



Analysis of the Constitutional Court Decision on Election Campaigns at Educational Institutions from the Perspective of the Purpose of Law

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Abstract: The conduct of elections in Indonesia as a manifestation of people's sovereignty requires guarantees of justice, legal certainty, and the neutrality of public institutions. The Constitutional Court Decision Number 65/PUU-XXI/2023, which permits election campaigns at educational institutions under certain conditions such as obtaining permission and appearing without campaign attributes has sparked significant debate. This study aims to analyze the court's legal considerations in this decision and evaluate it from the perspective of Gustav Radbruch's theory of the purpose of law, which encompasses justice, legal certainty, and utility. The research employs a normative juridical method, utilizing statutory and conceptual approaches to analyze the Constitutional Court's decision, the Election Law, and its implementing regulations. The findings indicate that the decision has established legal certainty by resolving the ambiguity and contradiction between the main provision and the explanatory note of Article 280 paragraph (1) letter h of Law Number 7 of 2017. It also generates societal benefit by opening political education opportunities for young voters, in line with Article 267 paragraph (1) of the Election Law. However, from the standpoint of substantive justice, the ruling risks creating unequal access for legislative candidates with only secondary education and may compromise the neutrality of educational institutions and civil servants. Therefore, while the decision achieves legal certainty and utility, it falls short in fully realizing substantive justice. Strict supervision and further regulatory refinement are needed to safeguard the integrity of democracy.

Keywords: Constitutional Court; election campaign; educational institution; the purpose of law.

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1. Introduction

Indonesia is a rule-of-law state that practices a democratic system, in which sovereignty is fully vested in the people.¹ This principle is explicitly affirmed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which serves as the constitutional foundation for all governmental administration, including the conduct of general elections (Pemilu).² Elections, as a tangible manifestation of popular sovereignty, function as a mechanism through which the people elect their representatives to legislative, executive, and judicial institutions, as well as determine the direction of national policy through democratic political participation.³

The conduct of elections follows a series of stages regulated in detail by statutory regulations, including Commission on General Elections (KPU) Regulation Number 3 of 2022 concerning the Stages and Schedule of the 2024 General Election.⁴ One particularly important and strategic phase in this democratic process is the campaign period a time during which election participants are given the opportunity to present their vision, mission, programs, and personal image to the public.⁵ However, to ensure that campaigns are conducted fairly, peacefully, and without the disproportionate use of state power or government facilities, legal restrictions on campaign locations are established in statutory regulations.

Restrictions on campaign locations are stipulated in Article 280 paragraph (1) letter h of Law Number 7 of 2017 on General Elections, which explicitly prohibits campaigning at government facilities, places of worship, and educational institutions. This prohibition aims to preserve the neutrality of these vital institutions and prevent the misuse of authority or public facilities for practical political purposes. However, the explanatory note to this article creates an exception by stating that such locations may be used for campaign activities provided that election participants attend without campaign attributes and are formally invited by the facility managers.⁶ This provision in the explanatory note generates legal ambiguity, as it contradicts the main norm, which imposes an absolute prohibition.

¹ Ahmad et al., *Hukum Konstitusi (Menyongsong Fajar Perubahan Konstitusi Indonesia Melalui Pelibatan Mahkamah Konstitusi)* (UII Press, 2020).

² Kurnia Ningsih Kolopita Kolopita et al., "A Comparative Study Of The Implementation Of A Closed Proportional System In The Perspective Of A Country With A Presidential System," *Estudiante Law Journal* 1, no. 1 (2024): 1, <https://doi.org/10.33756/eslaj.v1i1.24858>.

³ Bintang Muhamad Hendri and Ahmad Ahmad, "Studying the Steps of the General Election Commission in Responding to the Recommendations of the Election Supervisory Body," *Estudiante Law Journal* 5, no. 2 (2023): 2, <https://doi.org/10.33756/eslaj.v5i2.18726>.

⁴ Rubian Ariviani* et al., "Analisis Putusan Mahkamah Konstitusi Nomor 14/Puu-Xi/2013 Berkaitan Dengan Pemilihan Umum Serentak Di Indonesia," *Diponegoro Law Journal* 5, no. 4 (2016): 4, <https://doi.org/10.14710/dlj.2016.13455>.

⁵ Aermadepa Aermadepa et al., *Penegakan Hukum Pemilu di Indonesia: Tantangan dan Prospek Keberlanjutan Demokrasi* (PT. Sonpedia Publishing Indonesia, 2024).

⁶ Afif Fakhri Jamaludin, "Penerapan Pasal 280 Ayat (1) Huruf H Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum Terhadap Pemasangan Alat Peraga Kampanye Calon Bupati Kabupaten Tasikmalaya" (Skripsi, Universitas Galuh, 2025), <http://repository.unigal.ac.id:8080/handle/123456789/6286>.

The ambiguity between the main norm and the explanation in Article 280 paragraph (1) letter h of the Election Law leads to legal uncertainty and potentially violates the principle of electoral fairness. Based on perceived constitutional harm, two citizens Handrey Mantiri, (Petitioner I) and Ong Yenny (Petitioner II) filed a judicial review petition with the Constitutional Court (MK) challenging the explanatory note of this article. They argued that the provision in the explanation infringes upon their constitutional rights, particularly the right to vote in a fair election (Article 22E paragraph 1 of the 1945 Constitution) and the right to fair legal certainty (Article 28D paragraph 1 of the 1945 Constitution), especially in the context of the 2024 election campaign.⁷

The Constitutional Court, as a state institution mandated by Article 24C of the 1945 Constitution, holds exclusive authority to review laws against the Constitution.⁸ In its role as the "guardian of the constitution," the MK is tasked with ensuring that all statutory regulations are consistent with the 1945 Constitution and with maintaining the balance of power among state institutions.⁹ The MK's decisions are final and binding, thus significantly impacting legal certainty and stability in Indonesia. In Case Number 65/PUU-XXI/2023, the MK ruled that the petitioners' request was partially granted, clarifying that government facilities and educational institutions may be used for campaign activities, provided that no campaign attributes are used and the participants are officially invited by the facility managers.

This ruling carries dual implications. On one hand, allowing campaigning in educational institutions can be viewed as an effort to enhance political education for the younger generation, in line with Article 267 paragraph (1) of the Election Law, which encourages political socialization within academic circles. The presence of election participants on campuses can serve as a platform for rational and critical political education, helping students and academic communities form mature political judgments.¹⁰ On the other hand, this decision risks undermining the neutrality of campuses as academic spaces that should remain free from practical politics. Moreover, structural inequalities may arise, as legislative candidates without strong academic backgrounds or networks within higher education institutions may find it

⁷ Azzahra Ayu Sabilla and Hananto Widodo, "Analisis Putusan Mahkamah Konstitusi Nomor 65/Puu-Xxi/2023 Terkait Kampanye Pemilu Di Fasilitas Pemerintah Dan Tempat Pendidikan," *Novum: Jurnal Hukum* 9, no. 02 (2022): 349–59, <https://doi.org/10.2674/novum.v0i0.63018>.

⁸ Ahmad et al., "Constitutional Dialogue in Judicial Review at the Indonesian Constitutional Court: The Future Prospects," *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1S (2021): 1S, <https://www.abacademies.org/abstract/constitutional-dialogue-in-judicial-review-at-the-indonesian-constitutional-court-the-future-prospects-13248.html>.

⁹ Ahmad Ahmad and Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2019): 4, <https://doi.org/10.31078/jk1646>.

¹⁰ Ahmad Taufiqurrohman Al Maula, "Analisis Tujuan Hukum Terhadap Putusan Mahkamah Konstitusi Nomor 65/Puu-Xxi/2023 Tentang Kampanye Di Ranah Pendidikan" (skripsi, UIN Sunan Kalijaga, 2024), <https://digilib.uin-suka.ac.id/id/eprint/68089/>.

difficult to access campaign venues in educational settings, compared to candidates who are alumni or have established connections at universities.¹¹

Given the legal, constitutional, and social complexities arising from the MK's decision, there is a need for deeper analysis of the legal reasoning employed by the panel of judges and an evaluation of the ruling from the perspective of legal purpose theory. Therefore, this study focuses on analyzing Constitutional Court Decision Number 65/PUU-XXI/2023 regarding election campaigns in educational institutions, aiming to understand the legal basis of the MK's reasoning and to assess whether the decision has achieved the fundamental objectives of law namely justice, legal certainty, and societal benefit. Based on this background, two main research questions are formulated: How is Constitutional Court Decision Number 65/PUU-XXI/2023 viewed from the perspective of legal purpose theory?

2. Method

This study employs a normative legal research method with statutory and conceptual approaches.¹² The statutory approach is used to analyze relevant legal provisions, particularly Article 280 paragraph (1) letter h of Law Number 7 of 2017 on General Elections, its explanatory note, and Constitutional Court Decision Number 65/PUU-XXI/2023, in order to identify normative ambiguities and the legal reasoning employed by the panel of judges. Meanwhile, the conceptual approach is applied to examine the decision through the lens of legal purpose theory, as articulated by legal scholars such as Rudolf von Jhering and Philipus M. Hadjon, with the aim of assessing whether the Constitutional Court's ruling has achieved the fundamental objectives of law namely justice, legal certainty, and societal benefit. Secondary data, consisting of primary legal materials (the Constitution, legislation, Constitutional Court decisions), secondary legal materials (books, journals, articles), and tertiary legal materials, are collected through literature study and analyzed qualitatively using content analysis techniques to generate a comprehensive and in-depth understanding of the legal issues under examination.¹³

3. Analysis of Constitutional Court Decision Number 65/PUU-XXI/2023 from the Perspective of Legal Purpose Theory

3.1. Justice

Judicial decisions are commonly referred to as "*judicium dei*" (the judgment of God), reflecting the principle that rulings must always be made in the name of justice and grounded in faith in the Almighty. Furthermore, such decisions are deemed final and conclusive "*res judicata pro veritate habitur*" meaning they are accepted as truth and

¹¹ Muhamad Rahman et al., "Putusan Mahkamah Konstitusi NOMOR 65/PUU-XXI/2023 Tentang Kampanye Calon Anggota Legislatif Di Lembaga Pendidikan," *RIO LAW JURNAL* 6, no. 1 (2025): 563–75, <https://doi.org/10.36355/rlj.v6i1.1637>.

¹² Irwansyah Irwansyah, *Penelitian Hukum; Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020).

¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Prenadamedia Group, 2014); Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum : Normatif & Empiris* (Pustaka Pelajar, 2010).

cannot be challenged further.¹⁴ As such, judicial decisions must emerge from a fair legal process that emphasizes substantive justice, not merely formal or procedural legality. The Constitutional Court's rulings are decisions at first and final instance, meaning there is no avenue for appeal or cassation through the Supreme Court.¹⁵

Justice is a fundamental principle within the theory of legal purpose, requiring that laws be applied fairly and without discrimination, ensuring equitable treatment for all parties involved.¹⁶ This concept emphasizes that every individual, regardless of social, economic, or political status, has the right to equal treatment under the law. Justice encompasses impartiality, decisions based on facts and law, and respect for human rights and the dignity of every person.¹⁷

The petitioners argued that the phrase in the explanatory note of Article 280 paragraph (1) letter h of Law Number 7 of 2017 "*Government facilities, places of worship, and educational institutions may be used if election participants attend without campaign attributes upon official invitation from the responsible party of the facility*" contradicts the 1945 Constitution. They contended that this explanatory provision creates a contradiction with the primary norm in Article 280, which explicitly prohibits the use of government facilities, places of worship, and educational institutions for campaign activities. The petitioners emphasized that allowing exceptions to this prohibition undermines the principle of electoral fairness, as it may result in unequal treatment among election participants.

According to the petitioners, achieving "equal treatment" to uphold justice in elections, as implied in the explanation of Article 280 paragraph (1) letter h, is unattainable. This is due to the fact that candidates with only a high school (SMA) or equivalent education have significantly less access to university campuses compared to those holding bachelor's degrees or higher. This disparity creates an imbalance in opportunities, favoring candidates with academic backgrounds or institutional connections.¹⁸

The Constitutional Court acknowledged the importance of restricting the use of certain locations for campaigning to preserve the integrity and neutrality of elections. Such restrictions are necessary to protect public spaces and prevent conflicts arising from the politicization of religious sites. The use of public facilities for campaign purposes must be regulated to avoid undermining social and religious values and to

¹⁴ Ahmad Ahmad et al., "Antara Otoritas dan Otonomi : Pertautan Hak Asasi Manusia dalam Praktik Eksekusi Putusan PTUN: Perlindungan HAM dalam Eksekusi Upaya Paksa Terhadap Putusan Peradilan Tata Usaha Negara," *Jurnal Konstitusi* 21, no. 3 (2024): 3, <https://doi.org/10.31078/jk2133>.

¹⁵ Samudra Putra Indratanto et al., "Asas Kepastian Hukum Dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara Dan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Ilmu Hukum* 16, no. 1 (2020).

¹⁶ Ahmad Ahmad, "Analysis of Abuse of Authority by Government Apparatus in the State Administrative Legal System," *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 1.

¹⁷ Gholin Noor Aulia Sari et al., "Tinjauan Filosofis Keadilan Restoratif Dalam Lensa Teori Keadilan," *Hukum Dan Politik Dalam Berbagai Perspektif* 3 (2024). 2024. 3.

¹⁸ Halaman 6 Salinan Putusan Nomor 65/PUU-XXI/2023

prevent societal polarization. Overall, the Court must consider these arguments within the broader context of safeguarding democracy, justice, electoral integrity, and preventing potential conflicts that could damage social cohesion.¹⁹

However, the outcome of Constitutional Court Decision Number 65/PUU-XXI/2023 appears inconsistent with Article 280 letter h of Law Number 7 of 2017, which clearly prohibits election organizers, participants, and campaign teams from using government facilities, places of worship, and educational institutions for campaigning. In practice, the Constitutional Court has permitted campaigning in educational institutions, whereas such activities should ideally be conducted in neutral venues.²⁰

On the other hand, in Decision Number 65/PUU-XXI/2023, the Constitutional Court made efforts to uphold justice by invalidating and reinterpreting provisions deemed unjust, particularly in protecting the petitioners' constitutional rights to fair electoral processes. For instance, the Court revised the interpretation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 on General Elections (State Gazette of the Republic of Indonesia Year 2017 Number 182, Supplement to the State Gazette Number 6109). The Court sought to provide a fair platform for election participants to convey their visions and missions to young voters in educational settings, thereby contributing to the development of informed and critical voters.

The judges' reasoning for allowing campaigning in educational institutions centered on the contradiction between the main text of Article 280 paragraph (1) letter h of Law Number 7 of 2017—which absolutely prohibits campaigning in educational institutions and the explanatory note, which provides an exception. This contradiction creates legal uncertainty (*contradictio in terminis*), which the Court found detrimental to citizens' constitutional rights. The absolute prohibition on campaigning in educational institutions was viewed as conflicting with citizens' constitutional right to participate in democratic processes, as guaranteed under Article 28D of the 1945 Constitution. Therefore, the Court permitted campaigning under two conditions: obtaining formal permission from the facility's management and attending without campaign attributes. The judges considered the utility (benefit) of allowing election participants to engage with young voters—the largest potential voter demographic while safeguarding the educational function and institutional neutrality of schools and universities. By imposing these conditions, the Court aimed to balance election participants' political rights with the educational mission of academic institutions.²¹

¹⁹ Budi Purwatiningsih and WISSL Polri, "Optimalisasi Penanggulangan Konflik Sosial Guna Mendukung Pemilu Damai 2024 Dalam Rangka Memelihara Kamtibmas," *Jurnal Sanyata Sumanasa Wira* 1 (2024): 63–70.

²⁰ Lihat [3.12] halaman 39-40 Putusan Salinan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023

²¹ Sonia Khoirunnisa, "Analisis Yuridis Terhadap Putusan Mahkamah Konstitusi Nomor 65/Puu-Xxi/2023 Tentang Pelaksanaan Kampanye Pemilihan Umum Di Lembaga Pendidikan" (skripsi, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2024), <https://repository.uin-suska.ac.id/80811/>.

Nevertheless, this ruling also raises concerns regarding the neutrality of civil servants (ASN) and the potential politicization of educational institutions—issues critical to substantive justice, as they may compromise the neutrality and independence of the educational environment.²² Although the Constitutional Court established specific conditions to balance freedom of expression with the protection of institutional neutrality, the enforcement and monitoring of these conditions pose significant challenges. The risk of ASN neutrality violations remains high, potentially disrupting the impartial academic atmosphere.²³

Radbruch's legal theory is particularly relevant here, as it underscores that justice should take precedence over legal certainty when the two are in conflict. This decision highlights a tension between legal certainty stemming from clear and consistent regulations—and justice concerning the protection of educational neutrality and equal political rights. While the Court's interpretation aims to enhance democratic participation, it may inadvertently undermine the very neutrality it seeks to protect.

The petitioners highlighted that allowing campaigns in educational institutions would be unfair to legislative candidates with only a high school education, as their access to university campuses would likely be limited compared to candidates with higher academic credentials or institutional affiliations. The Court acknowledged the importance of restricting campaign locations to maintain electoral integrity and neutrality. Yet, in its ruling, the Constitutional Court permitted campaigning in educational institutions.

Ultimately, the Court partially granted the petitioners' request by allowing campaigning in government facilities and educational institutions, provided that formal permission is obtained and no campaign attributes are used. This represents a recognition of the petitioners' constitutional rights. Procedurally, this decision delivers justice to the petitioners, as their rights are no longer subject to an absolute ban. However, substantive justice—particularly the protection of educational institutional neutrality and the impartiality of civil servants operating within these institutions remains unfulfilled.

3.2. Legal Certainty

Law must be clear, unambiguous, and reliable for both citizens and the government. In this decision, legal certainty is analyzed through the Constitutional Court's annulment of the explanatory note to Article 280 paragraph (1) letter h of Law Number 7 of 2017, which was deemed inconsistent with the main provision. This

²² Harlan H. Lihawa et al., "Mekanisme Pengamanan Data Yang Diterapkan Oleh Komisi Pemilihan Umum Menurut Undang-Undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi," *Yustisi* 12, no. 2 (2025): 201–15, <https://doi.org/10.32832/yustisi.v12i2.19918>.

²³ Dicky Andika Rauf et al., "Ekuivalensi Kebebasan Berekspresi Dan Perlindungan Nama Baik Pasca Perubahan Undang-Undang Informasi Dan Transaksi Elektronik," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 601–21, <https://doi.org/10.61104/alz.v3i2.1104>.

action aims to eliminate confusion and ambiguity in legal application, thereby enhancing legal certainty.²⁴

Legal certainty in statutory regulations is achieved when laws are drafted with clarity and logical consistency. Clarity prevents ambiguity or multiple interpretations, while a coherent structure ensures harmony with other applicable norms, avoiding contradictions or normative conflicts.²⁵ Uncertainty in legal provisions can lead to normative conflicts, manifesting as clashes between norms, weakened normative authority, or distortion of the intended meaning of the law.²⁶

The Constitutional Court held that the violation of the petitioners' constitutional rights was specific. Petitioner I (Handrey Mantiri) experienced the violation in relation to his right to vote. In the case of Petitioner II (Ong Yenny), although she was affiliated with a political party holding seats in the House of Representatives (DPR RI)—an institution involved in the legislative process—the Court found that her constitutional rights were directly infringed upon regarding her right to fair and equal participation as a voter in the electoral process, a right exclusively belonging to her. Thus, the petitioners' claims of constitutional rights violations were considered legally justified, as the explanatory note to Article 280 paragraph (1) letter h of Law Number 7 of 2017 created legal uncertainty and contradicted the principle of fair elections.²⁷

In its ruling, the Constitutional Court concluded that the explanatory note to Article 280 paragraph (1) letter h of Law Number 7 of 2017 failed to provide legal certainty for the petitioners, as guaranteed under Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Court ruled that the arguments submitted by the petitioners regarding the unconstitutionality of this provision were legally valid. This decision reinforces the boundaries applicable to freedom of expression and legal protection within the context of criminal regulations in Indonesia, in accordance with the principles enshrined in the 1945 Constitution.

In the researcher's view, the Constitutional Court's decision allowing campaigning in educational institutions under certain conditions aligns with Gustav Radbruch's theory of legal certainty, as it resolves ambiguity and contradiction within the existing regulations. Previously, Article 280 paragraph (1) letter h of the Election Law imposed an absolute prohibition on campaigning at educational institutions, yet the explanatory note introduced an exception, thereby creating legal uncertainty. By invalidating the contradictory explanatory provision, the Court eliminated this inconsistency and restored clarity to the legal framework.

²⁴ Jeane Neltje and Indrawieny Panjiyoga, "Nilai-Nilai Yang Tercakup Di Dalam Asas Kepastian Hukum," *Innovative: Journal of Social Science Research* 3, no. 5 (2023): 2034–39.

²⁵ Syahreza Ali Akbar Marali et al., "Penerapan batas Kewenangan Mahkamah Konstitusi dalam Memutus Norma yang bersifat Opened Legal Policy," *Legal Advice Journal Of Law* 2, no. 2 (2025): 2.

²⁶ Siti Halilah and Mhd Fakhrurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *Siyasah: Jurnal Hukum Tata Negara* 4, no. II (2021).

²⁷ Halaman 35 Salinan Putusan Nomor 65/PUU-XXI/2023

However, according to the researcher, Constitutional Court Decision Number 65/PUU-XXI/2023 contains certain inconsistencies concerning legal certainty, as it does not clearly specify the educational levels at which campaigning is permitted, nor does it provide detailed norms regarding the permitting mechanism or the permissible forms of campaign activities. The absence of such specifications creates ambiguity in implementation. Nevertheless, although Decision 65/PUU-XXI/2023 does not explicitly define the scope of educational institutions eligible for campaign use, this gap has been subsequently addressed in greater detail through the General Elections Commission Regulation (PKPU) Number 20 of 2023, which amends and completes the provisions of PKPU Number 15 of 2023 on General Election Campaigns.

Regulations regarding campaign restrictions in educational institutions are stipulated in Article 72A paragraphs (3) to (7), which state:²⁸

- 1) "Educational institutions as referred to in Article 72 paragraph (1) letter h include: a. buildings; b. courtyards; c. fields; and/or other areas designated by the facility manager."
- 2) "Educational institutions as referred to in paragraph (3) are higher education institutions, including: a. universities; b. institutes; c. colleges; d. polytechnics; e. academies; and/or f. community academies."
- 3) "Election campaigns at government facilities and educational institutions shall be conducted on Saturdays and/or Sundays."
- 4) "Methods of election campaigning at government facilities and educational institutions include: a. limited meetings; and b. face-to-face meetings."
- 5) "Participants in election campaigns at educational institutions as referred to in paragraph (5) must be members of the academic community who are not prohibited from participating in election campaign activities under applicable laws and regulations."

Provisions regarding the campaign permitting mechanism are regulated in Article 72B, which states:

- 1) "Election campaign officers must submit a formal request for campaign activity permission to the managers of government facilities and educational institutions."
- 2) "Managers of government facilities and educational institutions must apply the principles of fairness, transparency, proportionality, and neutrality when granting permission for election campaign activities, without favoring any particular election participant."
- 3) "Managers of educational institutions as referred to in paragraph (2) include: a. rectors at universities and institutes; b. heads at colleges; and c. directors at polytechnics, academies, and community academies."

²⁸ PKPU20/2023 et al., "Peraturan Komisi Pemilihan Umum Nomor 20 Tahun 2023 Tentang Perubahan Atas Peraturan Komisi Pemilihan Umum Nomor 15 Tahun 2023 Tentang Kampanye Pemilihan Umum," *Komisi Pemilihan Umum*, 2023, 1-23.

- 4) "Permission from the facility manager must be in the form of a written permit, at a minimum containing the following information: a. day; b. date; c. time; d. location of the activity; e. campaign method; f. campaign topic; and g. election participant."
- 5) "If the manager of a government facility grants permission as referred to in paragraph (4), the campaign officer must submit a copy to the Ministry responsible for internal affairs no later than one (1) day before the campaign activity."
- 6) "If the manager of an educational institution grants permission as referred to in paragraph (4), the campaign officer must submit a copy to the Ministry responsible for education or the Ministry responsible for religious affairs no later than one (1) day before the campaign activity."
- 7) "If the manager of a government or educational facility grants permission as referred to in paragraph (4), the campaign officer for presidential and vice-presidential candidate pairs and candidates for DPR membership must submit a copy no later than one (1) day before the campaign to: a. KPU (General Elections Commission); b. Bawaslu (Election Supervisory Agency); and c. the Indonesian National Police, at the appropriate level."
- 8) "If the manager of a government or educational facility grants permission as referred to in paragraph (4), the campaign officer for candidates for provincial DPRD and DPD membership must submit a copy no later than one (1) day before the campaign to: a. Provincial KPU; b. Provincial Bawaslu; and c. the Indonesian National Police, at the appropriate level."
- 9) "If the manager of a government or educational facility grants permission as referred to in paragraph (4), the campaign officer for candidates for district/city DPRD membership must submit a copy no later than one (1) day before the campaign to: a. District/City KPU; b. District/City Bawaslu; and c. the Indonesian National Police, at the appropriate level."

In the researcher's opinion, the issuance of PKPU Number 20 of 2023 has clarified the restrictions and permitting mechanisms for campaigning at government facilities and educational institutions, thereby significantly improving legal certainty. This regulation serves as a follow-up and adjustment to Constitutional Court Decision Number 65/PUU-XXI/2023, which permits campaigning in educational and government facilities under the conditions of obtaining formal permission from the facility manager and refraining from using campaign attributes. As such, PKPU 20/2023 operationalizes the Constitutional Court's ruling into a more concrete and enforceable legal framework, reinforcing predictability and accountability in the electoral process.

3.3. Utility (Benefit)

Utility is a legal value that refers to the function of law in delivering tangible and positive benefits to the broader society. Law must not only be fair and certain in a normative sense, but also effective in creating social conditions that are advantageous

and beneficial to public welfare.²⁹ Radbruch views utility as a goal-oriented legal value—law should serve as an instrument to advance the common good, enhance societal well-being, and prevent social harm and unrest. Utility also implies that law must be flexible and adaptive to social changes and evolving public needs to remain relevant and function optimally.³⁰

The theory of legal utilitarianism explains that laws should maximize benefit for society and support the realization of the common good. In the context of Constitutional Court Decision Number 65/PUU-XXI/2023—which permits election campaigning in educational institutions under the conditions of formal permission and absence of campaign attributes—utilitarian theory helps explain the primary benefits of this policy, particularly for young voters.

In the researcher's view, Constitutional Court Decision Number 65/PUU-XXI/2023 reflects the theory of legal utility by generating concrete benefits for youth in the political selection process. By allowing campaigning in higher education institutions, students and academic communities gain direct opportunities to meet and assess political candidates up close and in a transparent manner. This provides them with richer and deeper access to information compared to passive exposure through mass media or off-campus campaign events.

This aligns with the principle of utility, as it enhances the quality of young voters, enabling them to make informed decisions based on better understanding. Campaigning within educational environments allows students to engage in dialogue, ask questions, and critically examine legislative or executive candidates directly. This process fosters the development of rational and critical voters, rather than passive ones.³¹ Thus, the decision delivers significant social benefits by contributing to a healthier and more sustainable democracy the very purpose of law in the context of elections.

Furthermore, in the researcher's opinion, Constitutional Court Decision Number 65/PUU-XXI/2023 embodies the theory of legal purpose, particularly in terms of utility, by opening campaign spaces in educational institutions that were previously subject to an absolute ban.³² The ruling seeks to generate greater benefit for society and democracy by expanding political communication in educational settings—

²⁹ Ahmad Ahmad et al., "Convergence of Constitutional Interpretation to the Test of Laws Through a Constitutional Dialogue Approach: Konvergensi Penafsiran Konstitusional Terhadap Pengujian Undang-Undang Melalui Pendekatan Constitutional Dialogue," *Jurnal Konstitusi* 20, no. 3 (2023): 3, <https://doi.org/10.31078/jk2038>.

³⁰ Ade Azharie, "Pemanfaatan Hukum Sebagai Sarana Untuk Mencapai Keadilan Sosial," *Lex Aeterna Law Journal* 1, no. 2 (2023): 72–90.

³¹ Ahmad Ahmad and Novendri M. Nggilu, *Constitutional Dialogue: Menguatkan Intraksi Menekan Dominasi (Konvergensi Terhadap Pengujian Norma Di Mahkamah Konstitusi)* (UII Press, 2023).

³² Ahmad Wijaya and Nasran Nasran, "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries," *Jurnal Legalitas* 14, no. 2 (2021): 2, <https://doi.org/10.33756/jelta.v14i2.11809>.

especially universities – thereby enhancing political participation among educated and eligible voters.

As previously discussed, campaigning indeed offers many benefits for young voters in selecting future leaders. However, it would be more beneficial to prioritize political education over direct campaigning, as political education provides broader and more sustainable advantages in cultivating intelligent, critical, and responsible citizens. Political education strengthens the foundation of a healthy democracy, whereas campaigning tends to be pragmatic, temporary, and prone to information distortion and unhealthy politicization – especially when conducted in educational environments without strict supervision.

Direct campaigning is effective in personalizing candidates and creating emotional connections with voters. However, it is often short-term, image-focused, and vulnerable to manipulation of information. While restricting campaigning may hinder candidates' ability to convey their vision directly, it also reduces the risk of excessive politicization and helps preserve the neutrality of civil servants (ASN).

3.4. Case Examples

Monitoring results from the National Civil Service Commission (KASN) in 2023 revealed that between 2020 and 2023, 1,596 civil servants were confirmed to have violated neutrality regulations. Of these, 26.5% (533) were functional-position ASN, and among them, 70% (373) were educators, including teachers and lecturers. The most common violations included: campaigning or social media promotion (34.9%), organizing activities indicating political bias (27.8%), taking photos with prospective candidates or candidate pairs (14.5%), and attending campaign events wearing party or civil service attributes (4.5%).³³

During the 2024 election period, the West Java Election Supervisory Agency (Bawaslu Jawa Barat) handled 20 cases of ASN neutrality violations, including teachers and education personnel. In seven confirmed cases, district heads (camat), school principals, and teachers – classified as ASN – were found to have violated neutrality regulations in regions such as Bogor, Ciamis, Garut, Karawang, Sukabumi, Kuningan, and Tasikmalaya. For instance, a viral video surfaced showing a civil servant teacher in Tasikmalaya allegedly engaging in partisan activities or campaigning using political symbols in support of a specific candidate.

Motivations for Violations include: personal or familial ties between educators and election candidates; pragmatic interests, such as expectations of promotion to structural positions; and temptations faced by lecturers to secure structural roles

³³ Sabilla and Widodo, “Analisis Putusan Mahkamah Konstitusi Nomor 65/Puu-Xxi/2023 Terkait Kampanye Pemilu Di Fasilitas Pemerintah Dan Tempat Pendidikan.”

within universities or external appointments in government, political parties, or private sectors.³⁴

One documented case, registered under number 03/TM/PP/Kota/13.10/2019, involved Mr. Wiryono Setiana, a civil servant and lecturer at a university in Bandung. He was accused of participating in a campaign event at an educational institution by distributing stickers bearing the image of a presidential and vice-presidential candidate pair. The case was subsequently handled by the National Civil Service Commission (KASN), which took disciplinary actions in accordance with applicable legal provisions.³⁵

On one hand, the Constitutional Court's decision to allow election campaigning in educational institutions can be seen as part of political education, as stipulated in Article 267 paragraph (1) of the Election Law, potentially encouraging political participation among youth. Exposure to candidates' visions, missions, programs, and self-images can help academic communities think critically and rationally when making political choices.³⁶ On the other hand, permitting educational institutions to be used for campaigning increases the risk that these institutions may lose their neutrality and become arenas for practical politics.

Ki Darmaningtyas, an education observer from the Persatuan Keluarga Besar Taman Siswa (Taman Siswa Family Association), criticized the Constitutional Court's decision, arguing that it was unwise. He emphasized that educational institutions must remain neutral and warned that such venues might only invite candidates favored by the management, potentially triggering internal conflicts. Similarly, Retno Listyarti, Chair of the Expert Council of the Indonesian Teachers' Union Federation (FSGI), stated that educational institutions and government facilities are neutral public spaces and should not be used for electoral campaigning.³⁷

5. Conclusion

In conclusion, Constitutional Court Decision Number 65/PUU-XXI/2023, while successful in enhancing legal certainty by eliminating the contradiction between the main provision and the explanatory note of Article 280 paragraph (1) letter h of the Election Law, and in promoting utility by enabling meaningful political engagement in educational institutions, ultimately falls short of fulfilling the principle of justice as central to Radbruch's theory of law. The ruling's reliance on invitation-based access to academic venues introduces structural inequities that disadvantage candidates with limited educational or institutional connections, thereby undermining equal opportunity and fair competition. The discretionary power of institutional leaders in

³⁴ <https://perpustakaan.dpr.go.id/epaper/index/popup/id/18825>

³⁵ Deni Aulia, "Strategi Bawaslu Kota Bandung Dalam Melakukan Pengawasan Netralitas Aparatur Sipil Negara (ASN) Pada Pemilu 2019," preprint, UIN Sunan Gunung Djati Bandung, 2023.

³⁶ Suwito et al., "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (2023): 10, <https://doi.org/10.55908/sdgs.v11i10.1261>.

³⁷ A Amelia et al., "Implikasi Putusan MK No. 65/Puu-Xxi/2023 Terhadap Prinsip Keadilan Pemilu Di Indonesia," *Media Hukum Indonesia (MHI)* 3, no. 3 (2025).

granting permission also risks bias and perceived partisanship, threatening the neutrality of educational spaces and the fairness of the electoral process. As Radbruch emphasizes that justice must prevail over legal certainty and utility when they conflict, this decision despite its rationality and social benefits—remains fundamentally incomplete, as it sacrifices substantive justice on the altar of procedural clarity and societal utility, thus calling for a more equitable legal framework that ensures fairness not only in form but also in practice.

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