

**EVALUATION OF THE PURCELL PRINCIPLE TOWARDS
STRENGTHENING THE DESIGN OF THE JUDICIAL POWER
SYSTEM IN INDONESIA FROM THE PERSPECTIVE
OF SADD ADZ-DZARIAH**

THESIS

Compiled by:

Irma Aminullah

NIM 210203110044



CONSTITUTIONAL LAW STUDY PROGRAM (SIYASAH)

FACULTY OF SHARIA

MAULANA MALIK IBRAHIM STATE ISLAMIC

UNIVERSITY MALANG

2025

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STATEMENT OF AUTHENTICITY OF THESIS

For the sake of Allah SWT,

With awareness and a sense of responsibility for scientific development, the author stated that the thesis with the title:

EVALUATION OF THE PURCELL PRINCIPLE TOWARDS STRENGTHENING THE DESIGN OF THE JUDICIAL POWER SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF SADD ADZ-DZARIAH

It is really a thesis that is prepared by itself based on the rules of writing scientific papers that can be accounted for, not duplicated or transferred other people's works, except as mentioned by reference, whether listed in footnotes or bibliographies. If later this thesis research is the result of plagiarism of other people's works, either partially or in whole, then this thesis as a prerequisite for getting a bachelor's degree title is declared null and void.

Malang, 05 February 2025



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APPROVAL PAGE

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EVALUATION OF THE PURCELL PRINCIPLE TOWARDS STRENGTHENING THE DESIGN OF THE JUDICIAL POWER SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF SADD ADZ-DZARIAH

Therefore, the supervisor stated that the thesis had met the scientific requirements to be submitted and tested by the Board of Examiners.

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It	Day/Date	Consultation Materials	Signature
1.	Friday/27-9-2024	Discussion of Thesis Proposal Title and Layout	
2.	Wednesday/9-10-2024	Discussion of Title and Revision of Thesis Proposal	
3.	Tuesday/4-11-2024	Revision of Thesis Proposal	
4.	Wednesday/7-11-2024	ACC Thesis Proposal	
5.	Tuesday/9-12-2024	Discussion of Proposal Seminar Results	
6.	Tuesday/16-12-2024	Thesis Outline Discussion	
7.	Friday/19-12-2024	ACC Thesis Outline	
8.	Wednesday/8-1-2025	Discussion and Discussion of Problem Formulation 1	
9.	Tuesday/13-1-2025	Discussion and Revision of Problem Formulation 1 and 2	
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12.	Tuesday/4-2-2025	Discussion and Revision of the Grand Design Problem Formulation 3	
13.	Wednesday/5-2-2025	ACC Thesis	

Hapless, 05 February 2025

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EVALUATION OF THE PURCELL PRINCIPLE TOWARDS STRENGTHENING THE DESIGN OF THE JUDICIAL POWER SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF SADD ADZ-DZARIAH

Have been declared **PASSED** with the following grades: **93 (A)**

Examiner:

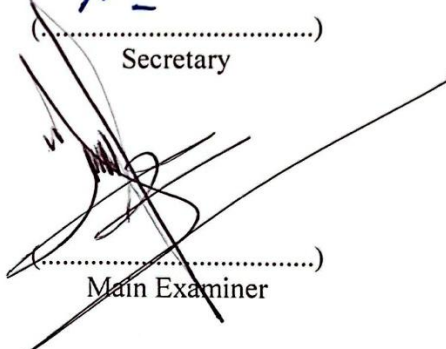
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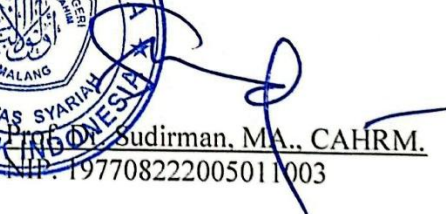

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MOTTO

الْقَضَاءُ ثَلَاثَةٌ: قَاضِيَانِ فِي النَّارِ، وَقَاضٍ فِي الْجَنَّةِ، رَجُلٌ قَضَى بِعَيْرِ الْحَقِّ فَعَلِمَ ذَاكَ فَذَاكَ فِي النَّارِ،

وَقَاضٍ لَا يَعْلَمُ فَأَهْلَكَ حُقُوقَ النَّاسِ فَهُوَ فِي النَّارِ، وَقَاضٍ قَضَى بِالْحَقِّ فَذَاكَ فِي الْجَنَّةِ

"There are three judges: two in hell and one in heaven. The judge who decides the law incorrectly, while he knows it, is in hell. A judge who does not know the truth (ignorance), so that he deprives others of their rights, then he is in hell. The judge who decides the law with the truth, then he is in heaven."

-HR. At-Tirmidzi-

"The law always limits every power it gives"

- David Hume-

"Integrity is the knot for every goodness. Hold on tightly, because letting go of it is the same as opening the way to commit tyranny"

- Prof. Dr. H. Muhammad Syarifuddin, S.H., M.H.-

TRANSLITERATION GUIDELINES

A. Common

Transliteration is the transfer of Arabic into Indonesian or Latin, not Arabic to Indonesian translation. Included in this category are Arabic names from Arabs, while Arabic names from non-Arabic nations are written according to the spelling of their national language, or as written in books as a reference. Writing book titles in footnotes and bibliographies, still use this transliter.

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

B. Consonant

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

Arabic Letters	Name	Latin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Baby
ت	Ta	T	Te
ث	Ša	Š	Ice (Dot above)
ج	Jim	J	Je
ح	Ĥa	Ĥ	Ha (Point above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De

ذ	Ẓ	Ẓ	Zet (Dot above)
ز	Ra	R	Er
ش	Zai	Z	Zet
ض	Sin	S	Ice
ش	Coins	Sy	Es and Ye
ص	Ṣad	Ṣ	Ice (Point Below)
ض	Ḍad	Ḍ	De (Dot Below)
ط	Ṭa	Ṭ	Te (Dot Below)
ظ	Ẓa	Ẓ	Zet (Point Below)
ع	ʿAin	ʿ..... ..	Inverted Apostrof
غ	Gain	G̣	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
و	Mim	M	Em
ن	Nun	N	En
و	Wade	W	We
هـ	Ha	H	Ha
أ/ء	Hamzah‘	Apostrof
ي	Yes	Y	Ye

Hamzah (أ) which is located at the beginning of the word follows its vowel without being given any signs. If it is located in the middle or at the end,

then it is written with a sign (‘).

C. Vocal, Long, and Diphthong

Each Arabic writing in the form of vocal fathah is written with "a", kasrah with "i", dlommah with "u", while the long readings are written in the following way:

- a. The vowel (a) length = â e.g. قال becomes qâla
- b. Vowel (i) length = î e.g. قيل becomes qîla
- c. Long vowel (û) = û e.g. دون becomes dûna

Especially for the reading of yes" nisbat, it should not be replaced with "i", but it should still be written with "iy" so that it can describe yes" nisbat at the end. Likewise for the sound of diphthong, wawu and ya" after fathah is written with "aw" and "ay". Consider the following example:

- a. Diphthong (aw) = ء e.g. قول becomes qawlun
- b. Diphthong (ay) = ي e.g. خير becomes an imaginary

D. Ta'marbûthah

Ta'marbûthah is transliterated with a "t" in the middle of the sentence, but if the ta'marbuthah is at the end of the sentence, then it is transliterated using "h" for example الرسالة المدرسة to al- risalat li al- mudarrisah, or if it is in the middle of a sentence consisting of the order of mudlaf and mudlaf ilayh, then it is transliterated using a "t" connected with the next sentence, for example في رحمة هلا becomes fi rahmatillâh.

E. Said Sandang and Lafadz Al-Jalâlah

The suffix in the form of "al" is written in lowercase letters, except at the beginning of the sentence, while the "al" in the lafadh jalalah that is in the middle of the sentence is leaned against (idhafah) and is omitted. Consider the following example example:

1. Al-Imâm Al-Bukhâriy says...
2. Al-Bukhâriy in his muqaddimah explains...
3. Masyâ" Allâh kâna wâ lam yasya" lam yakun.
4. Billah,, azza wa jalla.

F. Indonesian Arabic Names and Words

In principle, every word that comes from Arabic must be written using the transliteration system. If the word is an Arabic name from an Indonesian or an Arabic language that has been Indonesian, it does not need to be written using a transliteration system. Consider the following example:

“... Abdurahman Wahid, the former fourth president of the Republic of Indonesia, and Amin Rais, former chairman of the People's Consultative Assembly (MPR) at the same time, have made an agreement to eliminate nepotism, collusion and corruption from the face of Indonesia, one of the ways is through intensifying prayers in various government offices, but...”

Pay attention to the writing of the names "Abdurahman Wahid", "Amin Rais" and the word "salat" written using Indonesian writing procedures that are adjusted to the writing of the name. Even though the word comes from Arabic, it is in the form of a name from an Indonesian and has been Indonesian, for that it is written in the way of "Abd al-Rahman Wahid", "Amin Rais", and not written "shalât".

FOREWORD

Bismillahirrahamanirrahim,

All praise be to Allah SWT for His grace and grace so that the researcher can complete the writing of the thesis entitled "EVALUATION OF THE PURCELL PRINCIPLE TOWARDS STRENGTHENING THE DESIGN OF THE JUDICIAL POWER SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF SADD ADZ-DZARIAH." Prayers and greetings may always be bestowed on the Prophet Muhammad PBUH who has freed us from the shackles of the age of ignorance . The preparation of this thesis aims to meet one of the requirements to obtain a Bachelor of Law degree in the Constitutional Law Study Program, Faculty of Sharia, UIN Maulana Malik Ibrahim Malang.

The author received a lot of help from teaching, guidance, and direction from various parties both directly and indirectly during the process of making this thesis. For this reason, the author would like to express his infinite gratitude to:

1. Prof. Dr. M. Zainuddin, M.A, as the Rector of the State Islamic University of Maulana Malik Ibrahim Malang.
2. Prof. Dr. Sudirman, M.A., as the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang.
3. Dr. Musleh Herry, S.H., M.Hum., as the Head of the Constitutional Law Study Program, Maulana Malik Ibrahim State Islamic University, Malang.
4. Dr. Mustafa Lutfi, S.Pd., S.H., M.H., as a supervisor who has spent time in the midst of his busyness, provides criticism, suggestions and directions so that the author can complete the writing of this thesis well. Thank you for being patient and willing to share knowledge with the author. The knowledge provided is very meaningful as a provision for future writers.
5. The entire board of examiners, who have given constructive criticism and provided direction in improving the shortcomings contained in this study.
6. Irham Bashori Hasba, M.H. as the author's guardian lecturer while studying at the Constitutional Law Study Program, Maulana Malik Ibrahim State Islamic University, Malang. The author would like to thank you for the guidance and direction provided during the beginning of the lecture process until the end of the lecture period.

7. All lecturers of the Faculty of Sharia, all employees, and staff of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang who cannot be mentioned one by one, without reducing the respect the author would like to express his gratitude for his knowledge, advice, and guidance during the learning process.
8. To his beloved parents, Wasil Musthofa and Susilowati. The author would like to thank you for your prayers and hard work so that the author can pursue higher education. Thank you for the affection and love that has always been poured out to the writer so far. They are just ordinary parents, not someone who is educated and not a person who has enough but he is willing to ignore the tiredness so that his only daughter can get a proper education. Thank you ladies and gentlemen for all the sacrifices you have fought. Thank you for being willing to migrate until the hand is now rough and full of wounds due to the heat of cement and building lime in order to make the writer not feel any relief. Thank you Umik for all the attention and prayers that never stop for the smooth running of every step that the author takes. There is no one more beloved by the writer than him. May Allah SWT always give health and protection.
9. To the big family of the Law Debate Community and the Innovation Student Press Activity Unit. Thank you for your valuable knowledge and experience, thank you for being a means for the writer to expand relationships and develop talents during the lecture process.
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11. Thank you to the friends of the Constitutional Law (siyasah) class of 2021, who have become the author's comrades during the lecture period. May

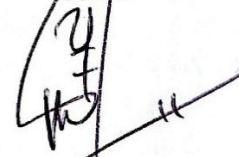
Allah make it easier to achieve hopes and aspirations in the future.

12. Finally, the author would like to thank myself for trying and being able to survive to this point, an only child who is full of ambition to achieve goals for the welfare of the family. May Allah SWT grant all wishes and make all affairs easier in the future, amen.

May all the goodness that you have done to you, mothers, brothers and friends be repaid with greater goodness by Allah SWT. The author realizes that this thesis is not perfect, both in terms of substance and in terms of presentation due to the limitations of the author's ability. Therefore, all suggestions and criticisms are highly expected by the author for the perfection of this thesis. Hopefully the thesis that the author compiled can be used as reference material and reading material so that it can be useful for all elements of society.

Malang, 05 February 2025

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ABSTRACT

Irma Aminullah. NIM 210203110044. "Evaluation of the Purcell Principle towards Strengthening the Design of the Judicial Power System in Indonesia from the Perspective of *Sadd Adz-Dzariah*". Thesis. Constitutional Law (Siyasah) Study Program. Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Advisor : Dr. Mustafa Lutfi, S.Pd., S.H., M.H.

Keywords : Purcell Principle; Judicial Power; *Sadd Adz-Dzariah*.

The Purcell principle evaluation was carried out in an effort to strengthen the design of the judicial power system as an independent institution, so that the Purcell principle evaluation is a necessity. The main focus of this research includes: 1) Analyzing the existing legal application of the Purcell principle in the judicial power system in Indonesia; 2) Identifying the suitability of judicial decisions in Indonesia based on the Purcell principle; 3) Formulating and offering the concept of applying the Purcell principle to strengthen the design of the judicial system in Indonesia in the future based on the perspective of *sadd adz-dzariah*.

The type of research method used is normative juridical, with 3 approach methods, namely statute approach, conceptual approach, case approach, and comparative approach. All legal materials (primary, secondary, tertiary) are analyzed using qualitative juridical analysis methods.

The results and findings of this study are 1) The legal existing application of the Purcell principle is based on the authority of the Supreme Court and the Constitutional Court as judicial review institutions as regulated in Article 24A paragraph (1) of the 1945 Constitution in conjunction with Article 31 paragraph (1) of the Supreme Court Law and Article 24C of the 1945 Constitution in conjunction with Article 10 paragraph (1) of the Constitutional Court Law. Evaluation of the Purcell principle is needed to realize legal certainty in elections in accordance with the provisions of Article 3 in conjunction with Article 4 of Law No. 7 of 2017 concerning Elections and as a form of caution so that the Supreme Court and the Constitutional Court do not judicialize politics during the election period caused by the shift in the function of the Supreme Court and the Constitutional Court as positive legislatures. Therefore, judges must have a standard for reviewing cases during the election period as a parameter for when judges must be involved and when judges must refrain from making changes to election and regional election regulations.; 2) The Purcell principle evaluation of the Supreme Court and Constitutional Court decisions during the 2024 election period shows the inconsistency of the judicial power in applying the Purcell principle case review standards which have implications for the opening of opportunities for judicial intervention which are indicated by violations of the judge's code of ethics. This condition can cause chaos and a crisis of integrity for a judge, so that a time limit is needed for judges in carrying out legislative practices during the election period; 3) The concept offered in this study is in line with *sadd adz-dzariah*, where an activity that was initially permitted must be prevented if in practice it causes chaos. The recommendation in this study is the need to limit legislative practices during the election period by revising Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which is based on the concept in America, Brazil, and Mexico. Future suggestions to strengthen the design of the judicial power system are the need for SOPs for resolving cases during the election period, transparent and accountable judge selection mechanisms to produce more independent judges so as to avoid chaos, and strengthening the integrity, impartiality, and code of ethics of judges by optimizing supervision by the KY and MKMK.

ABSTRAK

Irma Aminullah. NIM 210203110044. “Evaluasi Purcell Principle Terhadap Penguatan Design Sistem Kekuasaan Kehakiman di Indonesia Perspektif Sadd Adz-Dzariah”. Skripsi. Program Studi 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 : Purcell Principle, Kekuasaan Kehakiman, *Sadd Adz-Dzariah*.

Evaluasi *purcell principle* dilakukan dalam upaya untuk memperkuat *design* sistem kekuasaan kehakiman sebagai lembaga *independent*, sehingga evaluasi *purcell principle* merupakan suatu keniscayaan. Fokus utama penelitian ini meliputi: 1) Menganalisis legal *existing* penerapan *purcell principle* dalam sistem kekuasaan kehakiman di Indonesia; 2) Mengidentifikasi kesesuaian putusan kekuasaan kehakiman di Indonesia berdasarkan *purcell principle*; 3) Merumuskan dan menawarkan konsep penerapan *purcell principle* terhadap penguatan *design* sistem kekuasaan kehakiman di Indonesia ke depan berdasarkan perspektif *sadd adz-dzariah*.

Jenis metode penelitian yang digunakan ialah yuridis normatif, dengan 3 metode pendekatan yakni *statute approach*, *conceptual approach*, *case approach* dan *comparative approach*. Seluruh bahan hukum (primer, sekunder, tersier) dianalisis melalui metode analisis yuridis kualitatif.

Hasil dan temuan penelitian ini adalah 1) Legal *existing* penerapan *purcell principle* berdasarkan pada kewenangan MA dan MK sebagai lembaga *judicial review* yang diatur dalam Pasal 24A ayat (1) UUD 1945 *jo*. Pasal 31 ayat (1) UU MA dan Pasal 24C UUD 1945 *jo*. Pasal 10 ayat (1) UU MK. Evaluasi *purcell principle* diperlukan untuk mewujudkan kepastian hukum pemilu sesuai dengan ketentuan Pasal 3 *jo*. Pasal 4 UU No. 7 Tahun 2017 tentang pemilu dan sebagai bentuk kehati-hatian agar MA dan MK tidak melakukan yudisialisasi politik pada masa pemilu yang disebabkan oleh pergeseran fungsi MA dan MK sebagai *positive legislature*. Karena itu, hakim harus memiliki standar peninjauan perkara pada masa pemilu sebagai parameter kapan hakim harus terlibat dan kapan hakim harus menahan diri dalam melakukan perubahan terhadap peraturan pemilu dan pilkada; 2) Evaluasi *purcell principle* terhadap putusan MA dan MK pada masa pemilu 2024 menunjukkan adanya inkonsistensi kekuasaan kehakiman dalam menerapkan standar peninjauan perkara *purcell principle* yang berimplikasi pada terbukanya peluang intervensi kekuasaan kehakiman yang terindikasi adanya pelanggaran kode etik hakim. Kondisi tersebut dapat menyebabkan *chaos* dan krisis integritas seorang hakim, sehingga dibutuhkan rambu batasan waktu bagi hakim dalam melakukan praktik legislasi pada masa pemilu; 3) Konsep yang ditawarkan dalam penelitian ini selaras dengan *sadd adz-dzariah*, dimana suatu kegiatan yang awalnya diperbolehkan harus diupayakan pencegahannya apabila dalam praktiknya menimbulkan kekacauan. Adapun rekomendasi dalam penelitian ini adalah perlunya pembatasan praktik legislasi pada masa pemilu dengan merevisi Pasal 10 ayat (1) UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman yang berkaca pada konsep di negara Amerika, Brazil, dan Meksiko. Saran kedepannya untuk menguatkan *design* sistem kekuasaan kehakiman adalah perlu adanya SOP penyelesaian perkara pada masa pemilu, mekanisme seleksi hakim yang transparan dan akuntabel untuk menghasilkan hakim yang lebih mandiri sehingga menghindari *chaos*, dan penguatan integritas, impralitas, serta kode etik hakim dengan mengoptimalkan pengawasan oleh KY dan MKMK.

خلاصة

إرما أمين الله. 210203110044 تقييم مبدأ بورسيل من أجل تعزيز تصميم نظام السلطة القضائية في إندونيسيا من منظور سد أدز دزاريا. الأطروحة. برنامج دراسة قانون إدارة الدولة (السياسة). كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: الدكتور مصطفى لطفي، د. مصطفى لطفي، دكتوراه في الشريعة الإسلامية

الكلمات المفتاحية: مبدأ بورسيل، السلطة القضائية، سد الدزارية

تم إجراء تقييم مبدأ بورسيل في محاولة لتعزيز تصميم نظام السلطة القضائية كمؤسسة مستقلة، بحيث أصبح تقييم مبدأ بورسيل ضرورة. يتضمن التركيز الرئيسي لهذا البحث ما يلي: (1) تحليل التنفيذ القانوني الحالي لمبدأ بورسيل في نظام السلطة القضائية في إندونيسيا؛ (2) تحديد مدى ملاءمة القرارات القضائية في إندونيسيا استناداً إلى مبدأ بورسيل؛ (3) صياغة وتقديم مفهوم تطبيق مبدأ بورسيل لتعزيز تصميم النظام القضائي في إندونيسيا في المستقبل استناداً إلى منظور سادز دزاريا.

ونوع طريقة البحث المستخدمة هو المنهج القانوني المعياري، مع 3 طرق مقارنة، وهي المنهج التشريعي، والمنهج المفاهيمي، والمنهج القضائية، والمنهج المقارن. ويتم تحليل جميع المواد القانونية (الابتدائية والثانوية والثالثية) باستخدام أساليب التحليل القانوني النوعي.

نتائج واستنتاجات هذا البحث هي (1) يعتمد التطبيق القانوني الحالي لمبدأ بورسيل على سلطة المحكمة العليا والمحكمة الدستورية كمؤسستين للمراجعة القضائية على النحو الذي تنظمه المادة 24 الفقرة (1) من دستور عام 1945. المادة 31 الفقرة (1) من قانون المحكمة العليا والمادة 24 ج من دستور 1945 جو. المادة (10) فقرة (1) من قانون المحكمة الدستورية. يعد تقييم مبدأ بورسيل ضرورياً لتحقيق اليقين القانوني في الانتخابات وفقاً لأحكام المادة 3 جو. المادة 4 من القانون رقم 7 لسنة 2017 بشأن الانتخابات وكنوع من الحذر حتى لا تقوم المحكمة العليا وعضو الكنيست بإضفاء الشرعية على السياسة خلال فترة الانتخابات وهو ما سببه التحول في وظيفة المحكمة العليا وعضو الكنيست كهيئات تشريعية إيجابية. لذلك، يجب أن يكون لدى القضاة معايير لمراجعة القضايا خلال فترة الانتخابات كمعايير لتحديد متى يجب أن يشارك القضاة ومتى يجب على القضاة الامتناع عن إجراء تغييرات على لوائح الانتخابات والانتخابات الإقليمية؛ (2) يظهر تقييم مبدأ بورسيل لقرارات المحكمة العليا والمحكمة الدستورية خلال فترة انتخابات 2024 أن هناك عدم اتساق في السلطة القضائية في تطبيق معايير مراجعة القضايا لمبدأ بورسيل، مما له انعكاسات على فتح باب الحاجة إلى تدخل السلطة القضائية إذا كانت هناك مؤشرات على وجود مخالفات لمدونة أخلاقيات القاضي. يمكن أن يسبب هذا الوضع فوضى وأزمة في نزاهة القاضي، لذلك هناك حاجة إلى حدود زمنية للقضاة للقيام بالممارسات التشريعية خلال فترة الانتخابات؛ (3) إن المفهوم المطروح في هذه الدراسة يتماشى مع ما جاء في صدر الشريعة حيث يجب منع النشاط المسموح به مبدئياً إذا كان في إن المفهوم المقدم في هذا البحث يتماشى مع السد الدزارية، حيث يجب منع النشاط المسموح به في البداية إذا كان يسبب الفوضى في الممارسة العملية. أما التوصية في هذا البحث فهي ضرورة الحد من الممارسات التشريعية خلال فترة الانتخابات من خلال مراجعة الفقرة (1) من المادة 10 من القانون رقم 10 لسنة 2018 بشأن الانتخابات. القانون رقم 48 لسنة 2009 في شأن السلطة القضائية وهو ما يعكس المفهوم في أمريكا والبرازيل والمكسيك. تشمل الاقتراحات المستقبلية لتعزيز تصميم نظام السلطة القضائية الحاجة إلى إجراءات تشغيلية موحدة لحل القضايا خلال فترة الانتخابات، وآلية اختيار قضاة شفافة وخاضعة للمساءلة لإنتاج قضاة أكثر استقلالية لتجنب الفوضى، وتعزيز نزاهة وحياد وأخلاقيات القضاة من خلال تحسين الإشراف من قبل KY وMKMK

TABLE OF CONTENTS

STATEMENT OF AUTHENTICITY OF THESIS	ii
APPROVAL PAGE	iii
PROOF OF CONSULTATION.....	iv
VERIFICATION PAGE.....	v
MOTTO	vi
TRANSLITERATION GUIDELINES.....	vii
FOREWORD.....	xi
ABSTRACT	xiv
ABSTRAK	xv
خلاصة.....	xvi
TABLE OF CONTENTS.....	xvii
TABLE LIST	xx
IMAGE LIST.....	xxi
CHAPTER 1 INTRODUCTION	1
A. Background	1
B. Problem Formulation.....	19
C. Research Objectives	19
D. Research Benefits.....	19
1. Theoretical Benefits	19
2. Practical Benefits	20
E. Research Methods.....	20
1. Type of Research	20
2. Research approach	21
3. Types and Sources of Legal Materials.....	24
4. Methods of Collecting Legal Materials	26

5. Legal Material Analysis Method.....	27
F. Previous Research.....	28
G. Systematics of Discussion.....	34
CHAPTER II LITERATURE REVIEW.....	37
A. Operational Definition.....	37
B. Theoretical Framework.....	39
1. Sadd Adz-Dzariah.....	39
2. Chaos Theory.....	42
3. Integrity Theory.....	44
CHAPTER III RESULTS AND DISCUSSION.....	48
A. Legal Existing Application of Purcell Principle in Indonesia.....	48
1. The Rationality of Limiting the Political Judicialization of Judicial Power in Maintaining Election Stability in Indonesia.....	50
2. Legal Examination of the Application of the Purcell Principle in the Judicial Power System in Indonesia.....	57
3. Legal Politics of the Application of the Purcell Principle in the Judicial Power System in Indonesia.....	62
B. Evaluation of Judicial Power Decisions in Indonesia Based on the Purcell Principle.....	68
1. The Phenomenon of Changes in Election Regulations Ahead of the 2024 Election.....	71
2. The Implications of Legislation Product Practice in Judicial Review Efforts Related to Election Regulations at the Time the Election Stage Has Begun Reviewed from the Theory of Integrity.....	82
3. Law Development Strengthening the Design of Judicial Power in Indonesia: Chaos Theory Perspective.....	97
C. The Ideal Concept of the Application of the Purcell Principle to Strengthen the Design of the Judicial Power System in the Future Based on the Perspective of Sadd Adz-Dzariah.....	104
1. The Relevance of the Application of the Purcell Principle to the Strengthening of the Design of the Judicial Power System in Indonesia with the Concept of Sadd Adz-Dzariah.....	105
2. Models for the Application of the Purcell Principle in Other Countries.....	112

3. A New Paradigm of the Application of the Purcell Principle as Ius Constituendum in Strengthening the Design of the Judicial Power System in Indonesia.....	122
A. Conclusion	128
B. Suggestion.....	130
BIBLIOGRAPHY	132
CURRICULUM VITAE	144

TABLE LIST

Table 1. 1 Tabulation of the Purcell Principle Evaluation of the Supreme Court and Constitutional Court Decisions that were decided during the 2024 Elections and Regional Elections	12
Table 1. 2 Previous Research.....	28
Table 3. 1 Tabulating Laws With the Highest Frequency of Material Tests Year 2024.....	55
Table 3. 2 Tabulating the Evaluation of the Purcell Principle on Supreme Court and Constitutional Court Decisions in Indonesia 2024.....	78
Table 3. 3 Tabulation Validation of Intervention in Power	86
Table 3. 4 Tabulation of the Code of Ethics for Supreme Court and Constitutional Court Judges.....	89
Table 3. 5 Tabulation of Judges' Ethical Violations in the 2024 Election Period..	90
Table 3. 6 Tabulation of the Supreme Court of United States Decision Citing Purcell	115
Table 3. 7 Tabulation of the Application of the Purcell Principle in Other Countries	122

IMAGE LIST

Figure 3. 1 Purcell Principle Standard of Case Review in the United States.....	65
Figure 3. 2 Chaos Theory Benchmark Against the Condition of Judicial Power During The 2024 Election and Regional Elections.....	100
Figure 3. 3 Relevance Sadd Adz-Dzariah with Purcell Principle	109
Figure 3. 4 The Urgency of Implementing the Purcell Principle.....	124
Figure 3. 5 Ilustration of Case Review During the 2024 Elections and Regional Elections.....	124
Figure 3. 6 New Paradigm of Purcell Principle Application Towards Strengthening the Design of Judicial Power System in Indonesia.	125

CHAPTER 1

INTRODUCTION

A. Background

The purcell principle¹ became the most powerful Electoral doctrine in the United States. The purcell principle prohibits court intervention ahead of the election by emphasizing that judges should not decide a case that results in changes to the provisions of general elections (elections) and regional head elections (pilkada) when the election and regional elections have taken place² with the aim of avoiding confusion among election organizers, political parties, candidates, and voters.³ U.S. Supreme Court Justice Kavanaugh⁴ stated that "The Purcell principle reflects the basic principles of the General Election Act, so when an election is near, the applicable rules must be clear and established. Delay in tampering with the General Election Law will only result in unforeseen and unfair disruption and consequences for candidates, political parties, and voters."

The basis for the application of the purcell principle has not been specifically regulated in Indonesian legislation, but this principle emphasizes the prohibition of interference in judicial power ahead of elections and regional elections so that the purcell principle is related to the independence and integrity of a judge. Independence and integrity are part of the judge's code of ethics, so judges as state officials must meet these standards as stated in Article 5 of Law Number 48 of 2009 concerning Judicial Power which states:⁵

¹ Application *Purcell Principle* It began in the case of *Purcell v Gonzales* in 2006, where the United States Supreme Court overturned a lower court order related to the blocking of the Arizona Voter Identity Act issued in the run-up to the election. See Danika Elizabeth Watson, 'Free and Fair: Judicial Intervention in Elections Beyond the Purcell Principle and Anderson-Burdick Balancing', *Fordham Law Review*, 90.2 (2021), 1001-1002.

² Rachael Houston argued that the application of *the purcell principle* was implemented in the range of 5 to 411 days before the election. If referring to this opinion, the provisions for elections in Indonesia can only be changed 411 days before February 14, 2024, namely December 30, 2022, and 411 days before November 27, 2024, namely October 13, 2024 in the regional elections.

³ Ruoyun Gao, 'Why the Purcell Principle Should Be Abolished', *Duke Law Journal*, 71.5 (2022), 1.

⁴ Rachael Houston, 'Does Anybody Really Know What Time Its Is?: How The US Supreme Court Defines "Time" Using The Purcell Principle', *Navada Law Journal*, 23.3 (2023), 788.

⁵ Article 5 "Law Number 48 of 2009 Concerning Judicial Power", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia No. 157 of 2009 and Supplement to Statute Book of the Republic of Indonesia No. 5076.

- (1) Judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that live in society.
- (2) Judges and constitutional judges must have integrity and personality that is irreproachable, honest, fair, professional, and experienced in the field of law.
- (3) Judges and constitutional judges are obliged to obey the Code of Ethics and the Code of Conduct for Judges.

The code of ethics for judges is further regulated in the Regulation of the Constitutional Court of the Republic of Indonesia Number: 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Conduct of Constitutional Judges⁶ and the code of ethics for judges of the Supreme Court in the Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 047/Kma/Skb/IV/2009 and the Chairman of the Judicial Commission of the Republic of Indonesia Number 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Guidelines for Behavior of Judges.⁷

Changing the provisions of the general election and regional elections when the stages have already begun will only raise public suspicion of the intervention of the judicial power, therefore, in order to maintain the integrity of the judicial power in the eyes of the public, the judicial institution should refrain from being involved in electoral politics and focus on its role as an enforcer of justice and supervisor of the hierarchy of laws and regulations. Constitutional Law Expert at Gajah Mada University, Yance Arizona⁸ stated, "The judiciary should limit itself to being involved in the electoral political process. Changes in provisions or laws approaching elections and regional elections will undoubtedly cause suspicion and confusion for voters, implementing institutions, or candidates who will register."

⁶ The code of ethics for constitutional judges consists of the principle of independence, the principle of impartiality, the principle of integrity, the principle of propriety and courtesy, the principle of equality, the principle of competence and equality, the principle of wisdom and wisdom. See in "Regulation of the Constitutional Court of the Republic of Indonesia Number: 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Behavior of Constitutional Judges" (2006).

⁷ The code of ethics for Supreme Court judges consists of behaving fairly, behaving honestly, behaving wisely and wisely, behaving independently, having high integrity, being responsible, upholding self-esteem, being highly disciplined, behaving humbly, and being professional. See in "Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 047/KMA/SKB/IV/2009 and Chairman of the Judicial Commission of the Republic of Indonesia No. 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges" (2009).

⁸ Editorial Team, "What is the Purcell Principle Regarding the Supreme Court's Decision on the Age Limit for the 2024 Regional Elections?," CNN Indonesia, 2024, <https://www.cnnindonesia.com/nasional/20240606124859-12-1106606/apa-itu-purcell-principle-terkait-putusan-ma-batas-usia-pilkada-2024/amp>. Retrieved 27 August 2024.

The principle of *ius curia novit*⁹ indicates that the judge is considered to know and understand all laws, so it implies that the court is prohibited from refusing, examining, and adjudicating a case. Does this mean that the purcell principle is contrary to this principle? The restraint referred to in the purcell principle is the question of how far the judge must test a policy. Self-restraint does not mean that judges should not or refuse to test a policy, but rather when and for what issues judges must exercise restraint. Judges must have a measure of the degree of authority they have as a parameter for when to act and when to refrain from being involved in changes in election and regional election provisions.

The purcell principle does not absolutely prohibit judges from changing the provisions of elections, the application of the purcell principle can basically be excluded if a decision is used to prevent any voter votes from being wasted.¹⁰ As is the case with ¹¹ the Constitutional Court Decision Number 80/PUU-XX/2022 on December 22, 2022 which gives the authority to the KPU to organize the electoral areas for members of the House of Representatives and provincial DPRD, which previously had the authority in the hands of the DPR. If the KPU is not given the authority through the Constitutional Court's decision, the voters' votes to elect their representatives in several new autonomous regions that have not yet been included in the constituencies contained in the Attachment to Law Number 7 of 2017 will be in danger of being lost.¹²

⁹ I Made Dera Januartha, I Made Suwitra, and Ni Made Puspasutari Ujianti, "The Existence of the Principle of *Ius Curia Novit* in Civil Cases," *Journal of Legal Construction* 4, no. 3 (2023): 268, <https://doi.org/10.55637/jkh.4.3.8028.268-274>.

This principle is in line with Article 10 paragraph (1) of Law No. 48 of 2009 which prohibits the court from rejecting a case on the grounds that the law does not exist or is unclear, thus encouraging open access for anyone who wants to file a lawsuit or event that is considered a case. The existence of this principle opens up opportunities for anyone to file a lawsuit or event that is considered a case to the court. Januartha, Suwitra, and Ujianti, 268.

¹⁰ Wilfred U. Codrington, "Purcell in Pandemic," *New York University Law Review* 96, no. 4 (2021): 962, <https://doi.org/10.2139/ssrn.3891775>.

¹¹ Another case occurred in the 2009 election where the Constitutional Court decided case number 102/PUU-VII/2009 related to *judicial review* Law No. 42 of 2009 concerning the General Election of the President and Vice President regarding the right to vote that must be registered in the permanent voter list (DPT). At that time, the Constitutional Court assessed that there was an urgency if the decision was not decided immediately, many voters would lose their voting rights, so it was allowed to use a valid ID card or paspr as a condition to vote if there were voters who were not registered in the DPT. Tareq Elven, "Threshold Lawsuit That Is Easily Granted," *detiknews*, 2024, <https://news.detik.com/kolom/d-7500975/gugatan-amb>. Retrieved 9 October 2024.

¹² Dian Agung Wicaksono, "Leaning on the Constitutional Court Again?," *Kompas.id*, 2024, <https://www.kompas.id/baca/opini/2023/11/09/kembali-bersandar-pada-mk>. Accessed November 6, 2024.

What if there is a crucial problem that occurs, are judges still prohibited from changing the provisions of elections and regional elections? The Supreme Court of the United States provides¹³ a broader standard for reviewing cases that are worthy of filing during the election process, which includes the following considerations:

1. Likelihood of success based on benefits;
2. Possible irreparable harm if the award is not granted;
3. Losses suffered by the parties; and
4. The public's interest in the case.¹⁴

The above provisions are the basis for consideration that the United States Supreme Court considers to decide cases ahead of the election, where the first two factors are the most important factors in taking the decision of the United States Supreme Court. The application of this principle of restraint makes the implementation of elections not only provide justice for election organizers and voters, but also provide benefits and legal certainty in accordance with the ideals of the law in a constitutional democratic country.

Changes in election provisions outside the interests and standards according to the purcell principle can only be applied to the implementation of the next round of elections, meaning that the decision should not be applied retroactively.¹⁵ As with the Constitutional Court Decision No. 14 /PUU-XI/2013 concerning the obligation to hold simultaneous elections which was decided when approaching the implementation of the 2014 elections so that to avoid chaos to the election process that was already running, the a quo decision was implemented in the 2019 elections.¹⁶ The decision is in line with the Constitutional Court Decision No.

¹³ Richard L. Hasen in his journal entitled *Reining in The Purcell Principle* stated that the standard for the application of *the purcell principle* includes:

- a. Likelihood of success on the merits
- b. Relative hardship to the parties
- c. Appropriate deference to lower courts in deciding whether to grant a stay or other emergency relief in an election case.

¹⁴ Harry B Dodsworth, "The Positive and Negative Purcell Principle," *Utah Law Review* 5, no. 5 (2022): 1088.

¹⁵ This provision shows that *the Purcell principle* does not contradict the principle of *ius curia novit*, considering that the inner consciousness of Supreme Court and Constitutional Court judges to refrain from examining cases of changes in election and regional election provisions does not mean reducing the authority of judges, because judges can state in their rulings that the cases that have only been decided will be applied to the next elections and regional elections, not to elections and regional elections whose stages are ongoing.

¹⁶ Bimo Fajar Hantoro, "Originalism and Conditions for Election Simultaneity in the Constitutional Court's Decision," *Law: Law Journal* 6, no. 1 (2023): 40, <https://doi.org/10.22437/ujh.6.1.33-6>.

16/PUU-XXI/2023 concerning the elimination of the parliamentary threshold of four percent (4%). Although the decision was issued in 2024, its implementation will be enforced in the 2029 election.¹⁷ Learning from the *Veasey v. Perry* case in 2014, the U.S. Supreme Court allowed the new Texas Voter Identity Act to remain in effect at that moment, in the November 2014 election. The decision even caused confusion for voters and became a problem for election officials.¹⁸

The basis for the consideration of the purcell principle used by the United States Supreme Court has attracted the author's attention to evaluate the decisions of the Supreme Court and the Constitutional Court as the executors of judicial power in Indonesia who often issue decisions to change the provisions of elections and regional elections while the process is ongoing. So why did the court grant changes to the provisions of elections and regional elections even though the process was already underway? Are the amended election and regional election provisions a crucial problem that will cause losses and can eliminate voters' votes if left unchecked? And have these changes been adjusted to the interests of the community? or just part of the abusive judicial review¹⁹. This anxiety needs to be studied through an in-depth evaluation of the rulings of judicial power in Indonesia.

Elections and regional elections are a place to compete for power, the act of legalizing all means to gain power has become a culture that often haunts the implementation of elections and regional elections. Oliver Joseph and Frank Mcloughlin stated, "As a political competition, the electoral process is very vulnerable and vulnerable to abusive practices. The vulnerability of this violation practice does not only have the potential to occur during the implementation of elections, even in designing the electoral system and election legal framework there is a chance of violations, for example those that tend to benefit certain parties".²⁰

¹⁷ Ilham Wasi, "Purcell Principle," Daily Fajar.co.id, 2024, <https://harian.fajar.co.id/2024/07/01/purcell-principle/>. Retrieved 24 October 2024.

¹⁸ Houston, 777.

¹⁹ Rosalind Dixon and David Landau stated that the court decision is said to be an Abusive Judicial Review if the decision has a negative impact on constitutional democracy, in other words Abusive judicial review is a mechanism where the court is made as if the institution to supervise and control the government is in fact used as a tool to strengthen and maintain their power. Enika Maya Oktavia, Mely Noviyanti, and Dalpin Safari, "Portrait of Abusive Judicial Review during the Administration of President Joko Widodo," *Legislative Journal* 7, no. 2 (2024): 6.

²⁰ Dzikry Gaosul Ashfiya, "Redesigning the Concept of Election Law Enforcement in Indonesia in the Framework of Democratic and Fair Elections," *Journal of Constitutional Studies* 1, no. 1 (2021): 29, <https://doi.org/10.19184/jkk.v1i1.23792>.

The concern that needs to be watched out for is fraud through intervention in the judicial power to change the provisions of elections and regional elections with the aim of benefiting certain parties, evaluation based on Purcell Principle This is a form of caution against the existence of election fraud²¹, considering that the mode of using legal channels through the two judicial powers in Indonesia is often carried out through judicial review²² against the Election Law and the General Election Commission Regulation. Dissenting opinion by Constitutional Judge M. Guntur Hamzah in decision No. 60/PUU-XXII/2024 stated "The judicial power should apply Purcell Principle, especially the community and political parties have begun to find legal loopholes (loopholes) or mode by submitting a test of the law near or before the days of the election".²³

Evaluation Purcell Principle against strengthening design judicial power can be a benchmark for the accountability of the judicial system, whether the Indonesian judicial system can account for all its decisions or not, as well as measure the effectiveness of legal reforms that seek to Design This institution as an institution that Independent. Re-understanding the history of the independence of judicial power which began during the old order period, where judicial power is still not fully Independent.²⁴ Law Number 19 of 1964 concerning the Provisions of the Principal Provisions of Judicial Power issued after the Presidential Decree in its formulation and explanation at that time stated that the President could intervene in all matters in the court, including decision-making.²⁵

During the New Order period, the government issued new regulations that were predicted to have guaranteed the independence of judicial power, one of which was Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power, but in reality the judicial power could still be intervened because President Soeharto

²¹ *Election Faud* is a form of election fraud by manipulating laws, regulations, and decisions.

²² *Judicial Review* is a legal institution that gives authority to the executive body of the Judicial Power or other bodies appointed by the constitution to conduct a review or re-examination by interpreting the law or interpreting the constitution to provide a juridical settlement. Nurul Qamar, "The Constitutional Court's Judicial Review Authority," *Constitutional Journal* I, no. 1 (2012): 2.

²³ See in *Dissenting Opinion* "Constitutional Court Decision No. 60/PUU-XXII/2024," 2024, <https://perludem.org/2024/08/28/putusan-mk-nomor-60-puu-xxii-2024/>.
<https://perludem.org/2024/08/28/putusan-mk-nomor-60-puu-xxii-2024/>.

²⁴ Yulkarnaini Siregar and Zetria Erma, *Judicial Power* (West Java: Rumah Cemerlang, 2023).

²⁵ Article 19 "Law Number 19 of 1964 concerning the Main Provisions of Judicial Power" <[https://peraturan.bpk.go.id/Download/39618/UU Number 19 of 1964.pdf](https://peraturan.bpk.go.id/Download/39618/UU%20Number%2019%20of%201964.pdf)>. Statute Book of 1964 Number 107 and Supplement to Statute Book Number 2699.

explicitly regulated and enforced the management of a two-door ²⁶judicial organization which justifies executive interference against judicial power.²⁷

The wave²⁸ of reform then opened the door for the arrangement of the judicial world by making changes to the laws and regulations in the field of justice and judicial power, both in the form of amendments to various laws and amendments to the 1945 Constitution. Law Number 4 of 2004 concerning Judicial Power is one of the fruits of the reform²⁹, in this regulation began to carry out judicial reform using one-stop management³⁰, but the transfer turned out to be not a solution that was able to solve all judicial problems in Indonesia.³¹ Changes continue to be made so that currently the constitutional basis for judicial power is stated in Article 24 of the 1945 Constitution which states:³²

- (1) Judicial power is an independent power to hold the judiciary to uphold law and justice.
- (2) Judicial power is exercised by a Supreme Court and the judiciary under it in the general judicial environment, the religious judicial environment, the military judicial environment, the state administrative judicial environment, and by a Constitutional Court.
- (3) Other bodies whose functions are related to judicial power are regulated in law.

²⁶ The Supreme Court is authorized to take care of the judicial technical aspects of the court institution and the Ministry of Justice is authorized to take care of the organizational, administrative, and financial aspects of the court institution, which indicates the presence of interference from the executive.

²⁷ "Article 11 of Law Number 14 of 1970 concerning the Principal Provisions of Judicial Power" (n.d.), <https://jdih.mahkamahagung.go.id/index.php/legal-product/uu-nomor-14-tahun-1970/detail>.

²⁸ The basis for reform according to Mahfud MD:

- a. The rise of the judicial mafia, precisely *judicial corruption* involving judges and other law enforcers (chess, law enforcement dynasty).
- b. There are many laws and regulations, including legal products, that are considered substantively contrary to higher laws and regulations, including the 1945 Constitution, but there is no effective testing mechanism through judicial review institutions.
- c. Judges are vulnerable from government intervention because of the placement of judges under government guidance (for personnel and financial administration) and under the Supreme Court (for judicial technicalities).

²⁹ "Article 42 of Law Number 4 of 2004 concerning Judicial Power" (n.d.), [https://peraturan.bpk.go.id/Download/306788/UU Number 4 of 2004.pdf](https://peraturan.bpk.go.id/Download/306788/UU%20Number%204%20of%202004.pdf). Statute Book of the Republic of Indonesia No. 8 of 2004 and Supplement to Statute Book of the Republic of Indonesia No. 4358.

³⁰ All matters related to technical, judicial, organizational, administrative, and financial affairs are under one roof under the power of the Supreme Court.

³¹ Ardyansyah Jintang, 'The Ideality of the Concept of Judicial Power in Indonesia to Realize Independence of Judiciary in Perfection', *PRATUN Law*, 151 (2023) <<https://doi.org/10.25216/peratun.622023.140-166>>.

³² Article 24 "Constitution of the Republic of Indonesia 1945," Citizen and State (1945), https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

The above provisions are in line with Article 1 of Law Number 48 of 2009 concerning Judicial Power which states that:

"Judicial Power is the power of an independent state to hold the judiciary to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the State of Law of the Republic of Indonesia".³³

Law Number 48 of 2009 concerning Judicial Power has actually contained better regulations regarding the independence of judicial power than during the old order period and during the new order period because it reformulated Law Number 4 of 2004 concerning Judicial Power related to comprehensive regulation such as the existence of a separate chapter on the principle of the implementation of judicial power.³⁴ More fundamental changes were also made through the amendment of the 1945 Constitution with the change of the institution of judicial power which formed two judicial powers, namely the Supreme Court and the Constitutional Court, plus one state institution whose task is not in the field of judicial power but related to judicial power, namely the Judicial Commission (KY).³⁵

The establishment of the KY is an effort to change that has been made to realize an independent judicial power but apparently has not been achieved properly, every effort to build a control system through expanding or effective external supervision through the Judicial Commission, reviewing the one-stop power of the court system, and including the Judicial Commission in the selection of judges is even suspected as a step to weaken the Judicial Power.³⁶

The implementation of the 2024 elections and regional elections, which had become a trending controversy with the title of "emergency warning" due to the issuance of several conservatory decisions that changed the provisions of the 2024 elections and regional elections while the process was ongoing and was considered to only benefit certain parties, is an example of castration practices against the design of judicial power as an independent institution. Through its decision, the

³³ Article 1 "Law Number 48 of 2009 Concerning Judicial Power", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

³⁴ Siregar and Erma, 27.

³⁵ Moh. Mahfud MD, "Demarcation Signs and Expansion of the Constitutional Court's Authority," *Ius Quia Iustum Law Journal* 16, no. 4 (2009): 444, <https://doi.org/10.20885/iustum.vol16.iss4.art1>.

³⁶ Harrys Pratama Teguh, Heribertus Roy Juan, and Eva Berta Pattinasarany, *Dynamics of Judicial Power in Indonesia* (South Kalimantan: Ruang Karya Bersama, 2024).

Supreme Court and the Constitutional Court made changes to the provisions of the 2024 elections and regional elections regarding candidacy requirements up to the threshold for nomination of regional heads, which even caused confusion for stakeholders involved in the implementation of elections and regional elections. This situation is not only a hypothesis but a legal fact that occurs.³⁷

Starting from the existence of the Constitutional Court Decision No. 90/PUU-XXI/2023 related to testing in Law Number 7 of 2017 concerning General Elections. The a quo verdict reaped pros and cons because Gibran Rakabuming Raka ran for Vice President. The trigger was because the chief judge who decided the case was Anwar Usman, who is Gibran's uncle, so he was considered to be in line with the interests of the family.³⁸ This argument is reinforced by the opinion of Julius Ibrani, a member of the Civil Society Coalition Guarding Democratic Elections stating that "The Constitutional Court Decision No. 90/PUU-XXI/2023 is a very clear indication of collusion, corruption, and nepotism. There is a link between the ruler and the interests of the family, not the national interest."³⁹

The test of Law Number 7 of 2017 which examines Article 169 letter q states the requirements to be a presidential candidate and vice presidential candidate at least 40 years old.⁴⁰ This provision shows that the Constitutional Court through Decision No. 90/PUU-XXI/2023 has initiated its own norms that allow an elected official through elections to register as a presidential candidate or vice presidential candidate.

³⁷ There is a cancellation of the KY's authority to supervise Constitutional Court judges as regulated in Law Number 22 of 2004 concerning the Judicial Commission through the Constitutional Court Decision Number 005/PUU-IV/2006. See Muhammad Fauzan et al., "Reconceptualization of Constitutional Judge Selection as an Effort to Realize Qualified Constitutional Judges," *Legal Lantern E-Journal* 5, no. 2 (2023): 3, <https://doi.org/10.19184/ejllh.v4i1.5267>.

³⁸ Rio Subandri, "Juridical Review of the Constitutional Court's Decision Number 90/PUU-XXI/2023 concerning the Requirements for the Age Limit for Presidential and Vice Presidential Candidacy," *Prosecutor: Journal of Legal and Political Studies* 2, no. 1 (2024): 143, <https://doi.org/10.51903/jaksa.v2i1.1512>.

³⁹ Ibrahim Ghifar Hamadi, "Reviewing the Urgency of Applying the Purcell Principle in General Elections (Elections) in Indonesia," *Journal of Proceedings of Actual Law Seminar* 2, no. 5 (2024): 119.

⁴⁰ "Constitutional Court Decision Number 90/PUU-XXI/2023," 2023, <https://perludem.org/2023/10/17/putusan-mk-nomor-90-puu-xxi-2023-tentang-ketentuan-tambahan-pengalaman-menjabat-dari-keterpilihan-pemilu-dalam-syarat-usia-minimal-capres-cawapres/>.

During the regional elections, the existence of Supreme Court Decision Number 23 P/HUM/2024 concerning changes in the provisions for calculating the age limit for regional head candidates that was decided during the ongoing regional head election process also reaped public controversy. The Supreme Court stated that article 4 Paragraph 1 Letter d PKPU Number 9 of 2020 is contrary to Law Number 10 of 2016 concerning regional elections by amending the provision that the minimum minimum number of candidates for regional heads and deputy regional heads should be counted from the inauguration of the selected candidate pairs, not from the determination of candidates.⁴¹

The a quo decision is considered flawed and causes polemics both in the community and the regional election implementing institutions because it is considered paradoxical with Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors.⁴² Professor of the Faculty of Law, Islamic University of Indonesia, Mahfud MD, stated that the Supreme Court's decision would confuse the General Election Commission in formulating the KPU Regulation as a rule of play for the registration of candidates for regional heads in the 2024 simultaneous regional elections.⁴³ The Supreme Court's decision regarding the change in the age limit for regional head candidates seems to reopen the memory space of the community that has not escaped the previous general election process which was accompanied by a hot situation due to the emergence of Constitutional Court Decision Number 90/PUU-XXI/2023.

The Supreme Court's Decision Number 23 P/HUM/2024 then gave birth to the Constitutional Court's decision No. 70/PUU-XXII/2024 which contradicts the a quo decision. The Constitutional Court's Decision No. 70/PUU-XXII/2024 emphasizes that the age requirements for regional heads must be met before the determination

⁴¹ "Supreme Court Decision Number 23 P/HUM/2024," 2024, https://putusan3.mahkamahagung.go.id/direktori/download_file/ec588950997002d88d13caee73893200/zip/zaef21887b3c4de28717313630353533.

⁴² Syarif Hidayatullah Azhumatkhan and Adithya Tri Firmansyah, "Reflections on Supreme Court Decision Number 23 P / HUM / 2024 : The Escalation of Political Judicialization and Judicial Politicization in Norm Testing," *Journal of Law and Social Order* 3, no. 1 (2024): 11.

⁴³ Aryo Putranto Saptohutomo, "When the Supreme Court's Decision Makes 'Forward Hit, Backward Hit'...", *Kompas.com*, 2024, <https://nasional.kompas.com/read/2024/06/07/05150021/kala-putusan-ma-bikin-maju-kenamundur-kena?page=all>. accessed August 27, 2024.

of regional head candidates is carried out.⁴⁴ These two conflicting decisions further disrupt the implementation of the ongoing regional elections. The presence of the Constitutional Court Decision No. 70/PUU-XXII/2024 was accompanied by the issuance of the Constitutional Court Decision No. 60/PUU-XXII/2024 regarding changes in the provisions of the threshold for the nomination of regional heads, which originally had a minimum of 20% of DPRD seats or 25% of valid votes, to 6.5% to 10% according to the number of people on the permanent voter list.⁴⁵ This decision is applied directly to the 2024 regional elections, so that the decision applies retroactively.

Based on the description above, the conditions of the 2024 general election and regional elections cannot be said to be ideal overall, the Purcell principle can be a solution because there is a court decision that changes general election regulations into a central problem, without clear boundaries, court decisions have the potential to disrupt the election administration process which can cause uncertainty and thus harm the regularity of the election.

The author will further evaluate several Supreme Court and Constitutional Court decisions that were decided throughout the 2024 election and regional elections with the limitation of the decisions to be evaluated are only decisions that have been decided within a short period of time from the issuance of the Constitutional Court Decision No. 90/PUU-XXI/2023 to the issuance of the Constitutional Court Decision No. 70/PUU-XXII/2024 based on the time of the decision and the standards of the Supreme Court of the United States In reviewing cases that are worthy of being submitted during the election stage, namely the possibility of success based on the benefits, irreparable losses if the verdict is not granted, losses experienced by the parties, and the interests of the wider community. The evaluation based on the purcell principle will be further elaborated in the following table:

⁴⁴ "Constitutional Court Decision No. 70/PUU-XXII/2024," 2024, <https://perludem.org/2024/08/30/putusan-mk-nomor-70-puu-xxii-2024-tentang-syarat-usia-calon-kepala-daerah-di-pilkada/>.

⁴⁵ "Constitutional Court Decision No. 60/PUU-XXII/2024."

Table 1. 1

Tabulation of the Purcell Principle Evaluation of the Supreme Court and Constitutional Court Decisions that were decided during the 2024 Elections and Regional Elections

No.	Number and Type of Judgment	Amar Verdict	Evaluation Results
1.	Constitutional Court Decision No. 90/PUU-XXI/2023 concerning the Testing of Law Number 7 of 2017 concerning the testing of Article 169 letter q Number 7 of 2017 concerning General Elections as amended by Law Number 7 of 2023 concerning General Elections.	The Constitutional Court granted the Request to Change the Age Requirements for Presidential and Vice Presidential Candidates, where Presidential and Vice Presidential Candidates who have been elected through elections, either as DPR/DPD, Governor, or Mayor can run even though they are not yet 40 years old.	<ol style="list-style-type: none"> 1. The a quo decision has the potential to cause an unfair election in the 2024 election due to unequal contestation. The a quo ruling on the existence of a conflict of interest because it is an entrance for Gibran Rakabuming Raka to participate in running for Vice President, especially since one of the constitutional judges, Umar Usman, still has a family relationship with Gibran. 2. Judging from the legal standing of the applicant, namely Almas Tsaqibbiru Re A, which according to the author is very weak because the basis of the loss is only based on the applicant's admiration for Gibran Rakabuming

			<p>as the Mayor of Solo who cannot become a Presidential or Vice Presidential candidate.⁴⁶</p> <p>Seeing the a quo decision that is a fiber of intervention so that it does not reflect the interests of the community and does not cause losses if this decision is not granted, the judge should not have changed the provisions of the election.</p>
2.	<p>Constitutional Court Decision No. 70/PUU-XXII/2024 concerning the Testing of Article 7 paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of</p>	<p>Rejecting the change in the minimum age requirement for regional head candidates calculated at the time of the inauguration of the pair of gubernatorial and deputy governor candidates, as stipulated in Article 15 of PKPU Number 8 of 2004 based on the decision of the Supreme Court (MA). The Constitutional Court emphasized that the minimum age limit for candidates for Regional Heads is 30 years old from the time</p>	<p>The Constitutional Court Decision No. 70/PUU-XXII/2024 annuls the Supreme Court Decision No. 23P/HUM/2024 which has been decided previously, remembering the Supreme Court Decision No. 23P/HUM/2024 which is problematic and reflects the political interest to pass Kaesang Pangarep. Therefore, with the issuance of Constitutional Court Decision No. 70/PUU-XXII/2024, Supreme Court Decision No. 23P/HUM/2024 failed to be implemented in the</p>

⁴⁶ The postulates do not have a direct relationship with the Applicant. So that in this case there is no constitutional loss caused if the provisions of the age requirements for regional head candidates do not change.

	2014 concerning the Election of Governors, Regents, and Mayors into Law against the Constitution of the Republic of Indonesia in 1945.	of registration.	2024 Regional Elections. So that the existence of this decision provides benefits to the community and the possibility of irreparable losses if the decision is not granted, so that this decision is relevant to be decided in the midst of the implementation of the regional elections.
3.	Constitutional Court Decision No. 60/PUU-XXII/2024 concerning the Testing of Article 40 paragraph (1) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2014 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law against the Constitution of the Republic of	Changing the threshold for nomination of regional heads, which originally required obtaining a minimum of 20% of DPRD seats or 25% of valid votes, to a lower one, namely 6.5% to 10% according to the number of people in the permanent voter list.	1. In its consideration, the Constitutional Court Decision No. 60/PUU-XXII/2024 is indeed intended to improve the democratic process, but there is no doubt that this change also has a negative impact, for example causing political fragmentation and local government instability. So, even though the a quo decision is intended to improve the democratic process, careful implementation and supervision are very important so that the positive goal is achieved without causing adverse consequences, therefore to maintain the concession of the

	Indonesia.		decision based on the Purcell Principle, it would be better for the a quo decision to be applied in the next round of elections.
4.	Supreme Court Decision No. 23/P/HUM/2024 concerning the Application for Objection to the Right to Material Test Against Article 4 paragraph (1) letter d of the General Election Commission Regulation Number 9 of 2020 concerning the Fourth Amendment to the General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor.	The Supreme Court changed the age requirement for regional heads, namely the minimum age requirement of 30 years for candidates for Governor and Deputy Governor and 25 years for candidates for Regent and Deputy Regent, Mayor and Deputy Mayor candidates which were previously counted from the determination of the candidate pair to since the inauguration of the selected candidate pair.	<ol style="list-style-type: none"> 1. The judge's consideration in deciding this case is that the age limit of 30 years is considered more appropriate to ensure that the candidate has the maturity, experience, and capability needed to lead the region. The basis for this consideration does not show any loss if changes are not made. 2. The Supreme Court's decision No. 23/P/HUM/2024 which changes the provisions of the requirements for candidates for regional heads raises public suspicions of intervention by the Supreme Court to provide a door for Kaesang Pangarep, who will turn 30 years old in December, to run for the 2024 regional elections.

			<p>3. The Gerindra Party actually does not have the legal standing to question the minimum age requirement for regional head candidates⁴⁷, so that no constitutional losses have been violated.</p> <p>Based on the description above, Supreme Court Decision No. 23/P/HUM/2024 was decided without considering the interests of the community and the case decided was not an urgent matter to be decided in the middle of the election process because there were no losses incurred from the provisions of the age requirements for the previous regional head candidates.</p>
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Source: Data processed from the author's search results (2024).

The table above shows that the Supreme Court and the Constitutional Court have not completely decided the case according to the purcell principle standard, seeing that there are Supreme Court and Constitutional Court decisions that were decided during the 2024 election process and regional elections are not based on the interests of the community or other reasons that are the basis for the exemption of the purcell principle rather, it was found that there was intervention against the Supreme Court and the Constitutional Court. The resulting verdict seems subjective

⁴⁷ The party cannot carry a candidate for regional head because it does not meet the requirement to have at least 20 percent of the number of DPRD seats or 25 percent of the accumulated votes obtained in the DPRD election.

because it only benefits interested parties. These changes have proven to interfere with the preparations made by election and regional election organizers because they require them to adjust election regulations and regional elections with judicial power decisions, which is certainly not easy. Changes in election and regional election requirements that concern crucial matters such as candidate requirements and threshold provisions in the middle of the road show the potential for legal ambiguity and legal uncertainty.

The products produced by the Supreme Court and the Constitutional Court are essentially decisions used to solve a problem, therefore the court as a symbol of justice always promises to provide justice to everyone, especially the justitials.⁴⁸ Sadly, from the fact that there are Supreme Court and Constitutional Court decisions, they are no longer used to solve a problem, but instead become the mastermind of political chaos in Indonesia. The judicial power, which was initially considered to be the supervisor of the hierarchy of laws and regulations and the constitution, through its decisions, seems to be easy for the rulers to intervene.⁴⁹

Elections and regional elections are one of the benchmarks of the running of a democratic country, whether or not elections are held, whether or not the implementation of elections in a country or region will have an impact on the quality of democracy in a country or region.⁵⁰ The issuance of several court decisions that have changed the election provisions in the KPU laws and regulations while the process is underway clearly creates confusion and tears the sense of justice from voters in the 2024 elections and regional elections, creates unclear rules and conditions that are not ideal in the implementation of elections, and has the potential to damage the course of the election process as part of Luber Jurdil⁵¹ democracy, even though elections require a clear legal framework to achieve justice.⁵²

⁴⁸ Lamijan and Mohamad Tohari, 'Independence and Independence of Judicial Power in Indonesia', *JPeHI (Indonesian Journal of Legal Research)*, 3.1 (2022), 30 <<https://doi.org/10.61689/jpehi.v3i1.333>>.

⁴⁹ Oktavia, Noviyanti, and Safari, "Portrait of Abusive Judicial Review during the Administration of President Joko Widodo."

⁵⁰ Mustafa Lutfi and M.Iwan Satriawan, *Legal Treatise and Theory of Political Parties in Indonesia, Book* (Malang: UB Press, 2015).

⁵¹ It is the principle of general elections contained in Law No. 3 of 1999 *jo.* Law No. 7 of 2017 concerning General Elections, namely the principle of direct, general, free, and fair.

⁵² Hamadi, "Reviewing the Urgency of Applying the Purcell Principle in General Elections (Elections) in Indonesia." 119.

The Association for Elections and Democracy (Perludem) explained that judicial review of the election law, the election law, and PKPU has become a habit ahead of election contests and regional elections. The material review process is an important part of the legal system to ensure that the law is in accordance with the constitution and applicable legal principles, but in the context of elections and regional elections, several time limits and considerations should be given that need to be considered so that decisions remain effective and maintain democratic freedom. These restrictions must be formulated to avoid possibilities that can be detrimental to the parties involved in the election.⁵³

Formulating these restrictions, the author tries to refer to the perspective of *sadd adz-dzariah* by Ibn Qayyim⁵⁴ who states that *sadd adz-dzariah* views something based on its purpose, if something leads to *mafsadat* or prohibition, then *al-dzariah* must be closed tightly. *Sadd adz-dzariah* is used as a method to determine whether the path or method can be implemented or not by looking for the harmful side. The author uses this perspective to further analyze the prohibition for judges in changing the provisions of elections and regional elections when the process is already underway by looking at the harm that will be caused and also formulating standards for the application of the purcell principle with the aim of strengthening the design of judicial power as an independent institution in Indonesia.

Based on the elaboration of the background above, the course related to the problem of judicial power decisions will be evaluated with reference to the standard purcell principle, so that it is hoped that it can find and formulate new alternatives to the concept of applying the purcell principle in Indonesia by relying on relevant theories as a solution to existing legal problems.

⁵³ Hamadi, 122.

⁵⁴ Muhammad Jihadil Akbar, 'Analysis of Dissenting Opinion in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020 on the Testing of Article 27 of Law No. 2 of 2020 (Perspective of Progressive Legal Theory and Sadd Al-Dzari'ah)' (Maulana Malik Ibrahim State Islamic University Malang, 2022), 74.

B. Problem Formulation

The formulation of the problem in this study is:

1. What is the existing legal application of the purcell principle in the judicial power system in Indonesia?
2. Why is it necessary to evaluate the decision of judicial power in Indonesia based on the purcell principle?
3. What is the concept of applying the ideal purcell principle to strengthen the design of the judicial power system in Indonesia in the future based on the perspective of *sadd adz-dzariah*?

C. Research Objectives

Based on the formulation of the problem above, the objectives of this study are:

1. Analyze the existing legal application of the purcell principle in the judicial power system in Indonesia.
2. Finding and identifying the suitability of judicial power decisions in Indonesia based on the purcell principle.
3. Formulate and propose the concept of applying the purcell principle to strengthen the design of the judicial power system in Indonesia in the future based on the perspective of *sadd adz-dzariah*.

D. Research Benefits

Based on the objectives of the above research, the benefits of this research are:

1. Theoretical Benefits
 - a. It is hoped that the results of the research can serve as a literary media as well as reference material for readers to find out the concept of application and the results of evaluation based on the purcell principle on strengthening the design of the judicial power system in Indonesia.
 - b. It is hoped that the results of the research can be an enhancer of scientific insight that can be used as reference material in research related to the purcell principle, considering that research challenging the purcell principle is still rare.

2. Practical Benefits

- a. For judicial power: The results of this study are expected to provide input on the policies that will be taken by the government and the judges concerned, especially regarding the application of the purcell principle in judicial power in Indonesia to maintain the smooth implementation of elections and regional elections and strengthen the design of judicial power as an independent institution.
- b. For the community: The results of this study are beneficial to the community, if the purcell principle is applied by the judicial power in Indonesia, the community as voters in elections and regional elections will avoid confusion due to the provisions of elections and regional elections that often change during the process and maintain the dignity of judicial power because the public will always believe in the institution of judicial power as an institution of justice enforcement Independent.

E. Research Methods

The research method is a technical description used in research⁵⁵ to obtain scientific updates derived from the object being studied.⁵⁶

1. Type of Research

Legal research⁵⁷ is all the activities of a person to answer legal problems that are academic and practical, both those in the nature of legal principles, legal norms that live and develop in society, and those related to legal reality in society.⁵⁸ Answering the legal problems faced, the researcher chose the type of normative juridical legal research.⁵⁹ Normative law research

⁵⁵ Bahder Johan Nasution, *Legal Research Methods* (Bandung: Mandar Maju, 2008), 3.

⁵⁶ Suryana, *"Research Methodology: Quantitative and Qualitative Research Model"* (Bandung: Universitas Pendidikan Indonesia, 2010), 21.

⁵⁷ In the Black Law Dictionary quoted from Bryan A. Garner in the book Dyah Ochtarina and A'an Efendi, legal research is *The finding and assembling of authorities that bear on a question of law and The Field of study concerned with the effective marshalling of authorities that bear on a question of law*, "Dyah Ochtorina Susanti and A'an Efendi, *Legal Research* (Jakarta: Sinar Grafika, 2014), 1.

Peter Mahmud Marzuki argues that legal research is an activity that aims to answer existing legal issues by going through various processes of reviewing and analyzing various rules, principles, and legal doctrines that support the study of these legal issues, quoted from Peter Mahmud Marzuki, "Legal Research" (East Jakarta: Prenada media Group, 2019), 35.

⁵⁸ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2009), 19.

⁵⁹ Soejono Soekanto and Sri Maudji stated that normative law research is also called literature

according to Peter Mahmud Marzuki is an activity to identify legal problems and analyze the legal problems faced and then provide solutions to these problems, where the problems studied in this normative law research are caused by problematic norms or rules, either due to conflicts in the norms, the existence of ambiguities in meaning, or the existence of legal voids.⁶⁰

This research can be catalized as normative law because the focus of the study is the evaluation of the purcell principle on strengthening the design of the judicial power system with the object of study of the Constitutional Court Decision No. 90/PUU-XXI/2023, Constitutional Court Decision No. 70/PUU-XXII/2024, Constitutional Court Decision No. 60/PUU-XXII/2024, and Supreme Court Decision No. 23 P/HUM/2024, as well as the legal vacuum regarding the application of the purcell principle.

2. Research approach

The research approach⁶¹ is one of the methods in legal research that aims to build a relationship with the object of the problem being researched in order to achieve an understanding related to the research problem.⁶² The approach methods used in this study are the statute approach, conceptual approach, case approach, and comparative approach.

a. Statute Approach

According to Dyah Ochtorina Susanti da A'an Efendi in her book entitled *Legal Research*, the legislative approach is an approach that

research because normative law research is carried out by examining literature materials or secondary data only, which includes:

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

⁶⁰ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenda Media, 2011).93.

⁶¹ There are 5 types of approaches in normative law research according to Peter Mahmud Marzuki, namely:

- a. Statute approach;
- b. Case approach;
- c. Historical approach;
- d. Comparative approach; and
- e. Conceptual approach.

⁶² Ishaq, *United States Legal Research Methods and Writing Thesis, Thesis, and Dissertation*, Cv. Alfabeta, Bandung, 2020, 68-69.

is carried out by examining all laws and regulations related to the legal issues being handled. The⁶³ laws and regulations used in this research are:

1. Law Number 48 of 2009 concerning Judicial Power;
2. Law Number 7 of 2017 concerning General Elections;
3. Law Number 1 of 2016 *jo.* Law Number 8 of 2015 *jo.* Law Number 10 of 2016 *jo.* Law Number 2 of 2020 *jo.* Law Number 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law;
4. Law No. 14 of 1985 *jo.* Law No. 5 of 2004 *jo.* Law No. 3 of 2009 concerning the Supreme Court;
5. Law Number 24 of 2003 concerning the Constitutional Court *jo.* Law Number 8 of 2011 *jo.* Law Number 4 of 2014 *jo.* Law Number 7 of 2020 concerning the Constitutional Court;
6. General Election Commission Regulation Number 3 of 2017 *jo.* General Election Commission Regulation Number 8 of 2017 Regulation *jo.* General Election Commission Number 9 of 2020 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor.

b. Conceptual Approach

The conceptual approach is an activity that departs from the doctrines and legal principles that exist in legal science in order to give birth to legal concepts that are relevant to the legal issue being researched.⁶⁴ According to Bahder Johan Nasution, the conceptual approach is the study of legal concepts such as: legal sources, legal functions, legal institutions, and so on.⁶⁵ The conceptual approach is used in this study to build and formulate concepts related to the object of research by paying attention to the doctrines, views of

⁶³ Susanti and Efendi, *Legal Research*, 110.

⁶⁴ Marzuki, *United States Legal Research*, 137.

⁶⁵ Nasution, *United States Legal Research Methods*, 92.

experts, and existing Islamic figures to find appropriate concepts.⁶⁶ This approach is used to formulate suitable standards regarding the concept of applying the purcell principle in the judicial power system in Indonesia, as well as to test whether the purcell principle has a good chance of being applied in the judicial power system in Indonesia based on the existing doctrines and opinions of experts.

c. Case Approach

The case approach⁶⁷ uses a judge's decision that has permanent legal force as a source of legal material.⁶⁸ This case was studied to obtain an overview of the impact of the normative dimension in a legal rule in legal practice, and to use the results of the analysis for input in legal explanatory materials by understanding the decendi ratio of the decision.⁶⁹ The cases that will be studied in this study are related to the decision of the judicial power that changes the provisions of the 2024 elections and regional elections when the 2024 elections and regional elections have been implemented so that they can cause confusion for the implementers, candidates, political parties, and voters, namely the Constitutional Court Decision No. 90/PUU-XXI/2023, the Constitutional Court Decision No. 70/PUU-XXII/2024, the Constitutional Court Decision No. 60/PUU-XXII/2024, and Supreme Court Decision No. 23 P/HUM/2024. This study will evaluate these decisions based on the standard purcell principle to then formulate the concept of applying detailed purcell in the judicial power system in Indonesia by referring to the perspective of *sadd adz-dzariah*.

⁶⁶ Marzuki, 133.

⁶⁷ Peter Mahmud Marzuki said that the usefulness of the case approach is not only harena ratio decendi is also linked in the event that the law does not regulate it.

⁶⁸ Susanti and Efendi, *Legal Research*, 119.

⁶⁹ Ibrahim *Normative Legal Research Theory and Methodology of Bayumedia Publishing*, 321.

d. Comparative Approach

According to I Made Pasek Diantha⁷⁰ in his book *Normative Legal Research Methodology in Legal Theory Justification*, it is explained that the comparative approach is carried out by comparing the legal system of one country with the legal system of another country or between the constitution of one country and the constitution of other countries to then take positive things to complement the shortcomings of the legal system of the researcher⁷¹'s country. This comparative approach is important to fill the gap in norms in a country by reflecting on the system of other countries that have regulations related to the legal problems faced.⁷² The comparative approach is used by researchers to find out the system of application of the purcell principle in other countries, namely the United States, Mexico, and Brazil and then used as a reference in formulating a new paradigm for the application of the purcell principle to strengthen the design of the judicial power system in Indonesia.

3. Types and Sources of Legal Materials

According to Amirudin and Zainal Asikin, normative legal research sources are only secondary data consisting of primary, secondary, and tertiary legal materials. The legal materials used in this study are:⁷³

c. Primary legal materials

Primary legal materials are binding legal materials, usually in the form of norms or basic rules such as the 1945 Constitution, basic regulations such as the Decree of the People's Consultative Assembly, laws and regulations, customary law, and jurisprudence.

⁷⁰ I Made Pasek Diantha, *Normative Legal Research Methods in Legal Theory Justification*, (Jakarta: Kencana Prenada Media, 2017), 164.

⁷¹ This means that there are no norms that can be applied to certain legal events or completely new norms are needed to regulate the position, duties, and authorities of a state institution that are required according to the dynamics of the constitution. Therefore, comparisons with other countries are needed to be used as an example of how to resolve these legal events.

⁷² Diantha, United States *Normative Legal Research Methods in Legal Theory Justification*, 162.

⁷³ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: Rajawali Pers, 2004). 118-119.

The primary legal material in this study is the rules that have a correlation with the Judicial Power, General Elections, Regional Head Elections, General Election Commission Regulations, and several judges' decisions, namely:

1. Article 24, Article 24A, Article 24C, and Article 25 paragraph (1) of the 1945 Constitution
2. Article 1 and Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power;
3. Article 69 letter q of Law Number 7 of 2017 concerning General Elections;
4. Article 1 of Law No. 14 of 1985 *jo.* Law No. 5 of 2004 *jo.* Law No. 3 of 2009 concerning the Supreme Court;
5. Article 1 number 1 of Law Number 24 of 2003 concerning the Constitutional Court *jo.* Law Number 8 of 2011 *jo.* Law Number 4 of 2014 *jo.* Law Number 7 of 2020 concerning the Constitutional Court;
6. Article 4 paragraph (1) letter d of the General Election Commission Regulation Number 3 of 2017 *jo.* General Election Commission Regulation Number 8 of 2017 *jo.* General Election Commission Regulation Number 9 of 2020 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor;
7. Constitutional Court Decision No. 90/PUU-XXI/2023 concerning Changes in Age Requirements for Presidential Candidates and Vice Presidential Candidates;
8. Constitutional Court Decision Number 70/PUU-XXII/2024 concerning Changes in the Age of Candidates for Regional Heads and Deputy Regional Heads;
9. Constitutional Court Decision No. 60/PUU-XXII/2024 concerning Changes in the Threshold for Regional Head Candidacy;

10. Supreme Court Decision Number 23 P/HUM/2024 concerning Changes in the Age of Candidates for Regional Heads and Deputy Regional Heads.

d. Secondary legal materials, which are legal materials that provide an explanation of primary legal materials consisting of:

1. Books related to Judicial Power, both the Supreme Court and the Constitutional Court;
2. Books on legal theories, namely *sadd adz-dzariah*, chaos theory, and integrity theory;
3. Scientific works by legal experts related to the theme of the researcher's study, such as international journals and national journals related to the purcell principle, judicial power, *sadd adz-dazriah*, chaos theory, and integrity theory.

e. Tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials, including:

Encyclopedia, Bibliography, Black's Law Dictionary, Dictionary of Legal Terms, and Great Dictionary of Indonesian.

4. Methods of Collecting Legal Materials

The stages of collecting legal materials⁷⁴ in this study are using library research⁷⁵ which is used to find primary, secondary, and tertiary legal materials, with the following details:

- a. Primary legal materials are carried out by studying laws and regulations and decisions related to the research topic.
- b. Secondary legal materials are carried out by reviewing books, previous research documents that are relevant to the topic of

⁷⁴ According to Abdul Kadir Muhamad quoted through Muhaimin's book entitled Legal Research Methods, in normative legal research, 3 (three) types of secondary data collection methods are known, namely:

- a. Bibliography study;
- b. Document study; and
- c. Archive study (*file or record study*).

⁷⁵ Literature research is the acquisition of research materials through laws and regulations, books, official documents, publications, and research results such as journals. Zainuddin Ali, *Legal Research Methods*, (Jakarta: Sinar Grafika, 2009).

discussion and correlating them with relevant laws and regulations, searching for information through the internet, and journals related to the research topic.

- c. Tertiary legal materials are also carried out by examining certain documents such as legal dictionaries to support primary and secondary legal materials.

5. Legal Material Analysis Method

Analysis is a process of describing some specific symptoms or problems systematically and consistently.⁷⁶ The method used in this study is a qualitative juridical analysis method⁷⁷, which is research that refers to legal norms contained in laws and regulations, court decisions, and norms that live and develop in society.⁷⁸ The conclusion is written deductively⁷⁹ and then analyzed descriptively to build a legal argument as a conclusion in the form of a prescription (stating what should be done while providing recommendations).⁸⁰ The analysis of legal materials in this study begins by referring to court decisions, namely Constitutional Court Decision No. 90/PUU-XXI/2023, Constitutional Court Decision No. 70/PUU-XXII/2024, Constitutional Court Decision No. 60/PUU-XXII/2024, and Supreme Court Decision No. 23 P/HUM/2024, then analyze the laws and regulations related to this research and correlate them with several principles, theories, and perspectives that are the basis or analysis knife as a step to find a conclusion, the way out, as well as the ideal conception of

⁷⁶ Soerjono Soekanto and Susanti, *Introduction to Legal Research, UIB Repository* (Jakarta: UI Press, 2018), 137.

⁷⁷ There are two methods of analyzing legal materials, namely the qualitative method and the quantitative method. The difference between the two is that qualitative research is research that does not require a population but uses descriptive and sample qualitative data, while quantitative research is research that requires a population and sample, which can be in the form of a questionnaire which is then developed in the form of qualitative descriptive data presentation. Ali *Legal Research Methods*.

⁷⁸ Jonaedi Efendi and Johny Ibrahim, *Normative and Empirical Legal Research Methods* (Depok: Pranamedia Group, 2019).

⁷⁹ Conclusions or conclusions drawn from legal research are divided into 2 methods, namely deductive and inductive inference methods. Normative legal research is usually concluded using the deductive method, which is to draw conclusions from a general problem to be able to draw specific (concrete) conclusions. Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 76.

⁸⁰ Muhaimin, 76.

the things being discussed.

F. Previous Research

Previous research contains related to the research that has been carried out by previous researchers, the research is related to the author's research problems. Previous research is included to avoid duplication and plagiarism so that the difference between previous research and the author's research must be explained. Based on search results through several media such as google, no one has researched related to Evaluation Purcell Principle Against Strengthening Design The Judicial Power System in Indonesia, research with a similar theme is very limited, which attracts the desire of researchers to study it more deeply. Previous research that the author has found from international journals and national journals is described in detail below.

Table 1. 2
Previous Research

It	Name, Title, Year	Problem Formulation	Result	Difference	Elements of Novelty
1.	Samuel D. Gilleran, Purcell V. Gonzalez, Principle and Problem Native American Voting Rifghts in the 2018 North Dakota Elections, 2020. ⁸¹	<ol style="list-style-type: none"> 1. How is the purcell principle applied in the 2018 election in North Dakota? 2. How should the court apply the purcell principle? 3. What is the appropriate solution for the application of the purcell principle 	The case in North Dakota in 2018 is an example of chaos that occurs when the courts are too involved in the conduct of elections, but on the other hand, the court's inaction can lead to the disenfranchise ment of voting rights . In this case, the Supreme Court should protect voting rights by providing	<ol style="list-style-type: none"> 1. It does not discuss the purcell principle in judicial power in Indonesia but in North Dakota, the state of the United States. 2. Not using the perspective of <i>saad adz-dzariah</i>. 	This research is an extension or development of the previous research which was only focused on the application of the purcell principle in the United States, so the author's research will try to formulate the application of the purcell principle in Indonesia based on the perspective of <i>sadd adz-dzariah</i> .

⁸¹ This study adopts descriptive normative legal research by applying the Statute Approach and Case approach and using the library data collection method. Samuel D. Gilleran, "Purcell v. Gonzalez, Principle and Problem - Native American Voting Rights in the 2018 North Dakota Elections," *Wake Forest Law Review* 55, no. 2 (2020): 450.

		in the future?	reassurance to the courts under it about how and when election rules may change. ⁸²		
2.	Muhammad Anwar Soleh and Durohim Amnan, "Implications of the Constitutional Court's Decision Number 60/PUU-XXII/2024 on the Democratization of Regional Head Elections, 2024." ⁸³	<ol style="list-style-type: none"> 1. What are the implications of the Constitutional Court's Decision Number 60/PUU-XXII/2024 on the simultaneous regional election contest? 2. What is the ideality (ideal concept) of the threshold for the candidacy of Regional Heads in the election system in Indonesia? 	1. This causes the potential of each political party to propose a pair of candidates for Regional Head is increasingly wide open and increases the competition of parties that can produce skilled and qualified leaders because they have gone through a strict competition process from each candidate pair	<ol style="list-style-type: none"> 1. It does not explain the basic concept of the purcell principle and does not formulate the concept of applying the purcell principle in Indonesia. 2. The object of the research is only the Constitutional Court Decision Number 60/PUU-XXII/2024 and not with other decisions. 3. Not using the perspective of <i>saad adz-dzariah</i>. 	This research is an extension or development of the previous research which is only focused on the implications of the Constitutional Court decision Number 60/PUU-XXII/2024. While the author's research will also explain further the concept of applying the purcell principle to the strengthening of the design of judicial power and formulate it based on the perspective of <i>sadd adz-dzariah</i> by evaluating the decision of the

⁸² See Gilleran It may be inevitable that sometimes the rules will change in the middle of an election game, but the lower courts, the parties to the case, the election organizers, the candidates, and the citizens have the right to be sure about how and when the rules will change. If the court grants such a verdict, it will be rare to restore the right to restore the court impartiality.

⁸³ This study adopts descriptive normative legal research by applying a statute approach and using a library data collection method. Muhammad Anwar Soleh and Durohim Amnan, "Implications of the Decision of the Constitutional Court of the Republic of Indonesia Number 60/PUU-XXII/2024 on the Democratization of Regional Head Elections," *Journal of Law, State Administration, and Public Policy* 1, no. 3 (2024), <http://repository.unmuhjember.ac.id/17420/>.

			<p>submitted by a political party</p> <p>2. There is a potential for misappropriation of legal principles that guide the administration of the state, including the implementation of regional elections, namely the principle of non-retroactivity.</p> <p>3. Based on the principle of purcell, a quo decision should be applied in the 2029 simultaneous regional elections.⁸⁴</p>		<p>Constitutional Court Decision No. 90/PUU-XXI/2023, the Constitutional Court Decision No. 70/PUU-XXII/2024, and the Supreme Court Decision No. 23 P/HUM/2024.</p>
3.	Ibrahim Ghifar Hamadi, Reviewing	1. What is the concept of the Purcell Principle?	That the absence of restrictions on court decisions	1. Not to further formulate the	This research is an expansion or development of previous

⁸⁴ See Soleh and Amnan: As a result of the Constitutional Court decision No. 60/PUU-XXII/2024 which changed the threshold for nomination of regional heads, which was originally 20% of DPRD seats or 25% of the national valid votes, to 6.5% to 10% according to the number of people on the voter list, resulting in the wider participation of political parties and the community, however, this provision should not be applied to the 2024 regional elections because the process of the regional election stages has already taken place.

	<p>the Urgency of Implementing the Purcell Principle in the General Election (Election) in Indonesia, 2024.⁸⁵</p>	<p>2. What is the urgency of implementing the Purcell Principle in Indonesia?</p>	<p>to change election regulations is a central issue. Without clear limits, court decisions have the potential to disrupt the election administration process, creating uncertainty that can harm election regularity. Therefore, it is necessary to apply the purcell principle in Indonesia.⁸⁶</p>	<p>application of the purcell principle in Indonesia</p> <p>2. Not evaluating the Constitutional Court Decision No. 70/PUU-XXII/2024, the Constitutional Court Decision No. 60/PUU-XXII/2024 and the Supreme Court Decision No. 23 P/HUM/2024.</p> <p>3. Not using the perspective of <i>saad adz-dzariah</i>.</p>	<p>research which is only focused on the urgency of implementing the purcell principle with the research object of the Constitutional Court decision No. 90/PUU-XXI/2023. Meanwhile, the author will examine the concept of applying the purcell principle to the strengthening of the design of judicial power and formulate it based on the perspective of <i>sadd adz-dzariah</i> by evaluating the Constitutional Court Decision No. 90/PUU-XXI/2023, the Constitutional Court Decision No. 70/PUU-XXII/2024, the Constitutional Court Decision No. 60/PUU-XXII/2024 and</p>
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⁸⁵ The research method used in this study is normative legal research with a conceptual approach, a comparative approach and a statutory approach (staute approach). Hamadi, "Reviewing the Urgency of Applying the Purcell Principle in General Elections (Elections) in Indonesia."

⁸⁶ See Hamadi: That The application of the Purcell principle can be used as a restriction on judicial power, especially the Constitutional Court so that the Constitutional Court does not suddenly affect the ongoing election administration process, such as during the Constitutional Court decision No. 90/PUU-XXI/2023 concerning the testing of Article 169 letter q of the Election Law which regulates the age requirements for presidential candidates.

					the Supreme Court Decision No. 23 P/HUM/2024.
4.	Dian Agung Wicaksono, Opportunities for the Application of the Purcell Principle as Judicial Restraint for the Constitutional Court in Testing the Law at the General Election Stage, 2024. ⁸⁷	<ol style="list-style-type: none"> 1. How is the concept of purcell principle and judicial restraint explained in the dynamics of judicial power practice? 2. What are the chances of applying the purcell principle as a form of judicial restraint by the Constitutional Court in testing the Law at the General Election stage? 	<ol style="list-style-type: none"> 1. That the purcell principle has a relationship with judicial restraint. 2. There are several opportunities for the application of the purcell principle as a form of judicial restraint by the Constitutional Court, namely: 3. the purcell principle is a tangible manifestation of the attitude of Constitutional Court judges in implementing judicial restraint; 4. The opportunity to apply the purcell principle 	<ol style="list-style-type: none"> 1. Not to further formulate the concept of the application of purcell rinciple in Indonesia 2. Not evaluating the Constitutional Court Decision No. 70/PUU-XXII/2024, the Constitutional Court Decision No. 60/PUU-XXII/2024, and the Supreme Court Decision No. 23 P/HUM/2024. 3. Not using the perspective of <i>saad adz-dzariah</i>. 	This research is an expansion or development of previous research that is only focused on the Opportunity to Apply the Purcell Principle as Judicial Restraint for the Constitutional Court in Testing the Law at the General Election Stage and its relationship with Judicial Restraint. Meanwhile, this study is the concept of applying the purcell principle to strengthening the design of judicial power and formulating it based on the perspective of <i>sadd adz-dzariah</i> by evaluating the

⁸⁷ This study uses normative legal research with a statutory approach (Statute Approach) and a conceptual approach (conspetual approach). Dian Agung Wicaksono, "Opportunities for the Application of the Purcell Principle as Judicial Restraint for the Constitutional Court in Testing the Law at the General Election Stage," *Journal of Proceedings of Actual Law Seminar 2*, no. 5 (2024).

			<p>arises when Constitutional Court judges apply prudential self-restraint;</p> <p>5. Opportunities for the application of the purcell principle can also arise when the Constitutional Court implements judicial restraint.⁸⁸</p>		<p>decision of the Constitutional Court Decision No. 90/PUU-XXI/2023, the Constitutional Court Decision No. 70/PUU-XXII/2024, and the Supreme Court Decision No. 23 P/HUM/2024.</p>
5.	<p>Harry B. Dodsworth, <i>The Positive and Negative Purcell Principle</i>, 2022.⁸⁹</p>	<p>1. How is the judge's reasoning in applying the purcell principle?</p> <p>2. How does the Supreme Court understand the purcell principle in terms of cases that have occurred</p> <p>3. How should the court apply</p>	<p>Court decisions in elections are divided into two categories, namely positive and negative. The positive verdict is a decision that adds restrictions to election rules, while a negative verdict is a decision that reduces restrictions on election rules. Each ruling provides a different type of</p>	<p>1. It does not analyze the application of the purcell principle in judicial power in Indonesia, but the limitations of the application of the purcell principle in the United States.</p> <p>2. Not using the perspective of <i>sadd adz-dzariah</i>.</p>	<p>This research is an extension or development of the previous research which only focuses on how the US courts should implement the purcell principle in the United States, the author's research will try to formulate the application of the purcell principle in Indonesia Based on the</p>

⁸⁸ See Wicaksono: The purcell principle is related to judicial restraint and there is an opportunity for the application of the purcell principle as a form of judicial restraint by the Constitutional Court in testing the Law when the election stage has begun.

⁸⁹ This study adopts descriptive normative legal research by applying the Statute Approach and Case approach and using the library data collection method. Dodsworth, "The Positive and Negative Purcell Principle."

		the purcell principle in the future?	confusion effect. A positive result will cause voters to be unmotivated to vote because of the increased level of voting complications, while a negative result will cause excessive voter attitudes, thus making voters who are not entitled to vote. ⁹⁰		perspective of <i>sadd adz-dzariah</i> .
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Source: Data processed from the author's search results (2024).

Previous research is a reference to provide a different paradigm, so this research has an element of novelty and is not a plagiarism of previous research. Based on the presentation of the table above, there are differences and elements of novelty which are findings related to hypotheses in the research to be carried out, and there are no substantial similarities with previous research. The author states that according to the table above, this study does not plagiarize the previous research.

G. Systematics of Discussion

The systematics of discussion in research has a crucial role because it helps researchers compile findings and analysis in a structured manner, making it easier for readers to follow the flow of research. The systematics of the discussion is expected to be able to provide a clear and systematic picture to the readers. The author, in order to facilitate the discussion, has compiled into four chapters that are in accordance with the "Guidebook for Writing Scientific Papers" of the Faculty of Sharia, UIN Maulana Malik Ibrahim Malang, with the following details:

⁹⁰ See Dodsworth: If a belated rule change won't confuse voters by stopping them from voting, Purcell has no reason to stop the change. In order to maintain the integrity of the Purcell principle, the court must adopt the presumption of no confusion, assuming the change does not cause confusion unless there is evidence to the contrary.

I. CHAPTER I : INTRODUCTION

CHAPTER I is an introductory chapter consisting of the background of the problem, the formulation of the problem, the purpose of the research, the benefits of the research, the research method, previous research, and the systematics of the discussion. This introductory chapter contains an explanation of the reasons for this research and describes the background and urgency of the research conducted by the author, which is related to the Evaluation of the Purcell Principle Towards Strengthening the Design of the Judicial Power System in Indonesia From the Perspective Of *Sadd Adz-Dzariah*.

II. CHAPTER II : LITERATURE REVIEW

Chapter II is a literature review chapter that contains juridical thoughts and concepts as a theoretical basis for the study and analysis of problems and contains the development of data and information, both substantially and methods relevant to the research problem. The foundation of these concepts and theories will later be used in analyzing every problem raised in the research. In this chapter, relevant theories related to the Evaluation of the Purcell Principle Towards Strengthening the Design of the Judicial Power System in Indonesia From the Perspective Of *Sadd Adz-Dzariah* will be described.

III. CHAPTER III : RESULTS AND DISCUSSION

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

IV. CHAPTER IV : CONCLUSION

Contains conclusions and suggestions. The conclusion here is a brief description or essence of the discussion and is the final result that answers the formulation of the problem, besides that this subchapter is also accompanied

by the discovery of new ideas or the discovery of solutions related to the problem being studied. Then at the end there is a bibliography which is a list of references or references used by researchers in conducting research.

CHAPTER II

LITERATURE REVIEW

A. Operational Definition

The operational definition makes the variables studied operational in relation to the process of strengthening these variables.⁹¹ Operational definitions help provide an understanding of something abstract so that it can avoid multiple interpretations. Departing from the explanation above, the operational definitions used in this study include:

1. Purcell Principle

Ruoyun Gao in his journal entitled Why the Purcell Principle Should Be Abolished writes that the purcell principle is a principle that gives the idea that the court should not change election regulations when the election is about to be held. This principle aims to avoid suspicion of interference with the court institution so that court decisions that contradict and affect the election can be avoided and prevent confusion between election participants and election implementers regarding "clear guidance" during elections.⁹²

2. Judicial Power

The judicial power is a judicial institution whose function is carried out by the Supreme Court and the Constitutional Court. Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia explains that the judicial power is an independent power to hold the judiciary to uphold law and justice.⁹³ Article 1 Point 1 of Law Number 48 of 2009 concerning Judicial Power further explains that judicial power is the power of an independent state to hold the judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia in 1945, for the implementation of the State of Law of the Republic of Indonesia.⁹⁴

⁹¹ Nikmatur Ridha, "Research Process, Problems, Variables and Research Paradigms," *Wisdom Journal* 14, no. 1 (2017): 63, <https://doi.org/10.1111/cgf.13898>.

⁹² Rice, 1.

⁹³ Article 24 "Constitution of the Republic of Indonesia 1945", Citizens and State (1945).

⁹⁴ Article 1 of Law Number 48 of 2009 concerning Judicial Power', 2009. Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

3. Supreme Court

The Supreme Court is one of the institutions holding judicial power in Indonesia which is the highest court of all judicial environments, as the highest court of the Supreme Court has the authority to supervise the administration of justice in all judicial environments in Indonesia. Article 24A of the 1945 Constitution also explains that the Supreme Court is an institution with the authority to adjudicate at the cassation level, examine laws and regulations under the law against the law, and other powers granted by law.⁹⁵ The Supreme Court is one of the executors of judicial power in Indonesia based on Article 1 of Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court.⁹⁶

4. Constitutional Court

Article 24C paragraph (1) of the Constitution of the Republic of Indonesia explains that the Constitutional Court is a judicial institution that has the authority to adjudicate at the first and last level whose decision is final to test the law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide the dissolution of political parties, and decide disputes about the results of general elections.⁹⁷ Article 1 number 1 of Law Number 4 of 2014 concerning Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law is also explained that the Constitutional Court is one of the institutions of Judicial Power in Indonesia.⁹⁸

5. Sadd Adz-Dzariah

Sadd adz-dzariah is one of the methods of discovery of Islamic law that is used to prevent, prohibit, and close the way for an act that was initially

⁹⁵ Article 24A "Constitution of the Republic of Indonesia 1945", Citizens and States (1945).

⁹⁶ Article 1 "Law Number 5 of 2004 concerning the Supreme Court" (2004). Statute Book of the Republic of Indonesia No. 9 of 2004 and Supplement to Statute Book of the Republic of Indonesia No. 4359.

⁹⁷ Article 24C paragraph (1) "Constitution of the Republic of Indonesia 1945", Citizens and State (1945).

⁹⁸ Article 1 number 1 of Law No. 4 of 2014 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2013 concerning the Second Amendment to Law No. 24 of 2003 concerning the Constitutional Court into Law, 2014. Statute Book of the Republic of Indonesia Number 5 of 2014 and Supplement to Statute Book of the Republic of Indonesia Number 5493.

allowed but because it caused damage to the act it was later banned.⁹⁹ According to Ibn Qayyim al-Jauziyah, the concept of *sadd adz-dzariah* is a means of preserving maqashid as-shari'ah¹⁰⁰ which stands on the method of "Taking good things and leaving bad things".¹⁰¹

B. Theoretical Framework

The theoretical framework or theoretical foundation contains juridical concepts that are built to study and analyze the problems of each problem to be discussed.¹⁰² Relevant theoretical frameworks are used, including the *sadd adz-dzariah* theory as the grand theory and the chaos theory as the intermediate theory, while the integrity theory as the applied theory. The *sadd adz-dzariah* theory is used as the main basis to answer and provide a comprehensive understanding of the broad and complex research issue regarding the prohibition of judges from changing the provisions of elections and regional elections while the process is ongoing and formulating the application of the purcell principle in Indonesia. The chaos theory is used as an intermediate theory to be a benchmark for the impact of chaos from changes in election and regional election provisions, so that the application of the purcell principle is needed to strengthen the design of the judicial power system. Integrity theory, as an applied theory to formulate and offer future ideal concepts (*ius constituendum*).

1. Sadd Adz-Dzariah

Sadd adz-dzariah is used as a grand theory with the consideration that the application of the purcell principle in the judicial power system is carried out to avoid mufsatat. Ibn al-Qayyim in formulating his thoughts on *al-dzariah* is based on the concept that every goal will not be achieved

⁹⁹ Intan arafah Intan arafah, "The Sadd Adz-Dzari'ah Approach in Islamic Studies," *Al-Muamalat: Journal of Sharia Law and Economics* 5, no. 1 (2020): 326, <https://doi.org/10.32505/muamalat.v5i1.1443>.

¹⁰⁰ *Maqashid sharia* According to Imam Ghazali, it is perpetuation by rejecting all forms of madharat and attracting benefits. So it is known as the rule of getting good and rejecting damage. Paryadi, "Maqashid Sharia: Definition and Opinion of Scholars," *Cross-Border* 4, no. 2 (2021): 208.

¹⁰¹ Ismail Jalili, *The Existence of Sadd Adz-Dzari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim Al-Jauziyyah (d. 751 AH/1350 AD)* (Klaten: Lakeisha Publishers, 2020), <http://repository.iainbengkulu.ac.id/11158/>.

¹⁰² Zaenul Mahmudi and Khoirul Hidayah, 'Guidelines for Writing Scientific Papers of the Faculty of Sharia Uin Maulana Malik Ibrahim Malang', 2022, 24.

without going through causes and mediators.¹⁰³ The media that serves as an introduction is a necessity that cannot be ignored, the legal status of the introduction is the same as the goal to be achieved.

The mediator of haram and disobedience will be subject to the same law as far as the possibility of leading to the haram, on the other hand, the medium of goodness and worship will have the same law as the possibility of leading to the ability.¹⁰⁴

One of the rules of *al-dzariah* used by Ibn Al-Qayyim is:¹⁰⁵

مَا تَكُونُ وَسِيلَةً وَطَرِيقًا إِلَى شَيْءٍ مَمْنُوعٍ شَرْعًا

"Something that is an intermediary and a way to something that is forbidden in the Shari'a."

Departing from these rules, to determine the law of *al-dzariah* must refer to the goals to be achieved, so that *al-dzariah* according to Ibn Al-Qayyim is divided into two types,¹⁰⁶

1. *Fath Al-Dzariah*: If the goal leads to something good, then a wide way should be opened for *al-dzariah* as an introduction to the benefit;
2. *Sadd Adz-Dzariah*¹⁰⁷: If the purpose is to lead to *mafsadat* or prohibition, then *al-dzariah* must be closed tightly.

In essence, what is meant in *al-dzariah* is something that leads to *mafsadat*, so the discussion is more inclined to *sadd adz-dzariah*.¹⁰⁸ Ibn al-

¹⁰³ Wahbah Zuhaili argues that Al-Dzari'ah is a way or a way to achieve something depending on the motive of the perpetrator. If a way or way to achieve something is forbidden, then the law is not allowed, and vice versa. See Wahbah Zuhaili, *The Book of Ushul Al-Fiqh Al-Islami*, First Printing (Damascus: Dar al-Fikr, 1986).

¹⁰⁴ Imam Fawaid, 'The Concept of Sadd Al-Dzari'ah in the Perspective of Ibn Al-Qayyim Al-Jauziyah', *ORAL AL-HAL: Journal of Thought and Culture Development*, 13.2 (2019), 332 <<https://doi.org/10.35316/lisanalhal.v13i2.599>>.

¹⁰⁵ Zulfikri and Faizah, 173.

¹⁰⁶ Muhammad Jihadil Akbar, 74.

¹⁰⁷ In the science of ushul fiqh Sadd Adz-Dzariah is a problem that seems to be mubah, but there is a possibility that it can be conveyed to the forbidden (haram).

According to Ash-Syaitibi Sadd Adz-Dzariah is to carry out a work that originally contained benefits leading to damage. See: Intan Arafah, 70.

¹⁰⁸ Al-Qarafi argues that sadd adz-dzari'ah is to cut off the path of damage as a method to eliminate the mafsadat. Although in fact an act is free from the element of mafsadah, but it is feared that it will become a way or means for damage to occur, so we must prevent the act. Muhammad Hanif bin Halililah, 'The Blasphemy of Sadd al-Zari'ah as a Evidence of Islamic Law (Comparative Study

Qayyim put forward several arguments to determine the arrogance of *sadd al-dzariah*, one of which is the Word of Allah in Surah An-Nur verse 31:¹⁰⁹

وَقُلْ لِلْمُؤْمِنَاتِ يَعْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ

"And let them not beat their feet so that the jewels they hide may be known"

The verse prohibits women from stomping their feet on the ground by wearing anklets, actually the act is not prohibited but because it can attract the attention of men so that it can cause orgasm, this act is prohibited.¹¹⁰ The application of the pucell principle indicates that there is a prohibition on changing the provisions of elections and regional elections when the stages have begun, there is actually no prohibition in a law that regulates this, but in order to avoid a *mafsadat* that has the potential to confuse several parties, judges should refrain from changing the provisions of elections and regional elections in accordance with the purcell principle with the right formulation.

In line with the concept of *sadd adz-dzariah*, the fourth master *fiqh* rule reads:¹¹¹

الْحَاجَةُ قَدْ تَنْزَلُ مِنْزِلَةَ الضَّرُورَةِ عَامَّةً كَانَتْ أَوْ خَاصَّةً

"The need is placed in an emergency place, whether the need is general or special"

The above rule explains that wishes (urgent needs) can be equated with an emergency, on this basis a judge may be limited in his authority in changing the provisions of elections and regional elections to avoid chaos in the implementation process.

between Maliki, Shafi'i and Zhahiri madhhabs)', *Uin Ar-Rainy* (Ar-Raniry Darussalam State Islamic University, Banda Aceh, 2021), 19.

¹⁰⁹ Imam Fawaid, 335.

¹¹⁰ According to Al-Syaukani, Adz-Dzariah is a problem that is basically allowed but will lead to prohibited acts. See: Muhammad Hanif bin Halililah, 'The Blasphemy of Sadd al-Zari'ah as a Evidence of Islamic Law (A Comparative Study between the Maliki, Shafi'i and Zhahiri madhhabs)', *Uin Ar-Rainy* (Ar-Raniry Darussalam State Islamic University, Banda Aceh, 2021), 19.

¹¹¹ Duski Ibrahim, *Al-Qawa'id Al-Fiqhiyah (Rules of Fiqh)* (Palembang: Noerfikri, 2018), 86.

The above description shows the importance of the *sadd adz-dzariah* perspective used in formulating the application of purcell principle to the strengthening of the design of the judicial power system in Indonesia, by holding on to the *sadd adz-dzariah* perspective the author can formulate an ideal concept regarding how the purcell principle should be applied in the judicial power system in Indonesia in purcell Principles without clear formulations and standards will lead to the disenfranchisement of voting rights because the court's discretion is too broad without standards for decision-making will cause social and political problems.

2. Chaos Theory

The chaos theory is used as a middle theory as a continuation of the previous grand theory, namely *sadd adz-dzariah* which indicates the discovery of law by looking at the mufsadah that is caused, then the chaos theory also looks at the law by looking at the disorder or chaos that occurs to answer various legal problems in a society that is increasingly diverse. Charles Sampford¹¹² stated that legal theory does not have to be a legal theory that is mechanical, but can be a theory of chaos. Although the law is an orderly system and has a mechanism to overcome inconsistencies, in practice irregularities can occur due to attitudes that are not in accordance with the law.¹¹³

¹¹² Charles Sampford is one of the thinkers who tried to explore the theory of chaos in legal science. In the late 1990s Charles Sam Pford published a book entitled "The Disorder Of law", with the addition of "A Critique of Legal theory", as a form of rejection of what was held by the thinkers of the positivistic legal school, which based its income on systems theory. Kelik Wardiono, 'CHAOS THEORY: A Challenge in Understanding the Law', *Journal of Law*, 15.2 (2012), 142.

Charles Sampford said that positivists have imposed the model of approach used in the natural sciences on the social sciences, resulting in an extraordinary reduction in reality, reality cannot be seen / understood as it is. Therefore, according to Sampford, legal theory does not have to be (not necessarily in the form of a mechanical legal theory, but can be in the form of a disorder theory/nono-systematic). Hasdiwanti, 'A Study of Chaos Legal Theory on the Act of Playing Judge Himself to Handle the Crime of Theft with Violence' (Hasanuddin University, 2023), 42.

Satjipto Rahardjo once responded by featuring Sampford in his book; Where actually the law is not a building full of rational logical order. The truth is, that it is man who has an interest and wants to see that the law is indeed always in the consciousness that wants to be orderly (certainty-mechanistic). Faisal, "Tracing the Theory of Chaos in Law through the Critical Theory Paradigm," *Legal Journal of Justice* 3, no. 2 (2014): 132, <https://doi.org/10.20961/yustisia.v3i2.11108>.

¹¹³ Amir Syarifudin and Indah Febriani, 'The Legal System and Legal Theory of Chaos', *Hasanuddin Law Review*, 1.2 (2015), 300 <<https://doi.org/10.20956/halrev.v1n2.85>>.

The main points of Charles Sampford's teachings on the theory of chaos law are:¹¹⁴

1. Chaos and uncertainty in social relations, including legal relations built on the basis of power relations (power relations), are not reflected in formal relations with real relations (power relations). This gap is what causes chaos.
2. Relationships in society are based on power relations, where each party does not have the same power as a result of a power struggle from each party. This state gives rise to an asymmetrical state that he calls "social melee", a fluid social relationship.
3. After the law is established by the ruler or by the parties, the law is then implemented by parties who do not have the same power, which gives rise to chaos. Each party makes a subjective decision.

Based on the description above, Sampford argues that one of the factors that can cause chaos¹¹⁵ to occur is the gap in domination practices that preserve the gap between formal relationships and real relationships in society.¹¹⁶ Changes in the provisions of elections and regional elections by judicial power that will intervene by the rulers to maintain their power is one of the illustrations that having power means having the ability to change the behavior or attitude of others according to what the power holder wants. The rulers seem to castrate the independence of the judicial power through abusive judicial review of the regulations on elections and regional elections so that in practice this attitude of judicial power is not in accordance with the existing law and injures the judicial power which has been designed to be an independent institution.

Chaos theory provides an understanding that the world can no longer be seen unilaterally according to the concept of order but must also be seen in terms of chaos or disorder. The law in this case must be seen in a

¹¹⁴ Syarifudin and Febriani, 301.

¹¹⁵ Anthon F. Susanto stated in his book "semiotics of law" that for chaos theory, legal reality is an asymmetrical reality, full of uncertainty and disorder which is the characteristic (essence) of relationships in society (social). Faisal, "Tracing the Theory of Chaos in Law through the Critical Theory Paradigm."

¹¹⁶ Wardiono, "CHAOS THEORY: A Struggle in Understanding the Law."

dualistic way so that the resulting legal theory will describe the real reality.¹¹⁷ The evaluation of the purcell principle certainly has uniformity with this theory, because the evaluation that will be carried out aims to formulate the application of the purcell principle to strengthen the design of the judicial power system in Indonesia by departing from the phenomenon of legal chaos during the 2024 elections and regional elections.

3. Integrity Theory

The theory of integrity¹¹⁸ is used as an applied story on the basis that in order to maintain judicial power within its authority and avoid decisions that are not in accordance with the interests of the community, an integrity judge is needed¹¹⁹. The understanding and meaning of integrity in the legal realm is an important debate to be defined appropriately and honestly. The existence of a person's integrity in the world of ethics is important in carrying out the entrusted mandate. Integrity is related to clean morals, honesty, and sincerity towards others and God Almighty. Integrity is a standard of morality, ethics, honesty, and truth of a person's actions in daily life.¹²⁰

Etymologically, the words integrity, integration and integral come from the same word, namely integer, which means whole or entire. Referring to this meaning, it can be understood that something with integrity is something whole in the whole, something that is not divided, where the nuance of its wholeness or roundness cannot be eliminated. Integrity is appreciated as a benchmark in considering the good and bad of an action. An individual with integrity will not take actions that change him into another person depending on the context of his life, but will still persist with behavior that shows one true identity in various contexts of

¹¹⁷ Syarifudin and Febriani, 301.

¹¹⁸ According to Adrian Gostick & Dana Telford, the Merriam-Webster Dictionary defines integrity as strong adherence to a code, specifically a certain moral or artistic value.

¹¹⁹ Article 5 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power states that judges must have integrity and personality that is not reprehensible, noble, fair, professional, and experienced in the field of law.

¹²⁰ Mustafa Lutfi, "Legal Politics of the Application of Statesman Requirements in the Selection Process of Constitutional Judge Candidates" (Islamic University of Indonesia, 2023).

his life despite many influences from outsiders.¹²¹

The author refers to Henry Cloud's opinion that when it comes to integrity, it will be inseparable from the effort to become a whole person, who works well and carries out its functions according to what has been designed beforehand.¹²² Integrity is an inner attitude that reflects the integrity and balance of the personality of each judge as a person and as a state official in carrying out the duties of his office. Personality integrity includes an honest, loyal, and sincere attitude in carrying out their professional duties.

Many other literatures try to provide an understanding of the concept of integrity. Hosmer, Mayer, Davis and Schoorman stated that integrity is a person's heart, moral accountability, moral commitment, and moral consistency between the behavior he exhibits and certain values or principles. Developing this opinion, Treviño-Rodríguez explained integrity in the framework of the classification of systems theory, namely individual, social, and organizational frameworks. Integrity in this case refers to the values held by oneself, society, or the organization in which one belongs.¹²³

As the thinking developed, Jacobs defined integrity by emphasizing moral consistency, personal integrity, or honesty. Honesty seems to be an inseparable part of the discussion about integrity. In line with Jacobs, Butler and Cantrell also define integrity as a trustworthy and honest reputation from a person to explain the term "trust" in the context of an organization. Integrity is also placed as the core of the ethics of virtue initiated by Solomon by calling integrity not only about individual autonomy and togetherness, but also loyalty, harmony, cooperation, and

¹²¹ Gunardi Endro, "Examining the Meaning of Integrity and Its Opposition to Corruption," *Integrity: Anti-Corruption Journal* 3, no. 1 (2017): 134-135, <https://jurnal.kpk.go.id/Dokumen/Jurnal-INTEGRITAS-Volume-3-No-1-tahun-2017/Jurnal-INTEGRITAS-Volume-3-No-1-tahun-2017-06.pdf>.

¹²² Sheva Krisna Danendra, Titus Perdana Sulisty, and Moch. Ali Mashur, "Integrity of Morality and Public Trust in the Perspective of Judge Procurement Policy in Indonesia," *Journal Publicuho* 5, no. 2 (2022): 547.

¹²³ Anggara Wisesa, "Moral Integrity in the Context of Ethical Decision-Making," *Journal of Technology Management* 10, no. 1 (2011): 83, http://digilib.uinsgd.ac.id/9984/5/5_Bab2.pdf.

trustworthiness.¹²⁴

Referring to some of the ideas above, it can be understood that theories that discuss integrity are not only in the context of the individual but also develop in a broader context, namely organizations that are rooted in Max Weber's bureaucratic thought which indicates the need for universal rules that provide certainty for individuals to complete their work well.¹²⁵ This concept of integrity strengthens the autonomy, competence, credibility of political institutions and work efficiency in both public and private companies. Organizational integrity is a standard of personal morality and relational value with outsiders and focuses on kindness with others and strengthens attachment between people in the organization.

Racing on individual integrity and organizational integrity, it can be known that people with integrity or organizations with integrity are expected to take moral decisions and actions by expressing their self-identity to affirm that the meaning of cohesiveness in themselves is realized and expressed, so that there are two aspects of integrity for individual people or organizational individuals with integrity, namely: 1) Integrity is related to how individuals building and maintaining one's identity (internal control process); and 2) integrity relates to how individuals perform moral acts (the process of external participation).¹²⁶

Departing from some of the above understandings, the theory of integrity is harmonized to be used in this study because the manifestation of the independence of a judge as an individual and as an executor of an organization, which in this case is an institution of judicial power, must be able to resist internal and external influences in deciding a case and interpretations that are avoided from all forms of influence, both politically and economically.¹²⁷

¹²⁴ Wisesa, 84.

¹²⁵ Adrian Wijanarko, Iin Mayasari, and Handrix Chris Haryanto, "Report on Research Results: Development of Leadership Integrity Measurement" (Paramadina University, 2021).

¹²⁶ Endro, "Examining the meaning of integrity and its opposition to corruption.", 136.

¹²⁷ Iwan Satriawan and Tanto Lailam, "Implication of Selection Mechanism Towards Integrity and Independency of Constitutional Court Judges in Indonesia," *IUS Journal of Law and Justice Studies* 9, no. 1 (2021): 117, <https://doi.org/10.29303/ius.v9i1.871>.

The theory of integrity is used to formulate an ideal concept in the future, namely to avoid judges who are subjective and easy to intervene so that they are able to maintain the dignity of judicial power, be it the Supreme Court or the Constitutional Court. Integrity theory is also needed to measure the credibility or condition of the current Supreme Court and Constitutional Court judges, considering that integrity affects judges in carrying out their duties. A judge will not commit ethical violations, act arbitrarily, and will always carry out his duties in accordance with procedures, regulations, universal and rational moral values, and existing principles if the judge has integrity.

CHAPTER III

RESULTS AND DISCUSSION

A. Legal Existing Application of Purcell Principle in Indonesia

Legal existing¹²⁸ can be interpreted as a set of legal rules that are currently in force in a particular jurisdiction. The law has been enacted and actively enforced by the government to regulate various aspects of community behavior and interaction.¹²⁹ Bagir Manan stated that the existing legal system of Indonesia consists of 4 systems, namely: 1) Western legal system based on the principle of concordance from the Netherlands, 2) Customary law system; 3) Religious legal system; 4) The legal system that was born since our independence or called the national legal system.¹³⁰

Departing from this understanding, the legal existing purcell principle aims to analyze the relevance of the application of the purcell principle to the applicable law in Indonesia considering that this principle comes from the jurisprudence and legal culture of another country, namely the United States. Article 3 of the 1945 Constitution (1945 Constitution) has stated that Indonesia is a country of law¹³¹, therefore all rules that will be enforced in Indonesia must be in accordance with existing legal rules so that there is no conflict of norms.

The evaluation of the purcell principle is carried out not without a clear basis, historically reviewed before the 1945 Constitution Amendment, the judiciary did not have the authority to test laws and regulations. The authority to test these laws and regulations was then given to the Supreme Court (MA), but since it was accommodated in Article 26 of Law Number 14 of 1970 and Article 31 of Law Number 14 of 1985 *jis*. Article 11 of the Decree of the People's Consultative Assembly (MPR) No. III/MPR/1978 stipulates that the implementation of the case

¹²⁸ Existing according to Black's Law Dictionary is: exists, has current power, activity, or effect at a given time.

¹²⁹ Surin Manprasong, "Understanding the Meaning of Existing Laws," [personnel.obec.go.th](https://personnel.obec.go.th/home/archives/412808), n.d., <https://personnel.obec.go.th/home/archives/412808>. Retrieved January 30, 2025.

¹³⁰ *Academic Manuscript of the Draft Law on the Development of National Law*, National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia 2024, p. 43.

¹³¹ Article 3 "The Constitution of the Republic of Indonesia 1945," Citizens and States (1945), https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

of testing regulations under the law against the law cannot be said to be running meclamaly, even for 22 years there has been no case of testing laws and regulations in the Supreme Court.¹³²

The political and legal system then began to change during the reform period, where one of the issues that became a debate was the effort to give the authority to test laws and regulations at the legal level against the constitution to the judicial power. The long debate then resulted in a decision that the testing of laws and regulations will be carried out by two institutions of judicial power, namely the Supreme Court (MA) and the Constitutional Court (MK). The Supreme Court remains with its authority in examining laws and regulations under the law against the law while the Constitutional Court is given the authority to test the law against the constitution.

The authority possessed by the Supreme Court and the Constitutional Court then became a foothold for the public to conduct a material test of laws and regulations that were considered inappropriate. Along with the development of constitutional law, the existence of the use of judicial review then grew in the 21st century and began to show the dependence of society on the institution of judicial power to solve multisectoral problems related to socio-political, economic, public policy, and even related to election regulations.¹³³ The dependence on the court has led to political judicialization, which is a condition in which the court institution is involved in policy changes that have been the business of the House of Representatives and the President.

Political judicialization in the process of legislating election laws is caused by a shift in the authority of judicial power from a negative legislature to a positive legislature¹³⁴. The court acts as if it has played a dual role because in addition to

¹³² Achmad Mulyanto, "Problems of Testing Laws and Regulations (Judicial Review) in the Supreme Court and the Constitutional Court," *Legal Journal of Justice* 2, no. 1 (2013): 57, <https://doi.org/10.20961/yustisia.v2i1.11070>.

¹³³ Aditya Perdana and Muhammad Imam, "Political Judicialization in the Constitutional Court's Decision Regarding the Age Limit for Vice Presidential Candidates in the 202 Presidential Election," *Journal of Election Supervision*, 2024, 70.

¹³⁴ The results of the Congress of the International Academy of Comparative Law (2010) in Washington, D.C. with the theme "Constitutional Courts as Positive Legislators show that the Constitutional Court tends to carry out its role as positive legislators by:

1. The Constitutional Court intervenes in the power of constituents;
2. The Constitutional Court interferes with existing regulations;

exercising its authority as a judicial power, the court also intervenes and influences important political decisions that have implications for disrupting the stability of the election administration and causing legal uncertainty due to the rules of the election game that are often changed by the court.

Departing from these problems, the evaluation of the purcell principle on strengthening the design of judicial power in Indonesia is needed to overcome the problem of changes in election regulations during injury time. Judges as the executors of judicial power must show their integrity by upholding justice, in this case judges should not interfere too much by carrying out political judicialization during the electoral political period, so that the rationality regarding the limits of the political judicialization of judicial power during the election period must be further studied in the discussion below.

1. The Rationality of Limiting the Political Judicialization of Judicial Power in Maintaining Election Stability in Indonesia

The rationality of the restriction of the judicialization of judicial power¹³⁵ in maintaining the stability of the election administration is necessary because the courts often fail to be the last bastion against injustice, which then gives rise to the notion that the courts are easy to intervene. Political actors often change the provisions of general elections (elections) and regional head elections (pilkada) during the election period by using judicial review¹³⁶ as an alternative in maintaining power. The judicial review mechanism is often used as a subtle tactic to legitimize arbitrary actions.¹³⁷

3. The Constitutional Court intervened on the absence of law or legislative omission; and The Constitutional Court is the lawmaker in the testing of the law.

¹³⁵ Phenomenon *policy making* has been happening since the 21st century and has caused a dependence on the courts to resolve problems related to morality, public policy, and political controversies. Indra Perwira, "Reflection on the Phenomenon of Judicialization of Politics Legal Policy on the Establishment of Constitutional Court and Cons," *Constitution Journal* 13, no. 1 (2016): 27.

¹³⁶ Judicial Review is the authority of the judicial power to test the level of constitutionality or validity of a law or regulation against laws and regulations that are hierarchically higher. Joseph Tanenhus stated that judicial review is a process to test the constitutionality of a legal product of the legislative body and the executive body. See in: Safi'i, *History and Position of Judicial Review Arrangements in Indonesia* (Surabaya: Scopindo Media Pustaka, 2021), 38.

¹³⁷ This condition is also called Abusive Judicial Review which is an alternative for the ruler to maintain his power through testing the Law which is considered an open legal policy and not through arbitrariness. Enika Maya Oktavia, Mely Noviyanti, and Dalpin Safari, 'Portrait of Abusive Judicial Review during the Administration of President Joko Widodo', *Legislative Journal*, 7.2 (2024), 3.

This condition departs from the authority of the Supreme Court and the Constitutional Court to examine a law and regulation that in its development causes weaknesses and problems in its implementation. Along with the evolution of judicial power, currently the authority to test laws and regulations by the Supreme Court has been regulated in Article 24A paragraph (1) of the 1945 Constitution¹³⁸ and Article 31 paragraph (1) of Law No. 5 of 2004 concerning the Supreme Court¹³⁹ of *jis*. Article 20 paragraph (2) letter b of Law No. 48 of 2009 concerning judicial power¹⁴⁰ which states that one of the powers of the Supreme Court is to examine the laws and regulations under the law against the law. The limitation of the Supreme Court in exercising its authority to examine the laws and regulations has been further regulated in Article 6 paragraph (2) of the Supreme Court Regulation Number 1 of 2011 concerning the Right to Material Examination which states that¹⁴¹:

- (1) In the event that the Supreme Court is of the opinion that the application for objection is reasonable, because the Laws and Regulations are contrary to the Law or Laws and Regulations of a higher level, the Supreme Court grants the application for objection;
- (2) The Supreme Court in its decision stated that the Laws and Regulations that were objected to were invalid or invalid to the public, and ordered the relevant agencies to immediately revoke them;
- (3) In the event that the Supreme Court is of the opinion that the objection is unfounded, the Supreme Court rejects the objection.

Referring to the Perma above, the Supreme Court's authority in testing laws is only limited to assessing the content of laws and regulations under the law against laws and regulations of a higher level, so that if there are laws and regulations that are declared invalid, the Supreme Court needs to order the relevant agencies to

¹³⁸ Article 24A paragraph (1) "Constitution of the Republic of Indonesia 1945," Citizens and State (1945), <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

¹³⁹ Article 31 paragraph (1) of Law No. 5 of 2004 concerning the Supreme Court, <https://peraturan.bpk.go.id/Details/40491/uu-no-5-tahun-2004>. Statute Book of the Republic of Indonesia No. 9 of 2004 and Supplement to Statute Book of the Republic of Indonesia No. 4359.

¹⁴⁰ Article 20 paragraph (2) letter b"Law Number 48 of 2009 concerning Judicial Power", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

¹⁴¹ Article 6 paragraph (2) Regulation of the Supreme Court of the Republic of Indonesia Number 8 of 2017 concerning Procedural Guidelines for Obtaining a Decision on the Acceptance of an Application to Obtain an Appointment and/or Action of a Government Agency or Official, 2017, <https://peraturan.bpk.go.id/Details/206061/perma-no-1-tahun-2018>. State Gazette of the Republic of Indonesia Year 2017 Number 1751.

immediately revoke them and is not allowed to contain new norms, but in practice the Supreme Court often exceeds its authority by including new norms in its decision.

Ahead of the 2024 Regional Head Election (pilkada), the Supreme Court issued Supreme Court Decision Number 23/P/HUM/2024¹⁴² which tested the provisions of Article 4 Paragraph (1) letter d of the General Election Commission Regulation Number 9 of 2020 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor where the Supreme Court changed the phrase which initially read:

"The minimum age is 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor starting from the determination of the Candidate Pair"

Then the Supreme Court made it become:

"The minimum age is 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor starting from the inauguration of the selected candidate pair."

The Supreme Court's action in the a quo decision shows that there is an overlap in the activity of judicial power in making legal policies which is evidence that currently the judicial power does not bring problems to intervene, but rather the judicial power becomes the party that intervenes in the power of making laws.

Another branch of judicial power, namely the Constitutional Court (MK), in its development, also often experiences a shift in function from a positive legislature to a negative legislature. Article 24C paragraph (1) of the 1945 Constitution¹⁴³ and Article 10 paragraph (1) of Law No. 24 of 2003 concerning¹⁴⁴ the *jis*. Constitutional Court. Article 29 paragraph (1) letter a of Law No. 48 of

¹⁴² Supreme Court Decision Number 23 P/HUM/2024', 2024 <https://putusan3.mahkamahagung.go.id/direktori/download_file/ec588950997002d88d13caee73893200/zip/zaef21887b3c4de28717313630353533>.

¹⁴³ Article 24C paragraph (1) "Constitution of the Republic of Indonesia of 1945", Citizen and State (1945), <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

¹⁴⁴ Article 10 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, <https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003>. Statute Book of the Republic of Indonesia Year 2003 Number 98.

2009 concerning Judicial Power¹⁴⁵ states that one of the Constitutional Court's powers is to adjudicate at the first and last level whose decision is final to test the law against the Constitution.

Referring to the judicial review system in Austria, the Constitutional Court should only be able to annul laws that are declared contrary to the 1945 Constitution instead of creating new norms, in which case the Constitutional Court functions as a negative legislature.¹⁴⁶ The limitation of the Constitutional Court's authority in conducting constitutional tests was initially regulated in the provisions of Article 57 paragraph (2a) of Law Number 8 of 2011 concerning the Constitutional Court which states:¹⁴⁷

The Constitutional Court's decision does not contain:

- (1) Amar other than as referred to in paragraph (1) and paragraph (2);
- (2) Orders to lawmakers; and
- (3) The formulation of norms as a substitute for norms from laws that are declared contrary to the 1945 Constitution of the Republic of Indonesia.

The article indicates that the Constitutional Court limits itself only as a norm breaker and does not place itself as the drafter of new norms, considering that norm-making is the authority of the House of Representatives together with the President, but through the Constitutional Court Decision Number 48/PUU-IX/2011 concerning the Testing of Law Number 35 of 2009 concerning Narcotics. Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, Article 57 paragraph (2a) letter c is declared

¹⁴⁵ Article 29 paragraph (1) letter a "Law Number 48 of 2009 concerning Judicial Power", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

¹⁴⁶ Concept *Judicial review* in Indonesia is basically racing on the mechanism of *judicial review* in Austria which uses the doctrine that the Constitutional Court functions as a *negative* legislator who was first introduced by Hans Kelsen in his book *General Theory of Law and State* (1945: 268-9). See in: Xavier Nugraha, Risdiana Izzaty, and Anira. Alya, "Constitutional Review in Indonesia After the Constitutional Court Decision Number 48/PUU-IX/2011: From Negative Legislator to Positive Legislator," *RechtIdee* 15, no. 1 (2020): 3, <https://doi.org/10.1016/j.jnc.2020.125798> <https://doi.org/10.1016/j.smr.2020.02.002> <http://www.ncbi.nlm.nih.gov/pubmed/810049> <http://doi.wiley.com/10.1002/anie.197505391> <http://www.sciencedirect.com/science/article/pii/B9780857090409500205> <http://www.peraturan.bpk.go.id/Details/39183/uu-no-8-tahun-2011>.

¹⁴⁷ Article 57 paragraph (2a) "Law No. 8 of 2011 concerning the Constitutional Court", 2011. <https://peraturan.bpk.go.id/Details/39183/uu-no-8-tahun-2011>. Statute Book of the Republic of Indonesia Number 70 of 2011 and Supplement to Statute Book of the Republic of Indonesia Number 5226.

irrelevant and contrary to the 1945 Constitution and does not have binding legal force.

The Constitutional Court's Decision Number 48/PUU-IX/2011 became the beginning of a shift in the authority of the Constitutional Court from a negative legislature to a positive legislature, then it was also strengthened by the existence of Article 73 paragraph (3) of PMK Number 2 of 2021 which states "When deemed necessary, the Constitutional Court may add an amar other than what is specified as referred to in paragraphs 1 and 2". The cancellation of the provisions of Article 57 paragraph (2a) of Law No. 8 of 2011 concerning the Constitutional Court has caused the authority of the Constitutional Court to become more broad.¹⁴⁸

It is the expansion of the Constitutional Court's authority that then results in the court tending to decide political issues. The Constitutional Court's Decision Number 90/PUU-XXI/2023¹⁴⁹ is a form of shifting the authority of the Constitutional Court as a negative legislature to a positive legislature. The Constitutional Court changed the provisions of the requirements for presidential and vice presidential candidates by adding a clause in the article tested, namely Article 169 letter q of Law Number 7 of 2007 concerning General Elections which initially stated "The requirements to be a presidential candidate and vice presidential candidate are at least 40 (forty) years old" to read in full "At least 40 (forty) years old or have/are currently holding a position elected through general elections including regional head elections."

Based on data published on the official website of the Constitutional Court, Law Number 7 of 2017 concerning General Elections is indeed a law that is often tested in the Constitutional Court, even ranking first as the most tested law, namely 155 times. Meanwhile, Law Number 10 of 2016 concerning the Election of Regional Heads (Pilkada) is in third place with the number of tests as many as 80 times. The laws with the most frequency of material tests in 2024 will be outlined in the table below.

¹⁴⁸ Ochthavia Kirana Nuril Layli, 'The Constitutional Court's Authority over Decision Number 90/PUU-XXI/2023 as a Positive Legislator Reviewed from the Perspective of Justice Theory' (UIN Kiai Haji Achmad Siddiq, 2024), 5.

¹⁴⁹ "Constitutional Court Decision Number 90/PUU-XXI/2023."

Table 3. 1
Tabulating Laws with the Highest Frequency of Material Tests
Year 2024

No.	Law	Number of Material Tests
1.	Law No. 7 of 2017 concerning Elections	155
2.	Law No. 8 of 1981 concerning the Criminal Procedure Code	85
3.	Law No. 10 of 2016 concerning the Election of Governors, Regents, and Mayors	80
4.	Law No. 8 of 2015 concerning the Election of Governors, Regents, and Mayors	43
5.	Law No. 13 of 2003 concerning Manpower	39
6.	Law No. 32 of 2004 concerning Regional Government	38
7.	Law 18 of 2003 concerning Advocates	37
8.	Law No. 8 of 2012 concerning the General Election of the House of Representatives, Dewam Regional Representatives and Regional House of Representatives	37
9.	Law No. 42 of 2013 concerning General Elections for the House of Representatives, Regional Representative Councils and Regional People's Representative Councils	34
10.	Law No. 24 of 2003 concerning the Constitutional Court	33

Source: (Official website of the Constitutional Court, "Most tested laws 2024")¹⁵⁰

The table that shows the number of material tests on the election law above is a necessity because the election law regulates the concept of power transition. Mahfud MD stated that the law that regulates power is easily determined by the relevance between the political configuration and the character of the legal product so that it can be understood that the legal product related to power is easily influenced by the interests of the ruler.¹⁵¹

Referring to the legal basis above, although basically the Supreme Court and the Constitutional Court have the authority to examine a law and regulation, changes made in the middle of the election are not a wise thing. Such conditions

¹⁵⁰ Source: Constitutional Court, "The Most Tested Verdict 2024," n.d., <https://www.mkri.id/index.php?page=web.Verdict2dev&id=1&kat=1&menu=5>. Accessed on February 2, 2025.

¹⁵¹ Azmi Fathu Rohman, 'Relevance and Consistency of the Application of the Purcell Principle by the Constitutional Court in General Elections', *Lex Renaissance*, 9.116 (2025), 451.

in practice cause the judicial power as a judicial branch to be charged to solve problems that are actually the responsibility of legislators. The examination of election regulations cannot be separated from the request for changes to the regulations on candidacy requirements, things that allow political parties to become election participants, voting mechanisms and other crucial matters that have been tested to the Supreme Court or the Constitutional Court so that they have the potential to disrupt the stability of the implementation of elections and the regional elections themselves.

Political judicialization related to the electoral system is known as "the law of democracy", which is the involvement of judicial power in regulating the electoral system or governance so as to decide disputes between election participants¹⁵², therefore judicial institutions are required to refrain from conducting judicial review to avoid involvement in electoral politics that has the potential to undermine public trust and legitimacy in the judicial institution.¹⁵³

Regarding the limitations in law-making, election law has actually been conceptualized with judicial restraint¹⁵⁴, but the judicial power, especially the Constitutional Court, is rampant in doing the opposite, namely judicial activism,¹⁵⁵ so that there is a strong current by experts who oppose the practice of political judicialization through judicial activism, especially when the election stage is

¹⁵² Pratama and Muzaki, 6.

¹⁵³ Marcelino Ceasar Kishan, "The Limits of Political Judicialization by the Constitutional Court: The Paradox of the General Election Law," *Journal of Law* 8, no. 2 (2024): 207.

¹⁵⁴ According to Aharon, *Barak's Judicial Restraint* is that judges should as much as possible not form new legal norms in adjudicating a case to create a balance between conflicting social values. In other words, judicial restraint requires judges to interpret a law by first paying attention to the politics of the laws that form it.

According to Posner, *judicial restraint* It is an attempt by the judge or court to limit himself within the framework of the principle of separation of powers (*separation of powers*). This means that judicial restraint is an effort by the branch of judicial power not to try cases that will interfere with other branches of power. See in: Dramanda, 620.

¹⁵⁵ In Black's Law Dictionary *judicial activism* is: A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent. See in: Bryan A. Garner and Henry Campbell, *Black's Law Dictionary*, (Minnesota: West Group, 2004).

According to Lino Graglia, *Judicial Activism* is a view that allows judges to make decisions based on their personal or political considerations, so it is concluded that judicial activism is a view that allows judges to make decisions that contain new legal norms. See: Bagus Surya Prabowo, *Judicial Activism and Open Legal Policy Considerations in Constitutional Court Decisions* (Bandung: Mandar Maju, 2024).

ongoing.¹⁵⁶ The approach of judicial activism and the shift of judicial power as a positive legislature gives freedom to judges from procedural shackles, thus making judicial power a means of fraud to win election contests.

Judicial activism is used to further attract the involvement of the courts in deciding cases in the midst of big political stakes that are expected to protect the electoral interests of certain regimes. This condition is called by Ran Hirschl the term hegemonic maneuver,¹⁵⁷ which is the expansion of the authority or authority of the court's institutions in determining the results of public policies that have a wide impact on society and the governance of a country, including policies related to the electoral system.

Based on the above analysis, the evaluation of the purcell principle becomes relevant as a form of caution so that the judicial power does not carry out political judicialization during the election period caused by the shift in the functions of the Supreme Court and the Constitutional Court to a positive legislature, as contained in the contents of the Constitutional Court Decision No. 90/PUU-XXI/2023 and the Supreme Court Decision No. 23/P/HUM/2024. As a first step, the author will analyze the legal examination of the application of the purcell principle in the judicial power system in Indonesia to assess that this principle is relevant and does not cause conflict of norms in practice in Indonesia. The legal examination of purcell principle in Indonesia will be discussed further as follows.

2. Legal Examination of the Application of the Purcell Principle in the Judicial Power System in Indonesia

Empirical conditions show that judicial power, which is basically designed as an independent institution to uphold justice, is now often used as a bridge to extend power, so the idea of applying the purcell principle emerged as a solution so that judges should choose to refrain from the practice of formulating norms in the seconds when the election is held. Article 24 paragraph (1) of the 1945 Constitution *jo.* Article 1 Point 1 of Law No. 48 of 2009 concerning Judicial Power states that judicial power is an independent power to administer the

¹⁵⁶ Kishan, "The Limits of Political Judicialization by the Constitutional Court: The Paradox of the General Election Law."

¹⁵⁷ Ni Luh Dewi Sundariwati, 'Judicial Activism: Between Protecting Constitutional Supremacy or Transitioning to Juristocracy', *Constitution Journal*, 21.3 (2024) 442.

judiciary to uphold law and justice, but interpreting the word "Independent" more broadly as enshrined in the article does not mean that the judge can decide a case without clear limitations considering that the existence of unlimited power has the potential to cause arbitrariness. The judge must be able to account for the decision made whether the decision is in accordance with the original intention of achieving justice.¹⁵⁸

Ronald Dwokrin¹⁵⁹ stated that judges are prohibited from changing a regulation for two reasons, namely: 1) Judges are not elected by the people so they cannot directly make laws because only a body that is really elected by the people can do so; 2) Allowing the judge to make a law is a violation of the prohibition on retroactive enforcement of the law, meaning that the judge decides according to the law made after a legal event has occurred. Referring to these provisions, in order to maintain the khittah of the court institution as a tester of the validity of norms, it is necessary to limit the power of the judiciary in its authority to examine laws and regulations.

The application of the purcell principle as a form of prudence of a judge is in line with the principle of absolute necessity, the doctrine requires that a constitutional case must be very important in order to be tried by the court institution.¹⁶⁰ Every case that will be submitted at the time of the election must be assumed to be an important constitutional matter, for example related to saving voters' votes and concerning the interests of the wider community.

The idea of limiting changes to election regulations is also in line with the meaning of legal certainty initiated by Lon Fuller in his book *The Morality Of Law* which explains that one of the principles to achieve legal certainty, including electoral legal certainty, is that a regulation should not be changed too often.¹⁶¹

¹⁵⁸ Siregar and Erma, *Judicial Power*, 69.

¹⁵⁹ Syarif Hidayatullah Azhumatkhan and Adithya Tri Firmansyah, 'Reflections on Supreme Court Decision Number 23 P / HUM / 2024 : The Escalation of Political Judicialization and Judicial Politicization in Norm Testing', *Journal of Law and Social Order*, 3.1 (2024), 19.

¹⁶⁰ Wicaksana Dramanda, 'Initiating the Implementation of Judicial Restraint in the Constitutional Court', *Constitutional Journal*, 11.4 (2016), 629 <<https://doi.org/10.31078/jk1141>>, 629.

¹⁶¹ The eight principles are:

- a. The legal system consists of regulations that are not based on temporary or temporary regulations;
- b. Existing legal regulations must be socialized to the general public;

Departing from this view, the reality is that judicial review to change election rules is often carried out¹⁶², although it is very important that judicial review decisions issued during the election stage can have a significant impact on the stability of election implementation. The sudden change in rules then has the potential to cause legal uncertainty.

In fact, the Purcell principle in providing limits for judges does not mean reducing the authority of the judges themselves, because judges in changing election regulations can enforce changes to the regulations for the upcoming elections, so that the stability and certainty of election law are maintained.¹⁶³ This provision is in line with the principle of non-retroactivity where a decision must not be applied retroactively to ensure justice and legal certainty.

An example can be seen in the Constitutional Court Decision No. 14/PUU-XI/2013 which examines Article 3 paragraph (5) of Law No. 42 of 2008 concerning the implementation of simultaneous elections.¹⁶⁴ The judge stated that the norm a quo is contrary to the 1945 Constitution with the consideration that the choice of policy of the lawmaker in separating the implementation of the legislative election (pileg) from the presidential election (pilpres) is a form of deviation from the original intention of the drafters of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court then stated that between the legislative election and the presidential election, it must be interpreted and carried out simultaneously for the type of election mentioned in the provisions of Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

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- c. Legal regulations must not be retroactive, because they will damage the integrity of the law;
 - d. Legal regulations are designed with an easy formulation and can be digested by the public. See in: Edwin W Tucker, "The Morality of Law, by Lon L. Fuller," *Indiana Law Journal* 40, no. 2 (1965): 274.

¹⁶² Chairman of the Constitutional Court Surhartoyo stated that the Election Law has been tested 35 times while the Election Law has been tested 21 times throughout 2024. See in: Anggi Muliawati, 'Chairman of the Constitutional Court: The Most Tested Elections-Regional Elections Law During 2024', *detiknews*, 2025 <<https://news.detik.com/berita/d-7713940/ketua-mk-uu-pemilu-pilkadapaling-banyak-diuji-selama-2024>>. Accessed on January 29, 2025.

¹⁶³ Sri Indriyani Umra and Fatma Faisal, "The Impact of Conditional Unconstitutional Decisions on Legal Certainty," *INNOVATIVE: Journal Of Social Science Research* 3, no. 6 (2023): 6.

¹⁶⁴ "Decision of the Constitutional Court No. 14/PUU-XI/2013" (n.d.), https://www.mkri.id/public/content/persidangan/putusan/putusan_sidang_1612_14-PUU-2013-telahucap-23Jan2014.pdf.

The changes related to the obligation to hold simultaneous elections by the Constitutional Court were enforced in the 2019 elections and beyond. The suspension is based on the fact that the application was decided closer to the implementation of the 2014 elections, so it is feared that if it is applied directly in the 2014 elections, it will have the potential to cause chaos to the process that has been running. Another consideration underlying the suspension is to provide sufficient time for lawmakers to further regulate the holding of simultaneous elections.¹⁶⁵ The judge's consideration in this case is in line with the purcell principle which requires that the judicial power should not change or replace the election rules close to the implementation of the election.

The Constitutional Court's decision No. 14/PUU-XI/2013 is a wise decision and can be used as a reflection by judges in the future in deciding cases at the moment when the election is held, so that the realization of election legal certainty is a necessity. Departing from this, it can be understood that the application of the purcell principle is relevant to the mandate of Article 28D of the 1945 Constitution¹⁶⁶ and Article 3 Point d *jis*. Article 4 Point d of Law Number 7 of 2017 concerning General Elections which states that elections must be held with legal certainty.¹⁶⁷

Further examining the appeal for judges to refrain from changing the rules during injury time departs from the provision that judges must be absolute and independent and do not show partiality to one of the candidates, therefore judges are prohibited from being involved in the electoral election process. The provision refers to Article 3 paragraph (1) of Law No. 48 of 2009¹⁶⁸ concerning Judicial Power which states that "In carrying out their duties and functions, judges and

¹⁶⁵ Bimo Fajar Hantoro, "Originalism and Conditions for Election Simultaneity in the Constitutional Court's Decision."

¹⁶⁶ Article 28D "Constitution of the Republic of Indonesia of 1945", Citizen and State (1945), <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

¹⁶⁷ Article 3 "Law Number 7 of 2017 concerning General Elections", 2017. <https://peraturan.bpk.go.id/Details/37644/uu-no-7-tahun-2017>. Statute Book of the Republic of Indonesia Year 2017 Number 182 and Supplement to Statute Book of the Republic of Indonesia Number 6109.

¹⁶⁸ Article 3 paragraph (1) "*Law Number 48 of 2009 Concerning Judicial Power*", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia No. 157 of 2009 and Supplement to Statute Book of the Republic of Indonesia No. 5076.

constitutional judges are obliged to maintain judicial independence." As well as the provisions of Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power¹⁶⁹ which states that "The Court adjudicates according to the law by not discriminating against people."

These two articles indicate that judges in their duties must maintain the independence of judicial power by freeing themselves from interference by any party, and judges as justice enforcers are prohibited from showing their partiality, including in political issues during the election period. The prohibition of judges from engaging in electoral politics has also been regulated in the Supreme Court Circular Letter Number 2 of 2019 concerning the Prohibition of Judges from Politics which states that:¹⁷⁰

1. Judges must be impartial and independent;
2. The judge is prohibited from committing acts that lead to the partiality of one of the candidates;
3. Judges are prohibited from uploading, responding (such as likes, comments, and their sessions) or disseminating images/photos of prospective candidates, visions and missions, issuing opinions that show the partiality of one of the candidates;
4. Judges are prohibited from taking pictures with prospective candidates.

The Supreme Court's circular above indicates that judges are non-political institutions that are prohibited from showing partiality towards candidate pairs. If interpreted more broadly, these provisions also apply to judges in issuing decisions at the time of elections, where if there is a case related to a pair of candidates, the decision to be issued by the judge must show justice and not lead to partiality towards one of the candidates.

Based on the research conducted by the author regarding the legal examintaion, the application of the purcell principle in Indonesia shows that the purcell principle does not contradict any norms. Maskipun has not been specifically regulated, but overall this principle is in line with the provisions to realize legal certainty in the

¹⁶⁹ Article 4 paragraph (1)"*Law Number 48 of 2009 Concerning Judicial Power*", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia No. 157 of 2009 and Supplement to Statute Book of the Republic of Indonesia No. 5076.

¹⁷⁰ Supreme Court Circular Letter Number 2 of 2019 concerning the Prohibition of Judges from Politics, 2019. <<https://jdih.mahkamahagung.go.id/index.php/legal-product/sema-nomor-2-tahun-2019/detail>>.

implementation of elections and regional elections as well as a form of prudence to maintain the image of judicial power as a non-political institution. The restriction of legislative practice referred to in this principle does not mean limiting the authority of the judiciary as a justice-seeking institution, judges can enforce changes to the regulation in the next election period as is the case in the Constitutional Court Decision No. 14/PUU-XI/2013.

Answering further regarding the policies that must be fulfilled as an output of the evaluation of the above problems, the author will conduct an in-depth study related to legal politics and the application of the Purcell principle in the judicial power system in Indonesia in the future (*ius constituendum*) as follows.

3. Legal Politics of the Application of the Purcell Principle in the Judicial Power System in Indonesia

Legal politics in terminology comes from two words, namely politics¹⁷¹ and law.¹⁷² According to Mahfud MD, legal politics is a legal policy that will be or has been implemented nationally by the Indonesian government through legal development that is centered on the creation and renewal of legal materials so that they can be in accordance with the needs and implementation of existing legal provisions, including the affirmation of institutional functions and the development of law enforcement.¹⁷³

An understanding of legal politics¹⁷⁴ is important to include the official state policies that will be enforced or not enforced and are used to seek truth and give meaning to the law. The policy in question has been adjusted to the social situation at that time so that the law made by juridical and political will present quality legal products. Legal politics is a technique used by leaders to control various issues such as fostering a culture where law takes precedence over other considerations

¹⁷¹ Politics is defined as an action, tactic, method or policy to achieve a certain goal. See in: The Great Dictionary of Indonesian Second Edition (Jakarta: Balai Pustaka, 1995), 935.

¹⁷² Law is a regulation in the form of norms and sanctions that are made with the aim of regulating human behavior, maintaining order, justice, and preventing chaos.

According to R. Soeroso, the law is a set of regulations made by authorized people to regulate the life of the community. The characteristics of the law are to rule, prohibit, and enforce by imposing sanctions for those who violate it. See in: Yuhelson, *Introduction to Law* (Gorontalo: Ideas Publishing, 2017), 4-5.

¹⁷³ Mahfud MD, *Legal Politics* (Depok: PT Raja Grafindo Persada, 2017).

¹⁷⁴ Satjipto Rahardjo defines legal politics as the activity of choosing and the way to be used to achieve a certain social and legal goal in society. See in: Eka N.A.M. Sihombing, *Legal Politics* (North Sumatra: Enam Media, 2020), 2.

and instilling the principles of good governance.¹⁷⁵ Mahfud MD stated that there are three legal political criteria, namely:

- a. State policy in enacting laws to realize the country's ideals;
- b. Background of the legal policies enacted;
- c. Law enforcement of the enforced legal policy.

The three criteria above are a way to identify legal politics in every legal policy issued by the state, so that in this case legal politics can be an option related to the determination of laws that will be enacted to achieve the goals of the state as mandated by the constitution.¹⁷⁶ If we understand legal politics as a policy guide that must be followed to build or implement the desired legal system, then the purcell principle can be seen as a principle to ensure the smoothness and certainty of the law during the election period and to avoid excessive political judicialization during the election period.

Legal politics includes the problem of legal development which leads to efforts to reform existing laws and are considered obsolete, in addition to efforts to form new laws that are needed to meet the demands of developments that occur in people's lives.¹⁷⁷ Seeing the developments that have occurred related to the involvement of judicial power in the electoral political process is an important basis for the need to limit political judicialization during the election period, so that it is in harmony that the direction of this limit is shown so that the Supreme Court and the Constitutional Court can consistently apply the purcell principle in each of their decisions during the election period.

Political, legal, consistency in the implementation of the purcell principle is a form of *ius constituendum*¹⁷⁸ in the policy portrait of the general election system to ensure the achievement of election goals and strengthen the design of judicial

¹⁷⁵ Slamet Pribadi and Dwi Atmoko, *Legal Politics* (Malang: PT Literasi Nusantara Abadi Group, 2023).

¹⁷⁶ Political scope of law:

- a. The goal to be achieved through the existing legal system;
- b. The steps chosen in order to determine which is best for realizing the objectives;
- c. When a regulation or law needs to be changed and what kind of efforts will be used;
- d. What kind of pattern is formulated to determine the goals and efforts to achieve those goals.

¹⁷⁷ Wahyu Prijo Djatmiko, 'Responsive National Legal Development Paradigm in the Perspective of J.H. Merryman's Theory on Legal Development Strategies', *Legal Arena Journal*, 11.2 (2018), 417.

¹⁷⁸ *Ius constituendum* can be interpreted as a law that is aspired to by the association of life and the state, but it has not yet become a rule in the form of other laws or regulations, and it is expected to be a law that will apply in the future. See in: Didik Suhariyanto and others, *Politics of Election Law* (Jambi: PT. Sonpedia Publishing Indonesia, 2023), 35.

power in Indonesia. Purcell principle is a form of responsive law¹⁷⁹ that has emerged as the main goal of adherents of legal realism, namely to make the law more responsive to social needs.¹⁸⁰

First of all, the implementation of the purcell principle is triggered by a shift in the function of judicial power that exceeds its authority as an examiner of laws and regulations and the intervention of judicial power during the implementation of elections. Interference with judicial power can affect the law enforcement process through pressure on law enforcement officials or manipulation of the legislative process. This results in the resulting legal products being unobjective and tending to favor certain interests.

Comprehensive legal and political reform is needed to realize the implementation of fair elections and in order to maintain the dignity of judicial power as a non-political institution. Aharon Barak stated that judges should try as much as possible not to form new legal norms in adjudicating a case to create a balance between conflicting social values.¹⁸¹ The purcell principle requires judges to interpret a law by first paying attention to the politics of the law that forms it and the limitations on the period of its change.

The judicial power must have comprehensive rules of the game with standards for reviewing cases during the election period, which is very important to create consistency in the decisions of the Supreme Court and the Constitutional Court during the election period. Through the alternative review of the case, the intervention of judicial power during the election period can be justified as long as there are no other alternatives that can cause disruption of the stability of the implementation of the election. The case review standards offered as a form of Purcell Principle evaluation in this case are by paying attention to the following factors:

- a. Likelihood of success based on benefits;
- b. Possible irreparable harm if the award is not granted;
- c. Losses suffered by the parties; and

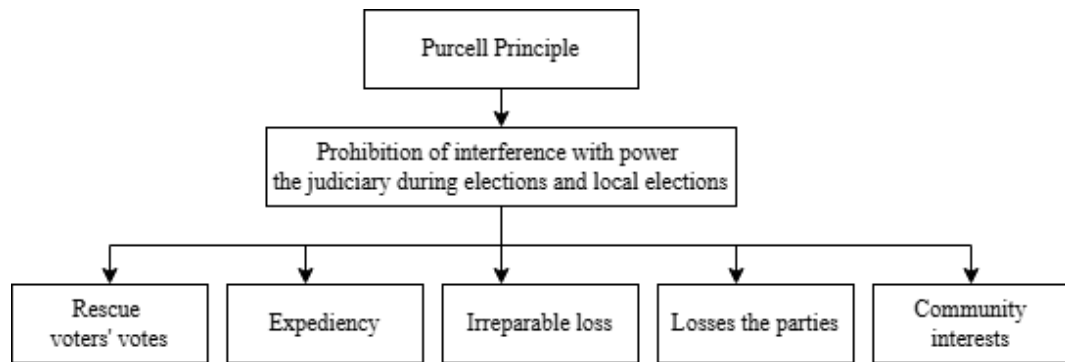
¹⁷⁹ Responsive legal products are legal products that reflect a sense of justice and meet the expectations of the community.MD, 31.

¹⁸⁰ Didik Suhariyanto and others, *Politics of Election Law* (Jambi: PT. Sonpedia Publishing Indonesia, 2023), 49.

¹⁸¹ Dramanda, 620.

d. The public's interest in the case.¹⁸²

Another additional standard for reviewing cases was also submitted by Wilfred U Codrington who revealed that there is an exception in terms of judicial assessment related to "Changing the provisions of elections", namely in the context of decisions made to keep voters' votes from being wasted, then changes in the rules can be made by the judicial view.¹⁸³ Overall, the standard for reviewing purcell principle cases is presented in the chart below.



Source: Author's Creation (2025)

Figure 3. 1 Purcell Principle Standard of Case Review in the United States

In practice, political judicialization that is in accordance with the standard of review of purcell principles is the Constitutional Court Decision No. 102/PUU-VII/2009. The a quo decision is a Constitutional Court decision that formulates a new norm and is related to changes in the electoral system that tests Law No. 42 of 2008 concerning the Election of the President and Vice President against the 1945 Constitution. As postulated by the petitioners, the provisions contained in Article 28 *jo.* Article 111 paragraph (1) of Law No. 42 of 2008 have at least contradicted Article 27 paragraph (1) *jo.* Article 28 (D) paragraph (1) and paragraph (3) of the 1945 Constitution¹⁸⁴.

The provisions of Article 28 of Law No. 42 of 2008 state that: "To be able to exercise the right to vote, Indonesian citizens as referred to in Article 27 must be registered as voters", while the provisions in Article 111 paragraph (1) read, "Voters who are entitled to participate in voting at the polling station include: a).

¹⁸² Harry B Dodsworth, "The Positive and Negative Purcell Principle," *Utah Law Review* 5, no. 5 (2022): 1088.

¹⁸³ Codrington, "Purcell in Pandemic."

¹⁸⁴ "Constitutional Court Decision No. 102/PUU-VII/2009" (n.d.), https://www.mkri.id/public/content/persidangan/putusan/putusan_sidang_102PUU-VII2009.pdf.

Voters who are registered in the Permanent Voter List at the polling station concerned; and b). Voters who are registered on the Supplementary Voter List."

This provision explains that a citizen must first be recorded in the Permanent Voter List (DPT) before exercising his right to vote in the election process. This phrase is postulated by the petitioners contrary to Article 27 paragraph (1) *jo.* Article 28D paragraph (1) *jo.* paragraph (3) of the 1945 Constitution. The Constitutional Court considers that there is an urgency to change the regulation, because if the case is not decided immediately, many voters will lose their voting rights and cause the loss of voters' votes. This condition underlies the judge to allow the use of a valid ID card or passport as a condition to vote if there are voters who are not registered in the DPT¹⁸⁵.

"Considering that the constitutional right of citizens to vote and the right to be a candidate is a right guaranteed by the constitution, laws and international conventions, then the restriction of deviation, elimination and deletion of the right is a violation of the human rights of citizens."

The Constitutional Court's consideration in resolving the problem in the *a quo* case explains that the DPT as an administrative procedure should not be able to negate the right to vote for citizens as a substantial constitutional right. The right to vote for citizens should not be lost just because procedural provisions are not fulfilled.¹⁸⁶ The Constitutional Court's Decision No. 102/PUU-VII/2009 is in line with the standard for reviewing cases of the *purcell* principle, namely to save voters' votes, so that the political judiciary for the case is considered not to violate the *purcell* principle and can be considered correct.

Referring to Posner's opinion¹⁸⁷, judges are required to have awareness of the existence of practical political obstacles in the exercise of judicial power, as much as possible judges must avoid abusive judicial review by predicting whether a change in the rules during the election period is really needed or not. Judges must be able to consider the possibility and potential irreparable harm

¹⁸⁵ Constitutional Court Decision No. 102/PUU-VII/2009.

¹⁸⁶ Center for Constitutional Studies, FH-Universitas Brawijaya, "Implications of the Constitutional Court Decision No. 102/PUU-VII/2009 on the Implementation of Regional Head Elections (Study in Malang Regency and Pasuruan City)," *Constitutional Journal* 8, no. 1 (2011): 147, <https://doi.org/10.31078/jk816>.

¹⁸⁷ Wicaksono, 64.

to all parties concerned with the public interest.

To ensure that the judge can sort out a decision based on the standard of reviewing the purcell principle, it is necessary to have a judge with integrity.¹⁸⁸ Integrity can be interpreted as a form of consistency between the results of the decision taken and the actual actions taken. Agreeing with this consistency, the instrument needed by a judge in making his decision is competence which includes three things, namely skill (skills/flight hours), knowledge (knowledge/education), and attitude (attitude, behavior).¹⁸⁹ If the three competencies are in the judge, then whatever the condition, the judge is able to make a fair decision based on his knowledge.

Decision-making on which action should be taken in deciding a case is not a random election process. Decision-making must be based on proper reasoning and taking into account relevant moral principles. Integrity occurs when judges in making decisions are not determined by feelings but by intellectual ability, namely the ability to understand and understand something rationally.¹⁹⁰ The judge in making a decision must know whether the decision is appropriate or not by first understanding the object of the problem before determining what policy will be taken rationally so that the decision can be accepted by the public.¹⁹¹

¹⁸⁸ Integrity comes from the English word integrity and comes from the word integer which means comprehensive, complete or everything. See in: Abdul Halim Talli, "Integrity and Active-Argumentative Attitude of Judges in Case Examination," *Al Daulah: Journal of Criminal Law and Governance* 3, no. 1 (2014): 6, http://journal.uin-alauddin.ac.id/index.php/al_daulah/article/download/1495/1456.

According to the great Indonesian dictionary, the meaning of integrity is quality, nature, or circumstances that show a complete unity so that it has potential and ability that radiates authority and honesty. See in: Tanti Kirana Utami, M. Rendi Aridhayandi, and Henny Nuraeny, 'Strengthening the Integrity of Judges through the Provision of Supporting Facilities for Judicial Activities', *Justitia Pulpit Law Journal*, 9.2 (2023), 475.

Integrity is unwavering consistency and steadfastness in upholding noble values and beliefs. Integrity can also be interpreted as the honesty and truth of a person's actions in daily life and is the standard of a person's ethical morality. See in: Mohamad Zainuri and others, *Conception of Integrity*, *Human Resource Development Agency* (Riau: Riau Provincial Government, 2017), 4-5.

¹⁸⁹ Rachmi Dwi Wiladatil Qodliyah ES, "Observing the Correlation of Integrity, Welfare and Judges' Decisions (Islamic Historical Literacy Study for Indonesian Judges) Rachmi," *Judex Laguens* 2, no. 2 (2024): 198.

¹⁹⁰ Referring to the definition of integrity as a pillar of loyalty which explains that judges with integrity do not just act in line with a principle or value, but an objective principle or value that can be morally justified.

¹⁹¹ Anggara Wisesa, "Moral Integrity in the Context of Ethical Decision-Making," *Journal of Technology Management* 10, no. 1 (2011): 86, http://digilib.uinsgd.ac.id/9984/5/5_Bab2.pdf.

Since its emergence the Judicial Power has been designed as an independent institution, political judicialization cannot necessarily be legalized for the sake of seeking justice. In fact, the shift in the function of the Supreme Court and the Constitutional Court, which is indicated by the judicial legalization of politics through the policy of judicial activism by judges, is often used to extend and maintain power by tampering with election regulations through the decisions of the Supreme Court and the Constitutional Court. Although it has not been specifically regulated, the legal existing purcell principle has the urgency to be regulated more comprehensively as a parameter for judges in deciding cases during the ongoing election stages. Without clear regulations and standards for case review, the Supreme Court and Constitutional Court decisions cannot be categorized as landmark decisions.¹⁹²

B. Evaluation of Judicial Power Decisions in Indonesia Based on the Purcell Principle

The evaluation of the purcell principle was carried out to assess how judges responded to efforts to change election regulations when the stages had taken place through legal considerations, then to validate the doctrine that political judicialization can expand the potential for judicial power intervention during the election period so that it can threaten the design of the judicial power system as an independent¹⁹³ institution.

The independence of the Supreme Court and the Constitutional Court is the main pillar in maintaining the balance of power and as one of the strengthening

¹⁹² According to Henry Campbell, a Black landmark decision is a judicial decision that significantly changes existing law.

Amran Suadi more emphatically explained that landmark decisions are decisions of judicial bodies with permanent legal force that contain important legal rules that do not yet have legal rules and aim to provide legal certainty for a concrete issue that enters the court.

The difference between landmark decisions and jurisprudence is that jurisprudence is a decision that has been repeatedly followed by other judges in the same case, while *landmark decisions* are new decisions that have never been followed by another judge in the same case, so it can be said that *landmark decisions* is a court decision proposed by the Supreme Court or Constitutional Court through its annual report to be used as jurisprudence and then used as a reference and guide for other judges if facing the same case.

¹⁹³ According to Black's Law Dictionary the word independent is:

- a. Not subject to the control or influence of another;
- b. Not associated with another (often larger) entity;
- c. Not dependent or contingent on something else.

See in: Garner and Campbell, 34.

of Indonesia's identity which has declared itself as a state of law.¹⁹⁴ Oemar Seno Adji stated "A court that is free and uninfluenced is an indispensable condition for the state of law, free means that there is no interference from the executive and legislative powers in carrying out the functions of the judiciary."¹⁹⁵

Article 1 Point 1 of Law No. 48 of 2009 concerning Judicial Power has guaranteed that judicial power is the power of an independent state to organize the judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia in 1945 for the implementation of the state of law of the Republic of Indonesia.¹⁹⁶ This article provides an understanding that the judicial power is an independent institution and is free from the interference of other branches of power.

Conceptually, the independence of judicial power¹⁹⁷ was born from the theoretical debate about¹⁹⁸ the separation of powers initiated by Aristotle in the trias politica until later perfected by Montesquieu.¹⁹⁹ This separation of powers is intended to ensure the implementation of political freedom of members of the community and is an important element in a democratic country. Departing from this concept, the role of judicial power as the front line in realizing the

¹⁹⁴ There are three special characteristics of the Indonesian legal state that are outlined by legal science through the principles of the Rule of Law, namely:

1. Recognition and protection of human rights that contain the meaning of equal treatment in the political, legal, social, economic, cultural, and educational fields;
2. Legality in the sense of law in all its forms; and
3. A free, impartial, free judiciary from all other influences of power.

¹⁹⁵ Floranta Adonara's Words, 'The Principle of Judges' Freedom in Deciding Cases as a Constitutional Mandate', *Constitutional Journal*, 12.2 (2015), 223).

¹⁹⁶ "Article 1 Paragraph (1) *Law Number 48 of 2009 Concerning Judicial Power*", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>.

Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

¹⁹⁷ Franken stated that there are 4 forms of independence of judicial power, namely:

1. Constitutional Independence (Constitutionele Onafhankelijkheid);
2. Functional Independence (Zakelijke of Functionele Onafhankelijkheid);
3. Personal Independence of Judges (Persoonlijke of Rechtspositionele Onafhankelijkheid);
4. Practical Independence (Praktische of Feitelijke Onafhankelijkheid).

See in: said Floranta Adonara, 'The Principle of Judges' Freedom in Deciding Cases as a Constitutional Mandate', *Constitutional Journal*, 12.2 (2015), 223-224.

¹⁹⁸ The separation of legislative, executive, and judicial powers is carried out to ensure the implementation of political freedom of members of society in the state, so that the presence of judicial power as an independent institution is a *conditio sine qua non* for the realization of the state of law, guaranteed freedom, and control over the course of state government.

¹⁹⁹ Ardyansyah Jintang, 'The Ideality of the Concept of Judicial Power in Indonesia to Realize Independence of Judiciary in Perfection', *PRATUN Law*, 6 (2023) <<https://doi.org/10.25216/peratun.622023.140-166>>, 146.

upholding of law and justice in the examination and decision-making process must reflect independence as a tangible form that the court is an authoritative, dignified, and trusted institution.

Richard D. Aldrich stated that "Judges in making decisions must be free from influence, except by the order of law, the constitution, decisions considered by sound thought, legal precedents, and the orders of the judges' own conscience".²⁰⁰ Currently, the independence of state institutions is suspected to be experiencing a significant decline. Various speculations show that the independence of the judiciary is weakened due to the intervention of a regime during the election period, raising concerns about the integrity of the legal process in Indonesia.

Proving this speculation, the author will further evaluate the decisions of the Supreme Court and the Constitutional Court during the 2024 election period, considering that these decisions are full of alleged political interests. The evaluation will be carried out by racing on the standards of reviewing cases of the purcell principle to then see the implications on the stability of the implementation of elections and the design of judicial power as an independent institution. The author uses integrity theory as an analytical knife to provide an understanding of the risk of not applying the purcell principle to the personality of a judge.

The law development method will also be examined by the author as a solution to existing problems, in this subchapter the author will explain how the practice of legislation should be carried out based on the purcell principle. This subject will be correlated with the theory of chaos proposed by Charles Sampford to then look at the other side of the law which states that law is not always orderly, logical and rational, but as something that has the advantage of being melee, fluid, fluid that does not have a formal form or a definite and rigid structure. The evaluation of the court decision that changes the 2024 election regulations will be described by the author as follows.

²⁰⁰ Ignas Riez Bria, I Nyoman Suandika, and Kadek Dedy Suryana, "Violations of the Code of Ethics by Constitutional Court Judges Related to the Constitutional Court Decision Number 90/PUU-XXI/2023," *Nusantara Hasana Journal* 4, no. 4 (2024): 63.

1. The Phenomenon of Changes in Election Regulations Ahead of the 2024 Election

The track record throughout the implementation of elections and regional elections in Indonesia shows that the implementation of the 2024 elections and regional elections seems to provide a different situation. The chaotic issuance of the Supreme Court (MA) and the Constitutional Court (MK) decisions which were accused of defects seems to be an interesting headline to evaluate considering the rumors of political interests through intervention in judicial power are increasingly prominent. Through its decision, the Supreme Court and the Constitutional Court made changes to the provisions of the 2024 elections and regional elections regarding the requirements for the age of candidacy up to the threshold for the candidacy of regional heads. Some of these decisions will be reviewed by the author as follows.

First, the Constitutional Court Decision No. 90/PUU-XXI/2023 filed by Almas Tssaqibbiru, a student of Surakarta State University. The a quo decision tested the provisions of Article 169 letter q of Law Number 7 of 2017 concerning the age requirements for presidential candidates and vice presidential candidates in the phrase "At least 40 years old" then changed to "At least 40 (forty) years old or have/are occupying positions elected through general elections, including regional head elections."The ²⁰¹ Constitutional Court granted the application after previously rejecting decisions that had the same postulates, namely Constitutional Court Decision No. 29/PUU-XXI/2023, Constitutional Court Decision No. 51/PUU-XXI/2023 and Constitutional Court Decision No. 55/PUU-XXI/2023.²⁰²

The Constitutional Court's Decision No. 90/PUU-XXI/2023 suddenly changed the provisions for the age requirements for presidential and vice presidential candidates when the election stage has begun. The a quo verdict was pronounced on October 16, 2023, four months before the vote count for the presidential and vice presidential elections was carried out. Referring to the

²⁰¹ See in: "Constitutional Court Decision Number 90/PUU-XXI/2023."

²⁰² Saldi Isra stated that regarding the Constitutional Court Decision Number 90/PUU-XXI/2023 as stated in the Constitutional Court Decision Number 29/PUU-XXI/2023, the Constitutional Court Decision Number 51/PUU-XXI/2023, and the Constitutional Court Decision Number 55/PUU-XXI/2023, I reject the a quo application, and the Court should also reject the a quo application.

General Election Commission Regulation (PKPU) No. 3 of 2022, program and budget planning and the preparation of KPU regulations have been carried out since June 14, 2022, which means that based on the purcell principle, the Constitutional Court should not be allowed to change election regulations since June 14, 2022.²⁰³

Judging from the conformity with the standard of review of the purcell principle, this decision originated from the applicant who in his application relied on the applicant's desire to become a president²⁰⁴ and his admiration for the Mayor of Surakarta in the 2020-2025 period, namely Gibran Rakabuming Raka.²⁰⁵ The applicant's reason for causing an unclear basis for constitutional losses is not directly related to the applicant and is only based on the potential aspect.²⁰⁶

The applicant in giving his reasons did not touch on the petitum regarding the alternative requirements related to the elected officials submitted, especially considering the fact that the applicant is not a person who is old enough to be a candidate for regional head, nor is the applicant a regional head,

²⁰³See in: "Constitutional Court Decision Number 90/PUU-XXI/2023."

²⁰⁴ That the Applicant is an Indonesian Citizen as evidenced by the Possession of an Identity Card, a student job, currently studying at the Faculty of Law, University of Surakarta (UNSA) and aspires to become President or Vice President.

²⁰⁵ That the Applicant is an admirer of the Mayor of Surakarta in the 2020-2025 period, namely Gibran Rakabuming Raka, where during the administration of Gibran Rakabuming Raka, economic growth in Surakarta increased by 6.25 percent from the beginning when he was the Mayor of minus 1.74 percent. That economic growth in Surakarta exceeds two big cities, namely Yogyakarta and Semarang, as we know that Solo is not the capital of the province such as Central Java or Yogyakarta, and Solo is only a small city that has a geographical area of +/- 44 KM and even Gibran Rakabuming Raka who is still 35 years old has been able to build and advance the city of Surakarta with honesty, Moral integrity and obedience and obedient service to the interests of the people and the state.

²⁰⁶ It should refer to the Constitutional Court Decision Case Number 006/PUU-III/2005, Case Number 011/PUU-V/2007 and subsequent decisions which are then clearly contained and regulated in PMK Number 2 of 2021 in article 4 paragraph (2) The Applicant's constitutional rights and/or authority as referred to in paragraph (1) are considered to be harmed by the enactment of the law or Perppu if:

- a. The existence of the Applicant's constitutional rights and/or authority granted by the 1945 Constitution;
- b. The Applicant's constitutional rights and/or authority are harmed by the enactment of the Law or Perppu for which the test is requested;
- c. The constitutional loss in question is specific (special) and actual or at least potential which according to reasonable reasoning can be ascertained to occur;
- d. There is a causal relationship between constitutional losses and the enactment of the law or Perppu for which the test is requested; and
- e. There is a possibility that with the granting of the request for constitutional damages as postulated, it will no longer or will not occur.

a legislative member, and not a presidential candidate or vice presidential candidate.²⁰⁷ The absence of constitutional losses to the applicant proves that the change in the age requirements for presidential candidates and vice presidential candidates in this decision is not an emergency matter that meets the standards for reviewing cases during the election period so that it does not have the urgency to be decided and enforced in the near time of the election.

Second, Supreme Court Decision Number 23 P/HUM/2024 concerning the testing of the norms of Article 4 Paragraph (1) letter d of the General Election Commission Regulation Number 9 of 2020 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor which changes the minimum age requirements for regional head candidates in the election law ahead of the 2024 simultaneous regional elections. This norm is considered contrary to Article 7 paragraph (2) letter e of Law Number 10 of 2016. This decision changes the provisions of the age requirements for candidates for regional heads which were initially:

"The minimum age is 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor starting from the determination of the Candidate Pair"

The Supreme Court changed it to:

"The minimum age is 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor starting from the inauguration of the selected candidate pair."

The a quo case was filed on April 23, 2024, distributed to a panel of judges who will examine the case on May 27, 2024 and then decided on May 29, 2024²⁰⁸. Based on the purcell principle, changes to election rules cannot be carried out if the stages of elections and regional elections have been running, namely since January 26, 2024. Further analysis then found that the issue of changing the age limit for candidates for regional heads and deputy regional heads is actually not contrary to the provisions of Article 7 letter e of Law

²⁰⁷ The applicant is a student of the Faculty of Law at the State University of Surakarta who was born on May 16, 200, so at the time of filing the Almas case he was still 23 years old.

²⁰⁸ See in: "Supreme Court Decision Number 23 P/HUM/2024."

Number 10 of 2016 which states:²⁰⁹

"Indonesian citizens who can become Candidates for Governor and Deputy Governor, Candidates for Regents and Deputy Regents, as well as Candidates for Mayor and Deputy Mayor are those who meet the following requirements: at least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent Candidates and Candidates for Mayor and Deputy Mayor."²¹⁰

This fact indicates that basically the Supreme Court's justification is inadequate, on the contrary, it shows that the practice of judicial activism by the Supreme Court shows an intervention in the authority of the KPU in conceptualizing the rules of the election game. The Supreme Court provides an interpretation of provisions that are basically not contradictory, therefore the Supreme Court should refrain from changing the provisions for candidates for regional heads and deputy regional heads in accordance with the purcell principle.

Third, the Constitutional Court's Decision Number 60/PUU-XXII/2024 which tests Article 40 paragraph (1) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2014 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law against the Constitution of the Republic of Indonesia.

The Constitutional Court Decision Number 60/PUU-XXII/2024 changed the provisions of the threshold for nomination of regional heads, which originally required a minimum of 20% of the votes of the DPRD seats or 25% of valid votes, to a lower 6.5% to 10%. The Constitutional Court considers that the 25% quota requirement is not in line with the ideal democratic principle so that the Constitutional Court provides greater opportunities for various parties to participate in the process of electing regional heads.²¹¹

Through the a quo decision, the Constitutional Court stipulates that the requirements for submitting a pair of candidates for regional heads must be

²⁰⁹ See in: "Supreme Court Decision Number 23 P/HUM/2024."

²¹⁰ See in: "Supreme Court Decision Number 23 P/HUM/2024."

²¹¹ See in: "Constitutional Court Decision No. 60/PUU-XXII/2024."

adjusted to the percentage of valid votes calculated based on the number of people registered in the Permanent Voter List (DPT) in each region. The decision was decided on August 1, 2024 and pronounced on August 20, 2024, where the regional election stages have already taken place. Based on the purcell principle, changes in provisions related to crucial matters such as the candidacy threshold should not be changed since the election or regional elections have begun, namely from January 26, 2024.

The a quo verdict is one of the rulings in Indonesia that cites the purcell principle. Referring to the dissenting opinion of constitutional judge M. Guntur Hamzah who stated that Article 40 paragraph (3) of the a quo law is a rule made by lawmakers to provide signs for the candidacy of regional heads so that the competition between candidates for regional heads carried by political parties is competitive and in order to get the best candidates for regional leaders in the democratic corridor. The norm a quo cannot simply be considered contrary to the constitution (unconstitutional) because in addition to not being explicitly and implicitly regulated in the constitution, it also does not contradict the values of the constitution, justice, and democratic principles.²¹²

Analyzing further, the Constitutional Court Decision Number 60/PUU-XXII/2024 was submitted by the Labor Party and the Gelora Party at a time when the two parties knew that their parties did not have enough votes to propose candidates for regional heads based on the provisions for obtaining at least 20% (twenty percent) of the number of DPRD seats so that they could not carry candidates for regional heads independently. Then the two parties submitted a judicial review to be able to nominate a candidate for regional head based on the provision of obtaining at least 25% (twenty-five percent) of the accumulated valid votes obtained in the general election of DPRD members in the area concerned.²¹³

²¹² See in: "Constitutional Court Decision No. 60/PUU-XXII/2024."

²¹³ This condition is then in line with what Ginsburg stated that seeing the presence of material tests in the Constitutional Court since the beginning of its establishment is actually closely tied to political motives, especially the motives of political parties that amend the constitution to establish the Constitutional Court with the authority of material tests. The authority possessed by the Constitutional Court has opened an alternative path as a guarantee for political parties and election participants who prospectively lose or have minority seats in the implementation of elections to

The legal steps of the petitioners, although part of the constitutional rights of citizens, actually show the desire or will to change the provisions or rules of the game in casu Article 40 paragraph (3) of the a quo law in the election of regional heads, so that political parties that become an adressat of the a quo norm can submit candidates for regional heads in the 2024 regional elections. If the change is made before the 2024 DPR-DPRD general election is held, it can be understood because it is carried out long before the regional head election contest is held.²¹⁴

The Constitutional Court's Decision Number 60/PUU-XXII/2024 is basically intended to improve the democratic process, but careful implementation and supervision are very important so that its positive goals are achieved without causing adverse consequences. In order to maintain legal certainty in the implementation of the regional elections and the consistency of the decision, it would be better for this decision to be applied in the next round of regional elections, as is the case with the Constitutional Court Decision No. 16/PUU-XXI/2023 concerning the elimination of the parliamentary threshold of four percent (4%). Although the a quo decision was decided close to the 2024 election, its application will be enforced in the 2029 election.²¹⁵

Fourth, the Constitutional Court Decision No. 70/PUU-XXII/2024 which was decided at the same time as the Constitutional Court Decision Number 60/PUU-XXII/2024, namely on August 1, 2024 and then pronounced on August 20, 2024. This decision was submitted by A. Fahrurrozi and Anthonee Lee regarding Article 7 paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 Challenging the Election of Governors, Regents, and Mayors into Law against the 1945 Constitution of the Republic of Indonesia which stipulates that the minimum age limit for candidates for governor and deputy governor is 30 years old and the minimum limit for candidates for regents or candidates Deputy

influence and produce policies that benefit them through material tests at the Constitutional Court, this scheme is referred to as *the insurance model judicial review*.

²¹⁴ See in: "Constitutional Court Decision No. 60/PUU-XXII/2024."

²¹⁵ See in: "Constitutional Court Decision No. 60/PUU-XXII/2024."

Regents and Candidates for Mayor and Deputy Mayor are 25 years old.²¹⁶

The applicant in his petition asked the Constitutional Court to state that Article 7 paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted:

"The minimum age is 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor starting from the determination of the Candidate Pair.

The judge rejected the application, in his consideration the judge was based on historical and empirical facts from the series of stages carried out by the organizers of the regional head election so far. Since the election of regional heads and deputy regional heads which were held simultaneously since 2015, 2017, 2018, and 2020, the point or limit for determining the fulfillment of candidate requirements is always carried out at the stage of determining the pair of candidates for regional heads and deputy regional heads. Referring to these historical facts, the Constitutional Court considers that the norm of Article 7 paragraph (2) letter e of Law No. 10 of 2016 which regulates the minimum age requirements for candidates for regional heads and candidates for deputy regional heads has provided fair legal certainty as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.²¹⁷

The Constitutional Court's Decision No. 70/PUU-XXII/2024 which rejected the a quo application caused a difference of opinion regarding the provisions for calculating the minimum age requirement for candidates for regional heads and deputy regional heads with the Supreme Court Decision No. 23 P/HUM/2024. In the process, if the Constitutional Court Decision No. 70/PUU-XXII/2024 is not realized, it will provide a way for dynastic politics to take place, considering that the changes in Supreme Court Decision Number

²¹⁶ See in: "Constitutional Court Decision No. 70/PUU-XXII/2024."

²¹⁷ See in: "Constitutional Court Decision No. 70/PUU-XXII/2024."

23 P/HUM/2024 are filled with allegations to pass Kaesang Pangarep, the son of President Jokowi who will turn 30 years old in December 2024. Looking at the standards for reviewing cases based on the purcell principle, the Constitutional Court decision No. 70/PUU-XXII/2024 is more appropriate to be applied in the 2024 regional elections because it is in line with the provisions regarding the existence of public interests and irreparable damage if the decision is not implemented.²¹⁸

Briefly evaluating the decision of judicial power during the election period, the author will measure through the duration of the time for the change of decision with the implementation of the election and regional elections, the estimated time for the enforcement of the change in regulations, and the standard of case review based on the purcell principle which consists of: 1) saving the votes of voters; 2) Success based on benefits; 3) Losses for the parties; 4) Irreparable losses; 5) the interests of the community. The results of the evaluation will be summarized by the author through the table below.

Table 3. 2

Tabulating the Evaluation of the Purcell Principle on Supreme Court and Constitutional Court Decisions in Indonesia 2024

It	Type of Article	Duration of Changes in Election Regulations and Regional Elections	Estimated Time for Regulatory Changes to Take Effect	Evaluation Results Based on Purcell Principle
1	Constitutional Court Decision No. 90/PUU-XXI/2023	The a quo verdict was decided on September 21, 2023, October 5, 2023, and October 9, 2023, then	Valid in the 2024 election	Judging from the legal standing of the applicant, namely Almas Tsaqibbiru Re A, where his position is very weak because the

²¹⁸ If the decision is not implemented, it will cause public chaos because the House of Representatives intends to disobey the Constitutional Court's decision, causing protests by the public which is a form of protest against the actions of the House of Representatives against the Constitutional Court's decision which is final and binding. This condition makes the implementation of the regional elections even more *chaotic*, because it is this condition that the Constitutional Court Decision No. 70/PUU-XXII/2024 will be enforced in the 2024 regional elections. Even though the Constitutional Court's decision No. 70/PUU-XXII/2024 was decided during the election stage, if the Constitutional Court Decision No. 70/PUU-XXII/2024 is not realized, it will provide a way for dynastic politics to take place, considering that the changes in Supreme Court Decision No. 23 P/HUM/2024 are filled with allegations to pass Kaesang Pangarep, the son of President Jokowi who will turn 30 years old in December 2024.

		pronounced on October 16, 2023, while the nomination for president and vice president will be carried out on October 19, 2023-November 25, 2023.		basis of his losses is only based on the applicant's admiration for Gibran Rakabuming as the Mayor of Solo who cannot become a Presidential or Vice Presidential candidate. Moreover, the a quo decision on the existence of a conflict of interest because it is the entrance for Gibran Rakabuming Raka to participate in running for Vice President, this decision is indicated to only benefit one party. ²¹⁹ Seeing the a quo decision that is a matter of intervention so that it does not reflect the interests of the community and does not cause constitutional losses if this decision is not granted, the judge should not have changed the provisions of the election.
2	Supreme Court Decision No. 23/P/HUM/2024	The new a quo decision entered the Supreme Court on April 23, 2024, distributed to a panel of judges who will examine the case on May 27, 2024, to then be decided on May 29, 2024 and pronounced on August 20, 2024, while the announcement of candidate registration begins	Valid in the 2024 regional elections	-The issue of the age limit for candidates for regional heads and deputy regional heads is actually not contradictory but is in line with the provisions of Article 7 letter e of Law Number 10 of 2016. -There is an indication that there is an interest in providing a door for Kaesang Pangarep, who will be 30 years old in December 2024, to be able

²¹⁹ The postulates do not have a direct relationship with the Applicant. So that in this case there is no constitutional loss caused if the provisions of the age requirements for regional head candidates do not change.

		<p>on August 24, 2024-August 26, 2024 and the registration of candidate pairs on August 27, 2024. The distance between the pronouncement of the verdict and the start of candidate registration is only around 4 days and about 3 months from the time of voting on November 27, 2024.</p>		<p>to run for the 2024 regional elections. Supreme Court Decision No. 23/P/HUM/2024 was decided without considering the interests of the community and the case that was decided was not an urgent matter to be decided in the midst of the election process because there were no losses incurred from the provisions of the age requirements for the previous regional head candidates.</p>
3	<p>Constitutional Court Decision No. 60/PUU-XXII/2024</p>	<p>The a quo verdict was decided on August 1, 2024 and pronounced on August 20, 2024, while the announcement of candidate registration will be made on August 24, 2024-August 26, 2024 and the registration of candidate pairs will begin on August 27, 2024. And about 2 months from the time of voting on November 27, 2024.</p>	<p>Valid in the 2024 regional elections</p>	<p>The change was made after the applicant learned that his party could not obtain enough voter votes to propose a candidate for regional head so that the applicant took steps of judicial review to be able to nominate a candidate for regional head. Although the Constitutional Court's Decision is intended to improve the democratic process, careful implementation and supervision are very important so that its positive goals are achieved without causing adverse consequences. In order to maintain legal certainty in the regional elections and the consistency of the decision, it would be better for this decision to be</p>

				enforced in the 2029 regional elections.
4.	Constitutional Court Decision No. 70/PUU-XXII/2024	Similar to the Constitutional Court Decision No. 60/PUU-XXII/2024, the Constitutional Court Decision No. 70/PUU-XXII/2024 was decided when the regional election stage has begun, namely August 1, 2024 and pronounced on August 20, 2024.	Valid in the 2024 regional elections	The Constitutional Court's Decision No. 70/PUU-XXII/2024 is contrary to the Supreme Court Decision No. 23/P/HUM/2024. Looking at the interests of the community and the irreparable crucifixion. Even though the a quo decision was decided during the election period, if the Constitutional Court's decision No. 70/PUU-XXII/2024 is not realized, it will provide a way for dynastic politics to continue, considering the change in the Supreme Court decision Number 23 P/HUM/2024 is alleged to pass Kaesang Pangarep. Especially at that time, public chaos had occurred because the House of Representatives who intended to disobey the Constitutional Court's decision caused protests by the public which was a form of protest against the actions of the House of Representatives against the Constitutional Court's decision which was final and binding. This condition makes the implementation of the regional elections even more chaotic, because this condition is the Constitutional Court's decision No. 70/PUU-XXII/2024 in accordance with the Purcell principle exception standard.

Source: Author's Creation (2025)

The results of the evaluation in the table above show that the decisions in the 2024 election are carried out too close to the time of the election, especially since the decision making is carried out quickly and looks rushed, so that the guarantee of the principle of the formation of democratic laws and regulations becomes difficult to ensure its fulfillment. Looking at the four decisions, it was found that only the Constitutional Court Decision No. 70/PUU-XXII/2024 was in line with the purcell principle. The evaluation shows the inconsistency of judicial power in applying the purcell principle, in one decision it can be seen that the judicial power is guided by the standards for reviewing cases of the purcell principle, but in another decision the judicial power seems to deny the standards for reviewing cases of the purcell principle.

Changes made during the election period should not be based solely on momentary pragmatic interests in accordance with the interests of a group or group of people, but should be aimed at a purpose that benefits everyone. The period of change in the election must reflect the nature of the permanence of an arrangement by maintaining these regulations and policies for a relatively long period of time to provide opportunities for the public to be able to anticipate changes in the regulations and policies for the implementation of the elections and regional elections.²²⁰ Further explanation of the implications of the practice of legislation products in judicial review efforts when the election stage has begun will be further elaborated in this sub-chapter.

2. The Implications of Legislation Product Practice in Judicial Review Efforts Related to Election Regulations at the Time the Election Stage Has Begun Reviewed from the Theory of Integrity

The practice of legislation products in judicial review efforts related to election regulations at the time when the stages have begun by the Supreme Court and the Constitutional Court certainly raises various problems, both to the institution itself or to other parties involved in the implementation of elections. These implications will be further described by the author below.

²²⁰ Muhammad Addi Fauzani and Fandi Nur Rohman, 'The Urgency of Constitutional Court Reconstruction in Giving Consideration to Open Legal Policy', *Justitia et Pax*, 35.2 (2020), 141 <<https://doi.org/10.24002/jep.v35i2.2501>>,141.

a) Open Opportunities for Judicial Power Intervention

The implementation of elections as a competition for power is often colored by fraud by irresponsible parties, therefore the role of judicial power as an independent institution is very important considering not only money politics and fraud in counting votes but fraud through changes to election regulations is often carried out to benefit one party. The possibility of an attempt to influence the performance of judicial power can be done by canceling a norm or creating a new norm that can cause legal uncertainty so as to disrupt the stability of the electoral process.

Degradation of the independence of the judiciary is a serious threat to democratic principles, such as the supremacy of law and justice.²²¹ Seeing the verdict as a product of judicial power that is no longer based on an objective interpretation of the law but rather on the political interests or needs of the ruling elite, the function of the judiciary as a guardian of justice becomes distorted. This phenomenon can be seen in several decisions of the Constitutional Court (MK) and the Supreme Court (MA) during the 2024 elections and regional elections.

The implementation of the 2024 election some time ago gave rise to a traumatic momentum due to the issuance of the Constitutional Court decision Number 90/PUU-XXI/2023 regarding the age requirements for presidential candidates and vice presidential candidates. The alleged intervention in the Constitutional Court Decision No. 90/PUU-XXI/2023 to pass Gibran Rakabuming Raka, who is the son of President Joko Widodo, can be measured first from the legal standing²²² of the applicant.

²²¹ Muhammad Safaat Gunawan, 'Reflections On The Implementation Of The Rule Of Law And Democracy In Indonesia', *Al Tasyri'iyah Journal*, 4.1 (2024), 32.

²²² Legal standing, according to Harjanto, is a situation where a person or a party is determined to meet the requirements and therefore has the right to apply for dispute resolution or other cases before the Constitutional Court. Applicants who do not have legal standing will accept the Constitutional Court's decision stating that their application is inadmissible (niet ontvankelijk). See in: Subandri, "Juridical Review of the Constitutional Court's Decision Number 90/PUU-XXI/2023 concerning the Requirements for the Age Limit for Presidential and Vice Presidential Candidacy."

The applicant relied on the applicant's desire to become a president²²³ and his admiration for the Mayor of Surakarta in the 2020-2025 period, namely Gibran Rakabuming Raka²²⁴, on the grounds that during the administration of Gibran Rakabuming Raka, economic growth in Surakarta increased by 6.25 percent from the previous economic growth of minus 1.74 percent.²²⁵ Constitutional Judge Wahihuddin Adams stated, "The position of this applicant does not have any constitutionality problems in the case being tested, but it is more visible to suppress losses because he cannot vote for Gibran Rakabuming Raka."²²⁶

The suspicion of intervention became stronger when it was known that the chief judge of the Constitutional Court who participated in examining, adjudicating, and deciding the case, namely Anwar Usman, was the uncle of Gibran Rakabuming Raka.²²⁷ Umar Usman in this case has violated the

²²³ That the Applicant is an Indonesian Citizen as evidenced by the Possession of an Identity Card, a student job, currently studying at the Faculty of Law, University of Surakarta (UNSA) and aspires to become President or Vice President.

²²⁴ That the Applicant is an admirer of the Mayor of Surakarta in the 2020-2025 period, namely Gibran Rakabuming Raka, where during the administration of Gibran Rakabuming Raka, economic growth in Surakarta increased by 6.25 percent from the beginning when he was the Mayor of minus 1.74 percent. That economic growth in Surakarta exceeds two big cities, namely Yogyakarta and Semarang, as we know that Solo is not the capital of the province such as Central Java or Yogyakarta, and Solo is only a small city that has a geographical area of +/- 44 KM and even Gibran Rakabuming Raka who is still 35 years old has been able to build and advance the city of Surakarta with honesty, Moral integrity and obedience and obedient service to the interests of the people and the state.

²²⁵ It should refer to the Constitutional Court Decision Case Number 006/PUU-III/2005, Case Number 011/PUU-V/2007 and subsequent decisions which are then clearly contained and regulated in PMK Number 2 of 2021 in article 4 paragraph (2) The Applicant's constitutional rights and/or authority as referred to in paragraph (1) are considered to be harmed by the enactment of the law or Perppu if:

- f. The existence of the Applicant's constitutional rights and/or authority granted by the 1945 Constitution;
- g. The Applicant's constitutional rights and/or authority are harmed by the enactment of the Law or Perppu for which the test is requested;
- h. The constitutional loss in question is specific (special) and actual or at least potential which according to reasonable reasoning can be ascertained to occur;
- i. There is a causal relationship between constitutional losses and the enactment of the law or Perppu for which the test is requested; and
- j. There is a possibility that with the granting of the request for constitutional damages as postulated, it will no longer or will not occur.

²²⁶ Angie Angel Lina and Alan Bayu Aji, "Legal Consequences of the Constitutional Court's Decision Number 90/PUU-XXI/2023 on the Democratic System in Indonesia," *Law Journal In Concreto* 3, no. 1 (2024): 64, <https://doi.org/10.35960/inconcreto.v3i1.1314>.

²²⁷ In the decision, it was stated that "This was decided in the Judges' Consultative Meeting by nine Constitutional Judges, namely Anwar Usman as Chairman and Member, Saldi Isra, M. Guntur

principle of *nemo iudex in causa sua*²²⁸ and the provisions of Article 17 paragraph (5) of Law Number 48 of 2009 concerning Judicial Power which states that:²²⁹

"A judge or clerk is obliged to resign from the trial if he has a direct or indirect interest in the case being examined, either of his own will or the will of the parties to the case."

Knowing that Umar Usman did not resign in the trial is a validation of the intervention of judicial power and the existence of a blatant conflict of interest.²³⁰

Not yet separated from the chaos of the Constitutional Court's decision Number 90/PUU-XXI/2023, the Supreme Court also issued a similar decision, namely Supreme Court Decision Number 23 P/HUM/2024 concerning the testing of the norms of Article 4 Paragraph (1) letter d of the General Election Commission Regulation Number 9 of 2020 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor which changed the minimum age requirement for regional head candidates in the election law ahead of the simultaneous regional elections in 2020 2024. The Supreme Court changed the provisions on the age requirements for candidates for regional heads, which were originally calculated from the determination of the selected candidate pair, to since the inauguration of the selected candidate pair.²³¹

Hamzah, Manahan M.P. Sitompul, Daniel Yusmic P. Foekh, Enny Nurbaningsih, Wahiduddin Adams, Arief Hidayat, and Suhartoyo."

²²⁸ This principle indicates that the judge should not test and adjudicate cases concerning himself. This principle is one of the basic principles in constitutionalism which affirms that a person should not be a judge in a case where he has a personal interest or is directly involved. See in: Fencing Putra and Saiful, 'Conflict of Interest of the Chief Judge of the Constitutional Court Reviewing Decision Number 90/PUU-XXI/2023', *Journal of Excellence Humanities and Religiosity*, 2.2 (2024), 111 <<https://doi.org/10.34304/joehr.v2i2.214>>.

²²⁹ Article 17 paragraph (5) "*Law Number 48 of 2009 Concerning Judicial Power*", 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

²³⁰ Kristiawan Putra Nugraha et al., "Analysis of Legal Reasoning and the Impact of Court Decisions," *Journal of Fundamental Justice* 5, no. 2 (2024): 94.

²³¹ "Constitutional Court Decision Number 90/PUU-XXI/2023."

The change made by the Supreme Court then sparked public attention because it was considered an effort to legitimize the candidacy of the president's family member, namely Kaesang Pangarep, in the 2024 regional elections, considering the phrase "Since the inauguration of the selected candidate pair" as referred to in Supreme Court Decision Number 23 P/HUM/2024 coinciding with the age of Kaesang Pangarep who will turn 30 years old at the time of the inauguration of the selected candidate pair at the end of December 2024.²³² Researcher from the Political Research Center of the National Research and Innovation Agency (BRIN), Aisah Putri Budiarti stated that "the Supreme Court's decision opens the door for Kaesang, who will only be 30 years old in December, to run for the provincial elections".²³³

Herbert Jacob stated that the independence of judicial power can be tested by two things, namely impartiality and disconnection with political actors (insurlarity).²³⁴ Departing from these benchmarks, the validation of the intervention of judicial power in deciding the case of Constitutional Court Decision Number 90/PUU-XXI/2023 and Supreme Court Decision Number 23 P/HUM/2024 during the election period will be described in the following table.

Table 3. 3

Tabulation Validation of Intervention in Power

No.	Name of the Verdict	Impartiality	Relations with political actors
1.	Constitutional Court Decision Number 90/PUU-XXI/2023	This verdict was submitted by Almas Tssaqibbiru who is a fan of Gibran Rakabuming Raka who relied on his admiration for Gibran so that he showed partiality.	- The chief judge who participated in examining, adjudicating, and deciding the case, namely Anwar Usman, is the uncle of Gibran Rakabuming Raka. Even though the applicant who submitted the verdict

²³² Kaesang Pangarep was born on December 25, 1994 so it can be known that at the time of the inauguration of the regional head Kaesang will be 30 years old.

²³³ Um Al-Mubarak, "There is Dynastic Politics Behind the Supreme Court's Decision," *lensamedianews.com*, 2024, <https://lensamedianews.com/2024/06/07/ada-politik-dinasti-di-balik-putusan-ma>.

²³⁴ Muh Risnain, "Criminalization of Judges and the Existence of the Principle of Judicial Independence in the Framework of the State of Law," *Journal of Law and Justice* 2, no. 3 (2018): 330, <https://doi.org/10.25216/jhp.2.3.2013.325-336>.

			<p>was not Gibran, in the basis of the lawsuit number 90/PUU-XXI/2023, there was the name Gibran Rakabuming Raka.</p> <p>- Gibran Rakabuming Raka is the son of Joko Widodo who is the President of the Republic of Indonesia.</p>
2.	Supreme Court Decision Number 23 P/HUM/2024	This decision changes the age provision for regional head candidates who previously had the phrase "Since the inauguration of the selected candidate pair" to "Since the determination of the candidate pair" which coincides with the age of Kaesang Pangarep who will be 30 years old at the time of the inauguration of the selected candidate pair at the end of December 2024.	Kaesang Pangarep is the son of Joko Widodo who is the President of the Republic of Indonesia.

Source: Author's Creation (2025)

The table shows that there has been a denial of the design of Indonesia's judicial power as an independent institution, the Constitutional Court decision Number 90/PUU-XXI/2023 and the Supreme Court Decision Number 23 P/HUM/2024 regarding the intervention or conflict of interest to pass Gibran Rakabuming Raka and Kaesang Pangarep, who are the sons of President Joko Widodo. Seeing that the parties who benefited from the intervention in the decision are closely related to President Jokowi, it shows the influence of power. The phenomenon of the influence of power can be called Abusive executive power²³⁵.

²³⁵ Abusive executive power can be understood as the use of executive power by the president for purposes not desired by the constitution as the main source of presidential authority in the Indonesian system of government.

Abusive executive power is specifically related to the abuse of power by a person in an executive position or function, especially in government. Common manifestations of abusive executive power include executive overreach, degrading freedom of opinion, manipulating the legal system, and abusing law enforcement for personal political gain.

Based on the above description, it can be concluded that the Constitutional Court Decision Number 90/PUU-XXI/2023 and Supreme Court Decision Number 23 P/HUM/2024 issued during the 2024 elections and regional elections are proven to contain conflicts of interest. The presence of these two rulings further shows that judicial power is often used as a "vehicle" for political elites to maintain or extend their power during election contests and regional elections.

b) Potential to Cause Violations of the Judge's Code of Ethics

The judge's code of ethics²³⁶ is a standard, value, and principle that seeks to state what is true and what is considered right. On the other hand, if something is wrong, then it is considered wrong.²³⁷ The code of ethics for judges aims to ensure that judges in making decisions are really in line with their authority so that a fair decision is created and to limit the behavior of judges as a form of protection for the dignity and dignity inherent in the judges themselves. Mardiya stated that:²³⁸

"A judge's ability to decide a case plays a very important role in ensuring the rule of law and strengthening the credibility of the courts in Indonesia. This code of ethics contains moral principles that prevent deviations and ensure judges act in accordance with the community's sense of justice, becoming a guide on how a judge should behave."

Referring to this opinion, the judge's code of ethics serves as a foundation or guideline for the judge's authority in carrying out his duties and functions as one of the fair law enforcers in deciding cases. The purpose of the code of ethics is so that judges in carrying out their duties in accordance with justice and avoiding something that is not justified by the law or law as well as

Friedrich stated that abuse of power refers to the abuse of power by a person in a certain (public) position to obtain personal benefits or to use his power in ways that are unethical, contrary to the law, or detrimental to other parties.

²³⁶ Article 1 point 6 of Law of the Republic of Indonesia Number 18 of 2011 concerning Amendments to Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission states that the Code of Ethics and/or the code of conduct for judges is a guide in order to maintain and uphold the honor, dignity, and behavior of judges in carrying out their professional duties and in public relations outside the official office.

²³⁷ Dara Puspita Riyawan and Kayus Kayowuan Lewoleba, 'Juridical Analysis of the Role of the Code of Ethics in the Profession of Judges', *Journal of Law and Citizenship*, 6.1 (2023), 11.

²³⁸ Edo Maranata Tambunan et al., "Analysis of the Existence of Ethics of Constitutional Court Judges in Realizing an Integrity and Accountable Justice (Constitutional Court Decision No. 90/PUU-XXI/2023)," *Iblam Law Review* 4, no. 2 (2024): 53, <https://doi.org/10.52249/ilr.v4i2.406>.

increasing awareness of their responsibilities as a judge²³⁹.

Seeing the importance of the existence of the judge's code of ethics, Jimly Asshidiqie then stated that in the administration of the state, regulations are needed that normatively discuss specifically related to ethics within the scope of judicial institutions because ethical infrastructure is considered contemplatively capable in the development and development of legal infrastructure itself.²⁴⁰

Departing from this view, the judicial power in Indonesia already has a code of ethics for judges which is contained in Constitutional Court Regulation Number 07/PMK/2005 until then perfected through Constitutional Court Regulation Number 09/PMK/2006 for the Constitutional Court²⁴¹ and contained in the Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 047/KMA/SKB/IV/2009 and Chairman of the Judicial Commission of the Republic of Indonesia No. 02/SKB/P.KY/IV/2009 for the code of ethics of the Supreme Court.²⁴² The content of the code of ethics for Supreme Court and Constitutional Court judges will be presented in the following table.

Table 3. 4

Tabulation of the Code of Ethics for Supreme Court and Constitutional Court Judges

Code of Ethics for Supreme Court Judges	Conditions
Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No.	a. Behave fairly b. Be honest c. Behave wisely and wisely

²³⁹ Ryan Abdul Muhit, "The Role of the Judicial Profession Code of Ethics on Judges' Accountability in Deciding Cases in Court," *Lex Laguens: Journal of Law and Justice Studies* 1, no. 1 (2023): 21.

²⁴⁰ Sivana Amanda Diamita Syndo, "Questioning the Effectiveness of the Judge's Code of Ethics in Maintaining the Dignity of the Quality of Fair Decisions," *Verfassung: Journal of Constitutional Law* 1, no. 2 (2022): 119, <https://doi.org/10.30762/vjhtn.v1i2.178>.

²⁴¹ The code of ethics for Constitutional Court judges was formed based on The Bangalore Principles of Judicial Conduct 2002 with the addition of Indonesian cultural values and was later announced as Sapta Karsa Hutama on October 17, 2005 and adopted in Constitutional Court Regulation Number 07/PMK/2005. Then it was refined through Constitutional Court Regulation Number 09/PMK/2006. Tambunan et al., "Analysis of the Existence of Ethics of Constitutional Court Judges in Realizing an Integrity and Accountable Justice (Constitutional Court Decision No. 90/PUU-XXI/2023), 53."

²⁴² "Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 047/KMA/SKB/IV/2009 and Chairman of the Judicial Commission of the Republic of Indonesia No. 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges" (2009).

047/KMA/SKB/IV/2009 and Chairman of the Judicial Commission of the Republic of Indonesia No. 02/SKB/P.KY/IV/2009.	<ul style="list-style-type: none"> d. Be independent e. High integrity f. Responsible g. Upholding self-esteem h. Highly disciplined i. Behave Humbly j. Be professional
Code of Ethics for Constitutional Court Judges	Conditions
Constitutional Court Regulation Number 09/PMK/2006.	<ul style="list-style-type: none"> a. Principle of independence b. The principle of impartiality c. Integrity principles d. Principles of propriety and courtesy e. Principle of equality f. Principles of competence and equality a. Principles of wisdom and wisdom

Source: Author's Creation (2025)

The table above shows the ethics that a judge must abide by. Article 5 paragraph (3) of the Judicial Power Law states that "Judges and constitutional judges are obliged to obey the Code of Ethics and the Code of Conduct for Judges."²⁴³ The article provides an understanding that a judge must obey the code of ethics mentioned above, but in practice, the phenomenon of Intervention in Judicial Power that occurred during the 2024 election yesterday indicated a violation of the judge's code of ethics so that it is clear evidence that currently judges' compliance with the code of ethics is slowly eroded by lust for the sake of power. An overview of violations of the code of ethics for Supreme Court and Constitutional Court judges during the 2024 election period is outlined in the table below.

Table 3. 5

Tabulation of Judges' Ethical Violations in the 2024 Election Period.

No.	Name of the Verdict	Ethical Violations
1.	Constitutional Court Decision Number 90/PUU-XXI/2023.	In the MKMK Decision No. 2/MKMK/L/11/2023, the MKMK ruled that Anwar Usman was proven to have violated the code of ethics and behavior of constitutional judges, namely:

²⁴³ Article 5 paragraph (3) of Law No. 48 of 2009 concerning judicial power , 2009 <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia No. 157 of 2009 and Supplement to Statute Book of the Republic of Indonesia No. 5076.

		<ul style="list-style-type: none"> a. The principle of impartiality; b. Integrity Principles; c. Principles of Proficiency and Equality; d. Principle of Independence; Principles of Propriety and Courtesy.
2.	Supreme Court Decision Number 23 P/HUM/2024.	<p>Currently, the KY is examining the judge's ethical violations in this decision, but judging from the author's observation, the judge's ethics violated in this decision are:</p> <ul style="list-style-type: none"> a. The principle of fair behavior; b. High integrity. <p>Seeing the decision that contains intervention.</p>

Source: Author's Creation (2025)

The table above shows that the implications of the practice of legislation products in judicial review efforts during the election period indicate violations of the judge's code of ethics, such as the birth of the Constitutional Court Decision Number 90/PUU-XXI/2023 and the Supreme Court Decision Number 23 P/HUM/2024. The more likely it is that the judicial institution participates in the formation of regulations during the electoral political period, the more opportunities will be opened to make the court a political institution which is then indicated to be a denial of the code of ethics of the judges themselves. This condition is a necessity considering that elections are a crucial transition period. The ruler has a great opportunity to do many ways to maintain power, on the contrary, other parties will also try to replace power in many ways as well.²⁴⁴

The phenomenon of judicial power intervention that is indicated by ethical violations is a problem that cannot be considered trivial, all the problems that occur are a picture of how the personal integrity of judges in Indonesia as a central figure in the judicial process.²⁴⁵ As it is understood that integrity in a judge is one of the traits that must be possessed by a judge as the main key to opening the door of justice for society as mandated by the constitution.

²⁴⁴ Satjipto Rahardjo stated that Indonesia is currently experiencing a crisis of justice as evidenced by the many cases that drag judges. The injury to the professional code of ethics of the judges has led to a decline in public trust in law enforcement in the judiciary. A. Muktif, *Constitutional Reform in a Paradigmatic Transition Period* (Bandung: Setara Press, 2008).

²⁴⁵ Talli, 6.

Judges with integrity will always be consistent and firm to always uphold honesty and truth. Basically, judges are required to have professional ability and high integrity in carrying out their duties and authorities by honing their sensitivity of conscience, maintaining moral intelligence, and increasing professionalism in upholding law and justice for society. All duties and authorities must be carried out indiscriminately by not discriminating against people as stipulated in the recitation of the oath of a judge, where everyone has the same position before the law and the judge himself.²⁴⁶

Henry Cloud²⁴⁷ stated that talking about integrity is inseparable from efforts to become a whole person, who works well and carries out its functions according to what has been previously designed. Departing from this opinion, if a judge has integrity, the judge will certainly carry out his role as a law enforcement institution properly and comply with all existing regulations and codes of ethics. Judges with integrity are always able to maintain morals, behavior, maintain honesty, and be responsible in carrying out their duties.

So important is integrity for a judge that the requirement of integrity for judges has been contained in Article 24A paragraph (2) *jo.* Article 24 C paragraph (5) of the 1945 Constitution²⁴⁸ *jo.* Article 5 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which both state that Integrity is one of the requirements to be able to become a judge.²⁴⁹

The depiction of a judge with integrity is by looking at the behavior of the judge, Tylor and Calhon²⁵⁰ describe the behavior with integrity including: a) Honest; b) Consistency between speech and actions; c) Comply with organizational regulations and ethics; d) Uphold the commitment and principles that are believed to be true; e) Take responsibility for the actions, decisions, and risks that accompany them; f) Consistent adherence to moral

²⁴⁶ Utami, Aridhayandi, and Nuraeny, "Strengthening the Integrity of Judges through the Provision of Supporting Facilities for Judicial Activities.", 474.

²⁴⁷ Danendra, Sulistyono, and Mashur, "Integrity of Morality and Public Trust in the Perspective of Judge Procurement Policy in Indonesia."

²⁴⁸ Article 24 "Constitution of the Republic of Indonesia 1945," Citizen and State (1945), https://jdih.komisijudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

²⁴⁹ Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.

²⁵⁰ Mustafa Lutfi, 'Legal Politics of the Application of Statesman Requirements in the Selection Process of Constitutional Judge Candidates' (Islamic University of Indonesia, 2023), 40.

principles that apply in society; g) Wisdom in distinguishing right from wrong and encouraging others to do the same.

Referring to some of the criteria and explanations regarding judges with integrity above, the problems that occurred during the 2024 election period where judges committed ethical violations and denied the dignity of judicial power as an independent institution indicate that judges in Indonesia are currently experiencing an integrity crisis, this condition certainly has an impact on public trust in the Supreme Court and the Constitutional Court. Judges are representatives of God who are trusted to provide justice and mediate conflicts between people, therefore judges should be mediators in solving problems, not the other way around.

c) Uncertainty of Election Law and Making it Difficult for Election Organizers

It is widely known that the election law is often associated with determining the life and death of political parties, even more so that the articles contained in the election regulations are the holders of control over who can be involved and how the election process is carried out, resulting in a high potential conflict of interest in the discussion of the revision of the election law.²⁵¹ Material testing efforts are often carried out as an advocacy step that results in articles that do not provide legal certainty and are also unconstitutional. M. Guntur Hamzah as a judge of the Constitutional Court stated;²⁵²

"Related to the rules of the game in the contestation of general elections, both for the presidential and vice presidential elections and the elections for governors and deputy governors, regents and deputy regents, as well as mayors and deputy mayors, is something that must be certain, fair and stable or stable, so that even if there is not for sure yet change or eliminate the norm a quo As a rule of the game in order to fulfill a sense of justice, it should be done long before the contest starts, not during the time / in progress."

Departing from this opinion, when the election stage begins, the rules to be used are clear and can be used as guidelines in the implementation of

²⁵¹ Pratama and Muzaki, 1.

²⁵² View in Dissenting Opinion "Constitutional Court Decision No. 60/PUU-XXII/2024."

elections. The issuance of decisions during the 2024 election period, namely the Constitutional Court Decision Number 90/PUU-XXI/2023, Supreme Court Decision Number 23 P/HUM/2024, and the Constitutional Court Decision No. 60/PUU-XXII/2024 is a reflection of the non-application of the principle of legal certainty. Moreover, the amended provisions in the a quo decision concern crucial matters in the implementation of elections such as candidate requirements and candidacy threshold provisions.

Gustav Redbruch²⁵³ stated that laws that reflect legal certainty are rules that are not easy to change, so that all changes that occur during the 2024 election period show legal uncertainty which of course has implications for all parties involved in the election. One of them has the implication of confusing candidates who may fail to compete in the election because there is a change in the election rules that annuls their candidacy, on the contrary, parties who initially did not meet the election requirements can suddenly be eligible to compete in the election.

Changes in election regulations in the middle of the road also have implications that make it difficult for the General Election Commission (KPU) as the executor of decisions that change the regulations because the impact of changes in election rules requires harmonization from election organizers which is often not easy. Chairman of the General Election Supervisory Agency (Bawaslu) Rahmat Bagja stated "The change in regulations in the middle of the road is confusing for us as organizers, I hope that there will be no more court decisions that make changes in the election law in the middle of the road, namely during the implementation of the stages (elections), because there will definitely be problems that arise for the organizers."²⁵⁴

In response to this, the determination of a change should be made long before the start of the election stage so that there is a period of time for election organizers to understand the substance of the regulation in the new

²⁵³ Neltje and Panjiyoga, 3-4.

²⁵⁴ Jaa Pradana, "Bawaslu Provides Policy Input on the Design of Future Election Regulations," Bawaslu, 2024, <https://www.bawaslu.go.id/id/berita/bawaslu-beri-masukan-kebijakan-desain-regulasi-pemilu-masa-depan>. accessed on January 31, 2024.

norms. A short time will only have the potential to cause errors, violations in the implementation of duties and increase the burden of the election organizers.

Through the Constitutional Court's decision No. 90/PUU-XXI/2023, the KPU must hurry up to make adjustments and improvements to the General Election Commission Regulation (PKPU) Number 19 of 2023 concerning the Nomination of Presidential and Vice Presidential Election Participants regarding the requirements for becoming presidential and vice presidential candidates listed in Article 12 paragraph (1) letter q as a follow-up to the Constitutional Court Decision No. 90/PUU-XXI/2023.

The KPU was confused in accommodating these changes so that it had implications for several technical errors, where in Decision Number 135-PKE-DKPP/XII/2023, Number 136-PKE DKPP/XII/2023, Number 137-PKE-DKPP/XII/2023, and Number 141-PKE-DKPP/XII/2023 of the Honorary Council for the Implementation of the Elections of the Republic of Indonesia proved the technical errors of the KPU as follows:²⁵⁵

1. The KPU was late in sending a letter requesting consultation to the House of Representatives on October 23, 2023, or seven days after the Constitutional Court's decision was pronounced under the pretext that at that time the House of Representatives was in recess²⁵⁶.
2. The KPU was not careful in submitting a letter of request for harmonization of the Draft Amendment to the General Election Commission Regulation on October 25, 2023 to the Director General of Laws and Regulations of the Ministry of Law and Human Rights because it did not attach the results of consultation with the House of Representatives and the government as a condition for the harmonization of the draft amendment to the PKPU, so that the amendment to the PKPU could not be followed up.

²⁵⁵ Rohman, 458.

²⁵⁶ The KPU does not understand that during the recess period, the House of Representatives can still conduct a Hearing Meeting as stipulated in Article 254 paragraph (4) and paragraph (7) of the Regulation of the House of Representatives of the Republic of Indonesia Number 1 of 2020 concerning Rules.

3. The KPU made a mistake in issuing General Election Commission Decree Number 1378 of 2023 concerning Technical Guidelines for the Registration, Verification, and Determination of Presidential and Vice Presidential Candidate Pairs in the 2024 General Election on October 17, 2023 to follow up on the Constitutional Court Decision Number 90/PUU-XXI/2023. The KPU's action in issuing the decision is not in line with the provisions of PKPU Number 1 of 2022 concerning Procedures for the Establishment of Regulations and Decisions within the General Election Commission. The KPU should amend PKPU Number 19 of 2023 concerning the Nomination of Presidential and Vice Presidential Election Participants first, after which it will issue technical guidelines.²⁵⁷

Likewise with the issuance of the Supreme Court decision No. 23P/HUM/2024. The a quo decision was followed up by the KPU through coordination with the Ministry of Home Affairs related to when the government plans to inaugurate the selected candidate pairs so that then a presidential regulation (Perpres) was issued that regulates the timing of the inauguration.²⁵⁸ The government has scheduled the selected candidate pairs to be inaugurated on February 7 for districts/cities and February 10 for provinces, but the KPU must revise its internal regulations within one week due to the issuance of Decision Number 70/PUU-XXII/2024, causing an unideal situation. The issuance of the Constitutional Court decision Number 60/PUU-XXII/2024 also caused a similar problem, where the KPU had to face a long debate considering that there was a very significant change in the conditions in the decision.

The KPU does not seem to be given a pause and continues to be required to execute the changes in PKPU even though the harmonization of a regulation is not an easy thing. The judge should be able to make this

²⁵⁷ Rohman, "Relevance and Consistency of the Application of the Purcell Principle by the Constitutional Court in General Elections, 458."

²⁵⁸ Susana Riita Kumalasanti, "Chairman of the KPU: No More Changes in the Rules in the Middle of the Game," Kompas, 2024, <https://www.kompas.id/artikel/ketua-kpu-jangan-ada-lagi-perubahan-aturan-di-tengah-permainan>. accessed on January 30, 2025.

condition one of the considerations before making changes to the election regulations when the stages have taken place.

The practice of legislation products in judicial review efforts related to election regulations at the time when the election stage has begun has proven to have implications for the stability of the implementation of elections and the design of judicial power as an independent institution. The practice of legislation opens up space for political actors to intervene in judicial power, triggering violations of judges' ethics which has an impact on the integrity crisis of the judges themselves. Reflecting on these conditions, it is necessary to develop a law as a solution to strengthen the design of judicial power as an independent institution during the election period. The author will outline the Law development of strengthening the design of judicial power by referring to Charles Sampford's chaos theory below.

3. Law Development Strengthening the Design of Judicial Power in Indonesia: Chaos Theory Perspective

Legal development (Law Development) is an action or activity intended to form a better and conducive legal life. Basically, legal development includes efforts to reform the nature and content of the law of applicable provisions as well as efforts that lead to the formation of new laws for community development.²⁵⁹ Mochtar Kusumaatmadja in his theory of development law stated:²⁶⁰

"Law is a tool to maintain order in society. However, a society that is building, which in our definition means a society that is changing rapidly, the law is not enough to have such a function. He must also be able to help the process of changing society. The outdated view of law that emphasizes the function of maintaining order in a static sense, and emphasizes the conservative nature of the law, considers that the law cannot play a meaningful role in the process of reform."

²⁵⁹ Ani Yunita, "The Improvement of Civil Consciousness of Law for the Endorsement of Law and Economic Development in Indonesia," *JCH (Journal of Legal Scholars)* 6, no. 2 (2021): 322, <https://doi.org/10.33760/jch.v6i2.339>.

²⁶⁰ Mochtar Kusumaatmadja, *Legal Development in the Context of National Development*, *Publisher of Inventions* (Bandung: Binacipta, 1986).

Departing from Mochtar's opinion²⁶¹ This means that the law is a catalyst and dynamizer as a means of renewal of Indonesian society and places the law to function dynamically and actively as a means of renewal and not as a tool for changing society, changes to the law can be made by way of adjustment²⁶² namely the formation of positive laws that are adjusted to the values and facts that occur in the field.²⁶³ The theory of development law provides space for the adoption of foreign laws as long as it supports the will of development so as to open up the possibility of conflict with living law.²⁶⁴

Evaluation through Purcell Principle In the legal system, judicial power is felt to be able to provide a bright spot in solving problems related to the limitations of legislative practice to maintain design Judicial power as an institution independent. Even though this principle is a foreign doctrine that comes from the state common law However, in this condition, the law must prioritize social benefits and interests. Even Mochtar had mentioned the School of Legal Realism which is a school of law that is based on empiricism, that is, knowledge that rests on empirical reality.²⁶⁵

Reviewed from the theory Chaos²⁶⁶, the empirical reality that occurred during the 2024 election period has met the standards for the need for legal

²⁶¹ The concept of legal development Mochtar explains that the role or function of law in a society that is building, or in Indonesia is known as national development. In a society that is building, the law should not only maintain order, but also direct social change and development to take place in an orderly and orderly manner.

²⁶² The formation of laws in the future, if carried out through the approach of development law theory, can be realized in the form of:

1. Defending all forms of law that are considered successful;
2. The formation of laws that can be done through the making of laws and regulations;
3. In addition to laws and regulations, morals, religion, morality, politeness, customs and other social norms can be used as a forum in achieving public order. In other words, it can be used as a source of law.

²⁶³ Anjar Setiarma, "The Disruption of Legal Technology to the Advocates Services in the Perspective of Mochtar Kusumaatmadja's Legal Development," *Legal Reform* 27, no. 2 (2023): 85.

²⁶⁴ M. Zulfa Aulia, "The Law of Development from Mochtar Kusuma-Atmadja: Directing Development or Serving Development?," *Law: Law Journal* 1, no. 2 (2019): 379, <https://doi.org/10.22437/ujh.1.2.363-392>.

²⁶⁵ Aulia, 379.

²⁶⁶ Sampford's main idea in developing the theory of chaos in law is based on his reading of complex power relations and creates a situation in which society cannot be seen as systematic or mechanistic. Sampford cleverly began his academic suspicions by saying that disorder and uncertainty are a reproduction of relationships that rely on relationships between forces. The power relationship is illustrated in the practice of domination that preserves the gap between formal relations and real

development in Indonesia regarding the limitations of the practice of legislation during the election period by the judicial power. This can be measured by looking at the phenomenon of judicial power intervention during the 2024 election period, which in this theory is included in the category of negative chaos²⁶⁷. When the law enforcers have violated the law themselves, they reflect on why they have to follow the rule of law while the law enforcers do not act fairly, and actually violate the rules. This condition will cause legal chaos (Chaos) in the community.

Theory Chaos first mentioned by Charles Sampford in his book *The Disorder Of Law: A Critique of Legal theory* in 1989 as a form of rejection of what was firmly held by thinkers from the positivistic law madzhab²⁶⁸ which bases its income on system theory.²⁶⁹ Sampford saw the law not as an orderly building, which was logical and rational, but as something that was beneficial melee, liquid, flowing (fluid) so it does not have a formal format or a definite and rigid structure. According to Sampford, human relationships are melee, both in social life and in legal life.²⁷⁰ The purpose of the law is built from the relationship between human beings that is melee, that is, social relationships between individuals with their overall variety and complexity tend to be asymmetrical.

relationships that exist in society. This is what causes the chaos to occur. See in: Faisal, 'Tracing the Theory of Chaos in Law through the Critical Theory Paradigm', *Legal Journal of Justice*, 3.2 (2014), 133 <<https://doi.org/10.20961/yustisia.v3i2.11108>>.

²⁶⁷ Negative chaos is a situation characterized by the nature of destruction, destruction, destruction, aggressiveness, explosion, but not all chaos is negative because there is a face of chaos which Serres said in Genesis as a positive chaos, namely a face of chaos that has constructive, progressive and creative properties.

Chaos in the negative sense of chaos has never been seen as an opportunity for progress, as a dialectical opportunity, as an opportunity for competition, as an opportunity to improve work ethic, as an opportunity to increase creativity, as an opportunity to increase productivity. Chaos has never been seen as a means of empowerment; as a way of management, as a way of learning, as a way of organizing, as a way of government.

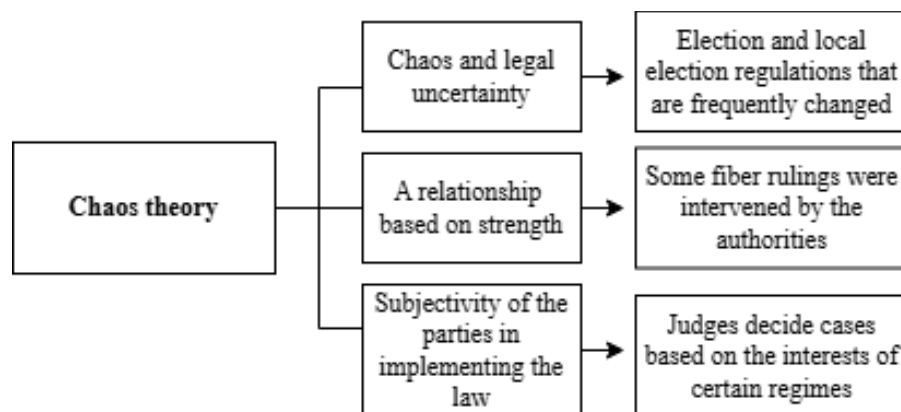
²⁶⁸Chares stated that legal theory does not always have to be based on the system theory (about) law, this is because the relationships that occur in society basically show asymmetric relationships, because after all, social relations are always perceived differently by the parties. Thus what appears on the surface is orderly, orderly, clear, certain, in fact full of uncertainty.

²⁶⁹ Kelik Wardiono, 'CHAOS THEORY: A Challenge in Understanding the Law', *Journal of Law*, 15.2 (2012), 142.

²⁷⁰ Saifullah, "The Twilight of Justice: A Treatise on the New Paradigm of Law Enforcement in Indonesia, Inauguration Speech of a Professor in the Field of Law at the Constitutional Law Study Program, Faculty of Sharia, UIN Maulana Malik Ibrahim Malang," 2020, 13.

Law is subject to centripetal forces that create an organized system but at the same time is also subject to centrifugal forces that give rise to disorder, chaos (Chaos) and even conflicts. This disorder is certainly caused by relationships in society that rely on relationships between forces (Power Relations). This relationship of power is not reflected in formal relations in society. So there is a gap between formal relationships and real relationships based on strength.²⁷¹

Sampford's thinking indicates that a mess (Chaos) in law due to the existence of unequal power in society, the more powerful party will make a policy and the weaker will be forced to follow it. The theory provides an understanding that the phenomenon of judicial power intervention by the rulers is a form of chaos that can be design Judicial power as an institution independent. The benchmark of chaos theory for the condition of judicial power during the 2024 election is as follows.



Source: Author's Creation (2025)

Figure 3. 2 Chaos Theory Benchmark Against the Condition of Judicial Power During the 2024 Election and Regional Elections

The above description shows that during the 2024 election there has been chaos (Chaos) against design Judicial power as an institution independent After the issuance of several decisions that fiber will intervene. This condition is an empirical fact that indicates the need for evaluation Purcell Principle to avoid Chaos Judicial power system in Indonesia during the election period. Law development purcell principle Against this condition, it is by prohibiting the intervention of the judicial power to

²⁷¹ Syarifudin and Febriani, "The Legal System and Legal Theory of Chaos."

change the election regulations when the election stage has begun, so that chaos (Chaos) as mentioned above does not recur.

Purcell principle can be a solution to avoid conflicts of interest that suddenly occur when approaching the implementation of the election. It is possible that the disruption of the independence of the judiciary can indeed occur at any time outside the election stage, but if the conflict occurs during the election period, the problem will be more complicated considering the implications that can disrupt the stability of the implementation of the election. The public should focus on thinking about who the candidate for leader will be elected and on the contrary, the candidates should focus on preparing the candidacy requirements and the KPU should focus on holding the election without having to be bothered by the complicated problems caused by the chaos of judicial power intervention.²⁷²

Benchmark for determining the time of deployment Purcell Principle To avoid the practice of legislation during the election and regional elections in Indonesia, it can be calculated from the stage of organizing elections and regional elections to the beginning of the planning of programs and budgets to the determination of the results of the elections and regional elections. Reflecting on the implementation of the 2024 elections, the implementation of the Purcell Principle starting from June 14, 2022 until the last stage, namely the determination of the election results, which is 3 days after the notification of the Constitutional Court's decision, where during the 2024 election yesterday, the Constitutional Court's decision was pronounced on April 22, 2024.²⁷³

Similar to elections, the implementation of Purcell Principle The Regional Elections are also carried out since the Regional Elections stage began, namely from the planning period of programs and budgets to the determination of regional head candidates. Calculating from the implementation of the 2024 regional elections, the implementation of

²⁷² Rohman, "Relevance and Consistency of the Application of the Purcell Principle by the Constitutional Court in General Elections, 460."

²⁷³ See in: PKPU No. 3 of 2022 concerning the Stages and Schedule for the Implementation of the 2024 General Election.

Purcell Principle starting from January 26, 2024 until the last stage, namely the determination of regional head candidates, namely 3 days after the notification of the Constitutional Court's decision, where in the 2024 regional elections the Constitutional Court's decision for the whole will be pronounced on February 24, 2025.²⁷⁴

Predicting the implementation of elections and regional elections in the next period, referring to Article 167 paragraph (6) of Law No. 7 of 2017 concerning General Elections²⁷⁵ which states that the stages of holding the election as referred to in paragraph (4) begin no later than 20 months before the voting day, which is 560 days before the voting, while the implementation of the stages of the regional elections reflects on the implementation of the 2019 regional elections and the 2024 regional elections are carried out 1 year before voting, namely 365 days before voting. The duration of time before the KPU starts the stages of organizing the elections and regional elections can be used to prepare election and regional election regulations, so that when the election and regional election stages have started, the regulations that will be used are certain and can be applied immediately.

Examples of compliance with Purcell Principle in Indonesia is the birth of the Constitutional Court Decision Number 62/PUU-XXII/2024 regarding the elimination of the presidential candidacy threshold or presidential

²⁷⁴ See Article 57 paragraph (1) *jo.* paragraph (2) PKPU No. 18 of 2024 concerning the Recapitulation of the Results of the Vote Count and Determination of the Election Results for the Governor and Deputy Governor, Regent and Deputy Regent, as well as the Mayor and Deputy Mayor which states:

- (1) The determination of the selected Candidate Pairs is carried out with the following provisions:
 - a. there is no application for dispute over the election results, no later than 3 (three) days after the Provincial KPU or Regency/City KPU through the KPU obtains a notification letter from the Constitutional Court regarding the registration of the election result dispute case in the constitutional case registration book; or
 - b. there is a request for a dispute over the election results, no later than 3 (three) days after the Constitutional Court's decision is read.
- (2) If a vote or recount is carried out based on the Constitutional Court's decision, the determination of candidate pairs is carried out after the results of the vote or recount determined by the KPU.

²⁷⁵ Article 167 paragraph (6) "Law Number 7 of 2017 concerning General Elections", 2017. <https://peraturan.bpk.go.id/Details/37644/uu-no-7-tahun-2017>. Statute Book of the Republic of Indonesia Year 2017 Number 182 and Supplement to Statute Book of the Republic of Indonesia Number 6109.

threshold which is regulated in Article 222 of Election Law Number 7 of 2017 concerning General Elections. The Constitutional Court judge stated that article a quo contrary to the political rights and sovereignty of the people, morality, rationality, and injustice that intolerable and contrary to the constitution.²⁷⁶ The change in election rules is felt to be in line with Purcell Principle because The decision was made on December 3, 2024 after the 2024 election stage was completed and before the 2029 election stage began.

Verdict a quo It should be a reflection for the judiciary to limit itself to involvement in the electoral political process because of the estimated time for the decision to be decided a quo ensuring that election stability is not disturbed, legal certainty, the urgency of election organizers and the public can have time to adapt to these changes. Purcell principle intended to build design The judicial power will be better, at least it can overcome the existence of political interests involving the judiciary as well as a medium that can prevent the disruption of election administration and legal uncertainty which of course can be detrimental to the electoral political order.²⁷⁷

The above evaluation shows that the existence of legislation practices during the election period has the potential to harm design Judicial power as an institution Independent. The absence of restrictions on legislative practice has the potential to open up opportunities for judicial power intervention that is indicated in ethical violations by judges, disrupt the election administration process, and create legal uncertainty. This condition causes chaos (Chaos) in the judicial power system in Indonesia, therefore the evaluation of Purcell Principle In responding to this problem, it is indicated that there must be a benchmark for the time span when election regulations can be changed and should not be changed.

²⁷⁶ "Constitutional Court Decision Number 62/PUU-XXII/2024" (n.d.), https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11344_1735807848.pdf.

²⁷⁷ Adi Jambia, "Purcell Principle in the Constitutional Court's Decision on the Presidential Threshold," Sambaliung Corner, 2025, <https://sambaliungcorner.com/2025/01/04/purcell-principle-dalam-putusan-mk-tentang-presidential-threshold/>.

Going through some of the evaluations above, the concept of application Purcell Principle is a necessity. About the concept of application Purcell Principle ideal for strengthening design the judicial power system in Indonesia in the future, the author will study it more deeply by looking at how it is integrated with the concept of *Sadd adz-dzariah* and by reflecting on the application system Purcell Principle in other countries to then design its application in Indonesia.

C. The Ideal Concept of the Application of the Purcell Principle to Strengthen the Design of the Judicial Power System in the Future Based on the Perspective of Sadd Adz-Dzariah

The judicial review mechanism was initially used to ensure that the constitutional rights of citizens are not violated considering that the constitution is the highest norm in the Indonesian government system. Brian Thomson²⁷⁸ stated that as the highest source of law, the constitution must be used as a guide in producing a policy in the form of laws or other regulations, otherwise the judiciary can cancel it. Therefore, in order to safeguard the basic rights of individual citizens, the judicial institution is given an expanded authority to test the law.

Every citizen whose basic rights are disturbed, harmed, or even harmed by the law can apply for a material test at the Supreme Court or Constitutional Court by canceling and even revising the legislation product in the name of restoring citizens' constitutional rights. The reality is that currently the judicial review authority of the Supreme Court and the Constitutional Court is only used as a subtle tactic to extend or maintain power through castration of a regulation.²⁷⁹

This condition in practice occurs during the election period, where instead of being used to protect the rights of individuals, judicial review is actually used as a bridge to maintain power through changes in regulations to launch the ambition of a political party in order to carry a candidate pair and change

²⁷⁸ Pratama and Muzaki, *Electoral Reform in the Constitutional Court*, 4.

²⁷⁹ Ratu Durotun Nafisah, "Excessive Reliance On Judicial Review In Indonesia: A Tactic To Avoid Democratic Accountability?," *Journal of International & Comparative Law X*, no. 1 (2023): 8.

the candidacy requirements to pass a certain political regime, especially during the midterm election stage last. Even though logically the test departs from constitutional losses, a sudden change in the electoral system will eventually give rise to certain polemics as described in the previous subchapter.

Departing from several problems that have occurred, then the purcell principle can be used as a solution as a new paradigm (*ius constituendum*) in overcoming these problems, considering that the mechanism has not been regulated in Indonesia, the author will try to compile a system for the application of the purcell principle by first looking at the relevance of the application of the purcell principle to strengthening The design of the judicial power system in Indonesia is based on the perspective of *sadd adz-dzariah* as one of the mechanisms for discovering Islamic law. The following are the results of analysts related to the design of the mechanism for implementing the purcell principle in Indonesia based on *sadd adz-dzariah*.

1. The Relevance of the Application of the Purcell Principle to the Strengthening of the Design of the Judicial Power System in Indonesia with the Concept of Sadd Adz-Dzariah

Islamic law has made a great contribution to the formation of national law, as evidenced by the birth of several regulations in Indonesia that are accommodated from Islamic law. Historical facts have explained that Islamic law is considered necessary to be an object of study. Barda Nawawi stated that apart from customary law, Indonesia also needs Islamic law which is a source of value that lives and develops in the order of Indonesian society.²⁸⁰ Seeing the basis of this urgency, it encourages Indonesia to continue to formulate and optimize laws in accordance with Islamic law. Not only because of the social factors of the Indonesian people who are Muslims, but because Islamic law is considered a just law.²⁸¹

²⁸⁰ Nabilah Apriani, "Actualization of the Position of Islamic Law in the Perspective of Indonesian National Law," *Lex Generalis Law Journal* 3, no. 2 (2022): 137, <https://doi.org/10.56370/jhlg.v3i2.185>.

²⁸¹ Aisyah Ayu Musyafah, "The Basis of Islamic Law is Normative in Indonesia," *Islamic Law* 2, no. 1 (2020): 7.

The sources of Islamic law have been regulated in such a way in the Qur'an and hadith, but as the problems faced by the community develop to give rise to several cases that have not been explicitly regulated in the Qur'an and hadith, therefore a further interpretation of its legal position is needed. It is in this condition that *sadd adz-dzariah*²⁸² is present as one of the methods of determining Islamic law in answering a problem seen from the side of its *mudharat*.

*Sadd adz-dzariah*²⁸³ in looking at a problem refers to the opinion of Abdul Qayyim who states that an act that was initially allowed will become prohibited if the act causes damage, both minor damage and major damage.²⁸⁴ The concept of *sadd adz-dzariah* is in line with the words of Allah in Surah An-Nur verse 31 which reads:²⁸⁵

وَقُلْ لِلْمُؤْمِنَاتِ يَعْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ

"And let them not beat their feet so that the jewels they hide may be known"

The verse prohibits women from stomping their feet on the ground by wearing anklets, actually the act is not prohibited but because it can attract the attention of men so that it can cause orgasm, this act is prohibited²⁸⁶. Other words are also contained in Surah Al-An'am verse 108 which reads:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ كَذَلِكَ زَيْنًا لِكُلِّ أُمَّةٍ

وَعَمَلُهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

²⁸² The perspective ushul fiqh *sadd adz-dzariah* is something that becomes a means to those who are forbidden or halal. If there is something as a means to the forbidden (bringing damage/mafsadah), then the means must be closed or prevented, and this is called *sadd al-dzari'ah*, as opposed to *fath al-dzari'ah*, which is a means that leads to benefits. See in: Moh Mahrus, "The Application of Al-Dzari'ah and Al-Hilah from the Perspective of Islamic Law," *Journal of Islamic Economics and Business* 7, no. 2 (2018): 4.

²⁸³ Imam al-Syatibi explained that *dzariah* is when a person does a work that is basically permissible because it contains a fame, but the goal that he will achieve will end in a mafsadatan. Diki Ramadhan Alfarisi and Irhamuddin, "The Urgency of Approaching *Sadd Zari'ah* in Making Islamic Law Decisions," *Innovative: Journal of Social Science Research* 4, no. 6 (2024): 4.

²⁸⁴ Zulfikri and Faizah, "Sadd al-Dzari'ah as a Media in Contemporary Case Resolution." 178.

²⁸⁵ Imam Fawaid, 335.

²⁸⁶ According to Al-Syaukani, *Adz-Dzariah* is a problem that is basically allowed but will lead to prohibited acts. See: Muhammad Hanif bin Halililah, 'The Blasphemy of *Sadd al-Zari'ah* as a Evidence of Islamic Law (A Comparative Study between the Maliki, Shafi'i and Zhahiri madhhabs)', *Uin Ar-Rainy* (Ar-Raniry Darussalam State Islamic University, Banda Aceh, 2021), 19.

"Do not curse (worship) that they worship other than Allah because they will curse Allah by exceeding the limit without (base) knowledge. Thus, We make every people think well of their work. Then to the Lord they will return to the place of their return, and He will tell them what they have done."

The verse explains that the act of insulting and insulting God other than Allah is legal, but because the act of insulting God can cause slander, the act is prohibited.²⁸⁷The two verses above provide an understanding that if there is an act that can cause something that is forbidden even though the act is basically allowed, the act must be prevented from being carried out. The basis of the scholars' thinking in this regard is that every action contains two sides, namely:²⁸⁸

- a) The side that drives to do, and
- b) The object or goal that becomes the *natijah* (conclusion/consequence) of the act. So when looking at the nature, the action is divided into two forms:
 - 1) If his *Natijah* is good, then something that leads to him is good and therefore it is required to reign over it.
 - 2) If his nature is bad, then everything that leads to him is bad and therefore forbidden.

Correlating the concept of *sadd adz-dzariah* above with the issue of legislative practice during the election period, departing from the provisions of Article 24A paragraph (1) of the 1945 Constitution²⁸⁹ and Article 31 paragraph (1) of Law No. 5 of 2004 concerning the²⁹⁰ Supreme Court of *jis*. Article 20 paragraph (2) letter b of Law No. 48 of 2009²⁹¹ which states that

²⁸⁷ Muhammad Takhim, "Saddu Al-Dzari'ah in Muamalah Islam," *ACCESS: Journal of Economics and Business* 14, no. 1 (2020): 20, <https://doi.org/10.31942/akses.v14i1.3264>.

²⁸⁸ Muhammad Jihadil Akbar, "Analysis of Dissenting Opinion in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020 on the Testing of Article 27 of Law No. 2 of 2020 from the Perspective of Progressive Law and Sadd Adz-Dzariah" (Dar al-Fikr, 2022).

²⁸⁹ Article 24A paragraph (1) "Constitution of the Republic of Indonesia 1945," Citizens and State (1945), <https://jdih.komisijudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

²⁹⁰ Article 31 paragraph (1) of Law No. 5 of 2004 concerning the Supreme Court, <https://peraturan.bpk.go.id/Details/40491/uu-no-5-tahun-2004>. Statute Book of the Republic of Indonesia No. 9 of 2004 and Supplement to Statute Book of the Republic of Indonesia No. 4359.

²⁹¹ Article 20 paragraph (2) letter b"Law Number 48 of 2009 concerning Judicial Power", 2009

the Supreme Court has the authority to examine laws and regulations under the law against the law, in this case the Constitutional Court also has similar authority in Article 24C paragraph (1) of the 1945 Constitution²⁹² and Article 10 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court²⁹³ *jis.* Article 29 paragraph (1) letter a of Law No. 48 of 2009²⁹⁴ concerning Judicial Power which states that one of the authorities of the Constitutional Court is to test laws against the constitution.

The article provides an understanding that the practice of legislation by the Supreme Court and the Constitutional Court during the election period is an action that is basically allowed and has been legitimized in the constitution, but the authority possessed by the Supreme Court and the Constitutional Court is often a challenge in itself during the election period. This practice causes uncertainty in election law so that it is contrary to the provisions of Article 28D of the 1945 Constitution which has guaranteed that everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law.²⁹⁵ The practice of legislation during the election period also has implications for the increasingly open intervention of judicial power with the practice of abusive judicial review so that it is contrary to the provisions of Article 24 paragraph (1) of the 1945 Constitution²⁹⁶ which states that the judicial power is an independent power to hold the judiciary to

<https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Statute Book of the Republic of Indonesia Year 2009 Number 157 and Supplement to Statute Book of the Republic of Indonesia Number 5076.

²⁹² Article 24C paragraph (1) "Constitution of the Republic of Indonesia of 1945", Citizen and State (1945), <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. The Statute Book and the Supplement to the 1970 Statute Book that has been reprinted.

²⁹³ Article 10 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, <https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003>. Statute Book of the Republic of Indonesia Year 2003 Number 98.

²⁹⁴ Pasal 29 ayat (1) huruf a "Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman", 2009

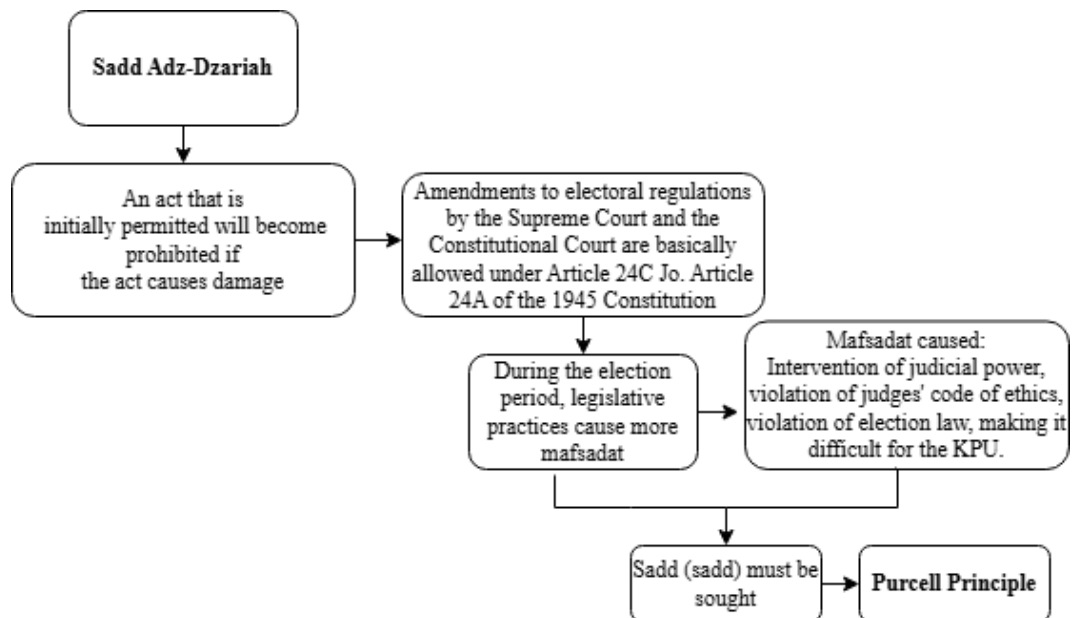
<https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf>. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157 dan Tambahan Lembaran Negara Republik Indonesia Nomor 5076.

²⁹⁵ Pasal 28D "Undang-Undang Dasar Negara Republik Indonesia 1945," Warga dan Negara (1945), <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. Lembaran Negara dan Tambahan Lembaran Negara Tahun 1970 yang Telah di Cetak Ulang.

²⁹⁶ Pasal 24 ayat (1) "Undang-Undang Dasar Negara Republik Indonesia 1945," Warga dan Negara (1945), <https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>. Lembaran Negara dan Tambahan Lembaran Negara Tahun 1970 yang Telah di Cetak Ulang.

uphold law and justice so that it is also indicated that there is a violation of the code of ethics of Supreme Court and Constitutional Court judges.

The emergence of some of these problems provides an understanding that even though the Supreme Court and the Constitutional Court have the authority to change election regulations, these actions are bad in nature so they must be prevented (*sadd*). The adoption of the purcell principle can act as an intermediary that limits the practice of legislation by judges during elections and regional elections to overcome chaos when the stages have begun. The relevance of the purcell principle to *sadd adz-dzariah* can be seen in the following figure.



Source: Author's Creation (2025)

Figure 3. 3 Relevance *Sadd Adz-Dzariah* with Purcell Principle

Abdul Qayyim then explained²⁹⁷ that everything that leads to damage can be divided into four levels and all of them must be prevented (*sadd*) so that they do not cause damage in the form of sinful acts and disobedience committed by humans.

²⁹⁷ According to Jasser Audah, the Sad Adz Dzari'ah method is basically an ijthad method whose use depends on the type of consequences it causes, in the sense that it is only used if the consequences of the act lead to damage or are negative, so it cannot be used continuously. He continued that the possibility of seeing the positive aspects of using means, tools and wasilah for one act also needs to be studied and seen as a possibility that can be used to realize other Maqashid Syari'ah, namely realizing welfare. See: Nurdhin Baroroh, "Metamorphosis of 'Illat Hukum' in Sad Adz-Dzari'Ah and Fath Adz-Dzariah (A Comparative Study)," *Al-Mazaahib: Jurnal Comparative Hukum* 5, no. 2 (2018): 303, <https://doi.org/10.14421/al-mazaahib.v5i2.1426>.

The acts in question include:²⁹⁸

- a) Something that contains a forbidden purpose and the method used is also a haram method, for example, drinking khamr can make you drunk, accusing adultery can lead to making lies, adultery can cause mixed nasab.
- b) Something that is basically a medium is something that is permissible but used as an intermediary to achieve *mafsadat*, for example, having a marriage contract while intending to legalize the ex-husband who is mentally three, buying and selling with the aim of allowing usury.
- c) Something that is basically a medium of something that is not accompanied by the goal of achieving *mafsadat*, but more predominantly tends to usher in *mafsadat*, for example, praying sunnah prayers at forbidden times, insulting the worship of polytheists in front of their eyes, praying in front of graves, and the death of women during iddah because of the death of their husbands.
- d) Something that is basically a medium is something that is not accompanied by the goal of achieving *mafsadat* and there is a possibility of ushering in *mafsadat* but the beneficial side is more dominant, for example, looking at the woman who is proposed, looking at women when transacting, telling the truth in front of a tyrannical ruler.

Judging from the level of damage stated by Abdul Qayyim, the problem of legislative practices during the election period is included in the second category. Basically, the authority of the judiciary in testing the law is a measure that is allowed to ensure that the constitutional rights of citizens are not violated and avoid conflicts with norms, but during the election period it is used as an intermediary to achieve *mafsadat* which is used to change the election rules with the aim of extending the power of certain political institutions, therefore this act must be prevented (*sadd*) which in this case is

²⁹⁸ Panji Adam Agus Putra, "The Concept of Sadd Al-Dzari'ah According to Ibn Qayyim Al-Jauziyyah and Its Application in Islamic Economic Law (Mu'âmalah Mâliyyah)," AL-AFKAR: Journal for Islamic Studies 7, no. 1 (2024): 1143, <https://doi.org/10.31943/afkarjournal.v7i1.926>.The.

by applying the purcell principle. Referring to the concept of prudence in the fourth master fiqh rule, it has also been mentioned that:²⁹⁹

الْحَاجَةُ قَدْ تَنْزَلُ مَنْزِلَةَ الضَّرُورَةِ عَامَّةً كَانَتْ أَوْ خَاصَّةً

"The need is placed in an emergency place, whether the need is general or special"

The rule explains that *hajat* (urgent need) can be equated with an emergency, on this basis a judge may be limited in his authority in changing the provisions of elections and regional elections to avoid *mudharat* and chaos in the implementation process. Even though the provisions of Article 10 of Law No. 48 of 2009 concerning Judicial Power state that the Court is prohibited from refusing to examine, adjudicate, and decide a case submitted on the pretext that the law does not exist or is not clear, but is obliged to examine and adjudicate it.

Further analyze through the decisions issued by the Supreme Court and the Constitutional Court during the election period, namely the Constitutional Court Decision No. 90/PUU-XXI/2023 and the Supreme Court Decision No. 23P/HUM/2024 which aims to avoid discrimination related to the issue of age to be a presidential or vice presidential candidate in the election as well as candidates for regional heads and deputy regional heads in the regional elections and the Constitutional Court Decision No. 60/PUU-XXII/2024 which aims to provide opportunities for all political parties to be able to Candidates during the Regional Elections gave an understanding that this condition indicates the existence of two mixed goals, namely the goal of good glory and bad goals because the three decisions also have the potential to cause chaos as explained in the chaos theory and have the potential to cause a crisis of the integrity of a judge.

Based on the principles of fiqh, if the halal and the haram are mixed, the principle is formulated in the following rules:³⁰⁰

²⁹⁹ Duski Ibrahim, *Al-Qawa'id Al-Fiqhiyah (The Principles of Fiqh)* (Palembang: Noerfikri, 2018), 86.

³⁰⁰ Akbar, "Analysis of Dissenting Opinion in Constitutional Court Decision Number 37/PUU-XVIII/2020 Regarding the Testing of Article 27 of Law Number 2 of 2020, Progressive Law Perspective and Sadd Adz-Dzariah."

إِذَا اجْتَمَعَ الْحَلَالُ وَالْحَرَامُ غَلِبَ الْحَرَامُ

Meaning: "If the haram is mixed with the unclean, then the haram defeats the halal"

In line with the above rule, if there is a mixture between something good and bad, it will be won by the bad, meaning that the bad in this case is more influential than the good itself. There are indications of chaos and cause several other problems, so the judge should choose to refrain from changing the election regulations through the three decisions.

Based on the description above, it can be understood that even though initially the testing of the election law was the authority of the Supreme Court and the Constitutional Court, but seeing from the implications that it caused more harm, the prevention (*sadd*) of the practice by applying the purcell principle must be carried out. The analysis shows that the application of the purcell principle to strengthen the design of the judicial power system in Indonesia is relevant to the concept of *sadd adz-dzariah*. Furthermore, to get an overview of the design of the system for the application of the purcell principle in Indonesia, the author will describe the model for the application of the principle in several other countries as follows.

2. Models for the Application of the Purcell Principle in Other Countries

Adopting the purcell principle in Indonesia certainly cannot be just accommodated. Analyzing how this principle is applied in other countries is very important to know the advantages and disadvantages of applying the purcell principle. The goal is that the advantages of the existing principle purcell mechanism can be used as a reflection in the context of its application in Indonesia. The countries chosen to be the object of analysis are America, Brzil, and Mexico. The United States was certainly chosen because basically the country was the first country to give birth to the purcell principle, then Brazil and Mexico were used because the two countries were predicted to have the highest level of stability in the implementation of elections. Further discussion of how the mechanism for applying the purcell principle in the three countries will be described by the author as follows.

a) Application of the Purcell Principle in the United States

America is a country that gave birth to the purcell principle. This principle is one of the policies that is often considered by the United States Supreme Court before making changes to election regulations. It began with the case of Purcell V. Gonzalez involving Arizona residents who sued a proposition, namely the Arizona Voter Identification Act of 2004 on a referendum measure to prevent fraud by requiring voters to show proof of citizenship when they register to vote and the obligation to show identity when they vote on election day.³⁰¹

In May 2006 the residents of Arizona challenged this requirement and filed a lawsuit in the district court, but the district court rejected the lawsuit so the residents of Arizona appealed to the high court which was ultimately granted. Shortly afterwards, the Supreme Court of the United States then issued a certificate to review the decision granted by the high court.

After a review, the Supreme Court then canceled the previous high court decision so that the applicable provisions were the initial provisions based on the judge's consideration at that time, namely: 1) a quo decision changing the election provisions even though the vote was close and potentially confusing the parties involved in the implementation of the election. 2) The court also considered that when the election was near, the guidelines for election organizers should be clear. Although the mask was not explicitly conveyed, but departing from the case, it can be concluded that the purcell principle requires that if the implementation of the election is near, the court must refrain from making changes to the election regulations.³⁰²

An in-depth evaluation of the application of the purcell principle in the United States, where this principle is still full of ambiguity regarding when the courts should actually apply the purcell principle? Should this principle always be applied even if there are conflicting cases? And when will the election be measured? This ambiguity then becomes a factor in the purcell principle being

³⁰¹ Casey P Schmidt, "Disrupting Election Day: Reconsidering The Purcell Principle As A Federalism Doctrine," *University of Virginia School of Law* 4, no. 4 (2024): 7.

³⁰² Gilleran, "Purcell v. Gonzalez, Principle and Problem - Native American Voting Rights in the 2018 North Dakota Elections, 450."

considered an unclear principle, many criticisms regarding the application of the purcell principle because the court often decides cases by positioning the purcell principle in the shadow file.³⁰³

The U.S. court also did not provide any clarity regarding the benchmark for the application of the purcell principle, as seen in the example of a case in 2020 when states changed voting rules to address security concerns posed by the Covid-19 pandemic. Although the rules were changed ahead of the election, they were designed to assist voters in voting safely during the global pandemic. Despite this fact, the Supreme Court has largely blocked last-minute changes by adhering to the principle of purcell.

Nullifying the ambiguity, then in 2009 the U.S. Supreme Court declared signs³⁰⁴ that should be considered by the court in reviewing changes to election rules and as a benchmark for ignoring the purcell principle. These signs have been established in the *Winter v. Natural Resources Defense Council*, namely:³⁰⁵

- a. The likelihood of the voter's success;
- b. The likelihood of irreparable harm if the decision is not granted;
- c. The losses suffered by the parties;
- d. The public's interest in the case.

The signs indicate that the purcell requires the plaintiff to demonstrate the urgency of changing the election regulations while the stage is ongoing so that it is worth filing and the benefits are fully clear to the advantage.³⁰⁶ Ignoring the purcell principle can also be done with the aim of saving voters' votes, beyond these signs, changes in election rules will be applied in the implementation of

³⁰³ Shadow files are emergency and summary decisions made outside the court case file, decided quickly without full explanation or oral argument and often provide little or no explanation regarding the decision-making process, therefore the jurisprudential basis of this doctrine is weak, causing the application of the Purcell principle in a case to be contradictory and inconsistent. Houston, "Does Anybody Really Know What Time It's Is?: How The US Supreme Court Defines 'Time' Using The Purcell Principle, 791."

³⁰⁴ Judge Kavanaugh gave his views on the application of the purcell principle, namely:

- a. Federal district courts generally may not enjoin state election laws in the period leading up to an election;
- b. Federal appeals courts must stay decisions when lower federal courts violate the principle.

23

³⁰⁵ Watson, "Free and Fair: Judicial Intervention in Elections Beyond the Purcell Principle and Anderson-Burdick Balancing, 1015."

³⁰⁶ Dodsworth, "The Positive and Negative Purcell Principle, 35."

the next election period. Some of the U.S. Supreme Court rulings that apply the Purcell principle are presented in the following table.

Table 3. 6

Tabulation of the Supreme Court of United States Decision Citing Purcell

No.	Case	Year	Date of Verdict	Election Date	Time Range
1.	Purcell v. Gonzalez on Voter ID	2005	5/10/2005	7/11/2006	33 Days
2.	Veasey v. Perry on Voter ID	2014	14 October 2014	4 November 2014	21 days
3.	Republican National Committee v. Democratic National Committee on Ballot Deadline	2020	April 2, 2020	7 April 2020	5 days
4.	Raysor v. DeSantis on Voter Access	2020	July 1, 2020	Florida Primary (August 18, 2020), General Election (November 3, 2020)	48 Days-125 Days
5.	Andino v. Middleton on Mail-in Ballot Requirement	2020	September 18, 2020	November 3, 2020	46 Days
6.	Merrill v. People First of Alabama on Curbside Voting	2020	June 15, 2020	November 3, 2020	141 Days
7.	Democratic National Committee v. Wisconsin State Legislature on Ballot Deadline	2020	September 29, 2020	November 3, 2020	35 Days
8.	Republican Party of Pennsylvania v. Degraffenreid on Ballot Deadline	2021	September 17, 2020	2 November 2021	411 Days
9.	Merrill v. Milligan (Initial Application) on Redistricting	2022	January 24, 2022	Alabama primaries (May 24, 2022), General Election (November 8, 2022)	120 Days-288 Days
10.	Moore v. Harper (Initial Application) on Redistricting	2022	February 14, 2022	North Carolina Primary (May 17, 2022), General Election	92 days-267 days.

				(November 8, 2022)	
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Source: Days Between Decision Date and Election Date³⁰⁷

Based on the table above, it shows that the use of the purcell principle has a large existence in the United States. The purcell principle has been applied more widely to various areas of election law, ranging from voter identification requirements, voting deadlines, voter accessibility, incoming ballot requirements and voting deadlines. Referring to the table above, the average number of days of the period between the verdict and the time of the election in 2020 was 66 days, in 2021 it was 411 days, and in 2022 the average number of days was 191 days.³⁰⁸

Basically, the Supreme Court has not formulated a definite limit on the period of court involvement, but Rachael Houston in his research on the dynamics of federal court decisions shows that the application of the purcell principle begins in the range of 5 to 411 days before the implementation of the election. According to the most conservative estimates, the federal court should avoid involvement in changing election rules at least 411 days before the election.³⁰⁹

Responding to the difference in the interpretation of time, Judge Kagan in his disagreement at the Democratic National Committee stated that purcell is not just a matter of time, but a matter of ensuring that the election process maintains its integrity.³¹⁰ This means that if it is felt that in the vulnerable time a change will interfere with the integrity of the election, then that is where the

³⁰⁷ Houston, “Does Anybody Really Know What Time Its Is?: How The US Supreme Court Defines ‘Time’ Using The Purcell Principle, 801.”

³⁰⁸ Houston, “Does Anybody Really Know What Time Its Is?: How The US Supreme Court Defines ‘Time’ Using The Purcell Principle.”

³⁰⁹ Houston, “Does Anybody Really Know What Time Its Is?: How The US Supreme Court Defines ‘Time’ Using The Purcell Principle, 806.”

³¹⁰ Houston, “Does Anybody Really Know What Time Its Is?: How The US Supreme Court Defines ‘Time’ Using The Purcell Principle, 803.”

purcell principle must be applied.³¹¹ In fact, the application of the purcell principle in the United States is triggered by:³¹²

1. Avoid voter confusion;
2. Election organizers need clear guidelines;
3. Respect for the district court.³¹³

Learning from the application of the purcell principle in the United States, in addition to being able to provide a handle for judges in certain conditions, the purcell principle without clear case review standards will actually make the court's discretion too broad so that it triggers social and political problems. Moreover, the American court has not determined exactly the time referred to by being too close to the election, causing inconsistencies regarding the interpretation of the time when the purcell principle is applied. The US only positions the purcell principle as a jurisprudence rather than a normative provision contained in laws and regulations.³¹⁴ This condition has triggered many parties to question the legitimacy of the application of the purcell principle in the United States itself.

b) Application of the Purcell Principle in Mexico

Basically, Mexico has a system of government similar to that of the United States. Mexico is a federal state consisting of thirty-one states and one federal district of Mexico City where the branches of the federal government are located.³¹⁵ The power of the 32 states of Mexico is based on the principle of division of power between the executive, legislative, and judicial branches in accordance with the 1917 Constitution. The power of the faculty-level

³¹¹Judge Kavanaugh stated that how close an election is depends on the nature of the election law at issue, and how easily states can make changes without undue additional impact. Changes that require complicated or disruptive implementation should be made ahead of changes that are easy to implement, Judge Kavanaugh considered in relation to the burden placed on election administrators. See in:Schmidt, "Disrupting Election Day: Reconsidering The Purcell Principle As A Federalism Doctrine, 24."

³¹² Schmidt, 27.

³¹³ This is because of several conditions, namely:

- a. the appellate court issued a court order but the district court rejected it;
- b. the district court had not issued any findings of fact at the time the appellate court issued its order; and
- c. the appellate court did not provide reasons for its decision.

³¹⁴ Gilleran, "Purcell v. Gonzalez, Principle and Problem - Native American Voting Rights in the 2018 North Dakota Elections."

³¹⁵ Applied Mathematics, "Development of Mexican Political Conditions" 25 (2016).

executive lies in the hands of the President, who can only be elected once for a term of 6 years and can never be re-elected in the next period to prevent the President from taking root in power. Each of the 31 states has its own Governor and Head of Government for the Federal District, all elected every six years in accordance with the President's term of office.

The Mexican facadal legislative branch is held by the Congreso de la Union (National Congress) which is divided into the Camara de Senados (Chamber of Senate/Upper Chamber) and the Camara de Diputados (Chambber of Deputies/Lower Chamber). The judiciary itself in the federal state is vested in the Supreme Court of Justice of the Nation, which consists of eleven ministers elected by two-thirds of the votes of the upper house.³¹⁶ Speaking of Mexico's Supreme Court of Justice which is the last appellate court for state federal courts, the Supreme Court has the authority to review the constitutionality of laws including election laws.

In September 2024 President Andrés Manuel López Obrador approved a constitutional amendment that overhauled Mexico's judicial system. The Mexican government reduced the number of judges from 11 to 9 and abolished the Supreme Court's tradition of hearing cases in panels, all cases are now heard by all courts. The Supreme Court's authority to conduct post-reform reviews is retained, where the court can declare the law unconstitutional by a vote of six out of nine judges.³¹⁷

Historically, previously in 1996 Mexico had carried out reforms to its political and electoral system aimed at providing guarantees of reasonable honesty in the material development of the electoral process.³¹⁸ One of the fruits of these reforms is the existence of rules regarding the provisions contained in Article 105 paragraph 2 of the Mexican Constitution. The article states that the

³¹⁶ Perludem, “Meksiko Election System,” n.d., <http://perludem.org/wp-content/uploads/2017/04/SISTEM-PEMILU-DI-MEKSIKO.pdf>

³¹⁷ Judiciaries Worldwide Resources on Comparative Judicial Practices, “Mexico,” judiciariesworldwide.fjc.gov, n.d., <https://judiciariesworldwide.fjc.gov/country-profile/mexico>. Accessed January 29, 2025.

³¹⁸ Perludem, “Meksiko Election System.”

only way to raise the issue of inconsistency between the election law and the constitution is through the following articles:³¹⁹

"The federal and local electoral laws must be promulgated and published at least ninety (90) days before the electoral process begins in which they will be applicable, and there may be no fundamental legal modifications to them during that period."³²⁰

The article shows that in Mexico changes to election rules at the start of the election process are not allowed, where the period of time allowed to change election rules is 90 days before the election process is implemented. The Supreme Court stated that an unconstitutional election law must be approved by a majority of at least eight votes. In line with the purcell principle in the Mexican constitution, it is also stated that:³²¹

"The declaration of invalidity of the resolutions to which sections I and II of this article refer shall not have retroactive effects, except in criminal matters, which shall be governed by the general principles and legal provisions that are applicable to this matter."³²²

The article explains that any changes made to the election law must not apply retroactively, which means that changes to election regulations within a period of less than 90 days from the voting period must be applied in the next election period. The purpose of this policy is of course to realize legal certainty in elections in line with the mandate of Article 41 Section D point V of the Mexican Constitution which states that:³²³

"The organization of federal elections is a state function carried out by an autonomous public body known as the Federal Electoral Institute, which possesses legal personality and its own assets and whose members shall be chosen by the Legislative Branch of the Union, the national political parties and the citizens, in accordance with the terms established by law. Certainty, legality, independence, impartiality, and objectivity shall be the guiding principles in the exercise of this state function."³²⁴

³¹⁹ See: Constitution Article 105 paragraph 2 Mexico 1917 (Rev. 2007)" (n.d.).

³²⁰ Federal and local election laws must be enacted and published no later than ninety (90) days before the election process to which they will apply, and no fundamental legal changes may be made to those laws during that period.

³²¹ Article 41 Section D point V Mexico 1917 (rev. 2007).

³²² The declaration of the invalidity of the resolutions referred to in parts I and II, which in this case include provisions regarding changes to election laws, does not have retroactive effect, meaning that any changes made will apply to the next election period.

³²³ Mexico 1917 (rev. 2007).

³²⁴ The organization of federal elections is a state function carried out by an autonomous public body

Based on this analysis, it can be seen that Mexico does not explicitly declare the adoption of the purcell principle, but the provision in Article 105 indicates that Mexico does not want a change in election regulations when the process has begun, as well as the concept of the purcell principle. In contrast to the United States, in Mexico, the provisions limiting changes to election rules have been accommodated in the 1917 Mexican constitution.

c) Application of the Purcell Principle in Brazil

Brazil is a country with a presidential federal republic system. Brazil is made up of 26 states and federal districts (Brasilia) where the faculty, state, and municipal governments have their own legislative, executive, and judicial institutions. Similar to the United States and Mexico, constitutional control in the state system is also held by the Supreme Court of Federal or in Brazil referred to as the Supremo Tribunal Federal (STF). The institution is responsible for the process and decision of autonomous actions involving constitutional controversies or commonly referred to as judicial review. The Supreme Court in changing the election rules is based on the provisions of Article 16 of the 1988 Brazilian Constitution which states:³²⁵

"A law altering the electoral process shall enter into force on its publication date and shall not apply to elections that occur within one year from the date it enters into force."³²⁶

The article indicates that especially changes related to the election law that are carried out one year before the implementation of the election, the change cannot be applied to the election that will be held at that time, so that all changes made will be applied to the next period of elections. Departing from the existence of this article, it has been understood that Brazil has indirectly accommodated the application of the purcell principle in its constitution.

known as the Federal Electoral Institute, which has its own legal personality and assets and whose members are elected by the Legislative Branch of the Union, national political parties and citizens, in accordance with the provisions established by law. Certainty, legality, independence, impartiality and objectivity are the guiding principles in the implementation of this state function..

³²⁵ Article 6 of the Brazilian Constitution of 1988 (Rev. 2005) (n.d.).

³²⁶ Laws that change the general election process come into force on the date of their enactment and do not apply to general elections taking place within one year of the date of their enactment.

As in the case of changes in campaign funding in 2015, where at that time the Supreme Court decided to prohibit the source of campaign funding coming from companies through Law 13.165/2015. The law stipulates that campaign funding should only come from public funds and individual donations with the aim of reducing dependence on large corporations that have the potential to influence the political process. Brazil's Supreme Court imposed the change in the 2018 national elections because the changes were made less than a year before the 2015 elections were held.³²⁷

Furthermore, the Brazilian constitution provides certain signs regarding when the courts can still issue decisions during elections, which can be seen in Article 5 of the LXXI of the Brazilian Constitution which states:³²⁸

"A mandate of injunction (mandado de injunção) shall be issued whenever lack of regulatory provisions make exercise of constitutional rights and liberties and the prerogatives inherent in nationality, sovereignty and citizenship unfeasible"³²⁹

The article explains that the judge can issue a decision during the election period if there is a case related to the denial of constitutional freedoms and also the prerogative rights of the community. Based on several articles contained in the constitution, it can be concluded that Brazil does not explicitly mention the purcell principle, but the Brazilian constitution has regulated the prohibition of changes to election regulations when its implementation is imminent and all changes made in the near future elections must not apply retroactively. The system of application of the purcell principle in some of these countries has different provisions, in detail the author will outline the differences in the application of the purcell principle from the countries above in the following table.

³²⁷ Ibnu Sina Chandranegara, Syaiful Bakhri, and Nanda Sahputra Umara, "Optimizing the Restrictions on Regional Head Election Campaign Funds as a Prevention of Corrupt Political Investment," *Law Forum - Faculty of Law, Gadjah Mada University* 32, no. 1 (2020): 44, <https://doi.org/10.22146/jmh.47512>.

³²⁸ Article 5 Point LXXI of the Brazilian Constitution 1988 (rev. 2005).

³²⁹ A writ of execution (mandado de injunção) must be issued whenever the lack of regulatory provisions makes the exercise of constitutional rights and freedoms and prerogatives inherent in nationality, sovereignty and citizenship impossible.

Table 3. 7

Tabulation of the Application of the Purcell Principle in Other Countries

No.	Country Name	Time Estimate	Purcell Principle Case Review Standards	Legitimacy of the Purcell Principle in Regulation
1.	United States	5-411 days	a. Likelihood of voter success; b. Possible irreparable losses if the verdict is not granted; c. Losses suffered by the parties; d. The community's interest in the case.	only in the form of jurisprudence
2.	Mexico	90 Days	Unregulated	Article 105 paragraph 2 of the 1917 Constitution of Mexico.
3.	Brazil	1 Year	Constitutional freedoms and also the prerogative of the community.	Article 16 of the 1988 Constitution of Brazil.

Source: Author's Creation (2025)

The table above shows that there are differences in how the purcell principle is adopted in other countries. The application of the purcell principle in the United States, Mexico, and Brazil has its own advantages and disadvantages. The differences in the system of application of the purcell principle in various countries can be used as a reference to design a good application of the purcell principle in Indonesia. Looking at some of the evaluations that have been carried out above, then a new paradigm for the application of the purcell principle as *ius constituendum* in Indonesia needs to be designed as a way to strengthen the design of the judicial power system in Indonesia, as follows.

3. A New Paradigm of the Application of the Purcell Principle as *Ius Constituendum* in Strengthening the Design of the Judicial Power System in Indonesia.

Law is the main reference in running the wheels of government in Indonesia. As a reference, the law is then required to follow the dynamic social development of society so that the problems caused are also more complex. In its development, the law experienced a crucial problem that was not in

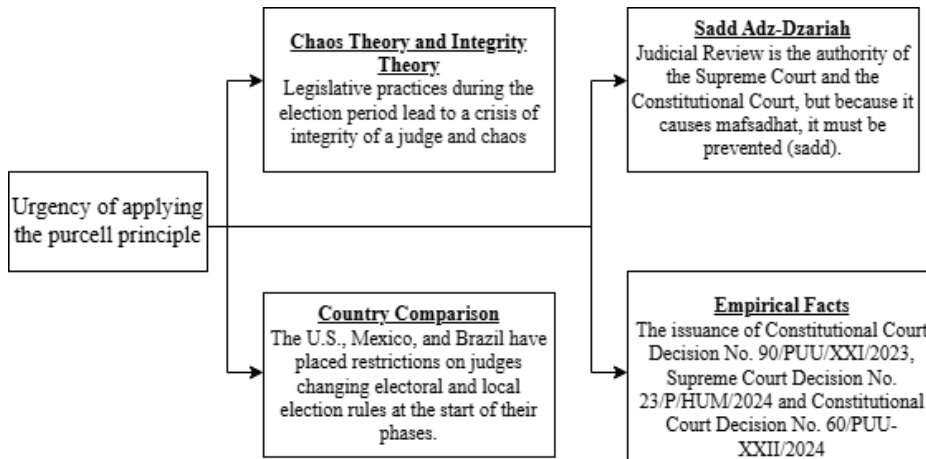
harmony with the meaning of the law itself. The law is used as a tool to protect certain interests and a tool to legalize actions that desecrate the values of justice in the midst of society. The ³³⁰ problem of the practice of legislation during the election period has become a new challenge for the law in Indonesia, the law must respond to this problem to limit the exercise of political power and prevent its abuse.

The Purcell principle then became a new paradigm that is relevant to overcome the problem of legislative practice during the election period by the Supreme Court and the Constitutional Court. Empirical facts have shown that currently the authority to test laws owned by the two judicial institutions seems to be only used as a means to legitimize arbitrary actions that indicate excessive political judicialization. The judicial power, which is basically a justice enforcement institution designed as an independent institution, is often used as a shortcut for political elites to maintain or extend their power under the pretext of judicial review for unconstitutional reasons.

This pattern then caused several problems and public disappointment towards the court institution because of the institution's blatant actions in denying its independence through controversial decisions issued during the 2024 election period. These decisions have led to increasingly open opportunities for judicial intervention which are indicated as violations of the judge's code of ethics, causing chaos and the integrity of judges being questioned again and disrupting the stability of the election process.

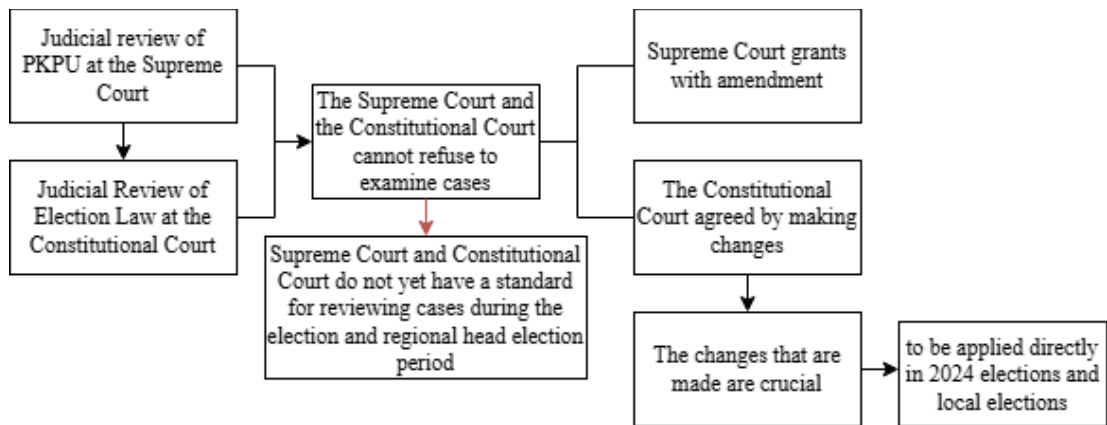
This condition further strengthens the urgency of implementing the Purcell principle, the study of *sadd adz-dzariah* itself in the analysis of the relevance of the application of the Purcell principle has concluded that this principle is relevant to be applied as an intermediary to prevent chaos (*sadd*) during the implementation of elections in Indonesia. The urgency of implementing the Purcell principle as *ius constituendum* to strengthen the design of the judicial power system in Indonesia is presented by the author in Figure 3.4 as follows.

³³⁰ Deni Nuryadi, "Progressive Legal Theory and Its Application in Indonesia," *De'Jure Scientific Journal of Law: Scientific Legal Studies* ~ 1, no. 2 (2016): 396.



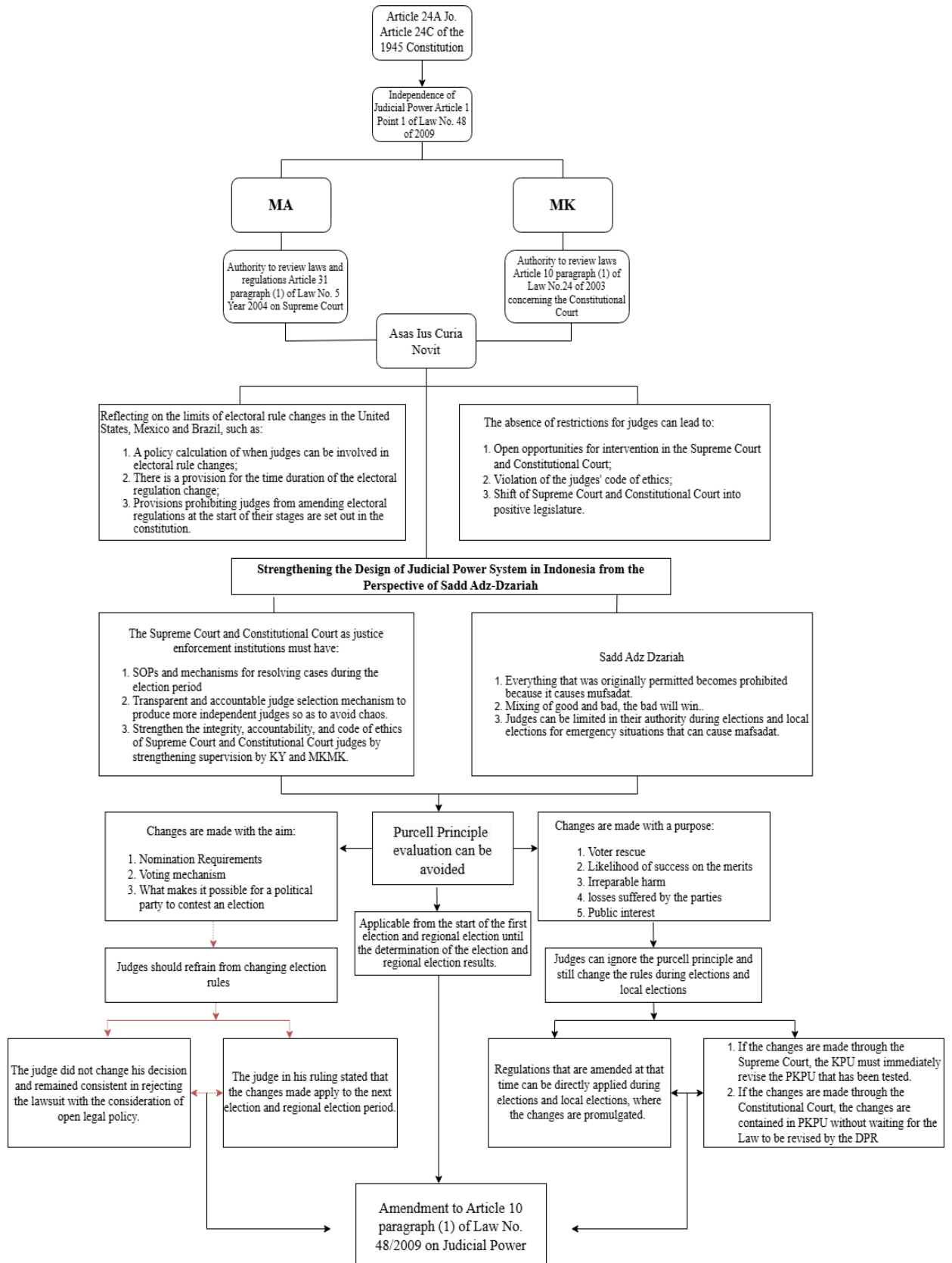
Source: Author's Creation (2025)
Figure 3. 4 The Urgency of Implementing the Purcell Principle

The image above shows various points of view that indicate that the application of the Purcell principle as a new paradigm in the electoral legal order and strengthening the design of the judicial power system is absolutely necessary, considering the changes in regulations made during the election stages that have started causing some harm, Understanding some of the problems that arise, the author will first illustrate the mechanism for reviewing cases during the 2024 elections and regional elections as follows.



Source: Author's Creation (2025)
Figure 3. 5 Illustration of Case Review During the 2024 Elections and Regional Elections

The The mechanism for reviewing election and regional election cases in 2024 as shown in the picture above has proven to be inefficient because it causes various problems so that improvements are needed. The new paradigm that the author offers in this case is to propose a design mechanism for implementing the Purcell principle to strengthen the design of the judicial power system in Indonesia in the following picture 3.6.



Source: Author's Creation (2025)

Figure 3. 6 New Paradigm of Purcell Principle Application Towards Strengthening the Design of Judicial Power System in Indonesia

Based on the pattern of strengthening the design of the judicial power system above, the idea of applying the purcell principle needs to be accommodated in Law No. 48 of 2009 concerning Judicial Power. After going through the evaluation process of the relevant law, the article that needs to be amended is the provision of Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states that "The court is prohibited from refusing to examine, adjudicate, and decide a case submitted on the pretext that the law does not exist or is not clear, but is obliged to examine and adjudicate it". The article provides an understanding that there are no restrictions for the Supreme Court and the Constitutional Court in reviewing a case.

Article 10 (1) of Law No. 48 of 2009 concerning Judicial Power seems to hold judges hostage to always accept every case submitted and makes the political judicialization more widespread so that all forms of case submissions, including acts of abusive judicial review during the election period, often pass the trial, therefore the limitations of legislative practice and the standards for reviewing cases during the election period need to be adjusted through changes to the article as applied by the United States, Mexico and Brazil.

Changes to Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power can be made by adding several paragraphs containing the provisions of the purcell principle after the provisions of Article 10 paragraph (1), so that Article 10 of Law No. 48 of 2009 concerning Judicial Power reads:

- (1) The court is prohibited from refusing to examine, adjudicate, and decide a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and adjudicate it.
- (2) The provisions as intended in paragraph (1) do not close efforts to resolve civil cases peacefully.
- (3) The provisions as referred to in paragraph (1) do not rule out the possibility for judges not to make fundamental legal changes to the election law during the period. All election and regional election regulations must be promulgated and published before the stages of holding elections and regional elections begin.
- (4) Changes as enshrined in paragraph (3) can only be made when the purpose is to save the votes of the electors, the possibility of success based on the benefits, the possible losses experienced by the parties,

The likelihood of irreparable harm if the decision is not granted, and the public's interest in the case.

- (5) Changes in election regulations and regional elections outside the provisions as referred to in paragraph (4), then the changes are applied to the implementation of elections and regional elections in the next period.

The importance of designing a model for the application of the purcell principle to strengthen the design of the judicial power system in Indonesia is actually a prudence after looking at the existing social facts. The practice of legislation during the election period is not a good thing. The integrity, accountability, and independence of the judiciary are in danger of being degraded after the issuance of several rulings that contain partiality in favor of certain regimes.

To avoid similar incidents, the SOP (Standard Operational of Procedure) was formulated related to the mechanism for resolving cases during the election period, then there was a transparent and accountable judge selection mechanism to produce more independent judges so as to avoid chaos, as well as strengthen the integrity, accountability, and code of ethics of judges through optimizing supervision by the Judicial Commission (KY) and the Honorary Council of the Court The Constitution (MKMK) is a necessity to strengthen the design of the judicial power system in Indonesia, so that in the future the evaluation of the purcell principle can be avoided.

The above provisions are expected to direct the judge to always be careful in making decisions and can lead the judge to return to his dignity as a guardian of justice, thus the provisions of *sadd adz-dzariah* which indicates the need for prevention of anything that causes harm achievable. Judges in exercising their authority related to testing laws and regulations will always remain in their domain, namely to avoid conflicts of norms, not to legitimize actions that are actually not in accordance with the concept of a democratic state.

CHAPTER IV CLOSING

A. Conclusion

Based on the presentation of the analysis presented by the author above, it can be concluded that:

1. The existing legal application of the purcell principle is based on the authority of the Supreme Court and the Constitutional Court as judicial review institutions as regulated in Article 24A paragraph (1) of the 1945 Constitution and Article 31 paragraph (1) of Law no. 5 of 2004 concerning the Supreme Court *jis.* Article 20 paragraph (2) letter b Law no. 48 of 2009 concerning Judicial Power and Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) of Law no. 24 of 2003 concerning the Constitutional Court *jis.* Article 29 paragraph (1) letter a Law no. 48 of 2009 concerning Judicial Power. Although the Supreme Court and the Constitutional Court have this authority, to ensure the creation of legal certainty in elections in accordance with the mandate of Article 3 in conjunction with Article 4 of Law No. 7 of 2017 concerning elections and to maintain the image of the judiciary as a non-political institution in accordance with the provisions of Article 3 paragraph (1) *jo.* Article 4 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power and Circular Letter of the Supreme Court Number 2 of 2019 concerning the Prohibition of Judges from Engaging in Politics, then the judicialization of politics through judicial activism caused by the shift in the function of the Supreme Court and the Constitutional Court as positive legislatures as in the Constitutional Court Decision No. 90/PUU-XXI/2023 and the Supreme Court Decision No. 23/P/HUM/2024 must be limited. This limitation can be done by formulating comprehensive rules of the game in the form of a standard for reviewing cases during elections and regional elections. Through this standard for reviewing cases, the intervention of the judiciary during elections can be justified as long

as there are no other alternatives that can disrupt the stability of the implementation of elections.

2. An evaluation of several decisions of judicial power in the 2024 elections, namely the Constitutional Court Decision No. 90/PUU-XXI/2023, the Constitutional Court Decision No. 60/PUU-XXII/2024, the Supreme Court Decision No. 23/P/HUM/2024, and the Constitutional Court Decision No. 70/PUU-XXII/2024 show that only the Constitutional Court Decision No. 70/PUU-XXII/2024 is in line with the purcell principle. This condition shows the inconsistency of judicial power in applying case review standards based on the purcell principle which has implications for the stability of the implementation of elections and the design of judicial power as an independent institution. The practice of legislation during the election period opens up space for political actors to intervene in judicial power which is indicated to cause violations of judges' ethics so that it has an impact on chaos and a crisis of the integrity of the judges themselves. This condition indicates that the evaluation of the purcell principle is needed to avoid chaos and conflicts of interest that suddenly occur when approaching the implementation of the election by providing a time benchmark for judges in making changes to election regulations.
3. The concept of applying the ideal purcell principle to strengthen the design of judicial power in the future can be done by formulating standards for reviewing cases during the election period as a parameter for when judges can be involved in changes in election regulations and in what cases judges must refrain from handling cases related to changes in election regulations when the stages have taken place. All changes decided during the election period should be applied in the next election period. Another alternative method is that the judge can choose to restrain himself by still rejecting the rule change with the consideration that the case is an open legal policy. The importance of designing a model for the application of the purcell principle to

strengthen the design of judicial power in Indonesia is actually a prudence after seeing the social facts that have occurred, where changes in election regulations at the time of the stage are not a good thing. Anticipating that there will be no more evaluation of the purcell principle and to prevent (*sadd*) chaos in accordance with the concept of *sadd adz-dzariah*, then strengthening the design of the judicial power system can be carried out by formulating SOPs for resolving cases during the election period. There is a transparent and accountable judge selection mechanism to produce more independent judges so as to avoid chaos, and strengthening the integrity, accountability, and code of ethics of judges by optimizing supervision by the KY and MKMK.

B. Suggestion

1. The Supreme Court and the Constitutional Court should formulate and apply the purcell principle consistently in the judicial power system in Indonesia as a limitation for judges not to change election and regional election regulations during injury time, so that judges can focus on their authority as justice enforcers.
2. The revision of Article 10 paragraph (1) of Law No. 48 of 2009 needs to be carried out by adding provisions that can later be contained in Article 10 paragraph (3), namely "The provisions as referred to in paragraph (1) do not rule out the possibility for judges not to make fundamental legal changes to the election law during the period, all election and regional election regulations must be promulgated and published before the stages of organizing elections and regional elections begin." Paragraph (4) "Changes as stated in paragraph (3) can only be made when the purpose is to save the votes of the electors; the possibility of success based on the benefits, the possible losses experienced by the parties; and the public's interest in the case." Paragraph (5) "Changes in election regulations and regional elections outside the provisions as referred to in paragraph (4), then the changes shall be applied to the implementation of elections and regional

elections in the next period."

3. Basically, legal reform is needed in the mission of strengthening the design of judicial power. In the future, judges in deciding a case during the election period must have an SOP for resolving cases during the election period, as well as parameters related to what cases can be changed during the election period and vice versa, what cases cannot be changed during the election period. This component is expected to create consistency in every Supreme Court and Constitutional Court decision issued during the implementation of elections and regional elections.

BIBLIOGRAPHY

Books

- Ali, Zainuddin. *Legal Research Methods*. Jakarta: Sinar Grafika, 2009.
- Amiruddin, and Zainal Asikin. *Introduction to Legal Research Methods*. Jakarta: Rajawali Pers, 2004.
- Efendi, Jonaedi, and Johnny Ibrahim. *Normative and Empirical Legal Research Methods*. Depok: Pranamedia Group, 2019.
- Diantha, I Made Pasek. *Normative Legal Research Methods in Justifying Legal Theories*. Kencana. Jakarta: Kencana Prenada Media, 2017.
- Garner, Bryan A., and Henry Campbell. *Black's Law Dictionary*. Minnesota: West Group, 2004.
- Ibrahim, Duski. *Al-Qawa'id Al-Fiqhiyah (Rules of Fiqh)*. Palembang: Noerfikri, 2018.
- Ibrahim, Johnny. *Theory and Methodology of Normative Legal Research*. Bayumedia Publishing. Bayumedia Publishing, 2006.
- Ishaq, *Legal Research Methods and Writing Thesis, Thesis, and Dissertation*. Cv. Alfabeta, Bandung, 2020.
- Jalili, Ismail. *The Existence of Sadd Adz-Dzari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim Al-Jauziyyah (d. 751 H/1350 AD)*. Klaten: Lakeisha Publishers, 2020. [http://repository.iainbengkulu.ac.id/11158/..](http://repository.iainbengkulu.ac.id/11158/)
- Kusumaatmadja, Mochtar. *Legal Development in the Context of National Development*. Publisher Binacipta. Bandung: Binacipta, 1986.
- Lutfi, Mustafa, and M.Iwan Satriawan. *Legal Treatise and Theory of Political Parties in Indonesia*. Books. Malang: UB Press, 2015.
- Mahmudi, Zaenul, and Khoirul Hidayah. "Guidelines for Writing Scientific Papers of the Faculty of Sharia Uin Maulana Malik Ibrahim Malang," 2022, 1–88.
- Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana Prenda Media, 2011.
- Mathematics, Applied. "Development of Mexican Political Conditions" 25 (2016).
- MD, Mahfud. *Legal Politics*. Depok: PT Raja Grafindo Persada, 2017.
- Nasution, Bahder Johan. *Legal Research Methods*. Bandung: Mandar Maju, 2008.
- Muhaimin. *Legal Research Methods*. Mataram: Mataram University Press, 2020.
- Muktif, A. *Constitutional reform in a paradigmatic transition period*. Bandung: Setara Press, 2008.
- Personal, Slamet, and Dwi Atmoko. *Legal Politics*. Malang: PT Literasi Nusantara Abadi Group, 2023.
- Saihu, Mohammad, Arif Ma'ruf Suha, Rahman Yasin, Titis Aditya Nugroho, Ferry

- Yanuar, Arif Budiman, and Arif Sarwani. *Election Organizers in the World: History, Institutions, and Electoral Practices in Countries Adhering to Presidential, Semi-Presidential, and Parliamentary Systems of Government*. Central Jakarta: DKPP RI, 2015.
- Safi'i. *History and Position of Judicial Review Arrangements in Indonesia*. Surabaya: Scopindo Media Pustaka, 2021.
- Sihombing, Eka N.A.M. *Legal Politics*. North Sumatra: Six Media, 2020.
- Siregar, Yulkarnaini, and Zetria Erma. *Judicial Power*. West Java: Rumah Cemerlang, 2023.
- Soekanto, Soerjono, and Susanti. *Introduction to Legal Research*. UIB Repository. Jakarta: UI Press, 2018.
- Suhariyanto, Didik, Mohamad Hidayat Muhtar, Arief Fahmi Lubis, and Muhammad Ardhi Razaq Abqa. *Politics of Election Law*. Jambi: PT. Sonpedia Publishing Indonesia, 2023.
- Suryana. Suryana, "Research Methodology: Quantitative and Qualitative Research Models" (Bandung: Universitas Pendidikan Indonesia, 2010), 21. Bandung: Indonesian University of Education, 2010.
- Susanti, Dyah Octorina, and A'an Efendi. *Legal Research*. Jakarta: Sinar Grafika, 2014.
- The book of Ushul Al-Fiqh Al-Islami. Cetakan Pe. Damascus: Dar al-Fikr, 1986
- Yuhelson. *Introduction to Law*. Gorontalo: Ideas Publishing, 2017.
- Zainuri, Mohamad, Mahfayeri, Suparman, and Dany Setyawan. *Conception of Integrity*. Human Resource Development Agency. Riau: Riau Provincial Government, 2017.
- Zuhaili, Wahbah. *The Book of Ushul Al-Fiqh Al-Islami, Juz 2*. Pe. Damascus: Dar al-Fikr, 1986.

Dissertations, Journals, Thesis, and Modules

- Academic Manuscript of the Draft Law on National Legal Development (2024).
- Adonara, said Floranta. "The principle of freedom of judges in deciding cases is a constitutional mandate." *Journal of Constitutional* 12, no. 2 (2015).
- Al-Mubarak, Ummu. "There is dynastic politics behind the Supreme Court's decision." *lensamedianews.com*, 2024. <https://lensamedianews.com/2024/06/07/ada-politik-dinasti-di-balik-putusan-ma>.
- Alfarisi, Diki Ramadhan, and Irhamuddin. "The Urgency of the Approach of Sadd Żarī'ah in Making Islamic Law Decisions." *Innovative: Journal of Social Science Research* 4, no. 6 (2024): 4
- Angel Lina, Angie, and Alan Bayu Aji. "Legal consequences of the Constitutional

- Court's decision number 90/PUU-XXI/2023 on the democratic system in Indonesia." In *Concreto Law Journal* 3, no. 1 (2024): 64. <https://doi.org/10.35960/inconcreto.v3i1.1314>.
- Apriani, Prophet. "Actualization of the Position of Islamic Law in the Perspective of Indonesian National Law." *Lex Generalis Law Journal* 3, no. 2 (2022): 137. <https://doi.org/10.56370/jhlg.v3i2.185>.
- Ashfiya, Dzikry Gaosul. "Redesigning the Concept of Election Law Enforcement in Indonesia in the Framework of Democratic and Fair Elections." *Journal of Constitutional Studies* 1, no. 1 (2021): 29. <https://doi.org/10.19184/jkk.v1i1.23792>.
- Aulia, M. Zulfa. "The Law of Development from Mochtar Kusuma-Atmadja: Directing Development or Serving Development?" *Law: Journal of Law* 1, no. 2 (2019): 379. <https://doi.org/10.22437/ujh.1.2.363-392>.
- Azhumatkhan, Syarif Hidayatullah, and Adithya Tri Firmansyah. "Reflections on Supreme Court Decision Number 23 P / HUM / 2024 : The Escalation of Political Judicialization and Judicial Politicization in Norm Testing." *Journal of Law and Social Order* 3, no. 1 (2024).
- Baroroh, Nurdhin. "Metamorphosis of 'Illat Hukum' in Sad Adz-Dzari'ah and Fath Adz-Dzariah (A Comparative Study)." *Al-Mazaahib: Journal of Comparative Law* 5, no. 2 (2018): 303. <https://doi.org/10.14421/al-mazaahib.v5i2.1426>.
- Bimo Fajar Hantoro. "Originalism and Conditions for Election Simultaneity in the Constitutional Court's Decision." *Law: Law Journal* 6, no. 1 (2023): 40. <https://doi.org/10.22437/ujh.6.1.33-6>.
- Bria, Ignas Riez, I Nyoman Suandika, and Kadek Dedy Suryana. "Violations of the Code of Ethics by Constitutional Court Judges are related to the Constitutional Court Decision Number 90/PUU-XXI/2023." *Nusantara Hasana Journal* 4, no. 4 (2024): 63.
- Codrington, Wilfred U. "Purcell in Pandemic." *New York University Law Review* 96, no. 4 (2021): 962. <https://doi.org/10.2139/ssrn.3891775>.
- Danendra, Sheva Krisna, Titus Perdana Sulisty, and Moch. Ali Mashur. "Integrity of Morality and Public Trust in the Perspective of Judge Procurement Policy in Indonesia." *Journal Publicuho* 5, no. 2 (2022): 547.
- Djarmiko, Wahyu Prijo. "A Responsive National Legal Development Paradigm in the Perspective of J.H. Merryman's Theory of Legal Development Strategy." *Journal of Arena Hukum* 11, no. 2 (2018): 417.
- Dodsworth, Harry B. "The Positive and Negative Purcell Principle." *Utah Law Review* 5, no. 5 (2022): 1081–1134.
- Dramanda, Wicaksana. "Initiating the implementation of judicial restraint in the Constitutional Court." *Journal of Constitutional* 11, no. 4 (2016): 627. <https://doi.org/10.31078/jk1141>.
- Endro, Gunardi. "Examining the meaning of integrity and its opposition to

- corruption." *Integrity: Journal of Anti-Corruption* 3, no. 1 (2017): 134. <https://jurnal.kpk.go.id/Dokumen/Jurnal-INTEGRITAS-Volume-3-No-1-tahun-2017/Jurnal-INTEGRITAS-Volume-3-No-1-tahun-2017-06.pdf>.
- ES, Rachmi Dwi Wiladatil Qodliyah. "Observing the Correlation of Integrity, Welfare and Judges' Decisions (Islamic Historical Literacy Study for Indonesian Judges) Rachmi." *Judex Laguens* 2, no. 2 (2024): 198.
- Faisal. "Tracing the Theory of Chaos in Law through the Critical Theory Paradigm." *Yustisia Law Journal* 3, no. 2 (2014): 132. <https://doi.org/10.20961/yustisia.v3i2.11108>.
- Fauzan, Muhammad, Tifanny Nur Yacub, Egi Rivaldi Gumilar, Nadia Safitri, and Matthew Jakaria Sitanggang. "Reconceptualization of the selection of constitutional judges as an effort to realize qualified constitutional judges." *E-Journal of Legal Lanterns* 5, no. 2 (2023): 3. <https://doi.org/10.19184/ejlh.v4i1.5267>.
- Fauzani, Muhammad Addi, and Fandi Nur Rohman. "The urgency of the reconstruction of the Constitutional Court in giving consideration to open legal policy." *Justitia et Pax* 35, no. 2 (2020): 141. <https://doi.org/10.24002/jep.v35i2.2501>.
- FH-Universitas Brawijaya, Center for Constitutional Studies. "Implications of the Constitutional Court Decision No. 102/PUU-VII/2009 on the Implementation of Regional Head Elections (Study in Malang Regency and Pasuruan City)." *Journal of Constitutional Law* 8, no. 1 (2011): 147. <https://doi.org/10.31078/jk816>.
- Gao, Ruoyun. "Why the Purcell Principle Should Be Abolished." *Duke Law Journal* 71, no. 5 (2022): 1139–74.
- Gilleran, Samuel D. "Purcell v. Gonzalez, Principle and Problem - Native American Voting Rights in the 2018 North Dakota Elections." *Wake Forest Law Review* 55, no. 2 (2020): 450.
- Gunawan, Muhammad Safaat. "Reflections On The Implementation Of The Rule Of Law And Democracy In Indonesia." *Al Tasyri'iyah Journal* 4, no. 1 (2024): 32.
- Halilah, Siti, and Fakhurrahman Arif. "The Principle of Legal Certainty According to Experts." *Journal of Constitutional Law* 4, no. 2 (2021): 60.
- Halililah, Muhammad Hanif Bin. "The Accusation of Sadd al-Žari'ah as a Evidence of Islamic Law (Comparative Study between Maliki, Shafi'i and Zhahiri madhhab)." UIN Ar-Rainy. Ar-Raniry Darussalam State Islamic University, Banda Aceh, 2021.
- Hamadi, Ibrahim Ghifar. "Reviewing the urgency of applying the Purcell Principle in General Elections (Elections) in Indonesia." *Journal of Proceedings of the Actual Law Seminar* 2, no. 5 (2024).
- Hasdiwanti. "A Study of Chaos Law Theory on the Act of Playing Judge Himself

- to Handle the Crime of Theft with Violence." Hasanuddin University, 2023.
- Houston, Rachael. "Does Anybody Really Know What Time It Is?: How The US Supreme Court Defines 'Time' Using The Purcell Principle." *Navada Law Journal* 23, no. 3 (2023).
- Imam Fawaid. "The concept of sadd al-Dzari'ah in the perspective of Ibn al-Qayyim al-Jauziyah." *ORAL AL-HAL: Journal of Thought and Culture Development* 13, no. 2 (2019): 332. <https://doi.org/10.35316/lisanalhal.v13i2.599>.
- Diamond arafah, Diamond arafah. "The Sadd Adz-Dzari'ah Approach in Islamic Studies." *Al-Muamalat: Journal of Sharia Law and Economics* 5, no. 1 (2020): 326. <https://doi.org/10.32505/muamalat.v5i1.1443>.
- Jambia, Adi. "Purcell Principle in the Constitutional Court's Decision on the Presidential Threshold," *Sambaliung Corner*, 2025, <https://sambaliungcorner.com/2025/01/04/purcell-principle-dalam-putusan-mk-tentang-presidential-threshold/>.
- Jannah, Asy Syifa, Shan Angela Irena, and Vicita Irish Arethusa. "Legal Certainty of Judicial Restraint in the Implementation of Judicial Power by the Supreme Court." *Journal of Law and Justice PP. IKAHI* 1, no. 3 (2023): 404.
- Januartha, I Made Dera, I Made Suwitra, and Ni Made Puspasutari Ujianti. "The Existence of the Principle of Ius Curia Novit in Civil Cases." *Journal of Legal Construction* 4, no. 3 (2023): 268. <https://doi.org/10.55637/jkh.4.3.8028.268-274>.
- Jintang, Ardyansyah. "The Ideality of the Concept of Judicial Power in Indonesia to Realize Independence of Judiciary in Completeness." *PRATUN Law* 6 (2023). <https://doi.org/10.25216/peratun.622023.140-166>.
- Kishan, Marcelino Ceasar. "The Limits of Political Judicialization by the Constitutional Court: The Paradox of the General Election Law." *Journal of Law* 8, no. 2 (2024): 204.
- LAMIJAN, and MOHAMAD TOHARI. "Independence and Independence of Judicial Power in Indonesia." *JPeHI (Indonesian Journal of Legal Research)* 3, no. 1 (2022): 30. <https://doi.org/10.61689/jpehi.v3i1.333>.
- Layli, Ochthavia Kirana Nuril. "The authority of the Constitutional Court over Decision Number 90/PUU-XXI/2023 as a positive legislator is reviewed from the perspective of justice theory." *UIN Kiai Haji Achmad Siddiq*, 2024.
- Lutfi, Mustafa. "Legal Politics of the Application of Statesman Requirements in the Selection Process of Constitutional Judge Candidates." *Islamic University of Indonesia*, 2023.
- Mahrus, Moh. "The Application of Al-Dzari'ah and Al-Hilah from the Perspective of Islamic Law." *Journal of Islamic Economics and Business* 7, no. 2 (2018): 4.
- MD, Moh. Mahfud. "Boundary Signs and Expansion of the Constitutional Court's

- Authority." *Ius Quia Iustum Law Journal* 16, no. 4 (2009): 444. <https://doi.org/10.20885/iustum.vol16.iss4.art1>.
- Muhit, Ryan Abdul. "The Role of the Judicial Professional Code of Ethics on the Accountability of Judges in Deciding Cases in Court." *Lex Laguens: Journal of Law and Justice Studies* 1, no. 1 (2023): 21.
- Muliawati, Anggi. "Chairman of the Constitutional Court: The Election-Regional Election Law is the Most Tested During 2024." *detiknews*, 2024. <https://news.detik.com/berita/d-7713940/ketua-mk-uu-pemilu-pilkada-paling-banyak-diuji-selama-2024>.
- Mulyanto, Achmad. "Problems of Testing Laws and Regulations (Judicial Review) at the Supreme Court and the Constitutional Court." *Yustisia Jurnal Hukum* 2, no. 1 (2013): 57. <https://doi.org/10.20961/yustisia.v2i1.11070>.
- Musyafah, Aisyah Ayu. "The basis of Islamic law is normative in Indonesia." *Islamic Law* 2, no. 1 (2020): 7.
- Nafisah, Ratu Durotun. "Excessive Reliance On Judicial Review In Indonesia: A Tactic To Avoid Democratic Accountability?" *Journal of International & Comparative Law X*, no. 1 (2023): 8.
- Neltje, Jeane, and Indrawieny Panjiyoga. "Values that are included in the principle of legal certainty." *Innovative: Journal of Social Science Research* 3, no. 5 (2023): 4.
- Nugraha, Kristiawan Putra, Dela Puspitasari, Riska Anggraini, and Keywords. "Analysis of Legal Reasoning and the Impact of Court Decisions." *Journal of Fundamental Justice* 5, no. 2 (2024): 94.
- Nuryadi, Deni. "PROGRESSIVE LEGAL THEORY AND ITS APPLICATION IN INDONESIA." *Scientific Journal of De'Jure Law: Scientific Review of Law* ~ 1, no. 2 (2016): 396.
- Oktavia, Enika Maya, Mely Noviyanti, and Dalpin Safari. "Portrait of Abusive Judicial Review during the administration of President Joko Widodo." *Legislative Journal* 7, no. 2 (2024): 2.
- Officer, Indra. "Reflection on the Phenomenon of Judicialization of Politics Legal Policy on the Establishment of Constitutional Court and Cons." *Journal of Constitutional Constitutions* 13, no. 1 (2016): 27.
- Paryadi. "Maqashid Sharia: Definition and Opinion of Scholars." *Cross-Border* 4, no. 2 (2021): 208.
- Perludem. "Mkesis Election System," n.d. http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_Sistem_Pembetulan_Terpusat_Strategi_Melestari.
- Prabowo, Bagus Surya. *Judicial Activism and Consideration of Open Legal Policy in Constitutional Court Decisions*. Bandung: Mandar Maju, 2024.

- Pratama, Heroik M, and Ajid Fuad Muzaki. electoral reform at the Constitutional Court. Perludem. Jakarta: Perludem, 2024.
- Putra, Fencing, and Saiful. "Conflict of Interest Chief Judge of the Constitutional Court Examines Decision Number 90/PUU-XXI/2023." *Journal of Excellence Humanities and Religiosity* 2, no. 2 (2024): 11. <https://doi.org/10.34304/joehr.v2i2.214>.
- Son, Panji Adam Agus. "The concept of sadd al-dzarf'ah according to Ibn Qayyim al-Jauziyyah and its application in sharia economic law (mu'âmalah mâliyyah)." *AL-AFKAR: Journal for Islamic Studies* 7, no. 1 (2024): 1143. <https://doi.org/10.31943/afkarjournal.v7i1.926>.The.
- Qamar, Nurul. "Judicial Review Authority of the Constitutional Court." *Journal of Constitutional I*, no. 1 (2012): 2.
- Pleasure, Enjoyment. "Research Process, Problems, Variables and Research Paradigm." *Journal of Wisdom* 14, no. 1 (2017): 63. <https://doi.org/10.1111/cgf.13898>.
- Risnain, Muh. "The criminalization of judges and the existence of the principle of judicial independence within the framework of the state of law." *Journal of Law and Justice* 2, no. 3 (2018): 330. <https://doi.org/10.25216/jhp.2.3.2013.325-336>.
- Riyawan, Dara Puspita, and Kayus Kayowuan Lewoleba. "Juridical Analysis of the Role of the Code of Ethics on the Judge Profession." *Journal of Law and Citizenship* 6, no. 1 (2023): 11.
- Rohman, Azmi Fathu. "Relevance and Consistency of the Application of the Purcell Principle by the Constitutional Court in General Elections." *Lex Renaissance* 9, no. 116 (2025): 451.
- Saifullah. "Twilight of Justice: A Treatise on the New Paradigm of Law Enforcement in Indonesia, Inauguration Speech of a Professor in the Field of Law at the Constitutional Law Study Program, Faculty of Sharia, UIN Maulana Malik Ibrahim Malang," 2020, 13.
- Satriawan, Iwan, and Tanto Lailam. "Implication of Selection Mechanism Towards Integrity and Independency of Constitutional Court Judges in Indonesia." *IUS Journal of Law and Justice Studies* 9, no. 1 (2021): 117. <https://doi.org/10.29303/ius.v9i1.871>.
- Schmidt, Casey P. "Disrupting Election Day: Reconsidering The Purcell Principle As A Federalism Doctrine." *University of Virginia School of Law* 4, no. 4 (2024): 7.
- Setiarma, Anjar. "The Disruption of Legal Technology to the Advocates Services in the Perspective of Mochtar Kusumaatmadja's Legal Development." *Legal Reform* 27, no. 2 (2023): 85.
- Sina Chandranegara, Ibnu, Syaiful Bakhri, and Nanda Sahputra Umara. "Optimizing the Restriction of Campaign Funds for Regional Heads as a

- Prevention of Corrupt Political Investment." *Law Pulpit - Faculty of Law, Gadjah Mada University* 32, no. 1 (2020): 44. <https://doi.org/10.22146/jmh.47512>.
- Situmeang, Selvi Christina, Ardilafiza, and Wiryadinata. "Inconsistency of the Constitutional Court Regarding the Minimum Age Requirement for Presidential and Vice-Presidential Candidates Inconsistency." *Journal of Constitutions* 21, no. 4 (2024): 610.
- Soleh, Muhammad Anwar, and Durohim Amnan. "Implications of the Decision of the Constitutional Court of the Republic of Indonesia Number 60/PUU-XXII/2024 on the Democratization of Regional Head Elections." *Journal of Law, State Administration, and Public Policy* 1, no. 3 (2024). <http://repository.unmuhjember.ac.id/17420/>.
- Subandri, Rio. "Juridical Review of the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the Requirements for the Age Limit for Presidential and Vice Presidential Candidacy." *Prosecutor: Journal of Law and Political Studies* 2, no. 1 (2024): 143. <https://doi.org/10.51903/jaksa.v2i1.1512>.
- Sundariwati, Ni Luh Dewi. "Judicial activism: between protecting constitutional supremacy or transitioning to juristocracy." *Journal of the Constitution* 21, no. 3 (2024).
- Supreme Court Circular Letter Number 2 of 2019 concerning the Prohibition of Judges from Politics (n.d.). <https://jdih.mahkamahagung.go.id/index.php/legal-product/sema-nomor-2-tahun-2019/detail>.
- Syarifudin, Amir, and Indah Febriani. "The Legal System and Legal Theory of Chaos." *Hasanuddin Law Review* 1, no. 2 (2015): 301. <https://doi.org/10.20956/halrev.v1n2.85>.
- Syndo, Sivana Amanda Diamita. "Questioning the effectiveness of the judge's code of ethics in maintaining the dignity of the quality of fair decisions." *Verfassung: Journal of Constitutional Law* 1, no. 2 (2022): 119. <https://doi.org/10.30762/vjhtn.v1i2.178>.
- Takhim, Muhamad. "Saddu al-dzari'ah in the Muamalah of Islam." *ACCESS: Journal of Economics and Business* 14, no. 1 (2020): 20. <https://doi.org/10.31942/akses.v14i1.3264>.
- Talli, Abdul Halim. "Integrity and Active-Argumentative Attitude of Judges in Case Examination." *Al Daulah: Journal of Criminal Law and Constitutional Law* 3, no. 1 (2014): 6. http://journal.uin-alauddin.ac.id/index.php/al_daulah/article/download/1495/1456.
- Tambunan, Edo Maranata, Rya Elita Br Sembiring, Frederick Gozali, and Dwi Mei Roito Sianturi. "Analysis of the Existence of Ethics of Constitutional Court Judges in Realizing an Integrity and Accountable Justice (Constitutional Court Decision No. 90/PUU-XXI/2023)." *Iblam Law Review* 4, no. 2 (2024): 53.

<https://doi.org/10.52249/ilr.v4i2.406>.

- Teguh, Harrys Pratama, Heribertus Roy Juan, and Eva Berta Pattinasarany. *Dynamics of Judicial Power in Indonesia*. South Kalimantan: Ruang Karya Bersama, 2024.
- The Great Dictionary of the Indonesian Second Edition. Jakarta: Balai Pustaka, 1995.
- Tucker, Edwin W. "The Morality of Law, by Lon L. Fuller." *Indiana Law Journal* 40, no. 2 (1965): 274.
- Umra, Sri Indriyani, and Fatma Faisal. "The Impact of Conditional Unconstitutional Decisions on Legal Certainty." *INNOVATIVE: Journal Of Social Science Research* 3, no. 6 (2023): 6.
- Utami, Tanti Kirana, M. Rendi Aridhayandi, and Henny Nuraeny. "Strengthening the Integrity of Judges through the Provision of Supporting Facilities for Judicial Activities." *Legal Journal of Justitia Pulpit* 9, no. 2 (2023): 475.
- Wardiono, Kelik. "CHAOS THEORY: A Challenge in Understanding the Law." *Journal of Law* 15, no. 2 (2012): 143.
- Watson, Danika Elizabeth. "Free and Fair: Judicial Intervention in Elections Beyond the Purcell Principle and Anderson-Burdick Balancing." *Fordham Law Review* 90, no. 2 (2021): 991–1027.
- . "Opportunity for the application of the Purcell Principle as a judicial restraint for the Constitutional Court in testing the law at the general election stage." *Journal of Proceedings of the Actual Law Seminar* 2, no. 5 (2024).
- Wijanarko, Adrian, Iin Mayasari, and Handrix Chris Haryanto. "Report on Research Results: Development of Leadership Integrity Measurement." Paramadina University, 2021.
- Wijaya, Henri. "Measuring the degree of legal certainty in elections in Law Number 7 of 2017." *Scientific Journal of Social Dynamics* 4, no. 1 (2020): 83. <https://doi.org/10.38043/jids.v4i1.2276>.
- Wisesa, Anggara. "Moral integrity in the context of ethical decision-making." *Journal of Technology Management* 10, no. 1 (2011): 82–92. http://digilib.uinsgd.ac.id/9984/5/5_Bab2.pdf.
- Yunita, Ani. "The Improvement of Civil Consciousness of Law for the Endorsement of Law and Economic Development in Indonesia." *JCH (Journal of Legal Scholars)* 6, no. 2 (2021): 322. <https://doi.org/10.33760/jch.v6i2.339>.
- Yusuf, Muhammad Rifai. "The Practice of Abusive Executive Power in the 2024 Elections: Its Implications for Indonesian Democracy and Efforts to Restore It." *Electoral Governance Journal of Indonesian Election Governance* 6, no. 1 (2024): 50.
- Zulfikri, and Isniyatin Faizah. "Sadd al-Dzari'ah as a medium in the settlement of contemporary cases." *The Indonesian Journal of Islamic Law and Civil Law*

4, no. 2 (2023): 172. <https://doi.org/10.11648/j.ijp.20210904.13>.

Online Media Articles (Internet)

Editorial Team. "What is the Purcell Principle Regarding the Supreme Court's Decision on the Age Limit for the 2024 Regional Elections?" CNN Indonesia, 2024. <https://www.cnnindonesia.com/nasional/20240606124859-12-1106606/apa-itu-purcell-principle-terkait-putusan-ma-batas-usia-pilkada-2024/amp>. August 27, 2024.

Elven, Tareq. "Threshold Lawsuit That Is Easily Granted." detiknews, 2024. <https://news.detik.com/kolom/d-7500975/gugatan-amb>. Accessed 9 October 2024

Jambia, Adi. "Purcell Principle in the Constitutional Court's Decision on the Presidential Threshold." Sambaliung Corner, 2025. <https://sambaliungcorner.com/2025/01/04/purcell-principle-dalam-putusan-mk-tentang-presidential-threshold/>. Retrieved January 27, 2025

Justices around the world Resources on Comparative Judicial Practice. "Mexico." judiciariesworldwide.fjc.gov, n.d. <https://judiciariesworldwide.fjc.gov/country-profile/mexico>. Retrieved January 29, 2025.

Kumalasanti, Susana Riita. "Chairman of the KPU: No more changes in the rules in the middle of the game." Kompas, 2024. <https://www.kompas.id/artikel/ketua-kpu-jangan-ada-lagi-perubahan-aturan-di-tengah-permainan>. Retrieved January 30, 2025.

Manprasong, Surin. "Understanding the Meaning of Existing Laws." personnel.obec.go.th, n.d. <https://personnel.obec.go.th/home/archives/412808>. Retrieved January 30, 2025

Pradana, Jaa. "Bawaslu provides input on the policy for the design of future election regulations." Bawaslu, 2024. <https://www.bawaslu.go.id/id/berita/bawaslu-beri-masukan-kebijakan-desain-regulasi-pemilu-masa-depan>. Retrieved 21 January 2024.

Saptohutomo, Aryo Putranto. "When the Supreme Court's Decision Makes 'Forward Hit, Backwards Hit'...." Kompas.com, 2024. <https://nasional.kompas.com/read/2024/06/07/05150021/kala-putusan-ma-bikin-maju-kena-mundur-kena?page=all>. Accessed on August 27, 2024.

"The Most Tested Decision 2024," n.d. <https://www.mkri.id/index.php?page=web.Putusan2dev&id=1&kat=1&menu=5>. Accessed on February 2, 2025

Wasi, Ilham. "Purcell Principle." Daily Fajar.co.id, 2024. <https://harian.fajar.co.id/2024/07/01/purcell-principle/>. Retrieved 24 October 2024.

Wicaksono, Dian Agung. "Leaning on the Constitutional Court again?" Kompas.id,

2024. <https://www.kompas.id/baca/opini/2023/11/09/kembali-bersandar-pada-mk>. Retrieved 6 November 2024.

Laws and Regulations

The Constitution of the Republic of Indonesia in 1945
<https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945dlmsatunaskah.pdf>

Indonesia, Law Number 48 of 2009 concerning Judicial Power'
<https://jdih.komisiyudisial.go.id/upload/produk_hukum/UU_Kekuasaan_Kehakiman.pdf> Statute Book of the Republic of Indonesia Year 2009 Number 157. Supplement to Statute Book of the Republic of Indonesia No. 5076.

Indonesia, Law Number 5 of 2004 concerning the Supreme Court. Statute Book of the Republic of Indonesia No. 9 of 2004 and Supplement to Statute Book of the Republic of Indonesia No. 4359.

Indonesia, Law Number 4 of 2014 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law, 2014. Statute Book of the Republic of Indonesia Number 5 of 2014 and Supplement to Statute Book of the Republic of Indonesia Number 5493. Statute Book of the Republic of Indonesia Number 5 of 2014 and Supplement to Statute Book of the Republic of Indonesia Number 5493.

Indonesia, Law No. 4 of 2004 concerning Judicial Power, <[https://peraturan.bpk.go.id/Download/306788/UU No. 4 of 2004.pdf](https://peraturan.bpk.go.id/Download/306788/UU%20No.%204%20of%202004.pdf)> Statute Book of the Republic of Indonesia No. 8 of 2004 and Supplement to Statute Book of the Republic of Indonesia No. 4358.

Indonesia, Law No. 19 of 1964 concerning the Principal Provisions of Judicial Power <[https://peraturan.bpk.go.id/Download/39618/UU No. 19 of 1964.pdf](https://peraturan.bpk.go.id/Download/39618/UU%20No.%2019%20of%201964.pdf)> of Statute Book No. 1964 No. 107 and Supplement to Statute Book No. 2699.

Indonesia, Law Number 14 of 1970 concerning the Main Provisions of Judicial Power <<https://jdih.mahkamahagung.go.id/index.php/legal-product/uu-nomor-14-tahun-1970/detail>> the Statute Book and the Supplement to the Statute Book of 1970 which has been reprinted.

Mexico 1917 (rev. 2007) (n.d.).

Brazil 1988 (rev. 2005) (n.d.).

Constitutional Court Decision No. 102/PUU-VII/2009 (n.d.).
https://www.mkri.id/public/content/persidangan/putusan/putusan_sidang_102PUU-VII2009.pdf.

Constitutional Court Decision No. 14/PUU-XI/2013 (n.d.).
https://www.mkri.id/public/content/persidangan/putusan/putusan_sidang_1612_14-PUU-2013-telahucap-23Jan2014.pdf.

Supreme Court Decision Number 23 P/HUM/2024', 2024
<https://putusan3.mahkamahagung.go.id/direktori/download_file/ec588950997002d88d13caee73893200/zip/zaef21887b3c4de28717313630353533>

- >
- Constitutional Court Decision No. 60/PUU-XXII/2024', 2024
[<https://perludem.org/2024/08/28/putusan-mk-nomor-60-puu-xxii-2024/>](https://perludem.org/2024/08/28/putusan-mk-nomor-60-puu-xxii-2024/)
- Constitutional Court Decision Number 90/PUU-XXI/2023', 2023
[<https://perludem.org/2023/10/17/putusan-mk-nomor-90-puu-xxi-2023-tentang-ketentuan-tambahan-pengalaman-menjabat-dari-keterpilihan-pemilu-dalam-syarat-usia-minimal-capres-cawapres/>](https://perludem.org/2023/10/17/putusan-mk-nomor-90-puu-xxi-2023-tentang-ketentuan-tambahan-pengalaman-menjabat-dari-keterpilihan-pemilu-dalam-syarat-usia-minimal-capres-cawapres/)
- Constitutional Court Decision No. 70/PUU-XXII/2024', 2024
<https://perludem.org/2024/08/30/putusan-mk-nomor-70-puu-xxii-2024-tentang-syarat-usia-calon-kepala-daerah-di-pilkada/>
- Constitutional Court Decision Number 62/PUU-XXII/2024 (n.d.).
https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11344_1735807848.pdf.
- Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 047/Kma/Skb/IV/2009 and Chairman of the Judicial Commission of the Republic of Indonesia No. 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges
- Stipulation of Government Regulation in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law (2014).
- Regulation of the Supreme Court of the Republic of Indonesia Number 8 of 2017 concerning Procedural Guidelines for Obtaining a Decision on the Acceptance of an Application to Obtain a Decision and/or Action of a Government Agency or Official (N.D.).
- Regulation of the Constitutional Court of the Republic of Indonesia Number: 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Conduct of Constitutional Judges, 2006.

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