

**RATIO DECIDENDI CONSTITUTIONAL COURT DECISION RULING
NUMBER 65/PUU-XXI/2023 CONCERNING THE PROHIBITION OF
GENERAL ELECTION CAMPAIGN VENUE PERSPECTIVE OF
*SIYASAH DUSTURIYAH***

THESIS

**BY:
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SIN 200203110050**



**CONSTITUTIONAL LAW DEPARTMENT
SHARIA FACULTY
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM
MALANG**

2024

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THESIS

**Submitted to Fulfill the Requirements to Obtain a Bachelor of Law (S.H.)
Degree**

BY:

TITANIA NUR IFANI

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CONSTITUTIONAL LAW DEPARTMENT

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**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM
MALANG**

2024

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**RATIO DECIDENDI CONSTITUTIONAL COURT DECISION RULING
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GENERAL ELECTION CAMPAIGN VENUE PERSPECTIVE OF
*SIYASAH DUSTURIYAH***

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 8 March 2024



Titania Nur Ifani
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APPROVAL SHEET

After reading and correcting thesis of Titania Nur Ifani Student ID 200203110050, Department of Constitutional Law, Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

**RATIO DECIDENDI CONSTITUTIONAL COURT DECISION RULING
NUMBER 65/PUU-XXI/2023 CONCERNING THE PROHIBITION OF
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*SIYASAH DUSTURIYAH***

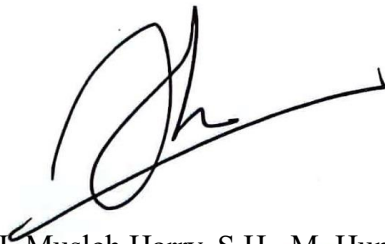
the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

Malang, 8 March 2024

Acknowledged by,

The Head Department of
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Dosen Pembimbing



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CONSULTATION PROOF

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Supervisor : Dr. Musafa Lutfi, S.Pd., S.H., M.H.
Thesis Title : Ratio Decidendi Constitutional Court Decision
Ruling Number 65/PUU-XXI/2023 Concerning
The Prohibition of General Election Campaign
Venue Perspective of *Siyasah Dusturiyah*

No	Tanggal	Materi Konsultasi	Paraf
1	12 October 2023	Proposal Outline	
2	23 October 2023	Research Background	
3	27 October 2023	Statement of Problem	
4	8 November 2023	Proposal Layout	
5	15 December 2023	Thesis Outline and Discussion	
6	2 February 2024	Research Results Outline and Discussion	
7	6 February 2024	ACC Chapter III Outline and Discussion	
8	13 February 2024	Discussion of Research Results	
9	29 February 2024	Discussion of Research Results	
10	1 March 2024	Editing Chapter I and Chapter II	
11	4 March 2024	Discussion Closing and Abstract	
12	6 March 2024	Collecting the Final Draft of the Thesis	
13	8 March 2024	ACC Draft of the Thesis	

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LEGITIMATION SHEET


Thesis Examining Board, Titania Nur Ifani, SIN 200203110050, Student of the Constitutional Law Study Program, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang, with the title:

RATIO DECIDENDI CONSTITUTIONAL COURT DECISION RULING NUMBER 65/PUU-XXI/2023 CONCERNING THE PROHIBITION OF GENERAL ELECTION CAMPAIGN VENUE PERSPECTIVE OF *SIYASAH DUSTURIYAH*


Has been certified to pass with mark: A

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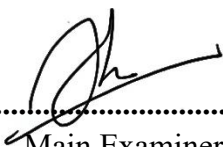
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MOTTO

إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ

“If a judge adjudicates and has ijthad and it turns out that he is right, then he gets two rewards, and if a judge tries and gives ijthad then he is wrong, then for him one reward”. (HR Al-Bukhari).

Judicandum est legibus non exemplis

“The judge's decision should be based on law, not by example. A judge is not restricted to explaining his own judgment or verdict”.

TRANSLITERATION GUIDENCE

A. General

Transliteration is the transfer of Arabic writing into Indonesian writing or Latin writing, not a translation of Arabic into Indonesian. Included in this category are Arabic names from Arab nations, while Arabic names from nations other than Arab are written as spelled in the national language, or as written in books for reference. Writing book titles in footnotes and bibliography still uses this transliter.

There are many transliteration options and provisions that can be used in writing scientific papers, both international and national standards, as well as provisions specifically used by certain publishers. The transliteration used by the Sharia Faculty of Maulana Malik Ibrahim Malang State Islamic University (UIN) uses EYD plus, namely a transliteration based on the Joint Decree (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, dated 22 January 1987 No. 158/1987 and 0543.b/U/1987, as stated in the Arabic Transliteration Manual *A Guide Arabic Transliteration*.

B. Consonant

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Letter Arab	Name	Letter Latin	Name
ا	Alif	Not denoted	Not denoted
ب	Ba	B	Be
ت	Ta	Q	Te
ث	S a	S	Es (with point above)
ج	Jim	J	Je
ح	Ha	H{	Ha (with point above)
خ	Kha	Kh	Ka And Ha
د	Dal	D	De
ذ	Z al	Z	Zet (with dot above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es And Ye
ص	S{ad	S{	Es (with point below)
ض	D}ad	D{	De (with point below)
ط	T{a	T{	Te (with point below)
ظ	Z}a	Z{	Zet (with ticks the below)

ع	„Ain	„_____	Inverted apostrophe
غ	Gain	G	Ge
f	Far	F	Ef
Q	Qof	Q	Qi
K	Kaf	K	Ka
p	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Kite	W	We
هـ	Ha	H	Ha
ء/أ	Hamza	_____“	Apostrophe
ي	Yes	Y	Ye

Hamzah (أ) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (”).

C. Vocals

Arabic vowels, like Indonesian vowels, consist of single vowels or monophthongs and double vowels or diphthongs. A single Arabic vowel whose symbol is a sign or harakat, the transliteration is as follows:

Sign	Name	Latin letters	Name
أَ	Fathah	A	A
إِ	Kasrah	I	I
أُ	Dammah	U	U

The symbol for double vowels in Arabic is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin letters	Name
أَيَّ	Fathah and ya	Ai	A and I
أَوَّ	Fathah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

هَوَّلَ : *hauila*

D. Madda

Maddah or long vowels whose symbols are harakat and letters, the transliteration is in the form of letters and signs, namely:

Letters and Characters	Name	Letters and Signs	Name
أَ...ي.../...ا	fathah and alif or ya	a`	a and the line above
إِ.....ي	Kasrah and ya	i`	i and the line above
أُ.....و	dammah and wau	and	u and the line above

Example:

نَارَ : *naara*

قِيْلَ : *qiila*

E. Ta'marbutah

Transliterations for *ta marbutah*, namely: living *ta marbutah* or having the meaning *fathah*, *kasrah*, and *dammah*, the transliteration is [t], while dead *ta marbutah* or having the meaning *sukun*, the transliteration is [h]. If the last word is *ta marbutah* and then there is the word *al-* and the two words are read separately, then *ta marbutah* is read with ha (h).

Example:

الْحِكْمَةُ : *al-hikmah*

F. Syaddah

Syaddah or commonly referred to as *tasydid* which in Arabic writing is denoted by the sign *syaddah*.

Example:

رَبَّنَا : *rabbana*

الْحَجُّ : *al-hajj*

G. Sandang Word

The word *sandang* is symbolized by *alif lam ma'rifah*. Like *al* followed by *al-syamsiyyah* or *qomariyah*. This word is written separately and connected with a horizontal line (-).

H. Hamza

Hamzah becomes Apostrophe (') only applies to hamzah located in the middle and end of the word. However, when the hamzah is located at the beginning of the word, it is not symbolized, because it is in the form of an alif.

I. Writing Arabic Words Commonly Used in Indonesian

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are common and become part of Indonesian vocabulary, or are often written in Indonesian language, are no longer written according to the transliteration method above.

J. Lafz Al-Jalalah (Allah)

The word Allah which is preceded by the letter *jarr* and other letters or is positioned as *muda'fillaih*, is transliterated without the letter hamzah.

K. Capital letters

Although the Arabic writing system does not recognize capital letters (*All Caps*), the transliteration of these letters is subject to provisions regarding the use of capital letters based on the current Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name (person, place, month) and the first letter at the beginning of a sentence. If the personal name is preceded by the word sandang (al-), then what is written with a capital letter remains the first letter of the personal name, not the first letter of the word sandang. If it is at the beginning of the sentence, then the letter A of the word sandang uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the word sandang al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).

ACKNOWLEDGMENT

سَمِ اللهُ الرَّحْمَنُ الرَّحِيمُ

Alhamdulillah rabbil'alamin. Praise and thanks for the blessings, grace and help of God who has given, almighty helper and almighty listening to the writer's complaints, until the writing of the thesis entitled: "Ratio Decidendi Constitutional Court Decision Ruling Number 65/PUU-XXI/2023 Concerning The Prohibition of General Election Campaign Venue Perspective of *Siyasah Dusturiyah*" has been well resolved. Sholawat and greetings are sent to His Majesty Rasulullah Muhammad SAW who has given *uswatun hasanah* to his people to live life according to *syar'i*. May we become a community that always follows his teachings and may we be among those who believe and receive his intercession on the last day. *Aamiinn*.

For all the teaching, guidance, and direction, as well as the services given, then with all humility the writer conveys a very big and infinite expression of gratitude to:

1. Prof. Dr. H. M. Zainuddin, M.A., as Rector of State Islamic University Maulana Malik Ibrahim Malang.
2. Prof. Dr. Sudirman, M.A., CAHRM. as Dean of the Sharia Faculty of State Islamic University Maulana Malik Ibrahim Malang.
3. Dr. Musleh Harry, S.H., M.Hum., as the Head of the Constitutional Law Study Program (*Siyasah*) of the State Islamic University Maulana Malik Ibrahim Malang, Faculty of Sharia.

4. Dr. Mustafa Lutfi, S.Pd., S.H., M.H., as the writer's guidance lecturer who has dedicated time, thought, energy, and sincerity in providing guidance, lessons, and experience, as well as motivation in completing the writing of this thesis.
5. Thesis Examiner Board in this Research, the author would like to thank you for your criticism, suggestions, and recommendations in improving this research.
6. Dr. H.M. Aunul Hakim, M.H., as the author's guardian lecturer while studying at the Sharia Faculty of the State Islamic University Maulana Malik Ibrahim Malang. Thank you for providing guidance, advice, support, and motivation during your studies.
7. All lecturers in the Constitutional Law Study Program, thank you for all your knowledge, guidance, and experience during the study process. May you be rewarded with goodness from Allah SWT.
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9. Beloved family, Mr. Sukiman, Mrs. Eni, and Sister Zifiana. The author would like to say thank you to the author's family for the love and affection that never diminishes, for the prayers that are always offered and the advice that never tires of being given. May you always receive mercy, pleasure and protection from Allah SWT.
10. friends while studying in Malang who cannot be mentioned one by one. Thank you for your kindness and help and being a family overseas. May Allah give the best reward to all of you.

11. Finally, the author would like to thank himself for persevering and fighting enthusiastically to complete this research.

With the completion of this thesis report, there is great hope that the knowledge we have gained during lectures can provide charitable benefits in life in this world and the hereafter. As a human being who is never far from making mistakes, the author hopes for forgiveness as well as criticism and suggestions from all parties for good efforts in the future.

Malang, 8 March 2024

Writer,

A handwritten signature in black ink, appearing to read 'Titania', with a long horizontal stroke extending to the right.

Titania Nur Ifani
SIN 200203110050

ABSTRACT

Titania Nur Ifani. SIN 200203110050, 2024. "Ratio Decidendi Constitutional Court Decision Ruling Number 65/PUU-XXI/2023 Concerning the Prohibition of General Election Campaign Venue Perspective of *Siyasah Dusturiyah*." *Thesis*. Constitutional Law (*Siyasah*). Faculty of Sharia. State Islamic University Maulana Malik Ibrahim Malang. Advisor: Dr. Mustafa Lutfi, S.Pd., S.H., M.H.

Kata Kunci: Ratio Decidendi, Election Campaign, *Siyasah Dusturiyah*, Interpretation of the Constitution

The Constitutional Court Decision Number 65/PUU-XXI/2023 results in the implementation of Article 280 paragraph (1) letter h of the Election Law whose explanation is contradictory. This study examines several things, namely 1) Consideration and interpretation of the judge's constitution in Constitutional Court Decision Number 65/PUU-XXI/2023; 2) Ratio decidendi of judges in Constitutional Court Decision Number 65/PUU-XXI/2023 perspective of *siyasah dusturiyah*; 3) The urgency of the applicant's legal standing in determining the judge's decision in Constitutional Court Decision Number 65/PUU-XXI/2023.

The type of research method used is normative legal research, with three approaches, namely the statute approach, conceptual approach, and case approach. The three sources of legal materials, both primary such as laws and regulations, secondary legal sources such as books and journals, and tertiary legal sources in the form of legal dictionaries and KBBI, were analyzed using qualitative juridical analysis methods.

The results of the study and findings show 1) The judge's consideration in Constitutional Court Decision Number 65/PUU-XXI/2023 related to the Explanation of Article 280 paragraph (1) letter h which contradicts Article 280 paragraph (1) letter h emphasizes campaign restrictions considering that one of the places prohibited from carrying out campaigns is a place of worship. The judge's consideration in this decision was identified using three methods of constitutional interpretation, namely textual, historical, and doctrinal by considering sociological aspects because campaigning is a political education of the community. 2) The ratio decidendi of judges related to *contradictio in terminis* uses a similar norm review which in the end the Constitutional Judge includes some exceptions in Article 280 paragraph (1) letter h of the Election Law. *Siyasah dusturiyah* views this verdict as in accordance with the principles of justice and equality. The concept of constitution in Islamic constitution and in Indonesia is in line with Muhammad Iqbal which protects the constitutional rights of citizens. 3) The urgency of the Applicant's legal standing in this decision has met the requirements as stipulated in Article 51 paragraph (1) point a. The petitioner described the constitutional losses he suffered related to the Explanation to Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections. Although the Judgment aims to create legal certainty over the ambiguity between Article 280 paragraph (1) letter h and its Explanation, there are inconsistencies of the judge in giving his consideration and there is a basic error in the petitioner's application, namely citing the wrong regulations.

ABSTRAK

Titania Nur Ifani. NIM 200203110050, 2024. “*Ratio Decidendi* Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023 Terhadap Larangan Tempat Kampanye Pemilihan Umum Perspektif *Siyasah Dusturiyah*.” *Skripsi*. Hukum Tata Negara (*Siyasah*). Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Dr. Mustafa Lutfi, S.Pd., S.H., M.H.

Kata Kunci: *Ratio Decidendi*, Kampanye Pemilu, *Siyasah Dusturiyah*, Penafsiran Konstitusi

Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023 berakibat pada pelaksanaan Pasal 280 ayat (1) huruf h UU Pemilu yang Penjelasannya bersifat kontradiktif. Penelitian ini mengkaji beberapa hal yaitu 1) Pertimbangan dan penafsiran konstitusi hakim dalam Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023; 2) *Ratio decidendi* hakim dalam Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023 perspektif *siyasah dusturiyah*; 3) Urgensi *legal standing* pemohon dalam menentukan putusan hakim pada Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023.

Jenis metode penelitian yang digunakan adalah penelitian hukum normatif, dengan tiga pendekatan yaitu *statute approach*, *conceptual approach*, dan *case approach*. Ketiga sumber bahan hukum baik primer seperti peraturan perundang-undangan, sumber hukum sekunder seperti buku dan jurnal, serta sumber hukum tersier berupa kamus hukum dan KBBI, dianalisis menggunakan metode analisis yuridis kualitatif.

Hasil penelitian dan temuan menunjukkan 1) Pertimbangan hakim dalam Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023 terkait Penjelasan Pasal 280 ayat (1) huruf h yang bertentangan dengan Pasal 280 ayat (1) huruf h menekankan pada pembatasan kampanye mengingat salah satu tempat dilarang melaksanakan kampanye adalah tempat ibadah. Pertimbangan hakim dalam putusan ini teridentifikasi menggunakan tiga metode penafsiran konstitusi, yakni tekstual, historis, dan doktrinal dengan mempertimbangkan aspek sosiologis karena kampanye merupakan pendidikan politik masyarakat. 2) *Ratio decidendi* hakim terkait *contradictio in terminis* menggunakan telaah norma serupa yang pada akhirnya Hakim Konstitusi memasukkan sebagian pengecualian dalam Pasal 280 ayat (1) huruf h UU Pemilu. *Siyasah dusturiyah* memandang putusan ini telah sesuai dengan asas keadilan dan persamaan. Konsep konstitusi dalam ketatanegaraan Islam dan di Indonesia sejalan dengan Muhammad Iqbal dimana melindungi hak konstitusional warga negara. 3) Urgensi *legal standing* Pemohon dalam putusan ini telah memenuhi syarat sebagaimana diatur dalam Pasal 51 ayat (1) huruf a. Pemohon menjabarkan kerugian konstitusional yang dialaminya terkait dengan Penjelasan Pasal 280 ayat (1) huruf h Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilu. Meskipun Putusan tersebut bertujuan menciptakan kepastian hukum atas ambiguitas antara Pasal 280 ayat (1) huruf h dan Penjelasannya, namun terdapat inkonsistensi hakim dalam memberikan pertimbangannya serta terdapat kesalahan dasar permohonan pemohon, yakni mengutip peraturan yang salah.

مستخلص البحث

تيتانيا نور ايفاني .رقم التسجيل ٢٠٠٢٠٣١١٠٠٥٠ ، ٢٠٢٤ . " قرار المحكمة الدستورية رقم ٦٥/-/٢٠٢٣ ضد حظر أماكن الحملات الانتخابية العامة وجهة نظر سياسة دستوريا. " البحث الجامعي . قسم السياسة . كلية الشريعة . جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج . المشريف: مصطفى لطفي البكلوري الماجستير .

الكلمات المفتاحية: الاعترافات القانونية ، الحملة الانتخابية ، السياسة الدستورية ، التفسير الدستوري

أدى قرار المحكمة الدستورية رقم ٦٥/-/٢٠٢٣ إلى تطبيق المادة ٢٨٠ الفقرة (١) حرف ح من قانون الانتخابات التي تتناقض تفسيراتها. تبحث هذه الدراسة في عدة أمور وهي (١) دراسة وتفسير دستور القاضي في قرار المحكمة الدستورية رقم ٦٥/-/٢٠٢٣ . (٢) قرار نسبة الحكيم في قرار المحكمة الدستورية رقم ٦٥/-/٢٠٢٣ منظور السياسة الدستورية. (٣) استعجال صفة المدعي القانونية في تحديد قرار القاضي بشأن قرار المحكمة الدستورية رقم ٦٥/-/٢٠٢٣ .

نوع طريقة البحث المستخدمة هو البحث القانوني المعياري ، مع ثلاثة مناهج ، وهي نهج النظام الأساسي ، والنهج المفاهيمي ، ونهج الحالة. تم تحليل المصادر الثلاثة للمواد القانونية ، سواء الأولية مثل القوانين واللوائح ، والمصادر القانونية الثانوية مثل الكتب والمجلات ، والمصادر القانونية الثالثة في شكل قواميس قانونية وقواميس إندونيسية ، باستخدام طرق التحليل القانوني النوعي .

أظهرت نتائج الدراسة والنتائج (١) نظر القاضي في قرار المحكمة الدستورية رقم ٦٥ / - / ٢٠٢٣ المتعلق بشرح المادة ٢٨٠ الفقرة (١) حرف ح الذي يتعارض مع المادة ٢٨٠ الفقرة (١) الحرف ح يؤكد على قيود الحملة الانتخابية باعتبار أن أحد الأماكن المحظورة من القيام بالحملات هو مكان للعبادة. تم تحديد نظر القاضي في هذا القرار باستخدام ثلاث طرق للتفسير الدستوري ، وهي نصية وتاريخية وعقائدية من خلال النظر في الجوانب الاجتماعية لأن الحملة الانتخابية هي تثقيف سياسي للمجتمع. (٢) النسبة المقررة للقضاة المتعلقة بالتناقض في المصطلحات تستخدم مراجعة معيارية مماثلة والتي في النهاية أدرج القاضي الدستوري بعض الاستثناءات في المادة ٢٨٠ الفقرة (١) الحرف ح من قانون الانتخابات. وترى السياسة أن هذا الحكم يتفق مع مبادئ العدالة والمساواة. يتماشى مفهوم الدستور في الدستور الإسلامي وفي إندونيسيا مع محمد إقبال الذي يحمي الحقوق الدستورية للمواطنين. (٣) تم تحديد الطابع القانوني لمقدم الالتماس في هذا الحكم على النحو المنصوص عليه في المادة ٥١ الفقرة (١) الحرف أ. ووصف مقدم الالتماس الضرر الدستوري الذي لحق به فيما يتعلق بشرح المادة ٢٨٠ الفقرة (١) الحرف ح من القانون رقم ٧ سنة ٢٠١٧ بشأن الانتخابات. على الرغم من أن الحكم يهدف إلى خلق يقين قانوني بشأن الغموض بين المادة ٢٨٠ الفقرة (١) الحرف ح وتفسيرها ، إلا أن هناك تناقضات من القاضي في النظر فيه وهناك خطأ أساسي في طلب الملتمس ، وهو الاستشهاد باللوائح الخاطئة.

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CHAPTER I

INTRODUCTION

A. Research Background

Indonesia as a country that adheres to democratic principles has a long history of building and strengthening the democratic process. The principles of democracy¹ are stated in the Preamble to the 1945 Constitution, specifically in Article 1 paragraph (2).² One of the main instruments of democracy is the General Election. Based on Pancasila and the 1945 Constitution of the Republic of Indonesia, elections are a process of justice for the people to elect members of the Regional Representative Council, President, and Vice President, as well as members of the Regional People's Representative Council. This election is carried out directly, publicly, freely, secretly, honestly, and fairly.³

Regulations regarding elections have been regulated systematically in Law Number 7 of 2017 concerning General Elections. Elections have become the main pillar in outlining the direction of democracy and

¹ Democracy is a form of government that indicates the role of the people in the running of government, and prioritizes the public interest. In a democracy, the people are the determinants in the administration of government. The idea of democracy was born out of people's dissatisfaction with the liberalism and utilitarianism system of government. See Jazim Hamidi and Mustafa Lutfi, *Civic Education: Between Political Reality and Legal Implementation* (Jakarta: PT Gramedia Pustaka Utama, 2010), 207.

² Jailani, "The Democratic System in Indonesia Viewed from the Point of Constitutional Law," *Innovative VIII*, No. 1 (2015): 136. Democracy comes from the words *demos* and *kratos*. This means that the pattern of government originates from the people. The government (President) can also be elected by the people's representatives. This means that supreme power is in the hands of the people. Democracy was developed to foster people's participation, not the participation of an individual or group. The role of the people is more respected because they play an important role in making decisions in the public interest.

³ Article 1 "Law Number 7 of 2017 concerning General Elections" (2017), [https://www.mkri.id/public/content/pemilu/UU/UU No.7 of 2017.pdf](https://www.mkri.id/public/content/pemilu/UU/UU%20No.7%20of%202017.pdf). State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to State Gazette of the Republic of Indonesia Number 6109.

participatory governance. Elections are a means for citizens to have the opportunity to vote and participate actively as a form of democracy. Elections consist of various stages which are the duties of election organizers. Campaigning is one of the stages that cannot be missed in the election process or activities.

Based on the Election Law, "An Election Campaign is the activity of Election Participants or other parties appointed by Election Participants to convince voters by offering a vision, mission, program and/or self-image of Election Participants."⁴ Election campaigns have a central role in democratic dynamics, where candidates, political parties, and community groups communicate directly with potential voters to influence their political views. Election campaigns are a means for election participants to convey their vision, programs, and goals to the public, and also serve as a platform for submitting criticism to political opponents. Election campaigns play an important role in enabling citizens to make informed decisions based on a better understanding of the options available.

Article 267 paragraph (1) of Law Number 7 of 2017 concerning Elections states that election campaigns are part of the community's political education.⁵ A similar understanding is also stated in Article 5 paragraph (1)

⁴ See Article 1 Number 35: "Election Participants are political parties for the election of members of the DPR, members of the provincial DPRD, members of the district/city DPRD, individuals for the election of DPD members, and pairs of candidates proposed by political parties or combinations of political parties for the Election of President and Deputy President". Law Number 7 of 2017 concerning the General Election of the State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109.

⁵ Article 267 Paragraph (1) Law Number 7 of 2017 concerning the General Election of the State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109.

of General Election Commission Regulation Number 15 of 2023 concerning General Election Campaigns. Election campaigns are not just a platform to campaign for candidates or political parties but also function as a form of political education for the community.⁶ Through campaigns, people are allowed to better understand political, social, and economic issues that are relevant to the country and society. Campaigns provide space for conveying information about the programs, vision, and mission of candidates or political parties, which in turn encourages people to get involved in the political process and make decisions that are more based on good information.

Campaigns as political education⁷ can also potentially present challenges. The information presented in campaigns is not always objective or correct, and can sometimes be misused for certain political purposes, therefore good political education must be emphasized in campaigns, including through providing accurate information, discussing crucial issues, and prioritizing principles of political ethical principles⁸ that encourage healthy, fact-based discussion. While election campaigns have the positive

⁶ "General Election Commission Regulation Number 15 of 2023 concerning General Election Campaigns" (2023), Paragraph. 5, <https://jdih.kpu.go.id/detailpkpu-4a4d546b5267253344253344>.

⁷ Kantaprawira Rusadi, *Indonesian Political System, An Introductory Model* (Bandung: Sinar Baru Algensindo, 2004), 55 Political education is an activity that aims to form and foster political orientations in individuals. Political education is to increase people's knowledge so that they can participate optimally in the political system. In accordance with the understanding of popular sovereignty or democracy, the people must be able to carry out their duties of participation.

⁸ Political ethics is included in the group of social ethics, namely those that discuss moral norms that should give rise to attitudes and actions between humans, because almost all human obligations are related to the fact that he is a social creature. The function of political ethics is limited to providing theoretical thinking to question and explain political legitimacy in a responsible, rational, objective and argumentative manner. Runi Hariantati, "Political Ethics in a Democratic State," *Democracy 2*, No. 1 (2003): 61.

aim of providing information to voters and enriching political discussions, there are several negative impacts that can arise along with the intensity and strategy of the campaign used.

One of the main negative impacts is the polarization of society. Violent campaigns often encourage differentiation between supporters of different candidates or political parties, which can lead to conflict or tension among communities. Recently, the ban on campaign locations has become a matter of debate. As stated in Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections, campaigns are prohibited from: "using government facilities, places of worship and places of education".⁹ Elucidation of Article 280 paragraph (1) letter h states "government facilities, places of worship and places of education can be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education."

These differences in interpretation have pros and cons, especially regarding campaigns in places of worship. There are several opinions regarding the ban on campaign venues, both places of worship and educational institutions, which are considered to reduce neutrality. Coordinating Minister for Human Development and Culture (Menko PMK) Muhadjir Effendy responded that it was still possible to carry out campaigns

⁹ Article 280 Paragraph (1) letter h Law Number 7 of 2017 concerning the General Election of the State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109.

in academic institutions as long as campuses could maintain their conduciveness. In contrast to campuses, Muhadjir emphasized that holding the campaign at school would cause more complicated problems considering the readiness of students and schools in organizing the campaign. School management which is under the concurrent authority of the regional government is also one of the reasons.¹⁰

The Education and Teachers Association (PPG) is concerned that regulations that allow campaigns in educational facilities will disrupt the learning and teaching process. It is said that the use of educational facilities for elections will serve as a strong reminder to school residents that politics is only a burden.¹¹ The pro opinion came from the Head of the Research and Development and Books Agency of the Ministry of Education and Culture, Research and Technology, Anindito Aditomo, stating that education to introduce, learn, and instill democratic principles and values is one of the most essential functions of the ideals of independence to become a nation that democratic, therefore democracy is encouraged to be implemented.¹²

Implementing campaigns in places of worship will reduce the religious value of the place of worship itself. Secretary General of the National Awakening Party (PKB), Hasanuddin Wahid wants places of

¹⁰ Mangku Alam, "Coordinating Minister for Human Development and Culture Responds to the Constitutional Court's Decision Regarding Campaigns in Educational Institutions," 2023, <https://www.kemendiknas.go.id/menkeu-pmk-tunjungi-bangunan-mk-terkait-kampanye-di-anggaran-pendidikan>.

¹¹ "Pros and Cons of the Constitutional Court's Decision," *Republika*, 2023, <https://www.republika.id/posts/44458/pro-dan-kontra-termun-mk-yang-bolehkan-kampanye-di-school>.

¹²"Political Education," *MediaIndonesia*, 2023, <https://epaper.mediaindonesia.com/detail/pendidikan-politik>.

worship to function as they should. According to PKB, there are still other suitable locations for campaigning. PKB supports banning campaigns in places of worship.¹³

The prohibition on campaign venues must be reaffirmed. Not long ago good news came regarding the election issue, namely reaching a common ground through one of the powers of the Constitutional Court, namely in the form of reviewing laws regarding places where campaigning is prohibited.¹⁴ The Petitioner explained that not only looking at neutrality but the explanation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections was considered to be contrary to the main material, where the campaign used government facilities, places of worship and places of education in Article 280 paragraph (1) letter h is expressly prohibited, in fact in the explanation it is permitted so that it is contradictory, even though Number 186 letter a of Appendix II to the Republic of Indonesia Law No. 12 of 2011 has emphasized that the formulation of the explanation article by article: "*does not conflict with the main material regulated in the body*".¹⁵

¹³ Rollin feel-no-harm.

¹⁴ Article 24C Paragraph (1) "1945 Constitution of the Republic of Indonesia," Citizen and State (945) https://jdih.komisiyudisial.go.id/upload/produk_Hukum/UUD1945dlmsatunaskah.pdf
There are 4 powers of the Constitutional Court, namely: a) Reviewing laws against the Constitution; b) Decide disputes over the authority of state institutions whose authority is granted by the Constitution; c) Decide on the dissolution of political parties; d) Resolve disputes regarding general election results.

¹⁵ Number 186 letter a Appendix II "Law Number 12 of 2011 concerning the Formation of Legislation" (2011) State Gazette of the Republic of Indonesia of 2011 Number 82 and Supplement to the State Gazette of the Republic of Indonesia Number 5234.

The Constitutional Court as *guardian of the constitution* has issued decision Number 65/PUU-XXI/2023 which changes the campaign prohibition in Article 280 paragraph (1) letter h of the Election Law.¹⁶The explanation of this article results in unclear norms in question. Based on attachment II of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the explanation does not use a formula whose contents contain hidden changes to the provisions of the Legislative Regulations. The ruling of the Constitutional Court excludes places of worship as places for campaigning, whereas previously campaigning in places of worship was permitted. This means that the Constitutional Court continues to grant permission to carry out election campaigns in government facilities and educational places because these two places are still possible. Of course, this decision will have an impact on the campaign process for the next election.

The judge in deciding the application is of course based on legal considerations. The legal considerations that build a decision have binding legal force and can be used as a legal basis because the judge's considerations/opinions can be considered as the judge's interpretation and interpretation of a case based on the 1945 Constitution. The essence of the

¹⁶“Constitutional Court Decision Number 65/PUU-XXI/2023” (2023), https://www.mkri.id/public/content/persidangan/angkatan/bangunan_mkri_9177_1692081989.pdf.

decision is basically in the content of the decision, so it is the decision that is *final and binding*^{17 18}.

One of the things considered by the Constitutional Court Judges in the decision was that holding election campaigns had a strong basis to maintain fairness, integrity, and transparency in the political process and to reduce the possibility of negative effects from the campaign. On the other hand, campaigns that do not have boundaries can lead to the spread of false information, slander, or manipulation to influence voters. Campaign restrictions can help prevent the spread of false or erroneous information. Participants see that campaign restrictions will help maintain equality in elections so that all candidates have an equal opportunity to gain support.

According to Peter Mahmud Marzuki in his book *Legal Research*, a judge's considerations, also known as *ratio decidendi* or legal reasoning, are arguments or reasons used by judges as a basis for deciding cases. "Weighing" or "main case" considerations are usually used in legal considerations.¹⁹ *The ratio decidendi* can be found by paying attention to material facts and the decision is based on these material facts. In a material fact, there can be two possible conflicting decisions, and *the ratio decidendi*

¹⁷ The decision of the Constitutional Court, which is final and binding, contains 4 (four) legal meanings, namely: First, to create legal certainty as soon as possible for the parties to the dispute. Second, the existence of the Constitutional Court as a constitutional court. Third, it is meaningful as a form of social control carried out by the Constitutional Court. Fourth, as the sole guardian and interpreter of the constitution. Johansyah, "The Decision of the Constitutional Court is Final and Binding," *Solusi* 19, No. 2 (2021): 180, <https://doi.org/10.36546/Solusi.v19i2.359>.

¹⁸ Meika Arista, "When is the Consideration of a Constitutional Court Decision Said to be Binding and Not Binding?," 2019, <https://www.Hukumonline.com/klinik/a/kapan-pertimbangan-besaran-mk-dikatakan-mengikat-dan-tidak-mengikat-lt5c860ff16a550/>.

¹⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2021), 119.

is tasked with determining the legal reasons to be considered in the decision. Constitutional Court Decision Number 65/PUU-XXI/2023 is a binding legal consideration or decision ratio that is directly related to the conclusion and ruling. Constitutional Court Decision Number 65/PUU-XXI/2023 resulted in four decisions.²⁰

Based on the Islamic survey, the political system and governance is a study of *fiqh siyasah*. *Fiqh siyasah* is a term in the context of Islamic law that refers to "Islamic political science" or "Islamic political law." According to Abdul Wahab Khallaf, the object of study of *fiqh siyasah* is the legislation needed to manage the country by the principles of religious teachings to create human benefits and meet their needs.²¹ *Fiqh siyasah* covers issues such as state governance, government obligations, and rights, as well as the relationship between the state and citizens within the framework of Islamic law. In general *fiqh siyasah* is divided into three groups, namely *Siyasah Dusturiyyah*, *Siyasah Maliyah*, and *Siyasah Qadhaiyyah*. This research

²⁰ Constitutional Court Decision Number 65/PUU-XXI/2023 The four rulings are: a) Granting the Petitioners' petition in part; b) State the explanation of Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections along the phrase "Government facilities, places of worship and places of education can be used if election participants attend without election campaign attributes at the invitation of the party person in charge of government facilities, places of worship and places of education" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force; c) Declare that Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, so that Article 280 paragraph (1) letter h Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections in full reads, "using government facilities, places of worship and places of education, except for government facilities and places of education as long as they have permission from the person in charge of the place in question and are present without election campaign attributes"; d) Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

²¹ David Aprizon Putra Syarial Dedi, Maburur Syah, *Fiqh Siyasah*, ed. by Ihsan Nul Hakim (Bengkulu: LP2 IAIN Curup, 2019), 13.

specifically discusses the Constitutional Court Decision Number 65/PUU-XXI/2023 which is the result of testing the legislation, therefore the scope that is appropriate for this is to use the perspective of *siyasah dusturiyah*.

The problem in *siyasah dusturiyah* is the relationship between the leader on the one hand and the people on the other hand as well as the institutions that exist in society. Of course, the scope of the discussion is very broad, therefore in *siyasah dusturiyah* it is usually limited to discussing only the regulations and legislation required by state affairs in terms of conformity with religious principles and the realization of human benefit and meeting their needs.²² *Siyasa dusturiyah* covers a very broad and complex area of life.²³

The author also uses the theory of constitutional interpretation in this research to see what constitutional judges consider when deciding on the petition. Interpretation is an approach to identifying related laws, where regulations exist but their application is unclear.²⁴ Interpretation is a very important activity in law. Interpretation is an approach to interpreting the meaning contained in legal documents with the aim of resolving case situations or making decisions related to concrete events. Based on the perspective of constitutional law, interpretation, which in this case is carried

²² Ahmad Djazuli, *Fiqh Siyasah: Implementation of the Benefits of the People in the Signs of Sharia* (Jakarta: Kencana, 2007), 47.

²³ A. Djazuli, *Fiqh Siyasah: Implementation of the Benefits of the People in Syariah Signs* (Jakarta: Kencana, 2017), 58 *Siyasah dusturiyah* reviews the imamate, issues relating to the people; *allegiance; Waliyul Ahdi*; representative, a *hlul halli wal aqdi* and *vizier* .

²⁴ Afif Khalid, "Legal Interpretation by Judges in the Judicial System in Indonesia," *Legal Interpretation* 6, No. 11 (2014): 10.

out by judges (*judicial interpretation*), has a role as a method for changing the Constitution, namely by adding, reducing, or correcting the meaning contained in the text of the 1945 Constitution of the Republic of Indonesia.

The constitutional judge granted the applicant's request in part in the Constitutional Court Decision Number 65/PUU-XXI/2023. This is of course done by constitutional judges based on the results of the interpretation of the constitution. Based on the applicant's *legal standing*, the provisions of Article 280 paragraph (1) letter h emphasize that every election implementer, participant, and campaign team is prohibited from using government facilities, places of worship, and places of education for campaign purposes without exception. The importance of this prohibition is that the Election Law complements it with quite severe criminal sanctions.²⁵ The clear and unequivocal prohibition regulated in Article 280 paragraph (1) letter h of the Election Law, which should no longer need to be explained, turns out to still be explained.²⁶ Why do constitutional judges only prohibit campaigning in places of worship while in government agencies and places of education, it is allowed with certain exceptions?

²⁵ Article 521 of the Election Law carries a maximum prison sentence of 2 (two) years and a maximum fine of IDR 24,000,000 (twenty four million rupiah) Law Number 7 of 2017 concerning General Elections State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109.

²⁶ Explanation of Article 281 paragraph (1) letter h: Government facilities, places of worship, and places of education can be used if election participants attend without election campaign attributes at the invitation of the party in charge of government facilities, places of worship and places of education.

What is meant by "educational place" is the building and/or yard of a school and/or college Law Number 7 of 2017 concerning the General Election of the State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109.

Based on the background description above, the urgency of this research is known. The author wants to formulate and analyze the suitability of the considerations of constitutional judges with the theory of constitutional interpretation, *the ratio decidendi* is viewed from the perspective of *siyasah dusturiyah*, and the petition is granted in part from the Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the prohibition on election campaign venues, as well as compiling it into legal research with the title "*Ratio Decidendi* Constitutional Court Decision Number 65/PUU-XXI/2023 Regarding the Prohibition of General Election Campaign Venues from the *Siyasah Dusturiyah Perspective*".

B. Statement of Problem

1. Are the basic considerations of constitutional judges in deciding Constitutional Court Decision Number 65/PUU-XXI/2023 in accordance with the theory of constitutional interpretation?
2. What is the ratio decidendi of Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the ban on election campaign venues from the perspective of theory *siyasah dusturiyah*?
3. Why did the Constitutional Court grant the petition in part in Decision Number 65/PUU-XXI/2023 regarding places prohibited from carrying out election campaigns based on the applicant's *legal standing*?

C. Objective of Research

1. To describe the suitability of the basic considerations of constitutional judges in deciding the Constitutional Court Decision Number 65/PUU-XXI/2023 with the theory of constitutional interpretation.
2. To analyze *the ratio decidendi* of Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the ban on election campaign venues from the perspective of *siyasah dusturiyah theory*.
3. To formulate the reasons for the Constitutional Court granting the petition in part in Decision Number 65/PUU-XXI/2023 regarding places prohibited from carrying out election campaigns based on the applicant's *legal standing*.

D. Benefit of Research

1. Theoretical Benefits
 - a. It is hoped that the results of the research can increase the reader's knowledge and insight regarding the judge's considerations and *the decision ratio* in the Constitutional Court's decision, especially finding the answer as stated in the problem formulation.
 - b. It is hoped that the results of the research can become a reference or additional reference in further research, especially regarding legal research which discusses the considerations of constitutional judges and *ratio decidendi* in Constitutional Court decisions so that later they can be further developed by further researchers.

2. Practical Benefits

- a. For election organizers to immediately adjust the campaign process according to the latest regulations and to provide understanding to campaign participants regarding the Constitutional Court decision that has been determined.
- b. For the public, it is important to understand that the election campaign is a means of information and political education that is legally regulated in law so that with this decision no new problems arise regarding campaign venues.

E. Method of Research

Research methods are the main foundation that supports the validity and reliability of research results. The author details comprehensive research methods starting from the type of research, the approach used in research, types and sources of legal materials, methods of collecting legal materials, and analysis techniques for legal materials used in research. The presentation of this research method aims to provide an overview and basis for the accuracy of the research carried out by the author. The research method used by the author in writing this thesis is as follows:

1. Type of Research

Legal research is a systematic process of exploring scientific truth in the field of law using scientific methods methodically, systematically, and logically. The main goal is to solve legal problems or find answers to legal events, both theoretically and practically. To answer the legal

problems faced, researchers chose a type of normative legal research, which is also known as library research, by the approach proposed by Soerjono Soekanto and Sri Mamudji.²⁷ Normative legal research is often referred to as library research because it involves the analysis of library materials or secondary data, without involving primary data collection.²⁸ Furthermore, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes:

- a. Research into legal principles;
- b. Research on legal systematics;
- c. Research on the level of vertical and horizontal synchronization;
- d. comparative law;
- e. legal history.

Research objects involve legal norms, legal concepts, legal doctrine, legal literature, as well as legal principles themselves. Alone.²⁹ The object of research in this research is the Constitutional Court Decision Number 65/PUU-XXI/2023 concerning the Review of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections, where the decision is part of the legal literature.

²⁷ Sri Mamudji Soerjono Soekanto, *Normative Legal Research: A Brief Overview* (Jakarta: Rajawali Pers, 2004), 13–14.

²⁸ Soerjono Soekanto, 13 According to Soerjono Soekanto, secondary data includes primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are binding legal materials, namely statutory regulations (1945 Constitution and so on), customary law, jurisprudence and treaties. Secondary legal materials are legal materials that provide explanations of primary legal materials, such as draft laws, research results, work from legal circles and so on. Tertiary legal materials are legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, for example dictionaries, encyclopedias, cumulative indexes, and so on.

²⁹ I Made Psek Dianta, *Normative Legal Research in the Justification of Legal Theory* (Jakarta: Prenada Media Group, 2016), 2.

2. Research Approach

In legal research, several approaches can be used to obtain information from various aspects regarding the legal issue being researched. The approach used in normative research allows researchers to use findings from empirical legal science and other sciences to analyze and explain law without changing the basic nature of legal science as a normative science. Many legal materials have an empirical nature, such as comparative law, legal history, and legal cases that have been decided.³⁰ The approaches used by the author in this research are statute approach, conceptual approach, and case approach.

- a. Statute Approach *is* an approach using legislation or regulations.³¹

The rule of law is the focus of research. This research examines the law related to Constitutional Court Decision Number 65/PUU-XXI/2023 concerning the Review of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections. The statutory approach is used to determine the suitability of one law with another law.

- b. *The* Conceptual Approach is an approach that adheres to legal views and doctrines that have developed in legal science. According to Bahder Johan Nasution, a conceptual approach,

³⁰ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, ed. by Setiyono Wahyudi (Malang: Bayumedia Publishing, 2007), 300.

³¹ Marzuki, *Legal Research*, 137.

namely research into legal concepts such as legal sources, legal functions, legal institutions, and so on. This legal concept is in three domains or levels according to the level of legal science itself, namely: the level of dogmatic legal science, the legal concept is technical juridical, the legal theory level is the general concept of law, the legal philosophy level is the basic concept of law.³²

- c. The *Case Approach* is an approach that emphasizes researchers regarding *the ratio decidendi* or legal reasons used by judges, this approach tends to pay attention to material facts. Appropriate legal rules will be applied to those facts. *Ratio decidendi* is an aspect that shows that legal science has a prescriptive, not descriptive, character. Meanwhile, the dictum, namely part of the decision statement, is descriptive. Therefore, the case approach does not refer to the dictum of court decisions, but rather to *the ratio decidendi*.³³ This approach is in line with research conducted by the author, namely regarding *the ratio decidendi* in Constitutional Court Decision Number 65/PUU-XXI/2023.

3. Law Material

a. Primary Law Materials

Primary legal materials are legal materials consisting of statutory regulations, official minutes, court decisions, and official

³² Bahder Johan Nasution, *Legal Research Methods* (Bandung: Mandar Maju, 2008), 92.

³³ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2021), 158.

state documents.³⁴ In another sense, primary legal materials are legal materials that have authority (*authoritative*).³⁵ In this research, the author used primary legal materials, namely:

- 1) Article 22E paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.³⁶
- 2) Article 280 paragraph (1) letter h Law of the Republic of Indonesia Number 7 of 2017 concerning Elections.³⁷
- 3) Article 72 paragraph (1) letter h General Election Commission Regulation Number 15 of 2023 concerning General Election Campaigns.³⁸
- 4) Constitutional Court Decision Number 65/PUU-XXI/2023.³⁹

b. Secondary Law Materials

Secondary legal materials are all publications about law which are unofficial documents. These publications consist of: (a) textbooks that discuss one and/or several legal issues, including

³⁴ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 59.

³⁵ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Graphics, 2016), 47.

³⁶ "1945 Constitution of the Republic of Indonesia" (nd) Article 22E paragraph (1) General elections are held directly, publicly, freely, secretly, honestly and fairly once every five years; Article 28D paragraph (1) Every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.

³⁷ Article 280 paragraph (1) letter h Law Number 7 of 2017 concerning the General Election of the State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109; states that election implementers, participants and campaign teams are prohibited from using government facilities, places of worship and places of education.

³⁸ Article 72 paragraph (1) letter h General Election Commission Regulation Number 15 of 2023 concerning General Election Campaigns states that Election Campaign Implementers, participants and Election Campaign teams are prohibited from using government facilities, places of worship and places of education.

³⁹ Constitutional Court Decision Number 65/PUU-XXI/2023 is the result of reviewing Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections regarding places where carrying out election campaigns is prohibited.

legal theses, theses, and dissertations, (b) legal dictionaries, (c) legal journals, and (d) comments on the judge's decision. These publications are instructions or explanations regarding primary legal materials or secondary legal materials originating from dictionaries, encyclopedias, journals, newspapers, and so on.⁴⁰

The use of secondary legal materials is to provide instructions for researchers to take steps, both in creating the background, problem formulation, research objectives and uses, theoretical and conceptual frameworks, and even determining methods for collecting and analyzing legal materials that will be created as a result of the research. For legal practitioners, these secondary legal materials can serve as a thinking guide in preparing arguments to be presented in court or providing legal opinions.⁴¹

c. Tertiary Law Materials

Tertiary legal materials, namely materials that provide important instructions and explanations related to primary and secondary legal materials,⁴² namely in the form of legal dictionaries, articles, legal journals, and the Big Indonesian Dictionary (KBBI).

4. Law Material Collection

The method for collecting legal materials used is library research.

Legal materials obtained through library research are first understood

⁴⁰ Soerjono Soekanto, *Normative Legal Research: A Brief Overview*, 33.

⁴¹ Ali, *Legal Research Methods*, 54.

⁴² Bambang Sunggono, *Legal Research Methodology* (Jakarta: PT. Raja Grafindo Persada, 2002), 116.

and studied in depth. Next, notes are made according to the problem being studied, either directly or indirectly.⁴³ Researchers conducted a literature study to collect legal materials, including primary and secondary legal materials, in this research.⁴⁴

Documentation studies are carried out by in-depth study of documents in the form of research results, related laws and regulations, and literature reviews, all of which are secondary data. This secondary data is related to an in-depth study regarding the recording of legal events.⁴⁵ In this research, the author conducted a review of the Constitutional Court Decision Number 65/PUU-XXI/2023.

5. Analysis of Law

The data analysis technique applied in this research is qualitative juridical analysis, where researchers evaluate the results of non-numerical data processing. This approach places more emphasis on legal analysis by adopting a deductive and inductive conclusion-drawing process, as well as using formal and argumentative thinking methods.⁴⁶ Qualitative research is oriented towards legal norms contained in legislation, court decisions, and also norms that are active and developing in society.⁴⁷ The author carried out qualitative data

⁴³ Zainal Asikin Amiruddin, *Introduction to Legal Research Methods* (Jakarta: PT. Raja Grafindo Persada, 2004), 58.

⁴⁴ Yulianto Achmad Mukti Fajar, *Dualism of Normative & Empirical Legal Research* (Yogyakarta: Student Library, 2010), 160 Literature study, namely searching for legal materials by reading, viewing, listening, or now many people do searches via the internet.

⁴⁵ Saifullah, *Legal Research Typology (History, Paradigm and Thought of Indonesian Figures)* (Bandung: PT Refika Aditama, 2018), 162.

⁴⁶ M. Syamsuddin, *Operationalization of Legal Research* (Jakarta: Grafindo Persada, 2007), 133.

⁴⁷ Ali, *Legal Research Methods*, 105.

processing by describing it in its entirety by approaching the social reality that occurred in Constitutional Court Decision Number 65/PUU-XXI/2023.

F. Previous Research

Previous research contains information related to research that has been carried out by previous researchers which is related to the research problem to avoid duplication and then this research must be explained and its differences with previous studies, to make it easier to recognize similarities and differences as well as comparisons and also to avoid plagiarism. There are several previous studies with the same variables but different discussions. Moreover, this research is a new object and topic so not many other researchers have discussed the Constitutional Court Decision Number 65/PUU-XXI/2023. The author has found previous research from various sources, both from theses and journals, as follows:

Table 1.1
Previous Research

No	Name, Title, Year	Problem Formulation	Results	The difference	Element of Novelty
1	Puspitalis Wahyuning Tyas, Review of <i>Siyasah Fiqh</i> on the Election Campaign at the Kuripan Babat Village Mosque, Lamongan	- How is the election campaign carried out at the Kuripan Village Mosque, Babat, Lamongan Regency according to Law Number 7 of 2017	- The campaign at the Kuripan Babat Village mosque, Lamongan Regency was carried out by distributing campaign materials, namely sticker	- Does not analyze the considerations of constitutional judges - Does not discuss <i>the ratio decidendi</i>	This research is an extension or development of previous research which focused only on mosques (places of worship) which were prohibited from being used as campaign

	<p>Regency According to Law Number 7 of 2017 Article 280 concerning Elections, 2020.⁴⁸</p>	<p>concerning elections?</p> <ul style="list-style-type: none"> - How to analyze <i>Siyasah Fiqh</i> regarding the implementation of the election campaign at the Kuripan Village Mosque, Babat, Lamongan Regency? 	<p>images and sample ballot papers with the names of the two legislative candidates, and one of the legislative candidates gave a speech to the Fatayat NU women's recital congregation.</p> <ul style="list-style-type: none"> - There is no standard understanding regarding campaigns in <i>siyasah fiqh</i>, however in Islam, there are elements of action that indicate a campaign, namely offering oneself to become a leader and an invitation to elect oneself, this is based on the Al-Qur'an, Surah Yusuf verse 55.⁴⁹ 	<ul style="list-style-type: none"> - Does not discuss Constitutional Court Decision Number 65/PUU-XXI/2023 - Not using <i>the Siyasa Dusturiyah perspective</i> 	<p>venues. The problem in this research will be broader because it does not only cover places of worship but also government and educational institutions as per the latest regulations, namely the Constitutional Court Decision Number 65/PUU-XXI/2023, as well as looking at how the judge's considerations are viewed from the theory of constitutional interpretation and <i>ratio decidendi siyasah dusturiyah</i> perspective in the applicant's application.</p>
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⁴⁸ This research uses field *research* and library research methods with a qualitative descriptive approach and an empirical legal approach and uses a deductive thinking method. Tyas, "Fiqh Siyasah review of the election campaign at the Kuripan Babat Village mosque, Lamongan Regency according to Law Number 7 of 2017 article 280 concerning Elections."

⁴⁹See Tyas: The results of this research can be concluded that there was an election campaign at the Kuripan Babat Village Mosque, Lamongan Regency, during the 2019 election, which violated law number 7 of 2017 concerning elections, Article 280 concerning the prohibition of election campaigns. using government facilities, places of worship and places of education, but according to Bawaslu's decision, these activities do not constitute a campaign prohibition because the campaign elements are not fulfilled.

2	<p>Agus Mahardika, Review of <i>Siyasah Fiqh</i> on the Prohibition of Using Mosques as Campaign Places Based on Law Number 7 of 2017 concerning General Elections, 2022.⁵⁰</p>	<ul style="list-style-type: none"> - What is the prohibition on mosques as election campaign venues according to Law Number 7 of 2017? - What is the review of <i>siyasah fiqh</i> regarding the prohibition on using mosques as campaign venues? 	<ul style="list-style-type: none"> - Mosques are prohibited as a place for election campaigns, this is by Law Number 7 of 2017, both with face-to-face meeting campaign methods and limited meetings because details regarding activities are made in a report and it does not require that the place be in a place of worship including a mosque. but in a building or room. - That in <i>siyasah fiqh</i> it is prohibited to use mosques as campaign venues, whether for limited and face-to-face meetings, installing props, and 	<ul style="list-style-type: none"> - Does not analyze the considerations of constitutional judges - Does not discuss <i>the ratio decidendi</i> - Does not discuss Constitutional Court Decision Number 65/PUU-XXI/2023 - Not using <i>the Siyasa Dusturiyah perspective</i> 	<p>This research is an extension or development of previous research which focused only on mosques (places of worship) which were prohibited from being used as campaign venues. The problem in this research will be broader because it does not only cover places of worship but also government and educational institutions as per the latest regulations, namely the Constitutional Court Decision Number 65/PUU-XXI/2023, as well as looking at how judges' considerations are viewed from the theory of constitutional interpretation and <i>the ratio decidendi</i> perspective. <i>siyasah dusturiyah</i> in</p>
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⁵⁰This research adopts a normative legal research method by applying a statutory approach (*Statute Approach*), namely a normative juridical perspective (normative legal research) by means of analysis, namely a research method that describes and analyzes the facts that occur as they are in the thesis writing. Agus Mahardika, "Review of *Siyasah Fiqh* on the Prohibition of Using Mosques as Campaign Places Based on Law Number 7 of 2017 concerning General Elections" (Fatmawati Sukarno State Islamic University Bengkulu, 2022).

			debating candidate pairs. ⁵¹		deciding the applicant's application.
3	Nadia Putri Asarah and Nofialdi, Prohibition of Using Worship Facilities as Places for Political Campaigns in Accordance with Law Number 7 of 2017 According to <i>Fiqh Siyasa</i> , 2022. ⁵²	<ul style="list-style-type: none"> - What is the prohibition on using religious facilities as a place for political campaigns according to Law Number 7 of 2017? - What is the view of Siyasa Fiqh regarding mosques being used as campaign facilities? 	<ul style="list-style-type: none"> - The prohibition on using religious facilities as a place for political campaigns according to Law Number 7 of 2017 concerning general elections means that everyone, without exception, must comply with these regulations. The campaign carried out in the mosque can be seen from the theory of the function of mosques during the time 	<ul style="list-style-type: none"> - Does not analyze the considerations of constitutional judges - Does not discuss <i>the ratio decidendi</i> - Does not discuss Constitutional Court Decision Number 65/PUU-XXI/2023 - Not using <i>the Siyasa Dusturiyah perspective</i> 	This research is an extension or development of previous research which focused only on mosques. places of worship that are prohibited from being used as campaign venues. The problem in this research will be broader because it does not only cover places of worship but also government and educational institutions as per the latest regulations, namely the Constitutional Court Decision Number 65/PUU-XXI/2023, as well as looking at how judges'

⁵¹ Mahardika, "Siyasa Fiqh Review of the Prohibition of Using Mosques as Campaign Places Based on Law Number 7 of 2017 concerning General Elections" Mosques are used as places of worship for Muslims, places for Muslims to study, places for giving fatwas, places for adjudicating cases when disputes arise, quarrels and hostility among Muslims, places of social activities, places of medical or health services.

⁵² This research uses a qualitative approach which includes data collection and data analysis. Data collection was carried out by means of literature study and document study. Literature study is carried out by reading, collecting books and laws as well as references that are relevant to the subject matter. Nadia Putri Asarah and Nofialdi Nofialdi, "Prohibition on the Use of Worship Facilities as Places for Political Campaigns in Accordance with Law Number 7 of 2017 According to Fiqh Siyasa," *JISRAH: Journal of Sharia Science Integration* 3, No. 2 (2022): 313, <https://doi.org/10.31958/jisrah.v3i2.6873>.

			<p>of the Prophet Muhammad.⁵³</p> <p>- The view of <i>siyasah fiqh</i> regarding the prohibition on using mosques as campaign venues in Law Number 7 of 2017 is that if the campaign is carried out in the mosque in sympathy with political parties or prospective leaders who are campaigning, it is feared that this will cause divisions between the existing mosque congregation. According to the author, Law Number 7 of 2017 does not conflict with <i>siyasah fiqh</i>.</p>		<p>considerations are viewed from the theory of constitutional interpretation and <i>the ratio decidendi</i> perspective. <i>siyasah dusturiyah</i> in deciding the applicant's application.</p>
4	<p>Didi Nazmi, Analysis of Constitutional Court Decision Number 65/PUU-</p>	<p>- How is the campaign carried out according to the laws and regulations regarding</p>	<p>- The organization of the campaign is based on the principle of fairness and is free from</p>	<p>- Does not analyze the considerations of constitutional judges</p>	<p>This research is a form of development of previous research but is not only limited to campaigns in the</p>

⁵³See Asarah and Nofaldi: At the time of the Messenger of Allah, the practice of using mosques as a place of campaigning never happened, so the use of mosques as a place of campaigning had no legal basis in *fiqh siyasah*. So it can be confirmed that there will be conflict friction and division among the community if the mosque is used as a campaign venue.

<p>XXI/2023 concerning Campaigns in the Education Realm from a Human Rights Perspective, 2023.⁵⁴</p>	<p>elections in Indonesia?</p> <ul style="list-style-type: none"> - What is the analysis of Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the implementation of campaigns in educational settings? 	<p>intervention by any party. The existence of a campaign helps people to be able to actively choose and cast their vote on the vision, mission, and programs designed by the candidate pairs.⁵⁵</p> <ul style="list-style-type: none"> - Prohibiting campaigning in educational venues is not part of limiting the human rights of every election participant. <p>⁵⁶The Court still maintains the provisions of Article 280 paragraph (1) letter h regarding the prohibition of campaigning through government facilities,</p>	<ul style="list-style-type: none"> - Does not discuss <i>the ratio decidendi</i> - Not using <i>the Siyasa Dusturiyah perspective</i> - Only discussing campaigns in the educational realm 	<p>realm of education but also discusses campaigns in government agencies and places of worship by looking at judges' considerations from the perspective of constitutional interpretation theory and the <i>ratio decidendi siyasah dusturiyah</i> perspective.</p>
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⁵⁴ The research method used in this research is legal research (*doctrinal research*). The approaches used are the conceptual approach , statutory *approach* and case approach to the Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the request for legal uncertainty regarding the Elucidation in Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning General Elections. Didi Nazmi, "Analysis of Constitutional Court Decision Number 65/PUU-XXI/2023 concerning Campaigns in the Education Realm from a Human Rights Perspective," *UNES Law Review* 6, No. 1 (2023): 53–62, <https://doi.org/10.31933/unesrev.v6i1.838>.

⁵⁵See Nazmi: This campaign is communication between candidate pairs and their people so that satisfaction in democracy can be felt on a massive scale. Election campaigns are part of community political education and are carried out responsibly.

⁵⁶See Nazmi, campaign activities are part of the derogable *rights* .

			places of worship, and places of education by interpreting that exceptions are still necessary and are included in the body of Law No. 7 of 2017 concerning Elections as a separate norm. ⁵⁷		
5	Fidyan Hamdi Lubis and Putri Ramadayanti Nasution, Problems of Organizing Political Campaigns in University Environments, 2023. ⁵⁸	<ul style="list-style-type: none"> - What are the rights to campaign for students? - What are the legal arrangements regarding campaigns within the university environment? 	<ul style="list-style-type: none"> - Students as <i>agents of change</i> are often exploited by politicians who prioritize personal interests. The closeness of students to officials can have a positive impact. However, in the context of campaign interests, many politicians also provide unfavorable doctrines toward students, so it 	<ul style="list-style-type: none"> - Does not analyze the considerations of constitutional judges - Does not discuss <i>the ratio decidendi</i> - Does not discuss Constitutional Court Decision Number 65/PUU-XXI/2023 - Not using <i>the Siyasa Dusturiyah perspective</i> 	This research is a form of development of previous research but is not only limited to campaigns in the realm of education or universities but also discusses campaigns in government agencies and places of worship by looking at judges' considerations from the perspective of constitutional interpretation theory and <i>the</i>

⁵⁷See Nazmi, the aim of the court to combine the exception provisions in the body of Article 280 paragraph (1) letter h is to create legal certainty in law enforcement for election violations.

⁵⁸ This research uses the Normative Juridical research method or also known as doctrinal legal research. It can be interpreted simply as research that asks what the law is in a particular jurisdiction. Researchers in this case attempt to collect and then analyze the law, along with relevant legal norms. Fidyan Hamdi Lubis et al., "Problematics of Organizing Political Campaigns in University Environments," *Journal of Constitutional Law and State Administrative Law* 2, No. 2 (2023): 267.

			<p>can be said that campaign activities are an opportunity for unscrupulous politicians to deceive students.</p> <p>- The implementation of campaigns in university environments is prohibited as regulated in Article 280 paragraph 1 letter (h) "Election campaign organizers, participants and teams are prohibited from using government facilities, places of worship and places of education." The author is made ambiguous by the explanation of Article 280 paragraph 1 letter h which explains the opposite. So, according to the author, there is a kind of "norm</p>		<p><i>ratio decidendi</i> perspective of <i>siyasa</i> <i>dusturiyah</i>.</p>
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			smuggling" in the provisions governing this matter.		
6	Zavina Shara Pova, Lira Melitasia, and Lili Suriyanti, Analysis of the Decision "MK Number 65/PUU-XXI/2023" Regarding the Permissibility of Campaigning in Educational Facilities, 2023. ⁵⁹	- What is the Analysis of Constitutional Court Decision Number 65/PUU-XXI/2023 on Campaigns in Educational Facilities?	- The Constitutional Court (MK) stated that the explanation regarding Article 280 paragraph (1) letter h of the General Election Law which permits the use of government facilities, places of worship, and educational environments provided that election participants attend without wearing election campaign attributes at the invitation of the responsible party is a violation of the 1945 Constitution	- Does not analyze the considerations of constitutional judges - Does not discuss <i>the ratio decidendi</i> - Not using <i>the Siyasa Dusturiya perspective</i>	This research is a form of development of previous research but is not only limited to campaigns in the realm of education or universities but also discusses campaigns in government agencies and places of worship by looking at judges' considerations from the perspective of constitutional interpretation theory and <i>the ratio decidendi perspective of siyasah dusturiyah.</i>

⁵⁹ This research uses the Normative Juridical research method or also known as research (doctrine law) which can be interpreted simply as research that asks what the law is in a particular jurisdiction. Researchers in this case attempt to collect and then analyze the law, along with relevant legal norms. This is often done from a historical perspective and may also include other sources such as journal articles or other written commentaries on case law and legislation. The type of data used in this research is secondary data. Lili Suriyanti Zavina Shara Pova, Lira Melitasia, "Analysis of the Decision of 'MK Number 65/PUU-XXI/2023' Regarding the Permissibility of Campaigning in Educational Facilities" 4, No. 6 (2023): 13665.

			and does not have binding legal force. Constitutional Court Decision Number 65/PUU-XXI/2023 not only limits the role of campuses in educating future generations but also plays a role in improving the quality of democracy in Indonesia by helping create voters who can make decisions based on logical thinking and based on facts.		
7	Devi Muhsonati, Campaign at Islamic Boarding Schools Based on Constitutional Court Decision Number 65/PUU-XXI/2023 Siyasa Dusturiyah's	<ul style="list-style-type: none"> - How is the Implementation of Political Campaigns Based on Constitutional Court Decision Number 65/PUU-XXI/2023 concerning Campaigns? - How is the political campaign at the Siyasa Dusturiyah Perspective Islamic Boarding School? 	- Constitutional Court (MK) Decision Number 65/PUU-XXI/2023 regarding political campaigns allows election participants to campaign in government and educational facilities, as long as they do not use	<ul style="list-style-type: none"> - This research is an empirical legal research. - Not analyzing the considerations of constitutional judges. - Does not discuss ratio decidendi. 	This research is a form of development from previous research, but not only limited to campaigns in the realm of education or Islamic boarding schools but also discusses campaigns in government agencies and places of worship by looking at the judges'

	<p>Perspective, 2024.⁶⁰</p>		<p>campaign attributes. In this case, that in the Sabilurrosyad Islamic Boarding School the implementation of political campaigns has been carried out, but in practice it does not violate the campaign ban because in the process the campaigns carried out at the Sabilurrosyad Islamic Boarding School do not carry campaign attributes and materials.</p> <p>- In fiqh siyasah dusturiyah the candidacy and campaign for a particular political office can be justified according to Islamic law for a person in whom there is</p>		<p>considerations from the perspective of constitutional interpretation theory and from the ratio decidendi perspective of siyasah dusturiyah.</p>
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⁶⁰ The type of research used is a type of empirical juridical research which in this case researchers directly plunge into the location (Field Research). The research approach used the Sociological Juridical approach to obtain legal knowledge empirically by plunging into its object. The research location is Sabilurrosyad Gasek Islamic Boarding School Malang City. Devi Muhsonati, "Campaign in Islamic Boarding Schools Based on Constitutional Court Decision Number 65/PUU-XXI/2023 Siyasah Dusturiyah Perspective", *Al-Balad: Journal Of Constitutional Law*, Vol. 5 No. 3 (2024): 4.

			<p>a sufficient capacity, capability and acceptability to assume the office for which he nominates and campaigns himself to reach it and the potential spouse whose main motivation is of course solely to seek the pleasure of Allah and for the realization of public benefit, not to achieve personal interests and or not a means to do things that are destructive to the public interest.</p>		
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Previous research played an important role in establishing the theoretical foundation and context for this research. Previous research is a reference to provide different views so this research has an element of novelty and cannot be said to be plagiarizing previous research. Based on the table above, there are differences and elements of novelty which are findings related to the hypothesis in the research to be carried out. The

author states that after research has been carried out in this work, there is no plagiarism from previous works or research results.

G. Structure of Discussion

Systematic discussion in research has a crucial role because it helps researchers organize findings and analysis in a structured manner, making it easier for readers to follow the flow of the research. It is hoped that the systematic discussion will be able to provide a clear and systematic picture to the reader. To simplify the discussion, the author has broadly organized it into four chapters which conform to the "Guidebook for Writing Scientific Work" at the Faculty of Sharia, UIN Maulana Malik Ibrahim Malang, with the following details:

I. CHAPTER I INTRODUCTION

Chapter I is the introductory chapter which consists of the background of the problem, problem formulation, research objectives, research benefits, research methods, previous research, and systematic discussion. This introductory chapter contains an explanation of the reasons this research was conducted as well as explaining the background and urgency of the research carried out by the author, namely related to the Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the review of the Explanation of Article 280 paragraph (1) letter h of the Law. Law Number 7 of 2017 concerning Elections regarding places where it is prohibited to carry out general election campaigns.

II. CHAPTER II: LITERATURE REVIEW

Chapter II is the literature review chapter which contains juridical thoughts and/or concepts as a theoretical basis for the study and analysis of problems and contains the development of data and/or information, both substantially and in methods relevant to the research problem. These conceptual foundations and theories will later be used in analyzing each problem raised in the research. In this chapter, relevant theories related to Constitutional Court Decision Number 65/PUU-XXI/2023 will be explained.

III. CHAPTER III: RESEARCH RESULTS AND DISCUSSION

Chapter III is the research results and discussion chapter which describes the data that has been obtained from the results of literature research (reading and reviewing literature) which is then edited, classified, verified, and analyzed to answer the problem formulation that has been determined. In this chapter, there are answers to the problem formulation which has been described and studied in such a way as the theory that the author has chosen to use as a perspective.

IV. CHAPTER IV: CLOSING

Chapter IV is the closing chapter, and the last chapter consists of conclusions and suggestions. Conclusions are short answers to the problem formulation, while suggestions are recommendations regarding a problem being studied to parties related to the research, the community, and subsequent researchers.

CHAPTER II

LITERATURE REVIEW

A. Operational Definition

1. *Ratio Decidendi*

Ratio decidendi is a legal justification used by judges as a basis for reaching their decisions. *Ratio decidendi* refers to the legal arguments or reasons used by judges as considerations and a basis for making decisions in a case.⁶¹ The judge's *ratio decidendi* can be interpreted as the judge's thoughts which are the determining factor when the judge makes a decision. For every judge's decision, there are determining or core reasons that form the basis for making the decision.⁶²

The judge's consideration in a decision is one indicator for assessing the quality of the decision. If a decision does not include the judge's considerations, then the decision is declared legally null and void. Another term for *ratio decidendi* is *legal reasoning* or the judge's consideration. In general, the function of *ratio decidendi* or *legal reasoning* is as a tool to present the core thoughts regarding legal conflicts between individuals and other individuals.

2. Constitutional Court Decision Number 65/PUU-XXI/2023

Constitutional Court Decision Number 65/PUU-XXI/2023 is a Constitutional Court judge's decision regarding the review of the

⁶¹ Marzuki, *Legal Research*, 119.

⁶² Team for Drafting the Procedural Law of the Constitutional Court, *Procedural Law of the Constitutional Court* (Central Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010), 190.

Election Law, specifically regarding the material review of content material in the Elucidation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections. Based on Article 280 paragraph 1 letter (h) Law Number 7 of 2017 concerning Elections. Three places are not allowed to carry out campaigns, namely government agencies, places of education, and places of worship. The reason why this petition was tested by the applicant was because the Elucidation of Article 280 paragraph 1 letter (h) of the Election Law created an expansion of norms and was unclear about the norms in question. This test was submitted by Handrey Mantiri, SH, a private employee and Ong Yenny who is a member of the DKI Jakarta Provincial DPRD. In this decision, the applicant's petition was granted in part.⁶³

3. Election Campaign

In general, a campaign is a series of communication activities that aim to influence the targets of the campaign being carried out. According to Ronald E. Rise and Wiliam J. Paisley, political campaigns are a social control strategy to direct the psychology and behavior of voters to adapt and comply with what is programmed by a political

⁶³ Constitutional Court Decision Number 65/PUU-XXI/2023 Article 280 paragraph (1) letter h of the Election Law: Election implementers, participants and campaign teams are prohibited from: h. use government facilities, places of worship, and places of education. The explanation of Article 280 paragraph (1) letter h reads: Government facilities, places of worship and places of education can be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education. What is meant by "educational place" is the building and/or grounds of a school and/or college.

party.⁶⁴ Based on Law Number 7 of 2017 concerning General Elections, it is stated that an Election Campaign is the activity of election participants or other parties appointed by election participants to convince voters by offering a vision, mission, program, and/or self-image of election participants.⁶⁵

4. *Siyasah Dusturiyah*

Siyasah dusturiyah is a part of *siyasah fiqh* which discusses the issue of state legislation so that it is in line with Islamic law. The law refers to the constitution and reflects the principles of Islamic law, which are taken from the Koran and Sunnah, including matters of faith, worship, morals, and muamalah, as well as aspects related to state administration. *Siyasah dusturiyah* examines issues of state legislation, including basic principles related to government structure, norms relating to citizens' rights, as well as procedures for the distribution of power.⁶⁶

B. Theoretical framework

1. Theory *Siyasa Dusturiyah*

Islam has regulated all structures of human life both in terms of human relationships with humans and human relationships with Allah SWT. Don't forget that Islam also regulates and teaches politics and state administration from an Islamic perspective.⁶⁷ The meaning of *dustur* is

⁶⁴ Efriza, *Political Explore: A Study of Political Science* (Bandung: Alfabeta, 2012), 470.

⁶⁵ Article 1 Number 35 Law Number 7 of 2017 concerning General Elections.

⁶⁶ Jubair Situmorang, *Constitutional Politics in Islam (Siyasah Dusturiyah)* (Bandung: Pustaka Setia, 2012), 20.

⁶⁷ Yulinda Sholikhatul Amalia and Khairul Umam, " *Ratio Decidendi* Constitutional Court Decision Number 006/PUU-II/2004 *Siyāsah Dusturiyāh* Perspective," *Al-Balad: Journal of Constitutional*

principle, basis, or guidance. In terms of terms, it is defined as a collection of rules that regulate the basis and relations of cooperation between fellow members of society in a country, both unwritten (convention) and written (constitution).⁶⁸

According to Abdul Wahab Khallaf, the principles that are the basis for drafting this constitution are guaranteeing human rights for every individual in society and seeking equality of position for all people in the eyes of the law, regardless of differences in human status. Atjep Jazuli discussed the scope of this field, regarding the issue of the relationship between the authorities and citizens as well as the institutions within them, this topic then focused on aspects of regulation and legislation in the context of state affairs.⁶⁹

One of the areas of *siyasah dusturiyah* is discussing the constitution. A constitution is also called *law* which involves elements such as legal sources and principles in a country, including material sources, historical sources, legislative sources, and interpretation. The basic material of the constitution is the core of this constitutional source, discussing the regulations that regulate the relationship between the government and the people.⁷⁰ The historical background cannot be separated because it

Law 3, No. 3 (2021), <http://urj.uin-malang.ac.id/index.php/albalad/article/view/786%0Ahttp://urj.uin-malang.ac.id/index.php/albalad/article/download/786/615>.

⁶⁸ Situmorang, *Constitutional Politics in Islam (Siyasah Dusturiyah)*, 19.

⁶⁹ Syarial Dedi, Mabror Syah, *Fiqh Siyasah*, 57.

⁷⁰ Muhammad Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 1 ed. (Jakarta: Kencana, 2014), 178.

has the unique character of a country, seen from the formation of its society, culture, and politics so that it is in line with its aspirations. The formation of a constitution must have a strong foundation so that it can bind and regulate all of society. Interpretation of laws is the authority of legal experts who can explain these matters, for example, the 1945 Constitution.

The author uses *siyasah dusturiyah* in the view of Muhammad Iqbal.⁷¹ *Siyasah dusturiyyah* covers a very broad and complex field of life. All of these problems, including the problems of *siyasah dusturiyah* in general, can be linked to two main aspects: first, general principles such as the verses of the Qur'an and hadith, *maqasid shari'ah*, as well as the spirit of Islamic teachings that serve as a guide in regulate society and will not change as society changes. These general principles become dynamic factors that influence transformation in society. Second, some rules are flexible and can change in line with changing situations and conditions, including the *ijtihad* of scholars, although not all aspects can change.⁷²

⁷¹ Muhammad Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 1 ed. (Jakarta: Kencana, 2014), 48 Muhammad Iqbal divides the scope of the study of *siyasah dusturiyah* into several parts, namely: a) *Al-sulthah al-tasyr'iyah*, which is legislative power, namely the power of the Islamic government in making and enacting laws; b) *Al-sulthah al-tanfidiyyah*, which is executive power which includes matters of *imamate*, *bai'ah*, *wizarah*, and *waliy al-ahdi*; c) *Al-sulthah al-qadha'iyah*, is a judicial power which is related to the duties and authority of the judiciary to resolve cases both civil and criminal and also related to administrative disputes related to the state, namely issues that determine whether they are legal or not. laws to be promulgated that have previously been tested in the subject matter of a country's constitution.

⁷² Situmorang, *Constitutional Politics in Islam (Siyasah Dusturiyah)*, 23–24.

Muhammad Iqbal in his book divides *siyasah dusturiyah* into four concepts, namely as follows:⁷³

a. Constitution

In the beginning, the word *dusturi* had the meaning of "someone who has authority, both in politics and religion". After being adopted into Arabic, the word *dustur* underwent an expansion of meaning into "foundation," "base," or "construction." In the context of terminology, *dustur* refers to a set of rules that regulate the basis and cooperation between individuals in a society within a country, both expressed unwritten (convention) and written (constitution). The term *dustur* has also been accepted into the Indonesian language, and one of its meanings is the basic law of a country.

The formulation of a constitution cannot be separated from the historical context of the country concerned, including social, political, and cultural aspects. Therefore, the contents of the constitution are in line with the spirit and aspirations of the people in the country. For example, the process of formulating the 1945 Constitution of the Republic of Indonesia was carried out taking into account the diversity of Indonesian society, so that it could reflect the aspirations of various groups and ensure the unity and integrity of the nation. In response to objections from Christians in the

⁷³ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 177–230.

Eastern part of Indonesia, Muslims were willing to evaluate and revoke several clauses in the formulation of the basic law.⁷⁴

b. Legislation

In the study of *siyasaḥ fiqh*, the legislature or legislative power is known as *al-sulṭah al-tasyri'iyah*, namely the authority of the Islamic government to make and establish laws. Based on an Islamic perspective, only Islamic governments have the authority to establish laws that apply to Muslims. This statement is expressly stated by Allah in QS Al-An'am verse 57.⁷⁵ Legislative power (*al-sulṭah al-tasyri'iyah*)⁷⁶ refers to the authority of the Islamic government to establish and implement laws based on the norms that have been revealed by Allah SWT in Islamic law.⁷⁷

Through *al-sulṭah al-tasyri'iyah*, the government carries out its *siyasaḥ syar'iyah* duties to formulate laws that will apply in the

⁷⁴ The change in the precepts regarding belief in God occurred in the Jakarta Charter, namely becoming the 1st principle with the sentence "Belief in God with the obligation to carry out Islamic law for its adherents". This sentence then became a heated debate at the PPKI session on August 18 1945 and was finally changed to "Belief in the Almighty God" in the 1st principle until today. Agus Fauzi, "Religion, Pancasila and Social Conflict in Indonesia," *e-Journal Lentera Hukum* 4, No. 2 (2017): 131.

قُلْ إِيَّاهُ عَلَىٰ بَيِّنَةٍ مِّن رَّبِّي وَكَذَّبْتُمْ بِهِ ۚ مَا عِندِي مَا تَسْتَعْجِلُونَ بِهِ ۚ إِنَّ الْحُكْمَ إِلَّا لِلَّهِ يَفْصِلُ الْحَقَّ وَهُوَ خَيْرُ الْفَصِيلِينَ⁷⁵

Meaning: Say (Prophet Muhammad), "I (am) above the real information (the truth, namely the Qur'an) from my Lord, while you deny it. It is not in my authority (to bring down the punishment) that you demand that its arrival be hastened. Establishing the law is only God's right. He explains the truth and He gives the best decisions."

⁷⁶ The legislative body (*al-sulṭah al-tasyri'iyah*) is an institution that has the power to amend laws. Nadirsah Hawari, "*As-Sulṭah At-Tasyri'iyah* in the Perspective of Fiqh Siyasi and Qanun Wadh'Iy," *Tapis* 7, No. 12 (2011): 57.

⁷⁷ Elements of legislation in Islam include: 1) The government as the holder of the power to determine the laws that will be enforced in Islamic society; 2) The Islamic Community will implement it; 3) The contents of the regulations or laws themselves must be in accordance with the basic values of Islamic law. Iqbal, *Fiqh Siyasaḥ Contextualization of Islamic Political Doctrine*, 187.

Muslim community that aim for the well-being of Muslims and are by the values of Islamic teachings. Furthermore, the concept of power-sharing, with certain nuances and differences, existed in the context of Islamic government before Western thinkers developed their theory of *Trias Politica*.⁷⁸

c. *Ummah*

In the context of Islamic terminology, the term "*ummah*" has a unique concept and cannot be equated with terms in Western languages. Although initially, Western political thinkers and orientalist tried to associate the word "*ummah*" with "*nation*" or "*nation-state*", this equation was considered inappropriate. Attempts to use the word "*community*" are also considered not fully by the concept of "*ummah*". Abdur Rasyid Moten, a Professor of Political Science at the International Islamic University, Malaysia, believes that making an equation between the words "*ummah*" and "*community*" oversimplifies the meaning of the concept.

The universal spirit of Islam which is the basis for the *ummah* emphasizes that Islam cannot support a narrow view of nationalism.

This view views land, territory, race, blood, and other man-made

⁷⁸ Islam and the Trias Politica theory both recognize what is called the triad of division of state power. In Islam, the known institutions of power are: *Sulthah al-Tasyri'iyah*, *Sulthah al-Tanfīzdiyah* and *Sulthah al-Qadhāiyah*. Meanwhile, in the Trias Political theory, what is known is the Legislative institution, the Executive institution and the Judicial institution. These three functions of institutions of power in Islam have been practiced directly by the Prophet Muhammad SAW. M. Syamsuddin, "Review of Islamic Politics on the Trias Politica Theory," *al Qisthās; Journal of Law and Politics* 9, No. 1 (2018): 53.

elements as bonds between humans. Islam rejects the view of nationalism which will only result in glorifying the values of tribalism and primordialism, which are contrary to Islamic values.⁷⁹

Iqbal stated that the Islamic perspective on nationalism is different from the Western view. In Islam, nationalism is not based on linguistic, geographical, or economic unity. The Muslim community is considered an extended family founded by the Prophet Muhammad SAW, with membership based on the shared beliefs and traditions of the Muslim community. In this framework, Islam justifies the existence of Muslim countries that are limited by geographical areas and racial differences. Although this difference exists to provide convenience and facilities to its followers, it does not limit the social perspective of Muslims. Iqbal tried to combine elements of nationalism and ummah, justifying the existence of Muslim countries that were geographically separated and had differences in skin color, race, or language, but at the same time emphasized the importance of unity in the big family of the Islamic World.

⁷⁹ Therefore, a common thread can be drawn that the character of the ummah is as follows: a) The nature of the ummah is not determined by various geographical considerations. Its territory is not just the entire earth, but the entire universe. b) The Ummah is also not limited to a certain race. The Ummah contains the characteristic that the entire human community is its actual and potential members. Islam considers all Muslims as members in its programs and projects, Islam also recognizes non-Muslims as potential members who should be invited to join. c) The ummah is also not a 'state' because the ummah is a world state which can include several or many 'countries'. Luqman Rico Khashogi, "The Concept of the Ummah in the Medina Charter," *Journal of Religion and Human Rights* 2, No. 1 (2012): 103.

d. Shura and Democracy

Iqbal stated that democracy, as a system of power that comes from the people, by the people, and for the people, often ignores the role of religion. Iqbal noted that parliament, as one of the foundations of democracy, has the potential to pass laws that are not in line with religious values if a majority of its members vote in favor of it. According to Iqbal, democracy only recognizes the people as the supreme ruler without recognizing divine values. He believes that this could lead to a moral deviation beyond the legitimacy of Western democracy. For example, in practice, Western democracies can legitimize laws supporting same-sex marriage and recognize their rights.⁸⁰

Iqbal emphasized that Islam rejects forms of authoritarianism and dictatorship. However, Iqbal also rejected the Western model of democracy which he considered to have lost its moral and spiritual basis. For Iqbal, modern democracy cannot be used as an appropriate example or model. Therefore, Iqbal proposed the concept of spiritual democracy which has a divinely based ethical and moral foundation.

In the Islamic perspective promoted by Iqbal, democracy is

⁸⁰ According to Iqbal, in Islamic history, Islamic democracy (shura) only existed during the time of the Companions and this must be revived in modern society, because it contains spiritual principles, namely: 1) Elections are the only way to express the will of all the people . The will of some people is declared null and void; 2) De facto, political sovereignty is in the hands of the people; 3) Muslim society is based on absolute equality of all its members; 4) The head of state is not the highest priest in Islam and is not God's representative. He may make mistakes and must submit to God's law; 5) Even though he is head of state, he can be sued before a court of law; 6) The head of state can nominate his successor, but his nomination will be invalid if the people reject it; 7) The people have the right to impeach the head of state if he goes against the Shari'a. Iqbal, 226.

transformed from merely solving economic problems into a form of spiritual purification and better moral regulation. In this way, Iqbal rejects not the concept of democracy as a whole, but the practice of democracy developing in the West which he considers to be incompatible with spiritual values.⁸¹

Based on the theory of *siyasah dusturiyah* above, there is a significant connection with the elements of research done by the Author. *Siyasah dusturiyah* will provide a deep perspective of the research that is being studied by looking at the politics of Islamic statecraft with the thinking of the figure of Muhammad Iqbal. According to the author, the elements of *siyasah dusturiyah* presented by Muhammad Iqbal are quite relevant to the research being studied, so that it can produce a new perspective for the reader.

2. Theory of Constitutional Interpretation

Interpretation is an important activity in law and legal science that functions as a method for understanding the meaning contained in legal texts. This interpretation is used to resolve cases or make decisions regarding the concrete situation at hand.⁸² Legal texts always require

⁸¹ As an alternative, Iqbal emphasized democratic principles which could be equated with shura in Islam. First, monotheism as a basic foundation; second, obedience to the law; third, tolerance among fellow citizens; fourth, Islamic democracy is not limited by geographic region, race, skin color or language; fifth, interpretation of God's law must be done through ijtihad. Iqbal clearly emphasized, " *Islamic democracy does not grow from expanding economic opportunities. It is a spiritual principle based on the assumption that all humans have a hidden center of power that allows them to develop and give birth to unique characters. Islam is very concerned with the formation of the most noble human beings who have power in life.*" Iqbal, 225.

⁸² Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2006), 273.

interpretation and rarely have absolute clarity.⁸³ People who state that a legal text is very clear and does not require interpretation have carried out their interpretation. The statement about the clarity of the text reflects the results of the interpretation made of the text.

Interpretation is a method of exploring the law that provides clarification of the text of the law to determine the scope of legal principles relevant to an incident. When a judge interprets, the explanation given must apply to the public regarding legal regulations in real-world situations. The interpretation method acts as a means of understanding the meaning of the law, and its validity is assessed based on the ability to implement legal provisions in the context of real situations, without only prioritizing the interests of the method itself.⁸⁴

Based on studies of constitutional law, interpreting legal texts including constitutions and other legal documents is a necessity, considering that the ideas and spirit contained therein are related to the context of space and time. This is closely connected to the situation of place and time where the legal text is applied. The importance of

⁸³ If a law contains provisions that still need to be completed or require explanation, then the law makers, judges and legal experts must be able to provide an interpretation of the actual meaning contained in the provisions of the law, so that it is in accordance with what was intended by the maker. Constitution. One way of interpreting the law is to carry out the formation of new laws (legal discovery/ *Rechtsvinding*). Cecep Cahya Supena, "The Benefits of Legal Interpretation in the Context of Legal Discovery," *Moderat: Scientific Journal of Government Science* 8, No. 2 (2022): 432.

⁸⁴ A. Pitlo and Sudikno Mertokusumo, *Chapters Concerning Legal Discovery* (Bandung: Citra Aditya Bakti, 1993), 13 Sudikno Mertokusumo and A. Pitlo identify several interpretation methods commonly used by judges (courts), namely: a) grammatical interpretation or interpretation by language; b) teleological or sociological interpretation; c) systematic or logical interpretation; d) historical interpretation; e) comparative interpretation or comparison; f) futuristic interpretation.

interpretation arises because the Constitution does not specify all the normative provisions needed to harmonize national life. The process of interpreting the constitution requires the application of certain methods and techniques that can be justified logically and scientifically. The aim is to uphold the Constitution by the dynamics of current developments and without violating the spirit on which the Constitution itself was formed, which generally includes normative formulations.⁸⁵

Constitutional interpretation is a translated version of the term "*constitutional interpretation*" Albert HY Chen, a professor at the Faculty of Law at the University of Hong Kong, uses the term "*constitutional interpretation*" which is distinguished from "*interpretation of statutes*" (interpretation of laws). Interpretation of the constitution or *constitutional interpretation* involves the process of interpreting the provisions contained in the constitution or basic law, and can also refer to the interpretation of *Basic Law*.⁸⁶ The interpretation of the constitution referred to here refers to the method used in finding law (*rechtsvinding*) based on the constitution or Basic Law. This method is generally applied in the judicial practice of the Constitutional Court.

⁸⁵ Tanto Lailam, "Interpretation of the Constitution in Testing the Constitutionality of Laws Against the 1945 Constitution," *Legal Media Journal* 21, No. 1 (2014): 92.

⁸⁶ Constitutional Court Procedural Law Drafting Team, *Constitutional Court Procedural Law* (Central Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010), 63 Constitutional interpretation is an inseparable part of judicial review activities. Chen stated: *The American experience demonstrates that constitutional interpretation is inseparable from judicial review of the constitutionality of governmental actions, particularly legislative enactments. Such judicial review was first established by the American Supreme Court in Marbury v Madison.*

In essence, constitutional interpretation is grouped into two parts, namely originalism and non-originalism interpretation methods. According to *Black's Law Dictionary*, originalism is an interpretation based on the drafters and adopters of the Constitution. Originalism is often equated with interpretivism, namely a doctrine that requires judges to follow the norms or values contained in the language of the Constitution. Meanwhile, non-originalism is a doctrine that gives interpreters, namely the Constitutional Court, leeway not to be limited only to the history of its preparation.⁸⁷

The author refers to the Constitutional Court Procedural Law Book⁸⁸ as a reference source for understanding what methods are used by judges in interpreting the Constitution. There are six interpretations or interpretations, namely as follows:

a. Textual Interpretation

Textual interpretation (*textualism*) is a method of constitutional interpretation that refers to giving literal meaning to the words contained in documents or legal texts created by legislative institutions. This approach focuses on understanding or interpreting the words contained in the constitution or law, according to the general meaning that is usually understood by most people.⁸⁹

⁸⁷ Pan Mohamad Faiz, "Dissecting Originalism," *Constitution Magazine "Constitution Space"* (Indonesia, March 2020), <https://panmohamadfaiz.com/2020/03/05/membedah-originalism/> Accessed January 21, 2024.

⁸⁸ Constitution, 74.

⁸⁹ Team for Drafting the Constitutional Court's Procedural Law, *Constitutional Court's Procedural Law (Revised Edition)* (Jakarta: Registrar's Office and Secretariat General of the Constitutional

Textualists view the text as the main guide for judges in making decisions regarding constitutional issues. According to experts, this approach is also known as strict constructionism, where legal decisions are based entirely on statements contained in the text of written laws. However, it is required that the meaning of the words in the Constitution have many interpretations or are ambiguous.⁹⁰

b. Historical Interpretation

Historical interpretation, also known as original interpretation, is a method of interpreting the Constitution that is based on the history of the formation, discussion, ratification, or ratification of the Constitution or law by its creator or authorized institution. In general, this method adopts an *original intent approach* to constitutional legal norms. According to Anthony Mason, this interpretation reflects an original understanding of the text or terms in the Constitution. This method is often applied to explain the text, context, objectives, and structure of the constitution.⁹¹ Every judge's decision must be based on an interpretation that explores the meaning of words or sentences through analysis of the history of the formation and ratification of laws or constitutions.⁹² Adherents of

Court, 2019), 128, https://simpus.mkri.id/uploaded_files/temporary/DigitalCollection/ZWVjZjBmNzY1ZWJmNWUwMTQ5NDk2YTZiMTVmYzg2M2M0NmQ0ZmM3MA==.pdf.

⁹⁰ Muchamad Ali Safaat, Aan Eko Widiarto, and Fajar Laksono Suroso, "Patterns of Constitutional Interpretation in Constitutional Court Decisions for the Period 2003 - 2008 and 2009 - 2013," *Constitutional Journal* 14, No. 2 (2017): 240.

⁹¹ Constitution, *Procedural Law of the Constitutional Court (Revised Edition)*, 130.

⁹² Rivaldo Edward Palendeng; Jadmiko Anom Husodo, "Analysis of Constitutional Interpretation of Constitutional Court Judges in the Formulation of Constitutional Court Decision No. 97/PUU-

this view believe that every judge's decision must be rooted in understanding the meaning of words or sentences through analysis of the history of the formation and ratification of laws or constitutions.

c. Doctrinal Interpretation

Doctrinal interpretation is a method of interpretation that involves understanding statutory rules through a system of precedents or judicial practice. James A. Holland and Julian S. Webb state that the term *common law* is used to cover all legal regulations that develop through court cases (as opposed to rules produced by parliament). Bobbitt added that this method of doctrinal interpretation is heavily influenced by the *common law tradition* which is his approach.⁹³

This understanding holds that a judge's decision must be based on existing practices or through the views of legal professionals, the meaning understood by existing legislative, executive institutions, or judges' decisions (jurisprudence). This thinking is rooted in meta-doctrine, where a decision is applied based on the principles used by the judiciary in deciding a case, not only as a review but also as normative law.⁹⁴

XIV/2016 Concerning the Inclusion of Beliefs in Identity Cards and Family Cards," *Journal Res Republica* 3, No. 3 (2019): 309.

⁹³ Constitution, *Procedural Law of the Constitutional Court (Revised Edition)*, 130.

⁹⁴ Safaat, Widiarto, and Suroso, "Patterns of Constitutional Interpretation in Constitutional Court Decisions for the Period 2003 - 2008 and 2009 - 2013," 241.

d. Prudential Interpretation

Prudential interpretation is an interpretive approach that aims to achieve a balance between the costs that must be incurred and the benefits that can be obtained from implementing a particular regulation or law. Bobbitt explains that prudential arguments are powered by facts, as these play a role in political and economic policy.⁹⁵ Judges' decisions are based on extralegal variables or special interests in each situation, such as the influence of political forces. This perspective considers things that can influence a judge's assessment of the external conditions of the court and rejects these influences.⁹⁶

e. Structural Interpretation

Structural interpretation is an interpretation method that involves the relationship between regulations in law and the constitution or Basic Law which regulates the constitutional framework. Bobbitt claims that this method also involves questions of federalism, separation of powers, and other governance issues, apart from issues of civil liberties and human rights, calling it 'structuralism as a type of macroscopic prudentialism'.⁹⁷ Adherents of the structural school believe that judges' decisions must come

⁹⁵ Constitution, *Procedural Law of the Constitutional Court (Revised Edition)*, 131.

⁹⁶ Rivaldo Edward Palendeng; Jadmiko Anom Husodo, "Analysis of Constitutional Interpretation of Constitutional Court Judges in the Formulation of Constitutional Court Decision No. 97/PUU-XIV/2016 Concerning the Inclusion of Beliefs in Identity Cards and Family Cards," 310.

⁹⁷ Constitution, *Procedural Law of the Constitutional Court (Revised Edition)*, 131.

from an analysis of the structure of the law and its relationship to the history of the formation of the law. This approach aims to understand harmonious relationships in the legal system.⁹⁸

f. Ethical Interpretation

The ethical interpretation method is a method of interpretation that utilizes ethical and moral principles as contained in the constitution or basic laws. This approach originates from a type of constitutional thinking that adopts philosophical, aspirational, or moral methods. Therefore, this interpretive method can be applied to issues that highlight the importance of human rights and limitations on state or government power. In the context of ethical interpretation methods, conventional morality, and moral philosophy are two aspects that are very relevant to use as approaches.⁹⁹ A decision must come from an assessment of justice, the balance of various interests, and principles of what is considered good and right, without ignoring what is written in legal regulations.¹⁰⁰

Based on the six interpretations of the constitution above, can be classified based on the approaches of *originalists* and *non-*

⁹⁸ Safaat, Widiarto, and Suroso, "Patterns of Constitutional Interpretation in Constitutional Court Decisions for the Period 2003 - 2008 and 2009 - 2013," 240–41.

⁹⁹ Constitution, *Procedural Law of the Constitutional Court (Revised Edition)*, 132.

¹⁰⁰ Rivaldo Edward Palendeng; Jadmiko Anom Husodo, "Analysis of Constitutional Interpretation of Constitutional Court Judges in the Formulation of Constitutional Court Decision No. 97/PUU-XIV/2016 Concerning the Inclusion of Beliefs in Identity Cards and Family Cards," 310.

originalists, then it will be divided into two groups of interpretations, as shown in the table below:

Table 2.1
Classification of Constitutional Interpretation

View Group	Interpretation Group
ORIGINALISM	Textual
	Historical
	Structural
NON ORIGINALISM	Doctrinal
	Prudential
	Ethical

Source: Constitutional Journal, Vol. 14 No. 2 June 2017: Patterns of Constitutional Interpretation in Constitutional Court Decisions for the Period 2003 - 2008 and 2009 - 2013. <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1421>

The theory of constitutional interpretation described above provides a strong basis for the author to study and analyze the judge's considerations in a decision, especially in the context of Decision Number 65/PUU-XXI/2023. Judges are given the freedom to choose the type of interpretation to be used without being limited to just one type of interpretation. The author will analyze the types of interpretation used by Constitutional Justices based on the considerations of each judge.

CHAPTER III
RESEARCH RESULTS AND DISCUSSION

A. Constitutional Judges' Considerations in Deciding on Constitutional Court Decision Number 65/PUU-XXI/2023

1. Assessing the Basic Considerations of Constitutional Judges in Decision Number 65/PUU-XXI/2023

Judicial power in the Indonesian constitutional system includes independent (independent and free) power,¹⁰¹ which is exercised by the Supreme Court and judicial institutions subordinate to it, as well as by the Constitutional Court. The aim is to administer justice to uphold law and justice. The meaning of independence means not being attached to anything and not being able to accept pressure from anywhere.¹⁰² The regulation of independent judicial power in the sense of being independent has been explained in Article 24 paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that:¹⁰³

- (1) Judicial power is independent power to administer justice to uphold law and justice.*
- (2) Judicial power is exercised by a Supreme Court and judicial bodies subordinate to it in the general court, religious court, military court, state administrative court, and by a Constitutional Court.*

¹⁰¹ One of the principles of a rule of law is the guarantee of the independent administration of judicial power to uphold law and justice. Dachran Busthami, "Judicial Power in the Perspective of the Rule of Law in Indonesia," *Legal Issues* 46, no. 4 (2018): 339.

¹⁰² Firman Floranta Adonara, "The Principle of Judges' Freedom in Deciding Cases as a Constitutional Mandate," *Constitutional Journal* 12, No. 2 (2015): 222.

¹⁰³ Andi Suherman, "Execution of Judicial Power," *Law Journal* 1, No. 1 (2019): 45.

(3) *Other bodies whose functions are related to judicial power are regulated in law*

The division related to the independence of judicial power was stated by Richard D. Aldrich in a book written by Pontang Moerad which states that judicial power is divided into two, namely:¹⁰⁴

- a. *Personal independence*, which includes:
 - 1) sufficient income or salary;
 - 2) term of office determined by law;
 - 3) immune from civil lawsuits;
 - 4) immune from testimony about the consequences of his decisions;And
- 5) judicial control over dismissal (transfer and discipline of judges).
- b. *Substantive independent*, which means:
 - 1) a judge is only faced with the law, the constitution, and considerations based on common sense;¹⁰⁵
 - 2) Promotion of judges must be based on the quality of their work.

The author focuses the discussion on the personal independence of a judge¹⁰⁶ (*substantive independence*), namely in providing considerations. The judge's considerations are a crucial element in achieving justice (*ex aequo et bono*) and legal certainty in a decision, as

¹⁰⁴ Pontang Moerad, *Formation of Law Through Court Decisions in Criminal Cases* (Bandung: Alumni, 2012).

¹⁰⁵ Judges are free to make all their decisions without any interference or interference from other parties. A judge who is very independent, impartial in carrying out his duties in deciding a case in court (*within the exercise of the judicial function*). The judge's freedom is an important authority inherent in the individual judge where the judge functions to apply the text of the Law to concrete events, not just substantive, but also to provide the right interpretation of the law in order to straighten out concrete legal events so that the judge can freely provide judgments and legal interpretation. Busthami, "Judicial Power in the Perspective of the Rule of Law in Indonesia," 341.

¹⁰⁶ Judges are the personification of the judiciary in making decisions on a case based on various considerations accepted by all parties and do not deviate from existing legal rules (*legal reasoning*). Saifullah, Ahmad Tholabi Kharlie, dan Aditya Prastian Supriyadi, "The Decision of Constitutional Justices: Between juridical Considerations and Islamic values in the Indonesian Legal System," *Kasetsart Journal of Social Sciences* 43, No. 4 (2022): 922.

well as providing significant benefits for the parties concerned, therefore it is important to pay close attention to the judge's considerations.¹⁰⁷

Amendments to the 1945 Constitution gave birth to the Constitutional Court in the Indonesian constitutional system so that it became an institution holding judicial power together with the Supreme Court. As one of the institutions that has judicial power, the Constitutional Court has received constitutional guarantees regarding its independence.¹⁰⁸ The principles of independence of the Constitutional Court regulated in the Constitution are also explained in more detail in the technical regulations contained in the Constitutional Court Law.¹⁰⁹ In granting the request stated in the decision, the Constitutional Court also uses its independent right in the form of providing considerations.

The considerations of Constitutional Court judges are steeped in constitutional principles which are based on the understanding of constitutionalism. Constitutionalism refers to the concept of limiting power and protecting people's rights through the constitution, by placing the constitution as a manifestation of the highest law that the state and government must follow.¹¹⁰ The judge's considerations can also be given

¹⁰⁷ Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 2004), 140.

¹⁰⁸ See Article 2: The Constitutional Court is one of the state institutions that exercises independent judicial power to administer justice to uphold law and justice. "Law Number 24 of 2003 concerning the Constitutional Court" (2003).

¹⁰⁹ Ahmad Fadlil Sumadi, "Independence of the Constitutional Court," *Constitutional Journal* 8, No. 5 (2011): 636.

¹¹⁰ Yuniar Riza Hakiki and Taufiqurrahman Taufiqurrahman, "The Idea of Structuring National Legislation Based on the Ratio of Decidendi & Obiter Dictum Constitutional Court Decision," *Journal of the Constitution* 20, No. 1 (2023): 84.

the meaning of *obiter dictum/dicta*. Debayan Samanta stated, " *Obiter Dicta is usually seen as normal statements made by the court which are not part of the ratio decidendi* ".¹¹¹ *Obiter dicta* is not directly related to the main legal issue being discussed, so its position is not equivalent to a ruling. *Obiter dicta* only functions as an illustration or analogy to build arguments in forming legal considerations, so it does not have binding legal force. The use of *obiter dicta* in decisions aims to clarify legal principles and regulations that will be the basis for judges in their considerations.¹¹²

The judge's considerations can be seen in the Constitutional Court Decision Number 65/PUU-XXI/2023 regarding places where election campaigns are prohibited. The following are the basic considerations of the Constitutional Court judges as stated in Decision Number 65/PUU-XXI/2023 as in the table below:

Table 3.1
Constitutional Judges' Considerations in Decision Number
65/PUU-XXI/2023

No.	Judge's name	Considerations Given
1	Daniel Yusmic P. Foekh ¹¹³	" <i>Doctrinally, elections are one of the central mechanisms in a modern democratic system that allows citizens to actively participate in the political process by electing their</i>

¹¹¹ Debayan Samanta, "Difference between Obiter Dicta and Ratio Decidendi," *Penacclaims* 15, No. April (2021): 3, <http://www.penacclaims.com/wp-content/uploads/2021/08/Debayan-Samanta.pdf>.

¹¹² Arief Rachman Hakim et al., "Legal Strength of Constitutional Court Judges' Considerations Regarding Acting Regional Heads," *Usm Law Review Journal* 6, No. 1 (2023): 23–24.

¹¹³ See [3.11.1] page 38 Constitutional Court Decision Number 65/PUU-XXI/2023.

		<i>representatives to run the government. Because elections reflect the fundamental principle that political power comes from the people and is used to represent the will of the people. With the central role in carrying out democracy in implementing popular sovereignty, regulations related to elections need to be stated in constitutional norms. Regulations at the constitutional level aim to ensure that the political process and leadership succession are carried out by democratic values and popular sovereignty as the foundation of state life. Background understanding</i> ¹¹⁴
2	Daniel Yusmic P. Foekh ¹¹⁵	<i>" One of the technical matters related to the implementation of elections is the regulation of campaign activities. In this case, Article 1 number 35 of Law 7/2017 defines an election campaign as the activities of election participants or other parties appointed by election participants to convince voters by offering a vision, mission, program, and/or self-image of election participants. Apart from providing this understanding, Law 7/2017 also places election campaigns as part of the community's political education and is carried out responsibly ..."</i> ¹¹⁶

¹¹⁴ The basis states that elections are a central mechanism in a democratic order that involves citizens to participate actively in the political process. Elections are the result of representing the will of the people which has been regulated in the constitution, namely in Article 22E of the 1945 Constitution of the Republic of Indonesia. Further regulations regarding elections have been regulated in lower regulations, namely Law Number 7 of 2017 concerning Elections which contains regulations. related to the election stages, one of which is the regulation of the campaign.

¹¹⁵ See [3.11.2] pages 38-39 Constitutional Court Decision Number 65/PUU-XXI/2023.

¹¹⁶ See Article 267 paragraph (1): Election campaigns are part of the community's political education and are carried out responsibly. Law Number 7 of 2017 concerning General Elections. State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to State Gazette of the Republic of Indonesia Number 6109.

3	Daniel Yusmic P. Foekh ¹¹⁷	<p><i>".... According to the Court, restrictions on campaigning based on location or place are based on several important principles that aim to maintain the neutrality and integrity of the election process, prevent disruption to public activities in certain places to maintain the principle of balance and at the same time maintain the principle of neutrality and to avoid misuse of public facilities. However, the principle of balance requires a balance between the rights and interests of candidates or political parties campaigning with the rights and interests of the general public and public institutions. Meanwhile, the principle of neutrality requires that several public places remain neutral from practical political factors to maintain neutrality in the use of public resources."</i>¹¹⁸</p>
4	Saldi Isra ¹¹⁹	<p><i>"Considering that one thing that [sic!] Article 280 paragraph (1) letter h of Law 7/2017 prohibits it from being used as a campaign place as a place of worship. In this context, it is important to respect cultural, religious, and religious freedom sensitivities and values in the context of election campaigns. Even though political campaigns are an important part of the democratic process, boundaries must be set in such a way as to not damage harmony and the values held by society. Places of worship</i></p>

¹¹⁷ See [3.12] pages 39-40 Constitutional Court Decision Number 65/PUU-XXI/2023.

¹¹⁸ The Constitutional Court stated that it was necessary to reduce the negative impact of holding campaigns by imposing restrictions. Campaign restrictions can be implemented by limiting the media used, funding, implementation time, as well as restrictions on the use of certain places. The applicant's petition is related to restrictions on campaigning based on location, so the Court is of the opinion that restrictions on campaigning based on location are based on the aim of maintaining integrity and neutrality in the election process.

¹¹⁹ See [3.13] pages 40-41 Constitutional Court Decision Number 65/PUU-XXI/2023.

		<i>have high spiritual meaning and value for every religious community. Using places of worship as campaign venues has the potential to trigger emotions and controversy as well as damage religious values".¹²⁰</i>
5	Enny Nurbaningsih ¹²¹	<i>" In this regard, the Explanation of Article 280 paragraph (1) letter h of Law 7/2017 along the phrase "Government facilities, places of worship and places of education can be used if election participants attend without election campaign attributes at the invitation of the party in charge of government facilities, places of worship, and places of education" have created conditions of conflict with the material content or basic norms of Article 280 paragraph (1) letter h of Law 7/2017. For example, if you carefully study the phrase "can be used if" in the Elucidation to Article 280 paragraph (1) letter h of Law 7/2017, lexically the phrase in question contains the meaning of permission for authority or the right to do something in a limited way, even though the limits or conditions This has been determined as a prohibition. Therefore, if it is placed in the understanding of the main material which is in nature providing prohibitions or restrictions on carrying out campaigns using government facilities, places of worship, and places of education, then the material of the quo explanation as long as the phrase requested by the</i>

¹²⁰ The Constitutional Court considered that one of the places prohibited from being used for campaigning as stated in Article 280 paragraph (1) letter h is a place of worship. Places of worship have meaning and spiritual values that are highly respected by society, so it is important to respect religious values.

¹²¹ See [3.15.3] pages 45-47 Constitutional Court Decision Number 65/PUU-XXI/2023.

		<i>Petitioners contains the meaning of an exception rather than an explanation that is an official interpretation of the meaning, scope and implications of the main norm material it explains".¹²²</i>
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Based on the description related to the judge's considerations above, the judge's considerations are used as an analogy or illustration which the judge will later use to compile and determine legal considerations so that the judge's considerations are *obiter dicta*¹²³ will be related to *the ratio decidendi* or the judge's legal considerations which will be directly related to the decision. The judge's considerations in the Constitutional Court Decision Number 65/PUU-XXI/2023 will clarify the legal rules or legal principles which the judge will then use in providing legal considerations.¹²⁴

2. Constitutional Interpretation Methods Used by Judges in Deciding Constitutional Court Decisions Number 65/PUU-XXI/2023

The Constitutional Court is a state institution that handles special cases in the constitutional realm to maintain the integrity of the

¹²² According to the Court in the Elucidation of Article 280 paragraph (1) letter h there is a phrase "can be used if" which contains the meaning of limited permissibility, so as long as the phrase requested by the Petitioners contains the meaning of an exception rather than just providing an official explanation or interpretation of the main norm material being explained, so that this phrase creates ambiguity in applying the main norm, namely Article 280 paragraph (1) letter h.

¹²³ *Obiter Dicta* is usually viewed as an ordinary statement made by a court that is not part of the ratio of the Samanta decision, "Difference between Obiter Dicta and Ratio Decidendi," 3.

¹²⁴ The purpose of applying obiter dicta in decisions is to clarify the legal principles and rules that the judge will use in his considerations. In such a context, obiter dicta is generally expressed in analogical, illustrative constructions, important points or conclusions based on hypotheses about a situation. Masni Larengam, "The Urgency of Obiter Dicta in Judges' Decisions in Civil Cases," *Lex et Societatis* 3, No. 10 (2015): 96.

Constitution.¹²⁵ The presence of the Constitutional Court is a form of manifestation of the provisions of the 1945 Constitution.¹²⁶ The Constitutional Court in adjudicating and deciding cases must be based on the provisions in the Constitution and has the right to interpret the Constitution (*the interpreter of the Constitution*). In interpreting the Constitution, the Constitutional Court remains based on the provisions that have been stated and are by the Constitution.¹²⁷

The Constitutional Court is the only state institution that can interpret the Constitution based on its authority which is directly regulated constitutionally.¹²⁸ The public can interpret the Constitution, but only to the extent of interpreting it, and it does not influence law enforcement. In contrast to the Constitutional Court, whose interpretation has an impact on law enforcement practices, this is caused by legal considerations in decisions which are the judge's legal considerations and opinions which constitute a decision. Based on this explanation, the Constitutional Court has a significant and very strategic role as the sole constitutional interpreter of the constitution so the

¹²⁵ Syawaluddin Hanafi, "The Authority of the Constitutional Court in Interpreting the 1945 Constitution of the Republic of Indonesia," *Expose: Journal of Legal and Educational Research* 16, No. 1 (2017): 351.

¹²⁶ See Article 1 paragraph (2) and (3): (2) Sovereignty is in the hands of the people and is implemented according to the Constitution. (3) Indonesia is a legal state. Republic of Indonesia Law of 1945.

¹²⁷ Bisariyadi et al., "Constitutional Interpretation in Legal Review of the Constitution," *Registrar's Office and Secretariat General of the Constitutional Court of the Republic of Indonesia*, 2016, 14.

¹²⁸ See Article 24C paragraph (1): The Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and adjudicate disputes about election results. Republic of Indonesia Law of 1945.

Constitutional Court is often referred to as *the soul and the highest interpreter of the constitution*.¹²⁹

“If returning to the dim science of interpretation, the true interpretation is a method of discovery of law that gives a clear explanation of a rule, because the interpretation is necessary because not all laws and regulations can be arranged in an obvious form and do not open the interpretation again, especially if referring to the post caterpillar that the true change in the environment of a very dynamic community that must be able to”.¹³⁰

The Constitutional Court in Decision Number 65/PUU-XXI/2023 has provided considerations that are the result of the interpretation of the Constitution. The author looks at the interpretation methods used by Constitutional Court judges in their considerations in terms of reviewing constitutional interpretation. Broadly speaking, the interpretation of the Constitution is divided into two, namely *originalist* and *non-originalist interpretation methods*. *Originalists* emphasize the interpretation of the constitutional text based on the understanding and objectives of the constitution as recognized by the constitution makers, while *non-originalists* apply an approach by viewing the constitution as a law that needs to be adapted to the reality of current conditions. It is impossible

¹²⁹ Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia," *Journal of the Constitution* 20, No. 2 (2023): 287.

¹³⁰ This means that correct interpretation is a method of legal discovery that provides an explanation of a rule, therefore interpretation is necessary because not all laws and regulations can be prepared in a clear form, especially laws and regulations must also follow the dynamic development of society. Mellisa Towadi; Ahmad Fance M. Wantu; Novendri M. Nggilu, "Indonesian Constitutional Interpretation: Constitutional Court Versus The People's Consultative Assembly," *Journal of Legal, Ethical, and Regulatory Issues*, 2021.

to only understand the Constitution from the perspective of the time it was created.¹³¹

The interpretation used to interpret the Constitution is not focused on one type of interpretation. Constitutional judges are given the freedom to choose the type of interpretation or interpretation they want. If guided by the Procedural Law of the Constitutional Court, *constitutional interpretation methods are identified into six groups of constitutional interpretation methods.*¹³²

In Constitutional Court Decision Number 65/PUU-XXI/2023 the author analyzes what interpretation methods are used by Constitutional Court judges in giving considerations. Based on the results of the author's analysis, Constitutional Justices use two general interpretations, namely *originalist* and *non-originalist*. The following is the interpretation method used by constitutional judges in Decision Number 65/PUU-XXI/2023 as shown in the table on the next page.

¹³¹ Rivaldo Edward Palendeng; Jadmiko Anom Husodo, "Analysis of Constitutional Interpretation of Constitutional Court Judges in the Formulation of Constitutional Court Decision No. 97/PUU-XIV/2016 Concerning the Inclusion of Beliefs in Identity Cards and Family Cards," *Journal Res Republica* 3, No. 3 (2019): 309-310.

¹³² The six interpretations of the constitution are: (1) textual interpretation; (2) historical interpretation (or original interpretation); (3) doctrinal interpretation; (4) prudential interpretation; (5) structural interpretation; and (6) ethical interpretation. Team for Drafting Procedural Laws of the Constitutional Court, *Procedural Laws of the Constitutional Court* (Central Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010), 74.

Table 3.2
Identification of Constitutional Interpretation Methods Used
by Constitutional Judges in Decision Number 65/PUU-XXI/2023

No	Judge Name: Interpretive Content	Types of Interpretation Methods	Information
1	<p>Daniel Yusmic P. Foekh:¹³³ <i>" Doctrinally, elections are one of the central mechanisms in a modern democratic system that allows citizens to actively participate in the political process by electing their representatives to run the government. Because elections reflect the fundamental principle that political power comes from the people and is used to represent the will of the people. With a central role in carrying out democracy in implementing popular sovereignty, regulations related to elections need to be stated in constitutional norms. Regulations at the constitutional level aim to ensure that the political process and leadership succession are carried out by democratic values and popular sovereignty</i></p>	Doctrinal ^{134;135}	<p>Doctrinal interpretation is part of <i>non-originalist interpretation</i>. According to the author, the use of the word "doctrinal" in the judge's considerations refers to doctrinal interpretation. The judge also explained that elections are the central mechanism of democracy in Indonesia so electoral trials are often handled by the Constitutional Court. Furthermore, election regulations in the constitution are also included in the technical regulations below, namely Law</p>

¹³³ See [3.11.1] page 38 Constitutional Court Decision Number 65/PUU-XXI/2023.

¹³⁴Doctrinal interpretation is a method of interpretation involved in understanding legal rules through precedent or judicial practice. Nor Fadillah, "Analysis of the Interpretation Method of the Constitutional Court in Formulating Decision Number 91/PUU-XVIII/2020 regarding Formal Review of Law Number 11 of 2020 concerning Job Creation," *Lex Renaissance Journal* 7, no. 4 (2022): 735.

¹³⁵This method believes that judges' decisions should be based on existing practices or the views of legal experts, the meaning understood by legislative, executive institutions, or existing judges' decisions (jurisprudence). This approach refers to meta-doctrine from the perspective of a decision, which is implemented based on the principles used by the judiciary in deciding a case, not only as a review, but also as a legal norm. Muchamad Ali Safaat, Aan Eko Widiarto, and Fajar Laksono Suroso, "Patterns of Constitutional Interpretation in Constitutional Court Decisions for the Period 2003 - 2008 and 2009 - 2013," *Journal of the Constitution* 14, no. 2 (2017): 241.

	<i>as the foundation of state life. The background to this understanding became one of the topics of discussion in the process of amending the 1945 Constitution, where finally the amendments to the 1945 Constitution agreed to include regulations regarding elections in the body of the 1945 Constitution to serve as a reference basis for holding elections in Indonesia".</i>		Number 7 of 2017 concerning Elections.
2	Saldi Isra: ¹³⁶ " <i>Historically, similar norms have previously been regulated in Article 86 paragraph (1) letter h of Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council (UU 8/2012) which states, "Election campaign organizers, participants, and officers are prohibited from: h. use government facilities, places of worship, and places of education."</i> "The explanation of the provisions of the norms of Article 86 paragraph (1) letter	Historical ^{137;138}	Historical interpretation is part of <i>originalist interpretation</i> . Based on the author's analysis, the historical interpretation carried out by Constitutional Justices can be seen when comparing the norms requested in the petition with previous norms. The author sees that constitutional judges historically examine the arrangements for previous election campaigns and compare norms and

¹³⁶ See [3.15.1] page 42 Constitutional Court Decision Number 65/PUU-XXI/2023.

¹³⁷ The historical interpretation method is an approach that is rooted in the history of constitutions or laws, involving an examination of the way the constitution or law was discussed, formulated, adopted, or ratified by its makers or by the institutions authorized to sign it. Nor Fadillah, "Analysis of the Interpretation Method of the Constitutional Court in Formulating Decision Number 91/PUU-XVIII/2020 regarding Formal Review of Law Number 11 of 2020 concerning Job Creation," *Lex Renaissance Journal* 7, No. 4 (2022): 734.

¹³⁸ Every judge's decision must be rooted in understanding the meaning of words or sentences through historical analysis in the process of drafting and ratifying laws or constitutions. . Rivaldo Edward Palendeng; Jadmiko Anom Husodo, "Analysis of Constitutional Interpretation of Constitutional Court Judges in the Formulation of Constitutional Court Decision No. 97/PUU-XIV/2016 Concerning the Inclusion of Beliefs in Identity Cards and Family Cards," 309.

	<i>h of Law 8/2012 turns out to be the same as the Explanation of Article 280 paragraph (1) letter h of Law 7/2017 ..."</i>		explanations of norms from the past to the present.
3	Enny Nurbaningsih: ¹³⁹ <i>"In this regard, the Explanation of Article 280 paragraph (1) letter h of Law 7/2017 along the phrase "Government facilities, places of worship and places of education can be used if election participants attend without election campaign attributes at the invitation of the person in charge of the government facility, place worship, and places of education" have created conditions of conflict with the material content or basic norms of Article 280 paragraph (1) letter h of Law 7/2017. For example, if you carefully study the phrase "can be used if" in the Elucidation to Article 280 paragraph (1) letter h of Law 7/2017, lexically the phrase in question contains the meaning of permission for authority or the right to do something in a limited way, even though the limit or condition has been determined as a prohibition. Therefore, if it is placed in the understanding of the main material which is in nature providing prohibitions or restrictions on carrying out</i>	Textual ^{140;141}	Textual interpretation is included in the <i>originalist interpretation group</i> . The author sees that the Constitutional Justices gave meaning to the phrase in the Elucidation of Article 280 paragraph (1) letter h, namely the phrase "can be used if" which has an ambiguous impact on the explanation and there is no legal certainty regarding the main norms,

¹³⁹ See [3.15.3] pages 45-46 Constitutional Court Decision Number 65/PUU-XXI/2023.

¹⁴⁰ Textual interpretation is a way or method of interpreting the constitution which is carried out by giving direct meaning to the words contained in the law. Constitution, *Procedural Law of the Constitutional Court*, 74.

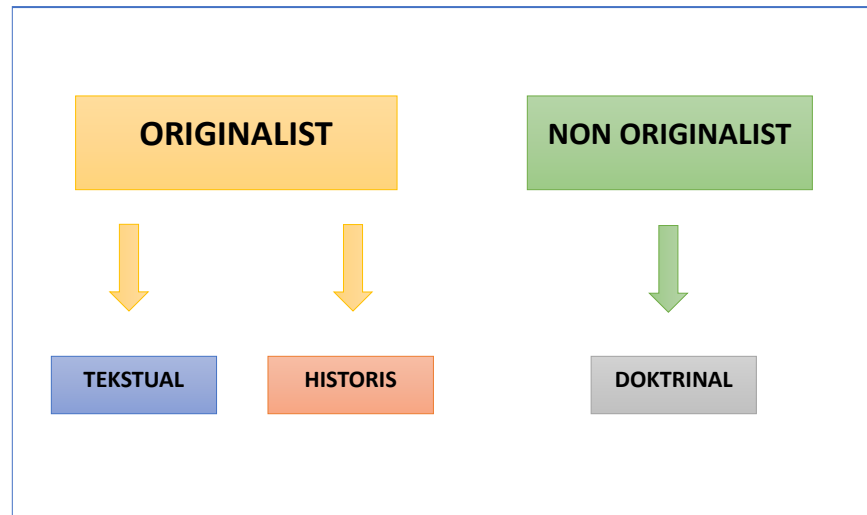
¹⁴¹ Provided that the meaning of the words in the constitution can have more than one interpretation or be ambiguous. Muchamad Ali Safaat, Aan Eko Widiarto, and Fajar Laksono Suroso, "Patterns of Constitutional Interpretation in Constitutional Court Decisions for the Period 2003 - 2008 and 2009 - 2013," *Journal of the Constitution* 14, No. 2 (2017): 240.

	<i>campaigns using government facilities, places of worship, and places of education, then the material of the quo explanation as long as the phrase requested by the Petitioners contains the meaning of an exception rather than an explanation which constitutes official interpretation”</i>		
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Source: Author's Creations: (2024)

Constitutional judges in interpreting the Constitution are not fixated on just a few interpretations. Judges are given the freedom to choose the type of interpretation according to their wishes, of course by adapting to what will be interpreted. Based on the Constitutional Court Decision Number 65/PUU-XXI/2023, the author analyzes the interpretation method used by Constitutional Justices, namely by using two broad interpretations, namely *originalist* and *non-originalist*. The author classifies the constitutional interpretation methods used by judges into three methods, namely textual, historical, and doctrinal interpretation methods. If classified according to the theory of constitutional interpretation, an understanding will be formed as shown in the picture below:

Image 3.1
Interpretation Methods Used by Constitutional Judges in Decision
Number 65/PUU-XXI/2023



Source: Author's Creations: (2024)

3. Discourse on The Considerations of Constitutional Court Judges in Decision Number 65/PUU-XXI/2023 viewed from the Sociological Aspect

Social life is not free from social problems. Legal issues are also things that often overlap, such as politics, religion, morality, and so on. The importance of *legal problem identification* is to select and formulate legal problems that exist in society.¹⁴² A judge is the embodiment of a judicial institution that makes decisions in a case.¹⁴³ Judges are not only

¹⁴² Rizka Noor Hashela, "Legal Reasoning in Court Decisions," Pelaihari, 2018, https://www.jdih.tanahlautkab.go.id/article_law/detail/legal-reasoning-in-court-decisions.

¹⁴³ In essence, judges in issuing decisions can be influenced by two streams: (1) conservative, namely judges' decisions based solely on written legal provisions (statutory regulations); and (2) progressive, namely judges' decisions that are not based solely on written legal provisions but also based on empirical knowledge and experience. Saifullah, Kharlie, dan Supriyadi, "The Decision of Constitutional Justices: Between juridical Considerations and Islamic values in the Indonesian Legal System," 922.

expected to have intellectual intelligence but are also required to have high morals and integrity. The aim is to reflect a sense of justice, ensure legal certainty, and provide benefits to society. In each decision-making process, judges must consider various factors that are acceptable to all parties and must not deviate from applicable legal principles.¹⁴⁴

The judge's basic considerations become the basis for producing a decision. Regulations regarding judges' considerations are regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states:¹⁴⁵ "Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society." Then it was emphasized with an explanation that read: "This provision is intended so that the decisions of judges and constitutional justices are by the law and the community's sense of justice."

This understanding implies that if the content of the law turns out to be inadequate or its implementation has the potential to create new injustices, judges must investigate the legal values that emerge and develop in that society.¹⁴⁶ The legal force of a Constitutional Court Judge's considerations is considered equivalent to a ruling and is an

¹⁴⁴ Nur Ifitah Isnantiana, "Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan," *Islamadina* 18, No. 2 (2017): 41.

¹⁴⁵ "Law Number 48 of 2009 concerning Judicial Power" (2009), [http://downloads.esri.com/archydro/archydro/Doc/Overview of Arc Hydro terrain preprocessing workflows.pdf](http://downloads.esri.com/archydro/archydro/Doc/Overview%20of%20Arc%20Hydro%20terrain%20preprocessing%20workflows.pdf)^{0A}<https://doi.org/10.1016/j.jhydrol.2017.11.003>^{0A}<http://sites.tufts.edu/gis/files/2013/11/Watershed-and-Drainage-Delineation-by-Pour-Point.pdf>^{0A}[www.State Gazette of the Republic of Indonesia of 2009 Number 157 and Supplement to State Gazette of the Republic of Indonesia Number 5076.](http://www.StateGazette.go.id)

¹⁴⁶ Erwin Prahara, "Judge's Consideration of the Defendant's Responsibilities in Providing Support After the Divorce Verdict," *USM Law Review Journal* 1, No. 1 (2018): 6.

inseparable part when creating a legal situation. Referring to Article 48 paragraph (2) of the Constitutional Court Law *jo.* Article 33 Constitutional Court Regulation Number 06/PMK/2005 concerning Procedure Guidelines in Legal Review Cases. This article reveals seven elements of Constitutional Court decisions that apply cumulatively.¹⁴⁷ Consideration is one of the elements in the decision and provides the basis for forming conclusions contained in the decision which is recorded in a separate section. In addition, the judge's considerations or opinions can be interpreted as the judge's interpretation and interpretation of a case based on the 1945 Constitution. The essence of the decision is found in the substance of the decision, so the decision is what has a final and binding nature.¹⁴⁸

In general, judges in giving considerations will refer to three aspects, namely juridical, philosophical, and sociological. The juridical aspect is the first and essential element which refers to the applicable laws and regulations. Judges as law enforcers have the responsibility to understand and look for laws related to the case at hand. The philosophical aspect includes the principles of truth and justice. The

¹⁴⁷ See Article 48 paragraph (2), Every decision of the Constitutional Court must contain: a) the head of the decision reads: "FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY GOD"; b) identity of the party; c) summary of the application; d) consideration of the facts revealed in the trial; e) legal considerations that form the basis of the decision; f) verdict; and g) day, date of decision, name of constitutional judge and clerk. Law Number 24 of 2003 concerning the Constitutional Court.

¹⁴⁸ Hakim et al., "Legal Strength of Constitutional Court Judges' Considerations Regarding Acting Regional Heads," 23.

sociological aspect considers cultural norms that are part of life in society.¹⁴⁹

In this research, the author focuses on the discussion related to the approach of Constitutional Justices in considering Decision Number 65/PUU-XXI/2023 as seen from a sociological aspect. The sociological review used by the judge in giving considerations will emphasize the benefits for society. The judge's decision must include elements of the basic value of the benefit, because apart from fulfilling the elements of legal certainty and justice, the decision should also provide benefits for all parties and not take sides with anyone, with the aim that the judge's decision can be used as a reference by other judges in deciding a case with similar material, known as jurisprudence.¹⁵⁰

Decision Number 65/PUU-XXI/2023 is related to the material review of Article 280 paragraph (1) letter h of¹⁵¹ Election Law Number 7 of 2017 concerning Elections and its explanation¹⁵² regarding the

¹⁴⁹ Ahmad Rifai, *Legal Discovery by Judges in a Progressive Legal Perspective* (Jakarta: Sinar Graphic, 2010), 126.

¹⁵⁰ Brian Khukuh Wijaya, Nur Rochaeti, and Ani Purwanti, "Basis of Judges' Considerations in Handing Down Decisions in Cases of Children in Conflict with the Law (Case Study Decision Number. 14/PID.SUS.ANAK/2015/PN SMG)," *Diponegoro Law Journal* 5, No. 4 (2016): 9–10, https://www.academia.edu/34113996/EKSISTENSI_HUKUM_KONTRAK_INNOMINAT_DALAM_RANAH_BISNIS_DI_INDONESIA.

¹⁵¹ Election Campaign organizers, participants and teams are prohibited from: h. use government facilities, places of worship, and places of education. Law Number 7 of 2017 concerning General Elections.

¹⁵² Explanation of Article 280 paragraph (1) letter h: Government facilities, places of worship and places of education can be used if Election Participants attend without Election Campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education. What is meant by "educational place" is the building and/or grounds of a school and/or college. Law Number 7 of 2017 concerning General Elections.

prohibition on election campaign locations. Constitutional justices certainly use their considerations based on sociological aspects because campaigning is an activity that is closely related to elections and has a direct impact on society.

Based on Decision Number 65/PUU-XXI/2023, the Constitutional Justices considered the following sociological aspects:

- a. The judge considered that the campaign was a form of political communication and social control activity.¹⁵³ Campaigns play a crucial role in advancing political life in a democratic system, through conveying information to voters, stimulating active participation in the election process, and forming public opinion on various political issues. However, campaign implementation needs to be carried out with full responsibility to ensure fairness and transparency in the electoral process. Especially in the context of elections as an arena for political competition, campaigns pragmatically aim to achieve victory by getting as much support as possible from voters. This means that an effective campaign strategy has a big impact on election results and can encourage candidates or political parties to achieve success.¹⁵⁴

¹⁵³ The emphasis on election campaign activities can be seen in Article 267 paragraph (1) which states that election campaigns are part of community political education and are carried out responsibly. Law Number 7 of 2017 concerning General Elections.

¹⁵⁴ Political campaigns are very important in introducing candidates to the public. We understand political campaigns as organized efforts that seek to influence the decision-making process within a particular group. With the aim of winning a particular election, each candidate needs to consider careful strategy and planning. This strategy and planning is very important because it determines the

Despite trying to achieve victory in a competition, campaigns have the potential to cause negative impacts such as the emergence of polarization, discrimination, stereotypes, and even political violence which can cause divisions in society. Therefore, according to the Constitutional Court, it is necessary to maintain an inclusive and responsible campaign so that it does not fall into these things because the interests of the state are much more important than just winning the election contest.¹⁵⁵

- b. Constitutional Court judges gave considerations, especially regarding campaigns in places of worship. This is seen as **[3.13]**:¹⁵⁶

" Considering that one of the places which is prohibited by Article 280 paragraph (1) letter h of Law 7/2017 from being used as a campaign location is a place of worship. In this context, it is important to respect cultural, religious, and religious freedom sensitivities and values in the context of election campaigns. "Even though political campaigns are an important part of the democratic process, boundaries must be set in such a way as to not damage harmony and the values held by society."

According to the Constitutional Judge, places of worship hold very valuable spiritual meaning and value for every religious follower. Using places of worship as campaign locations has the potential to cause emotions, and controversy and damage religious values. Especially if people tend to be easily provoked

candidate's victory in the election process. Siti Fatimah, "Campaigns as Political Communication: Essence and Strategy in Elections," *Resolution: Journal of Social Politics* 1, no. 1 (2018): 15.

¹⁵⁵ Constitutional Court Decision Number 65/PUU-XXI/2023, 39.

¹⁵⁶ See **[3.13]** pages 40-41 Constitutional Court Decision Number 65/PUU-XXI/2023.

and respond quickly to issues related to identity politics,¹⁵⁷ ethnicity, and religion without considering objective facts, this can deepen political polarization amidst the emergence of various narratives and opinions regarding the same facts. The consequence is that limiting the use of places of worship for campaigns is not an attempt to separate religion from state institutions, but rather a differentiation of functions between religious institutions and areas outside the religious aspect of society, especially those related to issues that have a high level of political relevance.¹⁵⁸

The sociological review by the Constitutional Justices in Decision Number 65/PUU-XXI/2023 above regarding the prohibition of places for carrying out campaigns certainly looks at the sociological aspect because campaigns are public activities as well as political education activities for the community. Campaigns play an important role in the implementation of elections which are part of the democratic party. According to Constitutional Justice, restrictions regarding campaign

¹⁵⁷ Theoretically, according to Lukmantoro, identity politics is political to prioritize the interests of members of a group because they have the same identity or characteristics, whether based on race, ethnicity, gender or religion. Identity politics is another formulation of the politics of difference. Identity politics is a political action with efforts to channel aspirations to influence policy, control over the distribution of values that are considered valuable and even the most fundamental demand, namely self-determination based on primordiality. Juhana Nasrudin and Ahmad Ali Nurdin, "Identity Politics and Political Representation (Case Study of the DKI Regional Election for the 2018-2022 Period)," *Hanifiya: Journal of the Study of Religions* 1, No. 1 (2019): 36.

¹⁵⁸ Utami Argawati, "MK's Interpretation of the Prohibition of No Title Election Campaign Places," accessed March 1 2024, <https://www.mkri.id/index.php?page=web.Berita&id=19444&menu=2>.

venues are one way to avoid the negative impact of the campaign itself.¹⁵⁹

Considering that one of the places prohibited from campaigning is a place of worship whose religious values are highly upheld by every believer.¹⁶⁰ The author understands that the sociological aspect is seen by limiting the campaign to places of worship to respect the sensitive values that exist in society and is not an attempt to separate the state and religion but prioritizes common interests by separating political activities and holy places.

B. Ratio Decidendi Constitutional Court Decision Number 65/PUU-XXI/2023 Perspective Theory *Siyasah Dusturiyah*

1. Highlights of the Constitutional Court Decision Number 65/PUU-XXI/2023

General elections are one element of democracy.¹⁶¹ General elections need to be supported by other regulatory instruments to promote communication and cooperation. Despite this, elections remain a fundamental democratic tool. General elections claim to form a system

¹⁵⁹ Basically, restrictions on campaigns are not specific to location. Campaign restrictions are contained in "Part Four Prohibitions in Campaigning" which are regulated in Articles 280-286. Law Number 7 of 2017 concerning General Elections. State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to State Gazette of the Republic of Indonesia Number 6109.

¹⁶⁰ See [3.13] Although political campaigns are an important part of the democratic process, boundaries must be set in such a way as to not damage harmony and the values held by society. Places of worship have high spiritual meaning and value for every religious community. Using places of worship as campaign venues has the potential to trigger emotions and controversy as well as damage religious values. Constitutional Court Decision Number 65/PUU-XXI/2023.

¹⁶¹ Farahdiba Rahma Bachtiar, "Indonesian Election: Qibla for a Democratic State from Various Representations," *Journal of Prophetic Politics* 3, no. 1 (2014): 1–17.

that encourages lawmakers to pay attention to the aspirations of their people. The collective agreement demands that competitive elections, more than any other function, will produce a country with a democratic political system.¹⁶² Based on Law Number 7 of 2017 concerning Elections, which is a technical regulation related to the election process, there are several stages, one of which is election campaign activities.

Election campaigns are the activities of election participants or other parties appointed by election participants to convince voters by offering a vision, mission, program, and/or self-image of election participants.¹⁶³ Campaigns are attempts to influence the beliefs and behavior of others with communicative appeals. Political campaigns include types of political communication carried out by a group of people, individuals, or political organizations in a certain period, to gain political support from the public.¹⁶⁴

Campaigns have the potential to have negative impacts on society, especially where the campaign is carried out. There are three places where campaigning is prohibited as regulated in Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections.¹⁶⁵ This article has become a polemic because its explanation expands the basic

¹⁶² Yuliani Widianingsih, "Democracy and Elections in Indonesia: An Overview of Political History and Sociology Aspects," *Journal of Business and Management Inspiration* 44, No. 8 (2011), <http://jurnal.ugj.ac.id/index.php/Signal/article/view/877/561>.

¹⁶³ See Article 1 Number 35 Law Number 7 of 2017 concerning General Elections. State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to State Gazette of the Republic of Indonesia Number 6109.

¹⁶⁴ Siti Fatimah, "Campaigns as Political Communication: Essence and Strategy in Elections," *Resolution: Journal of Social Politics* 1, No. 1 (2018): 8.

¹⁶⁵ The three places are: 1) places of worship; 2) government agencies; and 3) place of education.

norms, thereby giving rise to uncertainty. Material testing related to this matter has been carried out and resulted in Constitutional Court Decision Number 65/PUU-XXI/2023 with an overview as in the following table:

Table 3.3
Highlights of the Constitutional Court Decision Number
65/PUU-XXI/2023

Applicant	The Petitioner consists of two applicants consisting of Hendrey Mantiri, SH, a private employee, and Ong Yenny who is a Member of the DKI Jakarta Provincial DPRD who has given his power of attorney to the Advocates who are members of the Legal Team "National Election Witness Body of the Indonesian Democratic Party of Struggle (BSPN PDI Perjuangan)". ¹⁶⁶
Petitioner's argument	"States the explanation of Article 280 paragraph (1) letter h of the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) along the phrase "Government facilities, places of worship, and educational places can be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education" contrary to Article 22E paragraph (1) and Article 28D paragraph (1) of the Constitution of the Republic of Indonesia Indonesia in 1945 and do not have binding legal force." ¹⁶⁷

¹⁶⁶ See [1.1] page 1 Constitutional Court Decision Number 65/PUU-XXI/2023.

¹⁶⁷ See Petition page 28 Constitutional Court Decision Number 65/PUU-XXI/2023.

Announcement of Decision	The Constitutional Court Decision Number 65/PUU-XXI/2023 granted the Petitioners' petition in part. The Constitutional Court stated that Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the Constitution of the Republic of Indonesia 1945 and does not have binding legal force as long as it is not interpreted as "excluding government facilities and educational places as long as they have permission from the person in charge of the place in question and are present without election campaign attributes", so that Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 The 2017 year regarding General Elections reads in full, "using government facilities, places of worship and places of education, except for government facilities and places of education as long as they have permission from the person in charge of the place in question and are present without election campaign attributes." ¹⁶⁸
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The summary of the Constitutional Court Decision Number 65/PUU-XXI/2023 is a brief overview of the applicant's petition until the Constitutional Justice grants the petition. Restrictions on where to carry out campaigns represent a significant legal basis for maintaining order and justice in the implementation of the democratic process in

¹⁶⁸ For details, see the Decision on page 49. Constitutional Court Decision Number 65/PUU-XXI/2023.

Indonesia.¹⁶⁹ This decision ensures that restrictions on campaign venues are not merely restrictions on freedom of expression, but are steps taken to maintain security, order, and public comfort during the campaign period. This decision certainly did not escape the *ijtihad* of the Constitutional Justices by considering legal aspects.

2. Examining *the Ratio Decidendi* Constitutional Court Decision Number 65/PUU-XXI/2023

The Constitutional Court is one of the branches of judicial power, often referred to as judicial power, which is an independent authority, as regulated in Article 24 paragraph (1) of the 1945 Constitution to carry out judicial functions to maintain the validity of law and justice.¹⁷⁰ The constitutional function of the Constitutional Court is to uphold the supremacy of the Constitution. The Constitutional Court handles constitutional issues or specific constitutional cases to ensure responsible implementation of the Constitution in line with the will of the people and democratic principles.

This function is carried out by using the authority possessed, namely examining, adjudicating, and deciding certain cases by referring to constitutional considerations. On this basis, at least five functions can

¹⁶⁹ Constitutional Justice Enny Nurbaningsih stated: campaign restrictions based on location or place are based on several important principles which aim to maintain the neutrality and integrity of the election process, prevent disruption to public activities in certain places so as to maintain the principle of balance and at the same time maintain the principle of neutrality and to avoid misuse of public facilities. Utami Argawati, "MK's Interpretation of the Prohibition of Election Campaign Places," 2023, <https://www.mkri.id/index.php?page=web.Berita&id=19444>.

¹⁷⁰ Article 24 paragraph (1) of the 1945 Law of the Republic of Indonesia.

be identified that are inherent in the existence of the Constitutional Court and are carried out through its authority.¹⁷¹ Based on Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, it is stated that there are four powers of the Court to adjudicate at the first and last level whose decisions are final.¹⁷²

"The decision of the Constitutional Court is final, that is, the decision of the Constitutional Court immediately obtains permanent legal force from the moment it is pronounced and no legal action can be taken. "The final nature of the Constitutional Court's decision in this Law also includes binding legal force (*final and binding*)"¹⁷³

Regarding the decision of the judicial institution, it must contain the reasons and basis for the decision as well as include certain articles from the relevant legislation or unwritten sources of law that are used as the basis for judging.¹⁷⁴ Apart from that, Article 53 paragraph (2) of Law Number 48 of 2009 regarding judicial power, states that:

¹⁷¹ The five functions are: (i) guardian *of the constitution* , (ii) final interpreter of *the constitution* , (iii) protector of human rights , (iv)) protector *of the citizen's constitutional rights* , and (v) protector *of democracy* . Constitution, *Procedural Law of the Constitutional Court*.

¹⁷²The four powers of the Constitutional Court are: (a) reviewing laws against the 1945 Constitution of the Republic of Indonesia; (b) decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia; (c) . decide on the dissolution of political parties; and (d) decide disputes regarding general election results. See Article 10 paragraph (1) "Law Number 24 of 2003 concerning the Constitutional Court" (2003). State Gazette of the Republic of Indonesia of 2003 Number 98 and Supplement to State Gazette of the Republic of Indonesia Number 4316.

¹⁷³Explanation of Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court "Law Number 8 of 2011 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court" (2011). State Gazette of the Republic of Indonesia of 2011 Number 70 and Supplement to State Gazette of the Republic of Indonesia Number 5226.

¹⁷⁴ See Article 50 paragraph (1) "Law Number 48 of 2009 concerning Judicial Power" (2009). State Gazette of the Republic of Indonesia of 2009 Number 157 and Supplement to State Gazette of the Republic of Indonesia Number 5076.

"Determinations and decisions as intended in paragraph (1) must contain the judge's legal considerations which are based on appropriate and correct legal reasons and foundations"

Constitutional Court decisions must include the facts revealed in the trial and must also include the judge's legal considerations which form the basis of a decision.¹⁷⁵ The considerations of Constitutional Court judges are very identical to constitutional principles. Constitutional rules are based on the understanding of constitutionalism, which is an understanding of limiting power and guaranteeing the rights of the people. ¹⁷⁶Based on the explanation above, a decision includes legal reasons as well as legal considerations or the judge's legal considerations which will later be used as the basis for determining the decision

The legal considerations in a decision include the judge's legal considerations which are then called *the ratio decidendi*. *The ratio decidendi* is directly related to the ruling and the legal issues being resolved, so it is said that *the ratio decidendi* has a binding effect. *Ratio decidendi* is a judge's consideration which essentially does not stand alone and is born solely from the judge's stance and beliefs. The judge's considerations stated in the decision are built from a formal legalistic

¹⁷⁵ See Article 45 paragraph (3) Law Number 24 of 2003 concerning the Constitutional Court. State Gazette of the Republic of Indonesia of 2003 Number 98 and Supplement to State Gazette of the Republic of Indonesia Number 4316.

¹⁷⁶ Hakiki and Taufiqurrahman, "The Idea of Structuring National Legislation Based on the Ratio of Decidendi & Obiter Dictum Constitutional Court Decision," 84.

thinking framework based on philosophical, sociological, and juridical foundations as perspectives that serve as the basis for considerations.¹⁷⁷

The Constitutional Court is called “The Guardian of the Constitution” because all the authority it has is designed to ensure the implementation of the Constitution as a benchmark which is implemented in the regulations under it. The essence of the function of the Constitutional Court as guardian of the Constitution is that the Constitutional Court plays a philosophical role in maintaining the purity of the Constitution, reflecting the spirit contained in the 1945 Constitution. The Constitutional Court is considered as a balance to the positive legislature, namely as a negative legislature which will kill an article, paragraph, or even the law as a whole is considered to be contrary to the constitution.¹⁷⁸

Decision Number 65/PUU-XXI/2023 regarding the review of the Elucidation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections. the applicant felt that it caused constitutional damage.

Explanation of Article 280 paragraph (1) letter h:¹⁷⁹

¹⁷⁷ Muhammad Habiburrahman, " *Ratio Legis* and *Ratio Decidendi* Marriage Dispensation (Study of Marriage Dispensation Decisions in the Pamekasan Religious Court)," *Qanuni: Journal of Indonesian Islamic Family Law* 1, No. 1 (2023): 57–80.

¹⁷⁸ Indra, Saragih, and Muhtar, “Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia,” 286.

¹⁷⁹ Explanation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning General Elections. State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to State Gazette of the Republic of Indonesia Number 6109.

"Government facilities, places of worship, and places of education can be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship, and places of education. What is meant by "place of education" is the building and/or grounds of a school and/or college."

Article 280 paragraph (1) letter h:¹⁸⁰

"Election organizers, participants, and campaign teams are prohibited from:
use government facilities, places of worship, and places of education."

Request for review of Law Number 7 of 2017 concerning Elections, specifically Article 280 paragraph (1) letter h of the 1945 Constitution of the Republic of Indonesia submitted by two applicants, namely Hendrey Mantiri, SH, a private employee, and Ong Yenny, who is a Member The DKI Jakarta Provincial DPRD has given the power to the advocates who are members of the Legal Team "National Election Witness Body of the Indonesian Democratic Party of Struggle (BSPN PDI Perjuangan)".¹⁸¹

According to the Constitutional Court, it is necessary to first understand the substance of the norms contained in Article 280 paragraph (1) letter h of the Election Law, which are the basic norms and then be compared with the Elucidation of Article 280 paragraph (1) letter h of the Election Law. Historically, similar norms have also been regulated in several laws, including Law Number 8 of 2012 concerning

¹⁸⁰ Article 280 paragraph (1) letter h Law Number 7 of 2017 concerning the General Election of the State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109.

¹⁸¹ See page 1 of Constitutional Court Decision Number 65/PUU-XXI/2023.

the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, specifically in the Article and Explanation of Article 86 paragraph (1) letter h.¹⁸² Article 84 paragraph (1) letter h Law Number 10 of 2008 concerning General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council, Article¹⁸³ 74 letter g Law Number 12 of 2003 concerning General Election of Council Members People's Representatives, Regional Representative Council ¹⁸⁴and Regional People's Representative Council, and Article 47 paragraph (1) letter g of Law Number 3 of 1999 concerning General Elections.¹⁸⁵ To make it easier to study similar norms, the author describes their identification on the next page.

¹⁸² "Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council," Law no. 8 of 2012 § (2012). State Gazette of the Republic of Indonesia of 2012 Number 117 and Supplement to State Gazette of the Republic of Indonesia Number 5316.

¹⁸³ "Law Number 10 of 2008 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council" (2008). State Gazette of the Republic of Indonesia of 2008 Number 51 and Supplement to State Gazette of the Republic of Indonesia Number 4836.

¹⁸⁴ "Law Number 12 of 2003 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council" (2003). State Gazette of the Republic of Indonesia of 2003 Number 37 and Supplement to State Gazette of the Republic of Indonesia Number 4277.

¹⁸⁵ Republic of Indonesia Government Regulation, "Law Number 3 of 1999 concerning General Elections" (1999), <https://www.dpr.go.id/dokjdi/document/uu/593.pdf>. State Gazette of the Republic of Indonesia of 1999 Number 23 and Supplement to State Gazette of the Republic of Indonesia Number 3810.

Table 3.4
Identification of Similar Norms Based on Historical Studies of
Constitutional Judges

No	Identify Norms	Contents Norms	Explanation of Norms	Information
1	Article 86 paragraph (1) letter h Law Number 8 of 2012 concerning General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council	"Election Campaign organizers, participants, and officers are prohibited from: h. use government facilities, places of worship, and places of education."	"Government facilities, places of worship, and places of education can be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship, and places of education. What is meant by "educational place" in this provision is the school/college building and grounds.	The judge explained that these two articles describe criminal sanctions which are regulated in Article 299 of Law Number 8 of 2012 ¹⁸⁶ and Article 270 of Law Number 10 of 2008, respectively ¹⁸⁷ . The emphasis on this prohibition is based on the author's analysis that the Constitutional Justices

¹⁸⁶ See Article 299: "Every Election Campaign organizer, participant and officer who deliberately violates the prohibition on implementing the Election Campaign as intended in Article 86 paragraph (1) letters a, b, c, d, e, f, g, letter h, or letter i shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 24,000,000.00 (twenty four million rupiah)." Law Number 8 of 2012 concerning General Elections of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council. State Gazette of the Republic of Indonesia of 2012 Number 117 and Supplement to State Gazette of the Republic of Indonesia Number 5316.

¹⁸⁷ See Article 270: "Every person intentionally violates the prohibition on carrying out an election campaign as intended in Article 84 paragraph (1) letter a, letter b, letter c, letter d, letter e, letter f, letter g, letter h, or letter i shall be sentenced to imprisonment for a of 6 (six) months and a maximum of 24 (twenty four) months and a fine of at least IDR 6,000,000.00 (six million rupiah) and a maximum of IDR 24,000,000.00 (twenty four million rupiah)." Law Number 10 of 2008 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council. State Gazette of the Republic of Indonesia of 2008 Number 51 and Supplement to State Gazette of the Republic of Indonesia Number 4836.

2	Article 84 paragraph (1) letter h Law Number 10 of 2008 concerning General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council	“Campaign organizers, participants, and officers are prohibited from: h. use government facilities, places of worship, and places of education.”	"What is meant by "place of education" in this paragraph is the school/college building and grounds."	reviewed history regarding the severity of criminal sanctions against campaign participants who violated election campaign locations so that this previous regulation also became the basis for the norms tested by the applicant.
3	Article 74 letter g Law Number 12 of 2003 concerning General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council	“In election campaigns, it is prohibited: g. use government facilities, places of worship, and places of education.”	"For educational places as referred to in letter g, they are exempted if they take the initiative/obtain permission from the head of the educational institution by providing equal opportunities to election participants and not disrupting the teaching and learning process."	In this article, there is an explanation that is slightly different from the two articles above. The judge also emphasized again that criminal sanctions for violations of the use of campaign venues are much lighter as regulated in Article 138 paragraph (2) of Law Number 12 of 2003. ¹⁸⁸

¹⁸⁸ See Article 138 paragraph (2): "Any person who deliberately violates the provisions regarding the prohibition on the implementation of election campaigns as intended in Article 74 letters f and g, is threatened with imprisonment for a maximum of 1 (one) month or a maximum of 6 (six) month and/or a fine of at least IDR 100,000.00 (one hundred thousand rupiah) or a maximum of IDR 1,000,000.00 (one million rupiah)." Law Number 12 of 2003 concerning General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council. State Gazette of the Republic of Indonesia of 2003 Number 37 and Supplement to State Gazette of the Republic of Indonesia Number 4277.

4	Article 47 paragraph (1) letter g Law Number 3 of 1999 concerning General Elections.	“In the General Election campaign, it is prohibited: g. use government facilities and religious facilities.”	There is no explanation of the norms.	In this article, campaign activities are prohibited from being carried out in two places, namely government facilities and places of worship and there are no complete provisions for criminal sanctions for violations of the prohibition in Article 47 paragraph (1) letter g. ¹⁸⁹ The judge emphasized that the election regulations in this article of the law have a short formulation compared to previous laws considering that Indonesia is still relatively new in carrying out election activities.
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¹⁸⁹ However, there is an explanation of Article 47 paragraph (1): "The prohibitions in this Article are intended so that the campaign can run freely, smoothly, safely, in an orderly manner, and not endanger the unity and unity of the nation." RI, Law Number 3 of 1999 concerning General Elections. State Gazette of the Republic of Indonesia of 1999 Number 23 and Supplement to State Gazette of the Republic of Indonesia Number 3810.

Based on historical analysis, the prohibition on campaigns using government facilities, places of worship, and places of education has been regulated since the reform era. If you look closely at the norms of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections, it quotes the previous norms as shown in the **Table 3.4** Quoting not only norms but also explanations of norms along with criminal sanctions for campaign participants who violate them.

Basically, the reason for the formation of Article 280 paragraph (1) letter h in addition to looking at historical similar norms, the Applicant also attached **Exhibit P-15** and **Exhibit P-16** which are photocopies of the Minutes of Meeting of the Synchronization Team-Drafting Team (Timus-Timsin) Bill on Amendments to Law Number 10 of 2008 concerning the Election of Members of the DPR, DPD and DPRD.¹⁹⁰ Based on the views of the factions at the meeting, the majority of factions wanted it to remain banned, so the Chairman of the Meeting then concluded that the campaign to use government facilities, places of worship and places of education remained prohibited.

¹⁹⁰ See Petition Number 21 of Judgment 65/PUU-XXI/2023 page 19, which states the position of each political party faction. Based on the views of the factions mentioned above, it can be seen that the majority of factions (F-PDIP, F-PG, F-PPP and F-PAN) still want campaigns in government facilities, places of worship are prohibited. However, each participant is still allowed to attend invitations in places of worship or places of education as long as they are invited and not in the framework / agenda of the election campaign. Only F-PKS wants the ban lifted and left to local policy. While F-KB is one of the same options as F-PAN, it requires campaigns in government facilities, places of worship and places of education to be allowed as long as they are invited and without campaign attributes.

The explanation of a law outside of basic norms refers to the technical provisions for the formation of statutory regulations, namely as in point 176 of attachment II to Law Number 12 of 2011 concerning the Formation of Legislative Regulations which has been amended by Law Number 13 of 2022 concerning the Second Amendment Regarding Law Number 12 of 2011 concerning the Formation of Legislative Regulations.¹⁹¹ Explanations only contain descriptions of words, phrases, sentences, or equivalents of foreign words in a norm which can be accompanied by examples. Explanation is a means of clarifying norms and must not result in unclear clarity of the norm in question.

Point 178 of Appendix II to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations provides further understanding. The explanation must not contain formulations that contain hidden changes.¹⁹² An explanation is an official interpretation of certain norms in the body of statutory regulations. Explanations must be given to avoid ambiguity in the interpretation of the norms contained in the body so that the norms can still be understood clearly.

¹⁹¹ See point 176 of Appendix II: Explanation functions as an official interpretation for those forming Legislative Regulations regarding certain norms in the body. Therefore, explanations only contain descriptions of foreign words, phrases, sentences or equivalent words/terms in the norm which can be accompanied by examples. Explanations must not contain norms because explanations as a means of clarifying norms in the body must not result in the unclarity of the norms in question. "Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations" (2022). State Gazette of the Republic of Indonesia for 2022 Number 143 and Supplement to State Gazette of the Republic of Indonesia Number 6801.

¹⁹² Item 178 Appendix II, Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

Elucidation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections according to the Constitutional Court has created a conflict with basic norms. The phrase "can be used" lexically contains the meaning of permission or right to do something in a limited way. When compared with the main material which prohibits campaigning in three places, namely government facilities, places of worship, and places of education.¹⁹³

The content of a law, between prohibitive norms and exceptions, actually means to override the main norms. According to the Constitutional Court, norms that contain exceptions to the norms of Article 280 paragraph (1) letter h, if they are still needed, should be included as their norms that exclude places where campaigns are prohibited and should not be placed in the explanation section so that the Explanation of Article 280 paragraph (1) letter h of the Law is Law Number 7 of 2017 concerning Special Elections in the phrase "can be used if"¹⁹⁴ creates ambiguity in understanding and applying basic norms so that in implementation it creates legal uncertainty.

According to the Constitutional Court, it is still possible to carry out election campaigns in government facilities or educational places, so the Court needs to include some of the exceptions as intended in the

¹⁹³ See [3.15.3] paragraph 2 page 45. Constitutional Court Decision Number 65/PUU-XXI/2023.

¹⁹⁴ Lexically, the phrase in question contains the meaning of allowing limited authority or the right to do something, even though the limit or condition has been determined as a prohibition. Constitutional Court Decision Number 65/PUU-XXI/2023.

Elucidation to Article 280 paragraph (1) letter h into the basic norms of Article 280 paragraph (1) letter h. This content is of course based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations which states that explanations must not contain new norms and conflict with basic norms so that election participants can carry out campaigns by using government facilities and educational places as long as they have permission from the person in charge of the relevant place and does not use campaign attributes.

Based on all the legal considerations above, the Court granted an exception to the norms of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections as contained in the decision. According to the Constitutional Court, although the unconstitutionality of the norm of Article 280 paragraph (1) letter h was not appealed by the Petitioners, this norm is still closely related to the explanation in the decision and is for the benefit of the election campaign. Thus, the legal considerations above can be said to be legally reasonable.

3. Ratio Decidendi Analysis of Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the Prohibition of Election Campaign Venues from the Perspective Theory *Siyasah Dusturiyah*

Islam apart from regulating God's relationship with His people also regulates all aspects of human life including political or state affairs. Political or political problems in Islam come within the scope of *Fiqh*

Siyasah.¹⁹⁵ *Siyasah* linguistically has the meaning of organizing, managing, and ruling. This linguistic understanding shows that the purpose of *siyasah* is to organize, manage, and make wisdom on something of a political nature.¹⁹⁶ *Fiqh Siyasah* is generally divided into three scopes, namely: (i) *siyasah dusturiyah*, (ii) *siyasah dauliyah*, and (iii) *siyasah maliyah*.¹⁹⁷

Siyasah dusturiyah is a part of *siyasah fiqh* which examines various issues related to state legislation. According to this context, topics such as constitutional concepts (including the state constitution and the history of the formation of legislation in a country), legislation (the process of forming laws), as well as democratic institutions and shura, which are crucial elements in the legal framework -invitations, detailed. Apart from that, this analysis also discusses ideas related to the rule of law in *siyasah* and the mutual influence of interactions between the government and citizens, including the rights that must be guaranteed and protected for citizens.¹⁹⁸

Siyasah dusturiyyah is also said to be the science of statecraft and political science of government in Islam that discusses related arguments in the Qur'an and Hadith as well as what is contained in the purpose of Islamic Sharia. The journey of *ijtihad* of the scholars related

¹⁹⁵ Yulinda Sholikhatul Amalia and Umam, "Ratio Decidendi Constitutional Court Decision Number 006/PUU-II/2004 Perspective of *Siyāsah Dusturiyāh*."

¹⁹⁶ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 3.

¹⁹⁷ Djazuli, *Fiqh Siyasah: Implementation of the People's Interest in Sharia Signs*, 31; Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 15.

¹⁹⁸ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 177.

to the development and change of the problems of statecraft and governance also became a reference in this field. *Siyasah dusturiyah* studies the relationship between leaders and the people as well as the institutions found in society.¹⁹⁹

Siyasah dusturiyah provides a deep understanding of the regulation of affairs of the people and the state through various forms of laws, regulations, and policies implemented by those who hold power. This approach is in line with the basic principles of the teachings and spirit of Islamic law to achieve the welfare of the people.²⁰⁰ *Siyasah dusturiyah* has a significant role as a source of legitimacy for the existence of power. The context of *siyasah dusturiyah* is a merger that occurs between the reality of power and the prevailing political ideals, by the recommendations of Islamic law. Islamic political principles are used as standards for legitimizing and assessing political feasibility or suitability so that a person is considered entitled to hold the reins of power.

There are two important principles contained in *siyasah dusturiyah*, namely as follows:

¹⁹⁹ The main discussion of *siyasah dusturiyah* covers: 1) the concept of imamah, khilafah, imarah, mamlakah; 2) study of the people, their position, rights, and obligations; 3) study of *bai'ah*; 4) study about *waliul ahd*; 5) study of wakalah; 6) study about ahl al-halli wal aqd; 7) study of ministries and government systems; 8) study of general elections. Situmorang, *Political Politics in Islam (Siyasah Dusturiyah)*, 20–23.

²⁰⁰ Suyuthi Pulungan, *Fiqh Siyasah: Teaching, History, and Thought* (Yogyakarta: Ombak, 2014), 26.

a. The Principle of *Tauhidullah*

The political system in Islam is closely related to the belief that is its basis. The basis of faith is the Islamic way of looking at life, humans, and nature.²⁰¹ In the realm of Islamic governance, the basis of justice is also an important matter after monotheism. Justice is a distinctive feature of Islam and a differentiator for other religions. Justice means that the constitution made by the country must guarantee the rights and obligations of every citizen. Based on the opinion of Islamic state experts, justice is an important ingredient of *sharia maqashid*.

b. Principle of Equality

The principle of equality means that every individual has the same status as a citizen regardless of origin, race, religion, language, and social status. Everyone has similarities in demanding rights and carrying out obligations. Based on the context of Islamic constitutional doctrine, the equality emphasized is constitutional equality (*qanuniyyah*), not factual equality (*fa'liyyah*). This means, Islam teaches that all people must be guaranteed equality by law, even though in fact they may have differences, whether physically, intellectual capacity, or wealth. This doctrine of constitutional

²⁰¹ The basis of faith in Islam includes four things, namely: 1) Allah is the creator of nature and man; 2) Allah is the only authority who has any right to manage and treat His creatures; 3) God made man a caliphate to prosper nature; 4) Humans are noble creatures. Situmorang, *Political Politics in Islam (Siyasah Dusturiyah)*, 31-32.

equality is different from the approach in socialist societies which emphasizes factual equality rather than constitutional equality.²⁰²

One of the studies of *siyasah dusturiyah* is the constitution which is also called *dusturi*. Considerations regarding the constitution are also related to aspects of legal sources and methods in a country, including material sources, historical sources, legislative sources, and legal interpretation. Material sources include matters relating to the main substance of the constitution. The main focus in the context of this constitutional source is the regulations that regulate the relationship between the government and the citizens it governs.²⁰³

The formation of a constitution cannot be separated from the historical context of the country concerned, including the dynamics of society, politics and culture. Therefore, the substance contained in the constitution reflects the aspirations and values that live in the country's society. For example, in drafting the 1945 Constitution of the Republic of Indonesia, efforts were made to accommodate the spirit of diversity of Indonesian society, so that the constitution could encompass the aspirations of all parties and ensure the unity and integrity of the nation.²⁰⁴

²⁰² The principle of Islamic equality adheres to the doctrine of proportional equality contained in the teachings: For each person according to his efforts and the level of his needs. The principle of equality is Islam's reaction to facts and social systems when they first descended on the face of the earth. The pre-Islamic social system presented its own barriers that separated people's social status. There are a number of religions that legitimize this social system, such as Buddhism, Hinduism, Magi, Joroaster and Judaism. Situmorang, 36.

²⁰³ Atu Karamah, "Constitution in Islam," *Al-Qisthas: Journal of Law and Politics* 7, no. 1 (2016): 69.

²⁰⁴ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 178.

Based on the description above, the author focuses the study of *siyasah dusturiyah* on the concept of Muhammad Iqbal's constitution. The constitution is the study of *siyasah duturiyah*, not only the constitution as the object of study, principles or principles such as justice and equality also go hand in hand and become important values in the Islamic constitutional system. The constitution becomes the basis in the entire state order in enforcing the law. Like the Medina Charter which became the first Constitution in the Islamic constitutional system which was a written constitution at the time of the Prophet Muhammad SAW guided by the Al-Qur'an.²⁰⁵ It is the same as Indonesia with its constitution, the 1945 Constitution, which is the basis for all state life, including state administration and is the basis for regulations under it.

The Constitutional Court was born as one of the judicial institutions in Indonesia whose existence is to safeguard and guard the constitution. The Constitutional Court is called the guardian of the constitution because all of its authority is designed to ensure the implementation of the constitution as the main standard in the regulations under it. The title "*the guardian of the Constitution*" is very appropriate to be given to the Constitutional Court because this institution was formed with the main

²⁰⁵ The reasons for placing the Medina Charter as the Medina Constitution are because it contains principles for regulating public interests and socio-political bases that aim to form a society and government as a forum for the unity of the pluralistic population of Medina. The Medina Charter became the world's first constitution because it was a source of inspiration for building a pluralistic society, had strong relevance to the development of international society and became a modern way of life for various countries in the world. Muhammad Kaulan Karima et al., "Study of the Medina Charter as the World's First Constitution," *PENDIS (Journal of Social Sciences Education)* 4, No. 1 (2023): 35–47.

aim of protecting the Constitution and ensuring its respect in various contexts. The existence of the Constitutional Court also aims to resolve political disputes and conflicts through legal channels.²⁰⁶

One of the authorities of the Constitutional Court is to adjudicate at the first and last level whose decisions are final to review laws against the 1945 Constitution. This authority is also commonly known as *judicial review*²⁰⁷, which is the authority of the Constitutional Court to assess laws that are deemed not by The 1945 Constitution so that they can be judicially reviewed and declared inconsistent with the 1945 Constitution or deemed unconstitutional, so it does not have binding legal force.²⁰⁸ Constitutional Court Decision Number 65/PUU-XXI/2023 is a material review of the explanation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections regarding places where election campaigns are prohibited.

Constitutional Court Decision Number 65/PUU-XXI/2023 has implemented the principles contained in *siyasah dusturiyah*. As stated in the explanation above, namely the principles of justice and equality. The justice referred to here is a constitution that protects and guarantees

²⁰⁶ Indra, Saragih, and Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia," 286.

²⁰⁷ Testing of laws (*judicial review*) to the Constitutional Court (MK) has no other aim than to realize constitutional supremacy. In simple terms, *judicial review* can be translated as a concept that is closely related to the constitution as the highest set of values and rules and in maintaining the highest set of values. Saldi Isra calls it the term constitutionalism. Saifullah, Abdul Azis, and Mustafa Lutfi, "Transformation of Islamic Legal Values in the Jurisprudence of Constitutional Court Decisions from an Integrative Legal Theory Perspective," *De Jure: Journal of Law and Sharia* 12, No. 1 (2020): 6.

²⁰⁸ Abdul Rahman Maulana Siregar, "The Authority of the Constitutional Court in Legal Review of the 1945 Constitution," *Responsive Law Journal* 5, No. 5 (2017): 102.

the rights of every citizen. This is in line with Islam which guarantees human rights in various aspects as stated in the Al-Qur'an.²⁰⁹ The Petitioner in Constitutional Court Decision Number 65/PUU-XXI/2023 feels that he has been disadvantaged by the Elucidation of Article 280 paragraph (1) letter h of the Election Law so that this loss is protected by the constitution. The Petitioner uses Article 22E paragraph (1) and 28D paragraph (1) as touchstones that can protect his rights. The principle of justice is contained in the Al-Qur'an as in QS An-Nisa' [4]: 58 which reads:

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ۝٨ ﴾

Means:

“Indeed, Allah commands you to convey the trust to its owner. When you establish laws between people, you must establish them fairly. Indeed, Allah gives you the best teaching. Indeed, Allah is All-Hearing, All-Seeing.”

The principle of equality in the study of *siyasaḥ dusturiyah* is related to equality before the law. The principle of equality before the law is related to the principle of justice which implies that every individual appearing in court has "equal and equal" rights and standing. Likewise, when someone has been detained and is in prison, a prisoner has equal

²⁰⁹ In the Qur'an, humans have rights that must be protected, including: 1) The right to defend life; 2) The right to get a job; 3) Right to Education; 4) The right to independence; 5) The right to freedom of religion; 6) The right to freedom of expression; 7) The right to own property; 8) Equal Rights; and 9) Social security rights. Maula Sari Amin, Muhammad, "Protection of Citizens' Rights in the Perspective of the Al-Qur'an and the Constitution," *Journal of Qur'anic Studies* 8, No. 1 (2023): 24–28.

rights and positions.²¹⁰ This is in line with the constitution, precisely in Article 22 paragraph (1).²¹¹ Examples of the application of the principle of equality before the law include equality before the court and equality regarding political rights which can be seen in the Constitutional Court Decision Number 65/PUU-XXI/2023. The principle of equality is contained in the Al-Qur'an as in QS An-Nisa' [4]: 1 which reads:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۗ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ۝١

Means:

" O mankind, fear your God who created you from one person (Adam) and He created from him his partner (Eve). From the two of them Allah produced many men and women. Fear Allah in Whose name you ask each other and (maintain) family relations. Indeed, Allah always guards and watches over you".

Understanding related to the concept of the constitution in the Islamic constitutional system and Indonesia has similarities and is in line. Both protect and guarantee the rights of citizens. Related to the Constitutional Court Decision Number 65/PUU-XXI/2023 concerning the Review of Laws against the 1945 Constitution. This indicates that laws must not conflict with the constitution which has become the basic

²¹⁰ Hamzah K, Hamsah Hasan, and Amirullah Amirullah, "Law Enforcement of the Principle of Equal Status Before the Law (Islamic Law Perspective)," *Al-Amwal: Journal of Islamic Economic Law* 4, No. 2 (2019): 191.

²¹¹ See Article 27 paragraph (1): All citizens have the same position under the law and government and are obliged to uphold the law and government without exception. The 1945 Constitution of the Republic of Indonesia.

law. Thus, the Material Review of Articles and Elucidation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections met a common ground by prohibiting campaigning in places of worship without exception, which in Islam is a benefit to eliminating harm.²¹²

C. The Urgency of the Petitioner's Legal Standing in the Constitutional Court Decision Number 65/PUU-XXI/2023

1. Analysis of the Urgency of the Petitioner's Legal Standing and Constitutional Losses in Constitutional Court Decision Number 65/PUU-XXI/2023

An applicant is a legal subject who has fulfilled the requirements under the law to proceed (submit a petition) at the Constitutional Court.²¹³ Regarding the definition of an applicant, it has been explained in Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court that an applicant is a party who considers their constitutional rights or authority to be impaired by the enactment of the law.²¹⁴ A similar thing is also stated in Article 4 of Constitutional Court

²¹² Saifullah, Abdul Azis, and Mustafa Lutfi, "Transformation of Islamic Legal Values in the Jurisprudence of Constitutional Court Decisions from an Integrative Legal Theory Perspective," *De Jure: Journal of Law and Sharia* 12, No. 1 (2020): 7.

²¹³ Jimly Asshiddiqie, *Procedural Law for Testing Laws*, 2006, 68.

²¹⁴ See Article 51 paragraph (1) Law Number 24 of 2003 concerning the Constitutional Court. The applicants consist of: (a) individual Indonesian citizens; (b) the unity of the customary law community as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; (c) public or private legal entity; or (d) state institutions. State Gazette of the Republic of Indonesia of 2003 Number 98 and Supplement to State Gazette of the Republic of Indonesia Number 4316.

Regulation Number 2 of 2021 concerning Procedures in Legal Review Cases.²¹⁵

Based on the definition above, the applicant in the relevant sense must show relevant evidence such as a Resident Identity Card (KTP). In addition, it must show evidence of the Constitution relating to the guarantees that the applicant has constitutional rights or authority, which constitutional rights or authority are deemed to have been impaired due to the enactment of the law in question.

Every person or party concerned (applicant) who has fulfilled the requirements has the right to submit a case before the Constitutional Court, it can be said that that person has legal *standing*. Applicants who do not have legal standing will receive a decision from the Constitutional Court stating that their petition cannot be accepted (*niet ontvankelijk verklaard*).²¹⁶ Legal *standing* includes formal requirements as determined in the law, and material requirements, namely loss of constitutional rights and/or authority due to the enactment of the law whose review is requested.

²¹⁵ See Article 4 paragraph (1) "Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Legal Review Cases," Constitutional Court (2021), https://www.mkri.id/public/content/pmk/394_210420014128.pdf (a) individual Indonesian citizens or groups of people who have the same interests; (b) the unity of the customary law community as long as it remains alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; (c) public legal entity or private legal entity; or (d) state institutions.

²¹⁶ Constitution, *Procedural Law of the Constitutional Court*, 98.

Jimly Asshiddiqie thinks that three conditions must be fulfilled for the applicant's legal standing *in* the case of reviewing a law against the Constitution at the Constitutional Court, namely:

*" The four parties or legal subjects mentioned above (individual Indonesian citizens, customary law community units, public or private legal entities, and state institutions), must first prove that their identity meets the requirements as intended by Article 51 of Law Number 24 of 2003. Second, the party concerned must prove that he/she has certain guaranteed rights or certain authorities specified in the 1945 Constitution. Third, the constitutional rights or authorities in question have indeed been proven to have been impaired by the enactment of the relevant Law. "*²¹⁷

The Petitioners in the Constitutional Court Decision Number 65/PUU-XXI/2023 consist of two people who live in West Jakarta. Petitioner I is a private employee and Petitioner II is a member of the DKI Jakarta Provincial DPRD. Both of them have given power of attorney to advocates who are members of the Legal Team "National Election Witness Body of the Indonesian Democratic Party of Struggle (BSPN PDI Perjuangan)".²¹⁸

The Petitioner feels disadvantaged about the Elucidation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections regarding the prohibition of places for carrying out election

²¹⁷ What is meant by four parties or legal subjects as regulated in Article 51 paragraph (1) of Law no. 8 of 2011 concerning Amendments to Law 24 of 2003 concerning the Constitutional Court is further regulated with the same provisions in Article 3 PMK Number 06/PMK/2005 concerning Procedure Guidelines in Legal Review Cases, namely: (a) Individual Indonesian citizens ; (b) The unity of the customary law community as long as it is still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia as regulated in law; (c) Public or private legal entity; or (d) State institutions. Ajie Ramdan, "Problematics of Legal Standing of Constitutional Court Decisions," *Constitutional Journal* 11, No. 4 (2014): 740.

²¹⁸ See page 1 of Constitutional Court Decision Number 65/PUU-XXI/2023.

campaigns. The Petitioner believes that some constitutional rights or authorities are impaired by the enactment of this law. The applicant's constitutional disadvantages are stated as stated in Article 22E paragraph (1)²¹⁹ and Article 28D paragraph (1)²²⁰ of the 1945 Constitution of the Republic of Indonesia.

The provisions of Article 280 paragraph (1) letter h expressly prohibit election campaign activities from using three places, namely government facilities, places of worship, and places of education. Without exception, there should be no need for explanation. The explanation of Article 280 paragraph (1) letter h which contains exceptions expands the norm. The criminal sanctions given for violations of carrying out election campaigns in these three places show that the prohibition is absolute and does not need to be given further explanation.

Criminal sanctions for Article 280 paragraph (1) letter h are stated in Article 521 of the Election Law.²²¹ Regulations related to criminal sanctions are also stated in Article 76 of General Election Commission

²¹⁹ See Article 22E paragraph (1): General elections are held directly, publicly, freely, secretly, honestly and fairly every five years. The 1945 Constitution of the Republic of Indonesia.

²²⁰ See Article 28D paragraph (1) Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. The 1945 Constitution of the Republic of Indonesia.

²²¹ See Article 521: Any Election Campaign organizer, participant and/or team who deliberately violates the Prohibition on the Implementation of Election Campaigns as intended in Article 280 paragraph (1) letters a, b, c, d, e, f, letter g, letter h, letter i, or letter j shall be punished with imprisonment for a maximum of 2 (two) years and a fine of a maximum of Rp. 24,000,000.00 (twenty-four million rupiah). Law Number 7 of 2017 concerning General Elections. State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to State Gazette of the Republic of Indonesia Number 6109.

Regulation Number 15 of 2023 concerning Campaigns.²²² According to the Petitioner, this creates constitutional losses in the form of legal uncertainty regarding the prohibition on places to carry out election campaigns. Legal uncertainty can occur due to *contradictio in terminis* (contradiction of the Article Explanation with the subject matter).

According to the applicant, the explanation of Article 280 paragraph (1) letter h is impossible to realize. The Petitioner thinks that the use of government facilities for the election campaign will not be equally distributed to all election campaign participants, considering that the Regional Head is promoted by a political party so there are concerns that he will not be neutral. Apart from that, regarding election campaigns in places of worship, according to the applicant, it would not be fair for campaign participants, especially legislative candidates with non-Muslim backgrounds such as Petitioner II who is Buddhist, to allow election campaigns in places of worship results in creating identity politics (based on religion).²²³

Lastly, regarding the implementation of the election campaign in educational settings, according to the Petitioner, it is unfair for campaign participants, especially legislative candidates whose educational background is only high school or equivalent, the Petitioner argued that

²²² See Article 76: If it is proven that an act has violated the prohibitory provisions as intended in the Law governing Elections, sanctions will be imposed in accordance with the Law governing Elections and other statutory regulations. General Election Commission Regulation Number 15 of 2023 concerning General Election Campaigns.

²²³ See page 11 number 2 Constitutional Court Decision Number 65/PUU-XXI/2023.

it would be difficult to reach higher education institutions due to the lack of relationships.²²⁴

Based on the description of the Petitioner's *legal standing* above, the Petitioner has fulfilled the requirements to become a Petitioner in this case as intended in Article 51 paragraph (1) letter a of Law Number 23 of 2004,²²⁵ and Article 4 paragraph (1) letter a of PMK Number 2 of 2004. 2021.²²⁶ Exceptions to the prohibition regarding election campaign venues using government facilities, places of worship, and places of education have resulted in constitutional losses for the Petitioners.

2. Formulating the Ratio Legis Constitutional Judges Grant Part of the Request in Constitutional Court Decision Number 65/PUU-XXI/2023

Every Indonesian citizen has the right to protection of privacy, family, dignity, and security from threats. Violations of the rights of Indonesian citizens as legal subjects can arise from various factors and

²²⁴ See page 12 number 3 Constitutional Court Decision Number 65/PUU-XXI/2023.

²²⁵ See Article 51 paragraph (1) letter a " The applicant is a party who considers that their constitutional rights and/or authority have been impaired by the enactment of the law, namely: a) individual Indonesian citizens; b) the unity of the customary law community as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; c) public or private legal entity; or d) state institutions". Law Number 24 of 2003 concerning the Constitutional Court.

²²⁶ See Article 4 paragraph (1) "The applicant as intended in Article 3 letter a is a party who considers their constitutional rights and/or authority to be impaired by the enactment of a law or Perppu, namely: a) individual Indonesian citizens or groups of people who have the same interests; b). the unity of the customary law community as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; c) public legal entity or private legal entity; or d) state institutions". Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Legal Review Cases.

one of them can come from the implementation of statutory regulations.²²⁷ If a citizen feels that his rights have been disturbed due to the enactment of a law, he has the right to submit *a judicial review* of the law to the Constitutional Court based on the 1945 Constitution of the Republic of Indonesia.²²⁸

The Constitutional Court is a new state institution within the framework of the Indonesian constitutional system, which emerged as a result of the amendment process to the 1945 Constitution of the Republic of Indonesia. As a constitutional body, the Constitutional Court serves as the guardian and interpreter of the Constitution.²²⁹ The Constitutional Court has the authority to conduct trials at the first and last level so that decisions taken by the Constitutional Court are final and *binding*. In general, the Constitutional Court has four authorities, namely reviewing the constitutionality of laws against the 1945 Constitution of the Republic of Indonesia, deciding authority disputes between state institutions whose authority comes from the 1945 Constitution of the Republic of Indonesia, deciding on the dissolution

²²⁷The importance of protecting basic rights is crucial in realizing a rule of law, especially in a democratic context and confirming the constitution as the highest legal regulation as well as guarantees for basic rights that are written into the constitution and become part of the constitution itself, it will bind all branches of state power. This can also be seen from another perspective, namely from the perspective of the history of the birth of thinking about the constitution itself, which is essentially nothing other than the history of the statement of rights, so that constitutional rights are actually not only related to the constitution but are part of it (*incorporated in*) constitution. Jazim Hamidi and Mustafa Lutfi, "Constitutional Question (Between Political Reality and Legal Implementation)," *Constitutional Journal* 7, No. 1 (2010): 35.

²²⁸ See Article 24C paragraph (1) of the 1945 Law of the Republic of Indonesia.

²²⁹ Bambang Sutyoso, "Establishment of the Constitutional Court as an Executor of Judicial Power in Indonesia," *Constitutional Journal* 7, No. 6 (2010): 25.

of political parties, and deciding cases regarding disputes over general election results.²³⁰

Understanding *the legal ratio* requirements for constitutional loss by the Petitioner in the Review of Laws (PUU) by the Constitutional Court is carried out by analyzing the provisions contained in the Constitutional Court Law of 2003, as well as the legal considerations expressed in the decision on judicial review by the Constitutional Court at that time. assess the legal standing arguments put forward by the Petitioner. There are at least two decisions that are consistently used as references by the Constitutional Court in assessing the existence of impairment of constitutional rights and/or authority.²³¹

As explained above, constitutional losses experienced by citizens can submit *a judicial review* to the Constitutional Court. One of the Constitutional Court decisions relating to *judicial review* is Constitutional Court Decision Number 65/PUU-XXI/2023 which is a material review of the Explanation of Article 280 paragraph 1 letter (h) regarding places where election campaign activities are prohibited.²³²

²³⁰ Teuku Ahmad Yani Izra Fadiya, Eddy Purnama, "Ratio Legis Constitutional Court Decision Number 18/PUU-XVII/2019 Concerning the Execution of Fiduciary Guarantees," *Legal Journal Diversion* 7, No. 2 (2021): 266.

²³¹ Dian Agung Wicaksono and Andy Omara, "Legis Ratio of the Petitioner's Legal Position in the Review of Laws by the Constitutional Court," *Journal of De Jure Legal Research* 20, No. 4 (2020): 495.

²³² See Decision on page 49: 1) Granting the Petitioners' petition in part; 2) State the explanation of Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) along the phrase "Government facilities, places of worship , and educational places can be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education" is contrary to the 1945 Constitution of the Republic of

Paying close attention to the Constitutional Court Decision Number 65/PUU-XXI/2023 will illustrate *the legal ratio*. If examined historically, the Election Law is a technical regulation relating to the implementation of election activities as a people's democratic party, even though the existence of the Election Law sometimes still causes polemics in society. The polemic regarding election regulation itself can be seen from the large number of examinations of the Election Law by the Constitutional Court. Fajar Laksono, Head of the Administrative Law Bureau and Registrar's Office of the Constitutional Court (MK) said that " *Law Number 7 of 2017 concerning General Elections (Pemilu) has been most tested by the MK* ".²³³

Law Number 7 of 2017 concerning Elections contains various technical regulations including regulating campaign activities. In general, the campaign has four elements, namely: a. Campaign activities aim to create a certain impact or effect; b. The campaign target is a large audience; c. Campaign activities are generally carried out within a

Indonesia and has no binding legal force; 3) Declare that Article 280 paragraph (1) letter h of the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the Constitution of the Republic of Indonesia 1945 and does not have binding legal force as long as it is not interpreted as "excluding government facilities and educational places as long as they have permission from the person in charge of the place in question and are present without election campaign attributes", so that Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 The 2017 year regarding General Elections reads in full, "using government facilities, places of worship and places of education, except for government facilities and places of education as long as they have permission from the person in charge of the place in question and are present without election campaign attributes." 4) Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate. Constitutional Court Decision Number 65/PUU-XXI/2023.

²³³ Farid Kusuma, "Election Laws Have the Most Material Tested in the Constitutional Court," Suarasurabaya.net, nd, <https://www.besarsurabaya.net/kelanakota/2023/uu-pemilu-most-diuji-materinya-di-mk/>.

certain time; d. The campaign is carried out through a series of organized communication actions.²³⁴ Election campaigns have the potential to cause negative impacts so restrictions on election campaign activities are an effort to reduce these negative impacts.

One form of campaign limitation is by limiting the location in which it is carried out. Based on Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections, election campaigns are prohibited from being held in three places, namely places of worship, government facilities, and places of education. However, the meaning contained in the norm of Article 280 paragraph (1) letter h has been expanded due to the Elucidation article to Article 280 paragraph (1) letter h which is contrary to the main norm. The Petitioner in the Constitutional Court Decision Number 65/PUU-XXI/2023 stated that this norm had the impact of constitutional losses and did not provide legal certainty.²³⁵

When a regulation is made and promulgated, legal certainty is realized normatively. This certainty is seen when the regulations regulate clearly and logically, where clear means that they do not give rise to uncertainty or multiple interpretations, and logical in the sense

²³⁴ Enny Dwi Cahyani Syarafina Dyah Amalia, "Clicktivism and Election Campaign Management via Social Media," *Soedirman Law Review Journal* 4, No. 4 (2022): 426.

²³⁵ Based on reasonable reasoning, it is certain that it will result in constitutional losses for the Petitioners as voters and/or as candidates for members of the DKI Jakarta Provincial DPRD, namely legal uncertainty regarding the prohibition on campaigners from using government facilities, places of worship and places of education. This legal uncertainty occurs because there is a conflict between the Explanation of the Article and the main material (*contradictio in terminis*). Constitutional Court Decision Number 65/PUU-XXI/2023. See number 8 letter h legal position and constitutional disadvantages of the applicant page 8.

that the regulations are part of a norm system that is consistent with other norms so that they do not give rise to norm conflicts.²³⁶ In its consideration, the Constitutional Court stated that the Elucidation of Article 280 paragraph (1) letter h, which is an exception to the basic norm, namely Article 280 paragraph (1) letter h, creates legal uncertainty in the implementation of campaign activities.

According to the Petitioner, the prohibition in the form of restrictions on campaign locations should be clear so that no further explanation is needed. Explanations should contain official interpretations, not new norms, and not contradict them.²³⁷ According to the Constitutional Justice, the Elucidation of Article 280 paragraph (1) letter h which is an exception should be placed as part of the norms in the Election Law.²³⁸ The reason the Constitutional Court decided the case in Decision Number 65/PUU-XXI/2023 was because of the urgency of prohibiting the implementation of campaign venues, especially in places of worship that are steeped in religious values, so it is necessary to respect sensitivity so as not to damage harmony in society and damage religious values. Apart from that, legal certainty

²³⁶ Izra Fadiya, Eddy Purnama, "Ratio Legal Decision of the Constitutional Court Number 18/PUU-XVII/2019 concerning the Execution of Fiduciary Guarantees," 274.

²³⁷ See Number 176: Explanation functions as an official interpretation for forming Legislative Regulations on certain norms in the body. Therefore, explanations only contain descriptions of foreign words, phrases, sentences or equivalent words/terms in the norm which can be accompanied by examples. Explanations must not contain norms because explanations as a means of clarifying norms in the body must not result in the unclearness of the norms in question. Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

²³⁸ See [3.16] page 47 Constitutional Court Decision Number 65/PUU-XXI/2023.

regarding the application of norms in Article 280 paragraph (1) letter h is also important according to the judge considering that it is for the election campaign, considering that the decision was granted not long before the 2024 general election will take place.

Based on the description above, it can be concluded that the rationale *for* the Constitutional Court issuing Decision Number 65/PUU-XXI/2023 is to create legal certainty over the ambiguity between the main norm, namely Article 280 paragraph (1) letter h and its contradictory explanation. Based on the decision, there are exceptions to the prohibition on government facilities and educational places as places to carry out election campaigns if invited by the responsible party. This means that the Constitutional Court only prohibits campaigning in places of worship without exception or under any conditions. This decision has been stated in the technical regulations regarding the latest campaign, namely General Election Commission Regulation Number 20 of 2023 concerning General Election Campaigns.²³⁹

²³⁹ See Article 72 Paragraph (1) letter h: "using government facilities, places of worship and places of education, except for government facilities and places of education as long as they have permission from the person in charge of the place in question and are present without Election Campaign attributes." "General Election Commission Regulation Number 20 of 2023 concerning Amendments to General Election Commission Regulation Number 15 of 2023 concerning General Election Campaigns," General *Election Commission*, 2023, State Gazette of the Republic of Indonesia 2023 Number 816.

3. Inconsistencies in the Constitutional Judge's Considerations and the Arguments of the Petitioner's Petition in the Constitutional Court Decision Number 65/PUU-XXI/2023

The Constitutional Court acts as *the guardian of the constitution* which has the authority to review norms in laws that are deemed to conflict with the Constitution. Constitutional Court decisions in reviewing laws involve formal and material aspects. Every decision issued has gone through legal considerations which become the basis for a decision.²⁴⁰ Inconsistencies can occur in Constitutional Court decisions. Constitutional Court Decision Number 65/PUU-XXI/2023 which allows political campaigns in government facilities and educational places continues to raise debate regarding norms. This discussion is not only limited to pro and con arguments regarding substantive and technical details when campaigns involve certain facilities but also concerns the nature and harmony of norms that are built in the judge's interpretation domain. The following are the results of the author's research regarding the inconsistency of Constitutional Judges in considering Decision Number 65/PUU-XXI/2023 as in the table below:

²⁴⁰ Theresa Yolanda Sirait et al., "Inconsistency in the Constitutional Court's Decision Regarding the Existence of the Corruption Eradication Commission as an Independent State Institution," *Nommensen Journal of Legal Opinion (NJLO)* 1, No. 1 (2020): 1, <http://ejournal.uhn.ac.id/index.php/opinion>.

Table 3.5
Inconsistencies in Constitutional Judges' Considerations in
Decision Number 65/PUU-XXI/2023

Judge's considerations	Author's Analysis
<p>In [3.11.2]²⁴¹ the Constitutional Justice stated that campaigns have an important role in the political ecosystem in Indonesia. However, the judge's considerations were contradictory as seen in [3.12]²⁴² where the judge seemed doubtful about the location of the campaign by stating that restrictions on the campaign needed to be made, especially regarding the location of the campaign. Constitutional judges argued that the campaign restrictions were to maintain <i>equality</i>.</p>	<p>The author's analysis shows that the judge had doubts regarding the importance of the campaign and the negative impact of the campaign that might occur if there were no restrictions on the campaign. The judge was inconsistent or ambiguous in concluding.</p>
<p>The judge did not consistently consider all places prohibited from carrying out election campaigns as requested by the applicant.</p>	<p>The author's final analysis is related to the inconsistency of Constitutional Justices in considering the three places prohibited from carrying out campaigns, namely places of worship, government facilities, and places of education. The judge only looked at the place of worship when giving his consideration.²⁴³ If you look at Article 280 paragraph (1) letter h, the Constitutional Justices should also consider the prohibition of campaigning in government facilities and educational places. These two places should be</p>

²⁴¹ See [3.11.2] pages 38-39 Constitutional Court Decision Number 65/PUU-XXI/2023.

²⁴² See [3.12] pages 39-40 Constitutional Court Decision Number 65/PUU-XXI/2023.

²⁴³ See [3.13] page 40 Constitutional Court Decision Number 65/PUU-XXI/2023.

	worthy of consideration because there are concerns that they will also damage neutrality in the context of elections.
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The author views that Constitutional Justices in deciding Decision Number 65/PUU-XXI/2023 have two options, namely the first is campaigning as political education and the second is the neutrality and integrity of the campaign in the context of elections which must be maintained.²⁴⁴In the end, the Constitutional Justices chose campaign neutrality. If viewed from an Islamic perspective, the judge's view in choosing the two options above can be linked or based on one of the rules of *ushul fiqh*, namely *درء المفساد مقدم علي جلب المصالح* which means leaving damage is more important than taking benefit.²⁴⁵ It can be interpreted that maintaining neutrality in election campaigns must take precedence over campaigns such as political education.

The author also saw several errors in citing articles made by the applicant but was not reprimanded by the Constitutional Justices until the decision had been read. Mistakes in citing articles should be corrected by the judge at the preliminary examination hearing so that

²⁴⁴ A Fahrur Rozi. "Normal Discourse in Constitutional Court Decisions on Political Campaigns." Detiknews, 2023. <https://news.detik.com/kolom/d-7034063/disurus-norma-dalam-angkatan-mk-soal-kampanye-politik>.

²⁴⁵ The rules of Dar'ul Mafasid Muqaddamu Ala Jalbi Masholih, this is a rule derived from the main fihiyyah rule, namely Ad-Dhararu Yuzaluu, this rule means that if two things happen, mafsadat and maslahah, then preventing mafsadah is more important than seeking goodness or benefit. The basis in Sharia comes from maslahah and mafsadat. Saipul Nasution et al., "Online Game Law in the Rules of 'Dar'Ul Mafasid Muqaddamu 'Ala Jalbil Masholih,'" *Journal of Indonesian Comparative of Sharia Law* 4, No. 1 (2021): 7.

they can be corrected by the Petitioners at the petition revision hearing.

The author has examined this in the following table:

Table 3.6
Inconsistencies in the Basis of the Petitioner's Application in
Decision Number 65/PUU-XXI/2023

Basis of the Petitioner's Application	Author's Analysis
In the section "Legal Position and Constitutional Disadvantages of the Petitioner," there is an error in citing the law. This error is contained in number 6 where the Petitioner quotes the legal position in Article 51 paragraph (1) letter a of Law Number 23 of 2004. ²⁴⁶	The results of the author's study of Law Number 23 of 2004 are regulations regarding the Elimination of Domestic Violence and have absolutely no relevance to the applicant's position in <i>the judicial review</i> at the Constitutional Court. What should be quoted is Article 51 paragraph (1) letter an Author of Law Number 24 of 2003 concerning the Constitutional Court. ²⁴⁷ This error was not corrected until the trial verdict was read out.
In number 14 "Principal of the Petition" the Petitioner quoted several numbers from Attachment II to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, namely numbers 176, 177, 178, and 186. The ²⁴⁸ quotation error is that number 176 ²⁴⁹ has been changed	After the amendment to number 176 as stated in Law Number 13 of 2022, it reads: " <i>The explanation functions as an official interpretation for those forming Legislative Regulations regarding certain norms in the body. Therefore, explanations</i>

²⁴⁶ See number 6 page 6 "That to measure whether the Petitioners have legal standing as intended in Article 51 paragraph (1) letter a of Republic of Indonesia Law Number 23 of 2004..." Constitutional Court Decision Number 65/PUU-XXI/2023.

²⁴⁷ See Article 51 paragraph (1) letter a: The applicant is a party who considers their constitutional rights and/or authority to be impaired by the enactment of the law, namely: a. individual Indonesian citizens; b. the unity of the customary law community as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; c. public or private legal entity; or d. state institutions. Law Number 24 of 2003 concerning the Constitutional Court.

²⁴⁸ See number 14 page 14 of Constitutional Court Decision Number 65/PUU-XXI/2023.

²⁴⁹ See item 176: "The explanation functions as an official interpretation for the makers of Legislative Regulations on certain norms in the body. Therefore, the explanation only contains

<p>according to the Law. Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.</p>	<p><i>only contain descriptions of foreign words, phrases, sentences, or equivalent words/terms in the norm which can be accompanied by examples. Explanations must not contain norms because explanations as a means of clarifying norms in the body must not result in ambiguity from the norm in question ”.</i>²⁵⁰</p> <p>According to the author, the essence of the content is not much different, but the author regrets that the error was not corrected until the verdict was read.</p>
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Based on the description above, the judge's inconsistency can be seen from his considerations, especially not explaining the three places where campaigning is prohibited as the main point of the Petitioners' petition as well as the error of the Constitutional Court Judge who was not careful in citing the applicant's article or law in its legal standing so that the matter remained in the wrong position until the decision. read. The author regrets the judge's inconsistency in granting a decision outside the request but does not explain whether each aspect of the request has legal grounds or not.²⁵¹

descriptions of words, phrases, sentences or equivalents of foreign words/terms in the norm which can be accompanied by examples. Explanation as a means of clarifying norms in the body must not result in unclerness of the norms in question." Law Number 12 of 2011 concerning the Formation of Legislative Regulations. State Gazette of the Republic of Indonesia of 2011 Number 82 and Supplement to State Gazette of the Republic of Indonesia Number 5234.

²⁵⁰ Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

²⁵¹ See [3.16] page 47: "Because of the norms of Article 280 paragraph (1) letter h of Law 7/2017, even though the unconstitutionality of the Article a quo norms is not appealed by the Petitioners,

because the a quo norms are closely related to the explanation that will be stated in the verdict is unconstitutional, so for the purposes of the election campaign, the norm of Article 280 paragraph (1) letter h of Law 7/2017 which states, 'using government facilities, places of worship and places of education' is contrary to the 1945 Constitution if it does not exclude government facilities and places education as long as it has permission from the person in charge of the place in question and is present without election campaign attributes. "Thus, the full norms of Article 280 paragraph (1) letter h of Law 7/2017 will be interpreted as in the *a quo* decision." Constitutional Court Decision Number 65/PUU-XXI/2023.

CHAPTER IV

CLOSING

A. Conclusion

1. The Constitutional Justices' considerations in Decision Number 65/PUU-XXI/2023 emphasized restrictions on the implementation of campaigns, one of which was restrictions on campaign venues. Based on Article 280 paragraph (1) of the Election Law letter h, three places are prohibited from carrying out election campaigns, one of which is a place of worship. In providing its considerations, the Constitutional Court uses an interpretation method according to its needs. Meanwhile, in Decision Number 65/PUU-XXI/2023, the judge used 3 methods of constitutional interpretation, namely: textual, historical, and doctrinal interpretation. The judge's considerations prioritize sociological aspects, considering that the election campaign is part of the community's political education and is part of the activities of the democratic party in Indonesia.
2. *The ratio decidendi* of Constitutional Justices in Decision Number 65/PUU-XXI/2023 has two conclusions. *Firstly*, the judge has outlined similar previous norms regarding the regulation of campaign prohibitions which have the same editorial and are used as the basis for setting subsequent norms. However, there is a conflict between the main norm, namely Article 280 paragraph (1) letter h of the Election Law and its Explanation, giving rise to legal uncertainty, so the judge's middle

way is to include some exceptions in Article 280 paragraph (1) letter h of the Election Law. The exceptions are based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations. *Second*, the judge's *ratio decidendi* viewed from *siyasah dusturiyah* in Muhammad Iqbal's view has the similarity that the constitution guarantees the rights of every citizen. *Siyasah dusturiyah* considers this decision to be by the principles of justice and equality. The Constitution is the highest law, so every regulation that is made must be in harmony with the provisions contained in the Constitution, without conflict with the principles set out in it.

3. The Petitioner's *legal standing* in proceedings at the Constitutional Court is regulated in Article 51 paragraph (1) letter a and the Petitioner must prove that his constitutional rights have been impaired by the enactment of the law. The Petitioner in Constitutional Court Decision Number 65/PUU-XXI/2023 has fulfilled the *legal standing requirements* as intended and outlined the constitutional disadvantages. The Petitioner feels disadvantaged regarding the Elucidation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning Elections. The *rationale for* the Constitutional Court issuing Decision Number 65/PUU-XXI/2023 is to create legal certainty over the ambiguity between the basic norm, namely Article 280 paragraph (1) letter h and its contradictory explanation. However, if we examine it more deeply, there are inconsistencies in the judge's considerations and

the basis of the applicant's application. The judge was inconsistent in describing the three places where campaigning was prohibited as the main point of the Petitioners' petition. Based on his petition, the Petitioner cited incorrect articles twice, but this was not corrected until the decision was read.

B. Suggestion

1. Constitutional justices should consider the applicant's arguments (as a whole) so that judges can give their consideration not only to places of worship but also to government facilities and places of education through the method of interpreting the Constitution. The judge must also look at the facts on the ground regarding the implementation of the previous campaign so that he can consider more deeply the places where the campaign is prohibited.
2. The theory of *siyasaah dusturiyah* by Muhammad Iqbal can be the view of judges when giving considerations. This theory upholds the Constitution which protects the rights of citizens. In providing legal considerations, judges should be firm regarding prohibitions on basic norms. Focusing on the ban on campaign venues will eliminate the ambiguity of the underlying norm by its explanation.
3. The Constitutional Court judge should provide a complete explanation and consideration as per the applicant's argument so that the reasons partially granted in Decision Number 65/PUU-XXI/2023 are based on law. Apart from that, the Petitioner in proceedings at the Constitutional

Court must be more careful in quoting articles because the law is dynamic and changes. The judge should also check and notify errors in citing articles or other errors apart from errors in citing articles used as touchstones at the preliminary examination hearing so that when the decision is read there are no errors due to carelessness.

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