Const. Law Elections, Parties, Voting."

calibrating the legal consequences of its ruling.³⁴ The comparative lesson is not that courts must invariably defer, but that the intensity of judicial relief should correspond to the determinacy of the constitutional standard and the institutional necessity of judicial action.³⁵

Decision No. 135/PUU-XXII/2024 should therefore not be characterised as illegitimate merely because it generated new normative consequences or departed from a purely negative conception of constitutional review. Its structural intervention responded to constitutionally cognisable problems and to the legislature's failure to reconsider an electoral arrangement whose deficiencies had become increasingly apparent. The legitimacy of the decision becomes more vulnerable, however, at the point of temporal specification. The Court did not sufficiently establish why constitutional compliance required an interval of between two and two and a half years, why less intrusive remedies would have been inadequate, or why that policy choice could not remain within the legislature's residual discretion. The decision is therefore defensible as a form of structural constitutional correction, but approaches remedial overreach insofar as it transforms a constitutionally justified objective into an insufficiently justified temporal prescription. This distinction preserves the authority of constitutional review while affirming that judicial correction should not unnecessarily displace democratic responsibility for institutional design.³⁶

4. Conclusion

This article demonstrates that the constitutional legitimacy of Decision No. 135/PUU-XXII/2024 cannot be adequately assessed through the conventional dichotomies of judicial activism and judicial restraint or of the Constitutional Court as a negative and positive legislator. At the level of structural justification, the Court possessed a defensible constitutional basis for separating national and subnational electoral cycles. The concentration of electoral processes generated constitutionally relevant concerns regarding popular sovereignty, electoral quality, institutional capacity, political recruitment, and the effective differentiation of national and regional accountability. Legislative failure to meaningfully reconsider the electoral model following Decision No. 55/PUU-XVII/2019 further strengthened the justification for judicial intervention. The decision is more difficult to defend, however, at the level of remedial calibration. The Court did not sufficiently explain why constitutional compliance required a binding interval of between two and two and a half years, why the selected minimum and maximum periods were necessary, or why a less intrusive remedy preserving greater legislative discretion would have been inadequate.

³⁴ S T Siefken, "The Electoral Law of Germany after the Constitutional Court Decision of 2024 Continuity and Change in Personalized Proportional Representation," *German Politics and Society* 42, no. 3 (2024): 75–86, <https://doi.org/10.3167/gps.2024.420304>.

³⁵ The Bavarian, "Judgment of the Second Senate of 30 July 2024—Federal Elections Act 2023. Perkar 2 BvF 1/23, 2 BvF 3/23, 2 BvE 2/23, 2 BvE 9/23, 2 BvE 10/23, 2 BvR 1523/23, dan 2 BvR 1547/23.," no. 64 (2024): 1–9.

³⁶ Leckey, "The Harms of Remedial Discretion"; Dixon dan Yap, "Responsive judicial remedies."

The principal contribution of this article is therefore the distinction between the legitimacy of structural constitutional correction and the legitimacy of remedial specificity. The doctrine of open legal policy neither immunises legislative choices from constitutional review nor permits the complete transfer of electoral policymaking authority to the judiciary once a constitutional defect has been identified. A constitutionally legitimate remedy must remain connected and proportionate to the violation, supported by adequate constitutional and evidential reasons, attentive to institutional competence, and no more restrictive of legislative choice than necessary. Accordingly, the implementation of Decision No. 135/PUU-XXII/2024 should preserve the Court's constitutional objective of separating the two electoral cycles while allowing the legislature meaningful authority to formulate transitional arrangements and other implementation details through an inclusive and evidence-based process. This calibrated approach reconciles constitutional supremacy with democratic responsibility and offers a broader framework for evaluating judicial remedies in electoral governance.

5. References

- Aboelazm, K S, R Raafat, H Sharif, dan E Ibrahim. "THE IMPACT OF JUDICIAL CONSTITUTIONAL COURT REVIEW OF LEGISLATIVE OMISSION ON CONSTITUTIONAL AUTHORITARIANISM." *Corporate Law and Governance Review* 7, no. 4 (2025): 17–29. <https://doi.org/10.22495/clgrv7i4p2>.
- Afesha, N, dan H R Barrett. "Constitutional Remedies for Enforcement of Fundamental Rights in Ethiopia and India: A Comparative Study." *Nordic Journal of Human Rights* 43, no. 3 (2025): 264–81. <https://doi.org/10.1080/18918131.2025.2557116>.
- Ardhanariswari, R, E Nursetiawan, S D Amalia, E D Cahyani, dan R M Fadzil. "Upholding Judicial Independence through the Practice of Judicial Activism in Constitutional Review: A Study by Constitutional Judges." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (2023): 183–207. <https://doi.org/10.24090/volksgeist.v6i2.9565>.
- Arifin, F, I Maarif, I G P Astawa, M K Abdullah, dan R A Bahri. "Open Legal Policy Criteria in the Constitutional Court Decision: An Evaluation and Recommendation." *Padjadjaran Jurnal Ilmu Hukum* 12, no. 2 (2025): 216–33. <https://doi.org/10.22304/2442-9325.1335>.
- Bavarian, The. "Judgment of the Second Senate of 30 July 2024—Federal Elections Act 2023. Perkara 2 BvF 1/23, 2 BvF 3/23, 2 BvE 2/23, 2 BvE 9/23, 2 BvE 10/23, 2 BvR 1523/23, dan 2 BvR 1547/23,," no. 64 (2024): 1–9.
- Bisariyadi. "Referencing International Human Rights Law in Indonesian Constitutional Adjudication." *Constitutional Review* 4, no. 2 (2018): 249–70. <https://doi.org/10.31078/consrev424>.
- Butt, S, dan F Siregar. "Multilayered Oversight: Electoral Administration in Indonesia." *Asian Journal of Comparative Law* 16, no. S1 (2021): S121–35. <https://doi.org/10.1017/asjcl.2021.32>.
- Butt, Simon, dan Prayekti Murharjanti. "What constitutes compliance? Legislative responses to Constitutional Court decisions in Indonesia." *International Journal of Constitutional Law* 20, no. 1 (1 Januari 2022): 428–53. <https://doi.org/10.1093/icon/moac014>.
- Dixon, Rosalind, dan Po Jen Yap. "Responsive judicial remedies." *Global Constitutionalism* 14, no. 2 (2025): 323–48. <https://doi.org/DOI: 10.1017/S2045381724000200>.

- Fionna, U, dan F E Hutchinson. "INDONESIA'S 2019 ELECTIONS: A FRACTURED DEMOCRACY?" *Asian Affairs* 50, no. 4 (2019): 502–19. <https://doi.org/10.1080/03068374.2019.1672400>.
- Fuadi, A B. "Legal Policy for Simultaneous Election Regulations." *Jurnal Konstitusi* 18, no. 3 (2021): 702–23. <https://doi.org/10.31078/jk18310>.
- Gardbaum, S. "Comparative political process theory II." *Global Constitutionalism* 14, no. 2 (2025): 219–37. <https://doi.org/10.1017/S2045381724000029>.
- Hanan, D, T Sulistianing Astuti, dan L W Eddyono. "Electoral Reform Through the Indonesian Constitutional Court: Constitutionality of Presidential Candidacy Threshold in Indonesia." *Jurnal Konstitusi* 22, no. 2 (2025): 260–92. <https://doi.org/10.31078/jk2223>.
- Huq, Aziz. "The Entrenchment of Democracy: The Comparative Constitutional Law of Elections, Parties, and Voting." Cambridge University Press, 2024.
- Karjoko, L, L.T.A.L. Wardhani, S Marwiyah, I Gusti Ayu Ketut Rachmi Handayani, A K Jaelani, A Tahir, dan S Al-Fatih. "Problems of democratic and dignified election in indonesian simultaneously electoral era." *International Journal of Criminology and Sociology* 9 (2020): 1701–8. <https://doi.org/10.6000/1929-4409.2020.09.193>.
- Kartabrata, F R. "PENGUATAN PARTAI POLITIK DALAM PEMILIHAN UMUM LEGISLATIF PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 114/PUU-XX/2022." *Jurnal Litigasi* 24, no. 2 (2023): 229–60. <https://doi.org/10.23969/litigasi.v24i2.9860>.
- Laksono, F, dan O V Agustine. "Election Design Following Constitutional Court Decision Number 14/puu-xi/2013." *Constitutional Review* 2, no. 2 (2016): 216–33. <https://doi.org/10.31078/consrev223>.
- Leckey, Robert. "The Harms of Remedial Discretion." *International Journal of Constitutional Law* 14, no. 3 (2016): 584–607. <https://doi.org/https://doi-org.proxy.undip.ac.id/10.1093/icon/mow042>.
- Negara, T A S, D Cahyandari, A Siboy, dan A K Jaelani. "The Confrontational Role of the Constitutional Court's Decisions in the Legislative Process." *International Journal of Criminal Justice Sciences* 17, no. 1 (2022): 185–98. <https://doi.org/10.5281/zenodo.4756099>.
- Norman, F, S Hadiwijaya, dan F E Gunawan. "Preliminary Study: Electronic Counting in Indonesian National Election Using Computer Answer Sheets and DMR Software." In *ACM International Conference Proceeding Series*, 2022. <https://doi.org/10.1145/3557738.3557858>.
- Perbawa, K.S.L.P. "Open Justice Policy in Constitutional Court Decision and Law in Indonesia." *International Journal of Criminal Justice Sciences* 18, no. 2 (2023): 89–101. <https://doi.org/10.5281/zenodo.4756307>.
- Rahman, F. "Anomaly of Conditional Clause Implementation in Constitutional Review Decision." *Jurnal Konstitusi* 17, no. 1 (2020): 27–53. <https://doi.org/10.31078/jk1712>.
- . "Application of Conditionally Clauses in a Formal Constitutional Review Decision." *Jurnal Konstitusi* 19, no. 2 (2022): 381–405. <https://doi.org/10.31078/jk1926>.
- Rahmayanty, Mubarika, dan Irfan Amir. "Juridical Analysis of Implementing the Presidential Threshold in the Presidential Election Of Indonesia." *Jurnal Al-Dustur* 4, no. 1 (2021): 83–107. <https://doi.org/doi.org/10.30863/jad.v4i1.1477>.
- Republik Indonesia, Mahkamah Konstitusi. "Putusan Makkamah Konstitusi No. 135/PUU-

- XXII/2024.” *Mahkamah Konstitusi Republik Indonesia*, 2024.
- Samad, A W, Z M Utama, dan E Hermawan. An Analysis of the Impact of the 2024 Election on Democracy in Indonesia from a Human Resource Management Perspective, 1180 LNNS Lecture Notes in Networks and Systems 161–83 (2025).
- Sani, Arsul. “Reconfiguring Electoral Design Post-Constitutional Court Decision No. 135/PUU-XXII/2024: Prospects for Meaningful Voter Participation.” *Jurnal Konstitusi* 22, no. 4 (2025). <https://doi.org/https://doi.org/10.31078/jk22410>.
- Shalihah, A, dan E Huroiroh. “The Optimization of Bawaslu’s Role in the 2024 Simultaneous Elections.” *Jurnal Konstitusi* 21, no. 3 (2024): 501–17. <https://doi.org/10.31078/jk2139>.
- Siefken, S T. “The Electoral Law of Germany after the Constitutional Court Decision of 2024 Continuity and Change in Personalized Proportional Representation.” *German Politics and Society* 42, no. 3 (2024): 75–86. <https://doi.org/10.3167/gps.2024.420304>.
- Sinani, B. “Global Patterns of Constitutional Judicial Review Systems: Two Major Models of Constitutional Judicial Review in the World.” *Juridical Tribune - Review of Comparative and International Law* 14, no. 1 (2024): 155–72. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85186591810&partnerID=40&md5=7b089d36e360ac00bf15450650c2eaab>.
- Sulistyowati, T, dan A Satrio. “Strengthening the legitimacy of the Indonesian constitutional court decision through supermajority requirement: Lesson from the south Korean experience.” *Revista de Investigacoes Constitucionais* 10, no. 3 (2023). <https://doi.org/10.5380/rinc.v10i3.89341>.
- SUPREME COURT OF THE UNITED STATES. *Rucho v. Common Cause*, 588 U.S. 684 (2019).
- Susanto, M E I. “FAT COALITION AND CROWN-PRESIDENTIALISM : A CRITICAL REVIEW OF INDONESIA ’ S CONCURRENT ELECTIONS.” *PETITA* 10, no. 1 (2025): 35–54. <https://doi.org/https://doi.org/10.22373/petita.v10i1.757>.
- Tarnowska, A. “Constitutional courts and representative democracy- a kelsenian perspective.” *Comparative Law Review* 25 (2019): 277–98. <https://doi.org/10.12775/CLR.2019.010>.
- Verteş-Olteanu, A, dan D.-A. Caramidariu. “Safeguarding democracy Constitutional insights from Romania’s election annulment.” *Diritto Pubblico Comparato ed Europeo* 27, no. 1 (2025): 139–65. <https://doi.org/10.17394/116461>.
- Wibowo, M, I N Nurjaya, M A Safaat, dan J Hamidi. “The Criticism on the Meaning of ‘Open Legal Policy’ in Verdicts of Judicial Review at the Constitutional Court.” *Constitutional Review* 3, no. 2 (2017): 262–86. <https://doi.org/10.31078/consrev326>.