

CONSTITUTIONALITY OF EXTENDING THE TERM OF OFFICE OF REGIONAL HEADS AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 135/PUU-XXII/2024 SIYASAH SYAR'IIYAH PERSPECTIVE

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Abstrak

Indonesia sebagai negara hukum menempatkan konstitusi sebagai norma tertinggi dalam menjalankan pemerintahan. Perkembangan sistem ketatanegaraan di Indonesia setelah reformasi terus mengalami perubahan. Salah satu perubahan terbaru adalah munculnya Putusan Mahkamah Konstitusi Nomor 135/PUU-XXII/2024 yang mengubah sistem pemilu di Indonesia. Penelitian ini menggunakan pendekatan kualitatif dengan metode yuridis normatif. Data yang diambil dari bahan hukum baik primer maupun sekunder. Hasil dari penelitian ini adalah Putusan Mahkamah Konstitusi Nomor 135/PUU-XXII/2024 diyakini sebagai perubahan besar dalam sistem pemilu yang memiliki dampak langsung terhadap masa jabatan daerah dan berpotensi ketidaksinkronan masa jabatan yang dapat menyebabkan kekosongan jabatan atau mendorong wacana perpanjangan masa jabatan kepala daerah. Berbagai risiko yang dapat terjadi yaitu mengurangi kesempatan masyarakat untuk memilih pemimpin baru secara berkala yang mengakibatkan melemahnya prinsip demokrasi, perpanjangan masa jabatan dapat menimbulkan penyalahgunaan kekuasaan, melemahnya regenerasi kepemimpinan. Kesimpulan penelitian ini adalah keputusan Mahkamah Konstitusi tidak sejalan dengan prinsip-prinsip utama siyasah syar'iiyah yang menjadi pondasi dalam kehidupan negara. Meskipun putusan ini bertujuan untuk meningkatkan efektivitas sistem pemilu dan mengurangi beban kerja yang berlebih, tetapi banyak konsekuensi yang muncul seperti persoalan yang bertentangan dengan nilai-nilai dasar dalam hukum politik islam dan hukum positif negara.

Kata kunci: Pemilihan Umum, Putusan Mahkamah Konstitusi Nomor 135/PUU-XXII/2024

Abstract

Indonesia as a legal country places the constitution as the highest norm in running the government. The development of the constitutional system in Indonesia after the reform continues to undergo changes. One of the latest changes is the emergence of the Constitutional Court Decision Number 135/PUU-XXII/2024 which changes the electoral system in Indonesia. This study uses a qualitative approach with a normative juridical method. Data taken from legal materials, both primary and secondary. The result of this research is that the Constitutional Court Decision Number 135/PUU-XXII/2024 is believed to be a major change in the electoral system that has a direct impact on the term of office of the region and has the potential for a missynchronization of the term of office that can cause vacancy or encourage the discourse of extending the term of office of regional heads. Various risks that can occur are reducing the opportunity of the public to elect new leaders periodically which results in the weakening of democratic principles, the extension of the term of office can lead to abuse of power, and the weakening of leadership regeneration. The conclusion of this study is that the decision of the Constitutional Court is not in line with the main principles of siyasah syar'iiyah which are the foundation in the life of the state. Although this ruling aims to increase the effectiveness of the electoral system and reduce the excessive workload, many consequences arise such as problems that are contrary to the basic values of Islamic political law and positive state law.

Keywords: General Election, Constitutional Court Decision Number 135/PUU-XXII/2024

Introduction

The principle of term limits is one of the main pillars in the modern constitutional democratic system. Almost all democracies implement term limits as an instrument to prevent the concentration of power, ensure the circulation of political leadership, and strengthen public accountability mechanisms. In the perspective of democracy, the legitimacy of power comes from the sovereignty of the people which is manifested through general elections that are held periodically (Susilo, 2025). Therefore, any form of extension of the term of office of public officials without a democratic election mechanism has the potential to cause constitutional problems because it can reduce political legitimacy and weaken the principle of people's sovereignty.

Indonesia as a democratic country of law places the constitution as the highest legal norm in the administration of government. Article 1 paragraph 2) of the 1945 Constitution of the Republic of Indonesia emphasizes that sovereignty is in the hands of the people and is carried out according to the Constitution, while Article 1 paragraph 3) emphasizes that Indonesia is a state of law. Both provisions show that all policies of state administrators, including those related to the term of office of public officials, must have a clear constitutional basis while still upholding democratic principles. In the context of local government, Article 18 paragraph 4) of the 1945 Constitution of the Republic of Indonesia mandates that governors, regents, and mayors are democratically elected. This provision was then implemented through Law Number 8 of 2015 which regulates the direct election of regional heads by the people as a form of strengthening post-reform democratic legitimacy.

The development of Indonesia's constitutional system shows that regulations regarding general elections continue to change according to political dynamics and democratic needs. One of the most significant developments is the birth of the Constitutional Court Decision Number 135/PUU-XXII/2024 which changed the design of holding national and regional elections. The decision separates the time for holding the two types of elections that were previously held simultaneously. The change in the election design not only has an impact on the technical aspects of the implementation of the election, but also has juridical consequences for the term of office of the regional head which has the potential to end before the next election is held. This condition raises the question of the possibility of extending the term of office of regional heads as a solution to avoid a vacancy in local government.

Various previous studies have discussed term limits, constitutional democracy, and the implementation of regional head elections from various perspectives. Some studies have emphasized that term limits are an important instrument in maintaining the principle of checks and balances, preventing abuse of power, and strengthening the regeneration of political leadership. Other research

highlights that changes in the design of election administration can cause transitional problems that require temporary legal policies to keep the wheels of government running effectively. Meanwhile, the study of Islamic legal thought shows that the concept of *siyasah syar'iyah* provides space for the government to set policies for the public benefit (*maslahah*) as long as it does not conflict with the principles of sharia and justice. However, most of the research still discusses the issue of term limits or the holding of elections separately and has not specifically examined the constitutional implications of the Constitutional Court Decision Number 135/PUU-XXII/2024 on the possibility of extending the term of office of regional heads.

This condition shows that there is a research gap. First, there has not been much research that comprehensively analyzes the relationship between the Constitutional Court Decision Number 135/PUU-XXII/2024 and the constitutionality of extending the term of office of regional heads. Second, studies on these issues are generally still dominated by positive constitutional law perspectives so that they have not integrated normative analysis based on the perspective of *Siyasah Syar'iyah*. In fact, this approach is important to provide a more comprehensive assessment of the legitimacy of state policies, both based on constitutional principles and Islamic legal values. Thus, this study offers novelty in the form of an integrative analysis between Indonesian constitutional law and the perspective of *Siyasah Syar'iyah* in assessing the constitutionality of the extension of the term of office of regional heads after the Constitutional Court Decision Number 135/PUU-XXII/2024.

Based on the research gap, this study aims to analyze the constitutionality of the extension of the term of office of regional heads after the Constitutional Court Decision Number 135/PUU-XXII/2024 and examine its conformity with the principles of *Siyasah Syar'iyah*. In particular, this research is directed to answer two main questions, namely: (1) how is the constitutionality of extending the term of office of regional heads after the Constitutional Court Decision Number 135/PUU-XXII/2024 according to the Indonesian constitutional system; and (2) how the perspective of *Siyasah Syar'iyah* views the policy of extending the term of office of regional heads during the transition period of holding elections.

This research is expected to make a theoretical and practical contribution. Theoretically, this research enriches the development of constitutional law studies, especially regarding the relationship between democratic principles, term limits, and Constitutional Court decisions with a multidisciplinary approach that integrates the perspective of *Siyasah Syar'iyah*. Practically, the results of this research are expected to be considered for lawmakers, the government, the Constitutional Court, and academics in formulating local government transition policies that still

ensure the sustainability of government without ignoring the principles of the state of law, democracy, and welfare as the main goal of the implementation of government in the Indonesian constitutional system.

Research Methods

The approach used in this study is a qualitative approach with a normative juridical method, which is a method that does not involve observation activities or field research focusing on the study of legal norms and legal principles that develop in the literature. This is because the object of research is legal materials, so it uses materials or literature studies (*library based*). The objects taken rely on legal materials, both primary and secondary (Nurhayati et al., 2021) The data used in this study is secondary data, consisting of primary legal materials such as the 1945 Constitution, Law Number 7 of 2017 concerning Elections, and Constitutional Court Decision Number 135/PUU-XXII/2024. Secondary legal materials include scientific literature, constitutional law journals, expert opinions, as well as news and articles from official websites such as the House of Representatives of the Republic of Indonesia, Hukumonline, and the Constitutional Court. Data analysis techniques are carried out by interpreting legal norms systematically, logically, and argumentatively. The analysis was carried out to assess the conformity between the Constitutional Court Decision and the constitutional provisions in the perspective of sharia sharia.

Research Findings and Discussion

The Constitutional Court's decision Number 135/PUU-XXII/2024 brings major changes in the electoral system in Indonesia by separating national and regional elections. This change raises new constitutional problems, especially related to the term of office of regional heads. One of the main implications is the potential for term of office insynchronization that can lead to vacancy or encourage discourse on extending the term of office of regional heads.

The extension of the term of office of regional heads has various risks that can occur, namely reducing the opportunity of the public to elect new leaders periodically which results in the weakening of democratic principles, the extension of the term of office can lead to abuse of power, and weakening leadership regeneration (Kamil & Aziz, 2026). The emergence of discourse is due to the new norm formed by the Constitutional Court which is not followed by a corresponding legislative arrangement. If it is not immediately regulated further through the revision of the law, this provision risks being difficult to implement and even creating a legal vacuum that can hinder the democratic process (Fatullah et al., 2025) The opinion of the Chairman of Commission II of the House of

Representatives of the Republic of Indonesia, Muhammad Rifqinizamy Karsayuda firmly opposes the Constitutional Court Decision Number 135/PUU-XXII/2024 because according to him, if this decision is carried out in the form of a revision of the Election Law, it has the potential to violate constitutional norms, especially article 22E Paragraph (1) and Paragraph (2) of the 1945 UD which states that elections are held every five years to elect the President, Vice President, members of the House of Representatives, DPD, and DPRD.

One of the constitutional law experts, Zuhad Aji Firmantoro, gave his opinion, namely that he considered that the Constitutional Court had exceeded the limits of its judicial authority from its function as *a negative legislator* to *a positive legislator* by establishing new operational norms through decisions that should be the domain of the legislature, not the judiciary and the risk of constitutional crisis because the transition norms from the decision caused overlap with Article 22E of the 1945 Constitution and has the potential to cause a legal vacuum. If you follow the decision of the Constitutional Court with a minimum pause of 2 years to 2.5 years, then the election cycle is no longer the same as before which was held every 5 years, otherwise it can be 7 to 7.5 years.

Through TikTok @partainasdem and Youtube @AlineaID content videos, the content shows that the public is quite critical of the possibility of extending the term of office of regional heads without going through general elections. The narrative that emerges emphasizes that regional heads should gain legitimacy directly from the people through elections, not through administrative extensions. The Constitutional Court Decision Number 135/PUU-XXII/2024 is believed to be a major change in the electoral system that has a direct impact on the regional term of office. Discourse on social media shows that the community plays an active role as a control of public policy. Although the purpose of this Constitutional Court decision is to improve the quality of elections, the public sees consequences or impacts that have not been fully anticipated, especially related to the transition period of positions.

The Constitutional Court is a judicial institution that holds or has the authority to test laws against the 1945 Constitution, as stipulated in Article 24C paragraph (1) of the 1945 Constitution. In exercising its authority through Hans Kelsen's theory, the Constitutional Court functions as *a negative legislator*, namely only authorized to cancel norms that are contrary to the constitution, but does not have the authority to form new norms (Hermawati & Pratama, 2021) This concept affirms that the Constitutional Court is different from the legislative body. The Legislature (DPR with the president) functions as *a positive legislator* who has the authority to form laws through a democratic political process. However, a number of Constitutional Court decisions tend to be *judicial activism*, which is

not only assessing constitutionality, but also providing the construction of new norms to fill the legal void.

This phenomenon is clearly seen in the Constitutional Court Decision Number 135/PUU-XXII/2024 which is now in the wide spotlight because it changes the election system in Indonesia. In its ruling, the Constitutional Court stated that the implementation of national and regional elections must be separated by a time gap of 2 to 2.5 years. This time gap provision directly forms a new norm that has not been regulated in previous laws and regulations, thus raising the criticism that the Constitutional Court has exceeded the limits of its authority. This decision is contrary to the practice of simultaneous elections of five boxes that were previously carried out. The Constitutional Court reasoned that elections held simultaneously caused a heavy burden for organizers, decreased the quality of voter participation, and were less effective in carrying out democratic principles.

The shift of the Constitutional Court from *a negative legislator* to *a positive legislator* began with a 2009 ruling on elections, which in its decision stated to give an order to the election organizers that voters who are not listed in the KPU DPT, can do so using the original ID card. This decision turns the Constitutional Court into *a positive legislator* in its decision. Mahfud MD emphasized in his opinion that the Constitutional Court's decision should not contain to regulate a law. However, it provides a conclusion on the constitutional or unconstitutional basis of a law (Safitri et al., 2024) In the Indonesian constitutional system, sovereignty is in the hands of the people and also the implementation of elections every five years as stipulated in the 1945 Constitution. The Constitutional Court considers that this time separation is part of the constitutional interpretation to ensure the effectiveness of democratic, fair, and efficient elections. This separation of the organization is considered necessary because the five-box simultaneous election as stipulated in Law Number 7 of 2017 has lost its constitutional validity.

The constitutional principle of a five-year term of office is a provision in the constitutional system that stipulates that the government only has five years of work to carry out the implementation of the government and development plan. This principle has also been regulated in the 1945 Constitution (1945 Constitution) for the term of office of the President and Vice President, which states that both are elected for a five-year term and can be re-elected for one term of the same term. From this principle, the implication is the creation of a stable and structured cycle of government and allows for measurable and sustainable strategic planning of national development.

From a constitutional perspective, this decision raises a debate about the limits of the Constitutional Court's authority related to regulating the electoral system in Indonesia which is carried out without going through a legislative process or formal amendment to the constitution. This change

has not simple consequences for Indonesia's constitutional system. One of them is the insynchronization of the term of office of regional heads with the new election schedule. This situation has led to an extension of the term of office of regional heads as a solution. In this context, the extension of the term of office of regional heads is in a dilemma between practical needs and constitutional principles.

The display of the term of office of the regional head is not in accordance with the principle of *siyasyah syar'iyah*. In the perspective of *siyasyah syar'iyah*, the extension of this term of office must be based on the principle of benefit. If a policy causes more losses, then the policy cannot be justified and can cause *mafsadah*, such as weakening the legitimacy of democracy and abuse of power. In addition, power is a mandate that must be maintained and carried out fairly and responsibly by leaders. Extension of the term of office if there is no clear mechanism has the potential to contradict the principle of trust.

The principle of justice plays an important role that is the basis of every policy. Extending the term of office without going through elections has the potential to violate the principle of justice because the people lose their right to elect leaders periodically. The principle of justice in Islam requires equal and non-discriminatory treatment. The deliberation also emphasized the importance of the community in making decisions. In Indonesia, this principle is carried out in the form of general elections. The extension of the term of office of regional heads without going through the general election process will also reduce public involvement in choosing leaders.

Power relies heavily on the consent of the people through elections. If it is not through general elections, it can be interpreted that the leader no longer obtains a direct mandate from the people and can cause a crisis of people's trust in the government. *Siyasyah syar'iyah* does not expressly regulate term limits, but the importance of term limits is to prevent unfair treatment of leaders in carrying out their duties (Ahwadzy, 2025).

Conclusion

This study shows that the Constitutional Court Decision Number 135/PUU-XXII/2024 which separates the holding of national and regional elections has constitutional implications for the term of office of regional heads, especially the potential for an extension of the term of office during the transition period of holding elections. From the perspective of constitutional law, every policy to extend the term of office must have a clear legal basis and still uphold the principles of people's sovereignty, democracy, and legal certainty as mandated by the 1945 Constitution of the Republic of Indonesia. Sementara itu, dalam perspektif *Siyasah Syar'iyah*, An extension of office can only be

justified if it is truly based on considerations of the public interest (*maslahah*), is temporary, is carried out in urgent circumstances, and does not eliminate the principles of justice, trust, accountability, and legitimacy of power derived from the people. Therefore, the regulation of the transition period of local government after the Constitutional Court Decision Number 135/PUU-XXII/2024 requires a more comprehensive regulatory basis through changes in laws and regulations or the formation of legal policies in accordance with the principles of the constitution and the values of *Siyasah Syar'iyah*, so that the sustainability of government can be guaranteed without ignoring the principles of the state of law and democracy.

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