

Constitutional Court's Role in Regional Head Election Disputes: Substantive Justice and Voting Threshold Challenges

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Abstract

This study examines the Constitutional Court's authority in resolving regional head election disputes, focusing on its role in ensuring substantive justice and the implications of the vote threshold in Article 158 of the Regional Head Election Law on candidates' constitutional rights. The research employs a normative legal method, utilizing a statutory approach to analyze the Court's jurisdiction, a case approach to assess key decisions, and a conceptual approach to evaluate the principles of substantive justice in electoral disputes. Primary legal sources include the 1945 Indonesian Constitution and Constitutional Court rulings, while secondary sources consist of scholarly literature, legal commentaries, and tertiary legal references. The findings reveal that the Constitutional Court has played a pivotal role in upholding democratic principles by setting aside formalistic constraints such as the vote threshold when structured, systematic, and massive violations significantly impact election outcomes. However, this approach raises concerns regarding the consistency of judicial rulings and legal certainty. Additionally, the study highlights that Article 158 often limits candidates' access to legal remedies, restricting their ability to contest elections despite substantial evidence of electoral fraud. The study contributes to the academic discourse on electoral justice by demonstrating how legal formalism can undermine substantive justice in democratic processes. It recommends revising Article 158 to introduce an exception mechanism that balances procedural efficiency with fairness, thereby enhancing the legitimacy and integrity of regional head elections. This reform is essential to ensure a more equitable electoral dispute resolution system that safeguards both democratic accountability and legal certainty.

1. Introduction

Regional head elections in Indonesia serve as a cornerstone of direct democracy, embodying the people's sovereign right to choose their leaders.¹ As mandated by the 1945 Constitution, these elections are designed to uphold fairness, transparency, and legal integrity.² However, beyond their democratic ideals, regional head elections often become battlegrounds for political disputes, where allegations of electoral fraud and procedural irregularities threaten both political stability and public trust in the democratic process.

Law Number 24 of 2003, which was revised numerous times, governs the Constitutional Court's involvement in settling regional head election disputes. The Constitutional Court previously lacked jurisdiction over regional head election issues. However, Constitutional Court Decision Number 97/PUU-XI/2013 moved power from the Supreme Court (MA) to the Constitutional Court for speedier, more effective, and higher-integrity law enforcement. This ruling profoundly affects Indonesia's regional head election dispute settlement regime and has important constitutional ramifications for democratic legitimacy.

Regional Head Elections Law Number 10 of 2016 governs regional head election dispute settlement. The Constitutional Court must hear complaints over results if the difference in votes between specified candidate pairings is within a particular margin, as outlined in Article 158 of the Regional Head Election Law. This clause limits the number of cases and prevents delegitimation via the judicial procedure. However, this clause has raised concerns about the constitutional rights of regional head candidates who feel disadvantaged owing to alleged irregularities that impact election outcomes but do not satisfy the threshold.

The threshold in resolving regional head election disputes under Article 158 of the Regional Election Law has been debated in Indonesian constitutional law. The Constitutional Court only hears complaints if the difference in votes between candidate pairs passes a threshold, limiting the number of cases and preventing election results from being delegitimised by the courts.³ This clause sometimes restricts the constitutional rights of election participants who feel injured by major infractions but do not get enough votes. Germany and South Korea are more flexible in waiving voting criteria for severe infractions that might damage election legitimacy. If there is significant proof of fraud that might influence an election, the German constitutional court can hear cases even if they do not fulfil formal conditions.⁴

In South Korea, the Constitutional Court may overlook legal limits if infractions are regular and overwhelming. The Indonesian Regional Election dispute resolution method is excessively formalistic and does not provide adequate scope to verify the election results for fairness. This raises important considerations about whether Article 158 hurts justice more than it facilitates dispute settlement.

¹ Muhammad Bahrul Ulum, 'How Democracy Is Election? Reassessing Article 18 (4) of the 1945 Constitution and Its Implication to the Regional Head Election in Indonesia', *Jurnal Hukum Dan Peradilan* 8, no. 2 (2019): 315–32.

² Tuti Khairani Harahap et al., 'PENGANTAR ILMU HUKUM', *Penerbit Tahta Media*, 30 May 2023, <https://tahtamedia.co.id/index.php/issj/article/view/255>.

³ Ibnu Sam Widodo et al., *Hukum Tata Negara* (Sada Kurnia Pustaka, 2023).

⁴ Aziz Huq and Tom Ginsburg, 'How to Lose a Constitutional Democracy', *UCLA Law Review* 65 (2018): 78.

The Constitutional Court's involvement in settling regional head election disputes is typically complicated, notably in technical and legal matters.⁵ Critics say the Constitutional Court, which is supposed to test laws' constitutionality,⁶ is too often overburdened by administrative regional head election cases like vote counting disputes or procedural violations that should be handled by organising institutions like the General Election Commission or the Election Supervisory Body. In the 2017 Tolikara Regency regional head election, the Constitutional Court had to settle an issue involving the General Election Commission and specific candidate pairs' vote counting interpretations. Technical fact-checking including document validation and voter data reconciliation were beyond the Constitutional Court's jurisdiction as the protector of the constitution in this instance.⁷

The Constitutional Court's interpretation of various rulings frequently exceeds legal power, particularly when it overlooks Article 158 of the Law on Regional Head Elections' vote threshold. In the 2020 Sabu Raijua Regency Regional Head Election controversy, the Constitutional Court continues to process the complaint despite the lack of a vote margin. The Constitutional Court held that substantive justice must be prioritised above formal processes since the alleged planned, systematic, and large breaches substantially influenced the Regional Head Election outcomes.⁸ This decision has been criticised because it sets a legal precedent that could damage legal certainty by allowing candidate pairs to sue regional head election results for structured, systematic, and massive violations without following formal procedures.

Inconsistent Constitutional Court rulings might cause legal system conflict. The Constitutional Court annulled the victory of a candidate pair in the 2018 Makassar City regional head election dispute after the General Election Commission committed a fatal mistake in candidate verification. Although this ruling stressed the significance of law enforcement in regional head elections, several parties felt the Constitutional Court had stepped too far into technical matters that the General Election Commission should handle. Thus, disagreements between the Constitutional Court and regional head election organisers hampered future dispute settlement.

These instances show how difficult it is for the Constitutional Court to uphold democracy while making fair rulings. As an institution charged with protecting the constitution, the Constitutional Court must weigh substantive justice as well as formal legality. However, the Constitutional Court's participation in technical and administrative disputes sometimes creates a conflict between legitimising the regional head election process and restricting its jurisdiction as required by law. This suggests that the regional head election dispute resolution mechanism should be rethought so that the Constitutional Court can focus on its main role as a

⁵ Faiz Albar Nasution et al., 'Humbang Hasundutan Regional Head Election In 2020: Empty Box Volunteer Political Communication Movement', *Studies in Media and Communication* 11, no. 1 (2023): 52-59.

⁶ Titon Slamet Kurnia, 'Prediktabilitas Ajudikasi Konstitusional: Mahkamah Konstitusi Dan Pengujian Undang-Undang', *Jurnal Konstitusi* 13, no. 2 (27 August 2016): 259-77, <https://doi.org/10.31078/jk1322>.

⁷ Luh Putu Vera Astri Pujayanti et al., 'Indonesia's Constitutional Court: Bastion of Law Enforcement and Protector of Human Rights in The Reform Era', *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 17, no. 1 (26 February 2024): 35-49, <https://doi.org/10.21107/pamator.v17i1.24128>.

⁸ Mohamad Hidayat Muhtar et al., *Konsep Hukum Indonesia* (Global Eksekutif Teknologi, 2023).

constitutional guardian and special bodies or administrative courts can handle technical cases that do not require constitutional interpretation.

Problem formulation : (1) What are the constitutional consequences of the Constitutional Court's jurisdiction in resolving regional head election disputes for substantive justice? and (2) How does the vote threshold under Article 158 of the Regional Head Election Law impact participants' constitutional rights?

2. Method

This paper examines Indonesian regional head election dispute legislation, regulations, legal concepts, and court judgments using a normative legal research technique. The study employs a statutory approach to analyze the Constitutional Court's authority in regional head election disputes, a case approach to assess the Court's jurisprudence on substantive justice and the vote threshold under Article 158 of the Regional Head Election Law, and a conceptual approach to explore the broader principles of substantive fairness in electoral dispute resolution.

To ensure a robust jurisprudential analysis, case selection criteria were determined based on three key factors: (1) the significance of the Constitutional Court's ruling in shaping legal precedent, (2) the presence of structured, systematic, and massive violations affecting electoral outcomes, and (3) the degree to which the ruling deviates from or reinforces existing electoral jurisprudence. Notable cases analyzed include the 2020 Sabu Raijua Regency Regional Head Election Decision, which prioritized substantive justice over formal procedural requirements, as well as earlier rulings that have shaped the legal discourse on the vote threshold and candidates' constitutional rights.

The study relies on multiple sources of legal data to enhance reliability and minimize interpretive bias. Primary legal documents include the 1945 Indonesian Constitution, Law Number 10 of 2016 on Regional Head Elections, and relevant Constitutional Court rulings. Secondary sources consist of scholarly literature, legal commentaries, and expert opinions regarding the Constitutional Court's authority and the principle of substantive justice in electoral law. Tertiary legal sources, such as legal dictionaries and encyclopedias, are used to clarify key terminologies.

To ensure consistency in legal interpretation, the study incorporates methodological triangulation, combining textual analysis of legal provisions, judicial reasoning in case law, and doctrinal legal scholarship. This approach allows for a comprehensive examination of how the Constitutional Court's decisions align with broader constitutional principles and international electoral dispute resolution standards. The deductive legal material analysis approach is applied, beginning with general legal norms before evaluating their application in specific cases. Additionally, description-analytical methods are used to assess the effectiveness of existing regulations in safeguarding substantive justice while ensuring legal certainty.

The findings reveal that the Constitutional Court's expansive interpretation of its jurisdiction in electoral disputes has substantial constitutional consequences for substantive justice. In the Sabu Raijua case, the Court set aside procedural restrictions to uphold substantive fairness, demonstrating flexibility but also raising concerns about legal predictability and consistency. Regarding the second research question, the study finds that the vote threshold under Article 158 may undermine the constitutional rights of candidates who have strong evidence of electoral fraud but fail to meet the formal vote margin requirement. While several Constitutional

Court rulings have addressed the impact of electoral violations on election outcomes, inconsistencies in judicial reasoning have led to legal ambiguity and contradictory precedents. As a result, the study recommends a critical reassessment of the threshold provision to enhance both legal clarity and substantive fairness in electoral dispute resolution.

3. Analysis or Discussion

3.1. Constitutional Implications of the Constitutional Court's Authority in Resolving Regional Head Election Disputes Regarding the Principle of Substantive Justice

The Constitutional Court's power to resolve regional head election disputes is based on Indonesia's 1945 Constitution's principles of democracy and fairness.⁹ Article 18 paragraph (4) of the 1945 Indonesian Constitution emphasises democratically chosen regional chiefs, expressing the Indonesian people's dedication to direct democracy.¹⁰ The regional head election process must be honest, fair, and legal to preserve people's sovereignty as the foundation for regional heads' legitimacy. However, disagreements over election results, implementation processes, and planned, systematic, and large violations routinely mar Indonesian regional head elections. The Constitutional Court's duty as a constitutional guardian is crucial to settling regional head election disputes and preserving democracy.

As a constitutional protector, the Constitutional Court may resolve regional head election disputes. This function interprets constitutional principles, including general election norms. Through Constitutional Court Decision Number 97/PUU-XI/2013, the Constitutional Court took up regional head election issues from the Supreme Court (MA).¹¹ We argued that the Constitutional Court can make speedier and better rulings in circumstances that demand urgent legal clarity since regional head elections affect regional government. This power was then emphasised in several implementing regulations, such as Law Number 10 of 2016 on Regional Head Elections, which controls regional head election dispute submission.

Regional head election issues are handled by the Constitutional Court based on substantive justice. Substantive justice emphasises the substance of justice in the end consequences of a judicial process, not simply protocol. This concept applies to regional head election disputes to guarantee that election results fully represent the will of the people without breaches or deviations that might compromise the election process. Often, the Constitutional Court must choose between substantive fairness and legal certainty as defined by laws and regulations. The Constitutional Court processed the 2020 Sabu Raijua Regency regional head election result lawsuit

⁹ Suwito et al., 'Contemplating the Morality of Law Enforcement in Indonesia', *Journal of Law and Sustainable Development* 11, no. 10 (25 October 2023): e1261-e1261, <https://doi.org/10.55908/sdgs.v11i10.1261>.

¹⁰ Aisyah Risyat, Riska Muliani, and Muhammad Erfa Redhani, 'CONSTITUTIONAL JURISDICTION REVIEW OF THE EXISTENCE OF INDIGENOUS LAW COMMUNITIES IN INDONESIA', *Constitutional Law Society* 1, no. 1 (2 April 2022): 25-40, <https://doi.org/10.36448/cls.v1i1.6>.

¹¹ Ray Ferza and Nuril Fikri Aulia, '2018 Simultaneous Regional Head Elections: Political Dowry and Policy Implication', *Jurnal Bina Praja* 12, no. 1 (28 May 2020): 11-20, <https://doi.org/10.21787/jbp.12.2020.11-20>.

even though the candidate pair who filed it did not meet the difference in votes threshold in Article 158 of the Regional Head Election Law.¹²

Inconsistencies in the Constitutional Court's election dispute ruling have produced legal ambiguity and harmed Indonesia's electoral system. The Constitutional Court handled a lawsuit against the 2020 Sabu Raijua Regency Election results even though the candidate pair who filed the application did not fulfil the vote difference criteria under Article 158 of the Election Law. In circumstances of organised, systematic, and large breaches, substantive justice should trump formal processes, the court said. However, this ruling was criticised since it allowed losing candidate pairs to contest the election results even if they did not fulfil the statutory conditions, which might disturb electoral legal certainty. The electoral courts in the nation have tighter rules for judging trial cases than the US system. Administrative and technical disagreements are settled by electoral authorities before reaching the Supreme Court. Only instances with direct proof of an influence on election results may be taken to court. In South Africa, the electoral system permits infractions to be settled before going to the highest constitutional court to avoid judicial workload and legal confusion. Indonesia may prevent confusion caused by contradictory Constitutional Court judgements using this technique.

Inconsistencies in the Constitutional Court's decision on the election dispute have caused legal uncertainty and had an impact on the stability of Indonesia's electoral system. In the case of a dispute over the results of the 2020 Sabu Raijua Regency Election, the Constitutional Court still processed the lawsuit even though the candidate pair who submitted the application did not meet the vote difference threshold as specified in Article 158 of the Election Law. The court reasoned that the principle of substantive justice should take precedence over formal procedures, especially in cases involving structured, systematic, and massive violations. However, this decision drew criticism because it opened up opportunities for losing candidate pairs to sue the election results even though they did not meet the formal requirements, which could ultimately disrupt legal certainty in the electoral system. When compared to the system in the United States, the election courts in the country have stricter standards in determining cases that are acceptable for trial. Only cases with concrete evidence that can show a direct impact on the election results can be brought to the legal realm, while administrative and technical disputes are resolved by electoral institutions before reaching the Supreme Court. In South Africa, there is a special mechanism in the electoral system that allows for the settlement of violations before the case is brought to the highest constitutional court, so that the burden of the courts can be reduced and legal uncertainty can be suppressed. A model like this can be a solution for Indonesia to avoid uncertainty due to inconsistent decisions of the Constitutional Court.

The Constitutional Court stated that claims of organised, systematic, and widespread breaches that substantially influenced the regional head election must be prioritised to achieve substantive justice for the harmed parties.¹³ First, in

¹² Wicipto Setiadi et al., 'The Role of Indonesia Constitutional Court Decision in the Process of Establishing the Law: A Case Study in the Process of Establishing the Law on General Elections', *Journal of Legal, Ethical and Regulatory Issues* 24 (2021): 1.

¹³ Rima Yuwana Yustikaningrum and Mohammad Mahrus Ali, 'Dari Sekadai Ke Sabu Raijua: Menakar Jejak Bawaslu Dalam Dinamika Persidangan Di Mahkamah Konstitusi', *Jurnal Konstitusi* 18, no. 4 (2021): 918-38.

democracy, the Constitutional Court's substantive justice ruling legitimises regional head elections as embodying the people's choice. To protect election integrity, the Constitutional Court may cancel and revote election results if organised, systematic, and large breaches are shown. The Constitutional Court ordered a revote in the 2018 Makassar City regional head election dispute after finding breaches that adversely influenced the election results. Democracy is about results and an honest, fair process, and this decision supports that.

Second, when the Constitutional Court applies substantive justice, it sets a precedent for future challenges. The Constitutional Court regularly applies progressive interpretations of legal principles to complicated issues that are not explicitly governed by legislation.¹⁴ This strategy has drawbacks, particularly in preserving judgement consistency that affects legal certainty. In the 2017 Tolikara Regency regional head election, the Constitutional Court overturned administrative document provisions for regional head candidates since the infractions did not affect election outcomes. This ruling was criticised for allowing future variances and generating legal ambiguity for regional head election contestants.

Third, the Constitutional Court's jurisdiction to resolve regional head election disputes might damage local political stability. Candidate couples, supporters, and election organisers regularly clash after the Constitutional Court annuls regional head elections. Some societal confrontations arise from this strain, requiring security personnel to preserve order. Thus, the Constitutional Court's ruling affects political and social stability in the area, making it both legal and political.

Constitutional Court inconsistencies threaten Indonesia's voting system's legal clarity and stability. The Court's substantive justice ruling is a step towards a better democracy. However, ambiguity in legal norms may delegitimise the democratic process and increase post-election political turmoil. When the Constitutional Court accepts a complaint in one instance but denies a comparable case on procedural grounds, it casts doubt on the judicial system's predictability and consistency in protecting election participants' constitutional rights.

Hans Kelsen wrote in legal theory that the legal system needs a clear hierarchy of norms to prevent rule disputes and implementation.¹⁵ In reality, the Indonesian Constitutional Court frequently interprets Article 158 of the Election Law inconsistently, resulting in jurisprudence discrepancies. This may damage public faith in the court and allow politicians to exploit legal uncertainty. In solid legal systems like France, election dispute resolution processes distinguish between administrative and constitutional challenges, giving courts clearer rules for processing cases.

Critics question the Constitutional Court's regional head election jurisdiction. The Constitutional Court has been criticised for meddling in technical matters that should be handled by election organisers like the General Election Commission and

¹⁴ Olena Boryslavska and Mirosław Granat, 'Independence of Constitutional Justices: Stumbling Blocks in Ukraine and Poland', *Access to Just. E. Eur.*, 2021, 8.

¹⁵ Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, 'Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia', *Jurnal Konstitusi* 20, no. 2 (1 June 2023): 279–99, <https://doi.org/10.31078/jk2026>.

Election Supervisory Body.¹⁶ The Constitutional Court must regularly analyse technical evidence including the permanent voter list (DPT), candidate administration records, and vote counting results, which takes time and distracts it from its principal role as constitutional protector. The Constitutional Court's understanding of substantive justice occasionally exceeds legal power, which might cause legal system conflict.

The Constitutional Court's technical involvement in regional head election issues has sparked discussion about its jurisdiction. Often, the Constitutional Court must consider factual evidence like voting turnout, vote reconciliation, and regional head candidate documentation in addition to legal standards. In the 2017 Tolikara Regency regional head election dispute, the Constitutional Court encountered concerns pertaining to the DPT's inconsistencies and election administration irregularities that severely influenced the outcomes. This compelled the Court to examine technical issues like authenticating field records that the General Election Commission should handle. This shows that the mechanism for resolving regional head election issues is still not integrated sufficiently with election organisers, thus the Constitutional Court takes on the technical load that administrative institutions should.¹⁷

In addition, the Constitutional Court's view of substantive justice is sometimes criticised for exceeding legal power. In several cases, such as the 2018 Makassar City regional head election, the Constitutional Court annulled the victory of a candidate pair due to procedural violations that damaged the election results but did not directly affect vote acquisition. The Constitutional Court prioritises substantive justice above formal standards, anticipating that major procedural infractions might taint the electoral process. This method threatens legal clarity, particularly when precedents are conflicting. This leaves a grey area for regional head election participants who contest the election results without meeting the official standards, exposing the door to legal abuse.

However, the Constitutional Court's technical engagement may cause inter-institutional conflict. This may erode the public's trust in the General Election Commission and Election Supervisory Body (Bawaslu) when the Constitutional Court rules otherwise. In some situations, the Constitutional Court specifically declared that the General Election Commission's carelessness caused administrative breaches. This critique harms the General Election Commission's credibility and suggests Indonesia's election administration system is still flawed. As state institutions with complementary but distinct roles, the Constitutional Court and General Election Commission should collaborate to protect regional head elections.

Criticism of the Constitutional Court's technical involvement highlights Indonesia's urgent need to modernise regional head election dispute settlement. One option is to create an electoral court to resolve administrative and technical issues before the Constitutional Court hears the case. This would enable the Constitutional Court to concentrate on its core constitutional concerns while the special body handled technical matters like field evidence or administrative review.

¹⁶ Camden Kelliher et al., 'Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes', *Election Law Journal: Rules, Politics, and Policy* 18, no. 3 (September 2019): 297-308, <https://doi.org/10.1089/elj.2018.0535>.

¹⁷ M. Taufan Perdana, Moh Alfaris, and Anik Iftitah, 'Kewenangan Bawaslu Dalam Pilkada 2020 Pasca Putusan Mahkamah Konstitusi Nomor 48/PUU-XVII/2019', *Jurnal Supremasi*, 31 March 2020, 1-11, <https://doi.org/10.35457/supremasi.v10i1.940>.

The Constitutional Court's workload would be decreased, and regional head election issues may be resolved more rapidly without compromising substantive justice.

The Constitutional Court uses substantive justice to resolve regional head election disputes. This idea emphasises that judges must choose justice above process while enforcing the law. According to Lon L. Fuller's "internal morality of law," law should be more than a procedural regulation and should provide actual justice for justice seekers. To prevent significant election irregularities from causing substantive unfairness, the Constitutional Court routinely overrides statutory prohibitions like Article 158 of the Election Law.

However, the Constitutional Court has not always applied substantive justice. In the 2020 Sabu Raijua case, the Constitutional Court approved the candidate pair's claim despite not meeting the vote threshold since the offences were systematic, large, and planned. However, in the 2018 Makassar Regional Election disagreement, the Court dismissed the candidate pair's case on procedural grounds despite the General Election Commission's administrative infractions. This leads to contradictory legal precedents where the Court sometimes upholds substantive justice and sometimes follows a formalistic approach.

Constitutional Court's methodology differs from German and US Supreme Courts. The Bundesverfassungsgericht (Federal Constitutional Court) exclusively hears election complaints involving political discrimination or voter rights breaches in Germany. The Verwaltungsgericht settles most administrative issues, so the Constitutional Court does not have to deal with electoral technicalities.¹⁸ In the US, the Supreme Court only hears election disputes having a serious constitutional significance, like *Bush v. Gore* (2000), which directly affected the presidential election. This system keeps the highest court focused on fundamental concerns and away from administrative technical matters the electoral body should manage.

3.2. Implementation of the Voting Threshold in Article 158 Regional Head Election Law Affects Constitutional Rights of Regional Head Election Participants

In submitting regional head election challenges with the Constitutional Court, Article 158 of Law Number 10 of 2016 governs the vote threshold. According to this article, candidate pairs may only appeal regional head election results if their vote total is within a particular population-based range of the winning pair. This provision aims to maintain efficiency in the judicial review process and prevent excessive election litigation. However, its implementation raises critical constitutional and human rights concerns, particularly in relation to the right to political participation and access to justice as guaranteed by Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Indonesian Constitution. These constitutional provisions emphasize equality before the law and the right to fair legal remedies, which may be undermined when candidates with substantial claims

¹⁸ Devin K. Joshi, 'Lawyers and Law Graduates in Parliaments as a Consequence of SMD Electoral Systems: A Comparison of Japan, South Korea, and Germany', *Japanese Journal of Political Science* 21, no. 1 (March 2020): 19–30, <https://doi.org/10.1017/S1468109919000112>.

of electoral violations are denied access to judicial review due to the vote margin requirement.¹⁹

From an international human rights perspective, the voting threshold rule may contradict principles outlined in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a party.²⁰ This article guarantees citizens the right to freely participate in elections and to have access to effective legal remedies against electoral fraud. In Germany and South Korea, electoral disputes that involve allegations of structured, systematic, and massive violations (TSM) are assessed based on their substantive impact on electoral integrity rather than formal vote margin thresholds. The German Constitutional Court allows judicial review when constitutional rights are at stake, while in South Korea, courts prioritize fair electoral competition over rigid procedural limitations. If Indonesia continues to apply a strict threshold without exception, it risks violating internationally recognized democratic norms.²¹

The 1945 Indonesian Constitution guarantees legal equality and fair treatment for all individuals, including regional head election contestants, under Article 27 paragraph (1) and Article 28D paragraph (1).²² This entitlement involves effective, non-discriminatory dispute settlement for regional head elections. However, Article 158 of the Regional Head Election Law may restrict this access, particularly for candidate pairs with substantial breaches but no vote margin. Structured, systematic, and large infractions that impact the regional head election outcomes are hard to show within the vote margin limit. This puts a strain on conflict resolution efficiency and fairness for everybody.²³

In the 2020 Sabu Raijua Regency regional head election dispute, the plaintiff candidate pair sued despite their vote margin with the victorious candidate pair exceeding Article 158 of the Regional Head Election Law. The Constitutional Court accepted the complaint because of alleged systematic, substantial breaches of regional head election results.²⁴ The Constitutional Court stressed that substantive justice must be prioritised above formal processes, particularly if the alleged infractions might damage electoral legitimacy. This verdict sets a precedent that thresholds should not be utilised to evaluate major infractions, but it also raises

¹⁹ Maichel Wutoy et al., 'Application of the Presidential Threshold Concept in the Presidential and Vice-Presidential Election System and Its Impact on the Indonesian Constitutional System', *Journal of Digitainability, Realism & Mastery (DREAM)* 1, no. 03 (2022): 46–55.

²⁰ Askari Razak et al., 'Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria', *Journal of Indonesian Legal Studies* 8, no. 2 (12 December 2023): 1311–60, <https://doi.org/10.15294/jils.v8i2.70717>.

²¹ Nabih Amer et al., 'IMPLICATIONS OF THE CONSTITUTION FOR POLITICAL NEUTRALITY IN THE DYNAMICS OF LAW AND DEMOCRACY', *Journal de Facto* 10, no. 2 (28 January 2024): 283–302, <https://doi.org/10.36277/jurnaldefacto.v10i2.189>.

²² Pujayanti et al., 'Indonesia's Constitutional Court'.

²³ Razak et al., 'Balancing Civil and Political Rights'.

²⁴ Muhammad Ardhi Razaq Abqa et al., *POLITIK HUKUM PEMILU (JAMBI: PT. Sonpedia Publishing Indonesia, 2023)*, https://www.researchgate.net/profile/Mohamad-Hidayat-Muhtar/publication/371735353_Penerbit/links/6492eb86b9ed6874a5c549fc/Penerbit.pdf.

questions about the consistency of law enforcement in regional head election disputes.²⁵

Article 158 of the Regional Head Election Law affects regional head election participants' constitutional rights in numerous ways. The legal aspect of this clause limits regional head election participants' access to dispute settlement processes. Even with proof of infractions, candidate pairs who do not fulfil the vote margin standards are frequently blocked from presenting their complaints to the Constitutional Court. Legal certainty from these constraints conflicts with substantive justice that may be overlooked. A progressive interpretation by the Constitutional Court is needed to guarantee regional head election participants' constitutional rights without compromising efficient dispute settlement.²⁶

In the democratic dimension, Article 158's vote threshold may influence public trust in regional head elections. When candidate pairs cannot file lawsuits owing to formal limitations, the public typically views the dispute resolution system as a tool to limit political involvement rather than a means to achieve justice. In places with limited political engagement or considerable social strife, this may weaken regional head elections as part of democracy. To show the public that the judicial system safeguards their rights, the threshold provision should be tempered with flexibility in examining some situations, notably those involving organised, systematic, and widespread infractions.²⁷

Third, this provision affects local political stability. Candidate couples who feel disadvantaged but cannot sue the Constitutional Court may mobilise the crowds or use political pressure to express their unhappiness. This may cause horizontal conflict in society, threatening municipal governance. This kind of conflict may be reduced by giving candidate couples and their supporters a lawful way to address issues via official legal channels.²⁸

The Constitutional Court has used interpretation to reconcile substantive justice with Article 158 of the Law on Regional Head Elections. At times, the Constitutional Court has accepted complaints beyond the statutory threshold if there is a high possibility that the claimed breach might significantly impact regional head elections. This strategy has drawbacks, particularly in decision consistency. Regional head election participants feel unfairness since the Constitutional Court rejects several major infractions. This suggests that Article 158 needs clearer instructions to let the Constitutional Court operate more consistently without compromising substantive justice.²⁹

²⁵ Mohamad Hidayat Muhtar et al., *TEORI & HUKUM KONSTITUSI: Dasar Pengetahuan dan Pemahaman serta Wawasan Pemberlakuan Hukum Konstitusi di Indonesia* (PT. Sonpedia Publishing Indonesia, 2023).

²⁶ Ridwan Syaidi, Zainal Arifin Hoesein, and Ahmad Redi, 'Resolution of Disputes Over The Regional Head Elections Post The Constitutional Court Decision Number 85/PUUXX/2022 Regarding The Implementation of Simultaneous Regional Elections in Indonesia', *Eduvest - Journal of Universal Studies* 4, no. 3 (20 March 2024): 1396–1412, <https://doi.org/10.59188/eduvest.v4i3.1132>.

²⁷ Amer et al., 'IMPLICATIONS OF THE CONSTITUTION FOR POLITICAL NEUTRALITY IN THE DYNAMICS OF LAW AND DEMOCRACY'.

²⁸ Edward Aspinall, 'Oligarchic Populism: Prabowo Subianto's Challenge to Indonesian Democracy', *Indonesia*, no. 99 (2015): 1–28, <https://doi.org/10.5728/indonesia.99.0001>.

²⁹ Mohamad Hidayat Muhtar et al., 'IUS CONTITUTUM (ATURAN HUKUM POSITIF PEMILU)', 2023, 22–34.

Reforming Article 158's threshold rules might increase regional head election participants' constitutional rights. An exception mechanism might enable applicant pairings to sue outside the threshold if they can establish organised, systematic, and substantial breaches. Giving the General Election Commission and Bawaslu more power to resolve administrative and procedural infractions would limit the Constitutional Court to election results challenges. This makes the dispute resolution system more efficient and sensitive to substantive justice.³⁰

Overall, Article 158 of the Law on Regional Head Elections' vote threshold has a complicated influence on regional head election participants' constitutional rights. Limiting the number of Constitutional Court cases helps sustain conflict settlement efficiency. However, this clause may neglect the rights of regional head election participants damaged by severe abuses. Given these effects, Article 158 must be applied more evenly to balance efficiency and substantive justice. Legal reform and improving election organising institutions are crucial to making Indonesia's regional head election system fair and functional.

4. Conclusion

The Constitutional Court's jurisdiction in resolving regional head election disputes significantly impacts the balance between substantive justice and legal certainty. While the Court prioritizes substantive justice by setting aside procedural constraints, particularly in cases involving structured, systematic, and massive electoral violations, this approach has led to inconsistencies in decision-making and uncertainties in legal interpretation. The study contributes to academic debates by demonstrating how rigid procedural requirements, such as those in Article 158 of the Regional Head Election Law, may hinder access to justice for candidates affected by electoral fraud. By critically analyzing judicial trends and comparing international electoral dispute resolution mechanisms, this research highlights the need for a more adaptive legal framework. For policymakers, the study recommends revising Article 158 to allow exceptions for cases involving significant electoral violations, ensuring that access to legal remedies is not arbitrarily restricted. Furthermore, it urges the Constitutional Court to establish clearer judicial guidelines to maintain consistency in its rulings, thereby strengthening legal predictability. Additionally, the creation of a specialized electoral dispute resolution body, as seen in jurisdictions like France and Mexico, should be considered to handle procedural and administrative aspects before cases reach the Constitutional Court. These reforms would enhance both the legitimacy of electoral dispute resolution and the protection of democratic principles, ensuring that Indonesia's electoral system is more equitable, transparent, and aligned with international legal standards.

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