

SEPARATION OF NATIONAL AND LOCAL ELECTIONS AFTER THE CONSTITUTIONAL COURT DECISION 135/2024: IMPLICATIONS FOR THE DURATION OF TENURE AND THE FILLING OF REGIONAL HEAD VACANCIES

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ABSTRACT

The Constitutional Court Decision Number 135/PUU-XXII/2024 is present in response to the excessive burden of the 2024 simultaneous elections which interferes with the quality of democracy and the safety of organizers and voters. This research uses a juridical-normative method with a legislative and conceptual approach. The results of the study show that the juridical implications of this decision cause a time gap of about 2 to 2.5 years between the 2029 National Election and the 2031 Regional Election, which has the potential to cause a vacancy in the position of regional head. Legal measures that can be taken to overcome this vacancy include the appointment of the Acting Regional Head, strengthening the legitimacy and limits of his authority, comprehensive revision of the law, and the issuance of Perppu. The Constitutional Court emphasized that this separation does not reduce the fixed term of office for 5 years that has been regulated in the law. Thus, this decision ensures that the 2029 and 2031 elections are more manageable, efficient, and constitutional without harming the 1945 Constitution of the Republic of Indonesia.

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INTRODUCTION

General elections are a fundamental pillar in the modern democratic system, becoming the main instrument for the people to channel their sovereignty in electing leaders and representatives of the people. Indonesia as a democratic country has held periodic elections every five years as mandated by Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The long journey of elections in Indonesia starting from the Old Order, New Order, to Reform era has shaped an electoral system that continues to grow along with the demands of

democratization. History records that the first post-independence election was held in 1955, then continued with various dynamics until the Reform era which brought fundamental changes in the Indonesian constitutional system (Satriawan et al., 2026).

The Reform era became an important turning point in the history of Indonesian elections. After the fall of the New Order regime, Indonesia entered a phase of democratic transition which was marked by the holding of elections in 1999 as the first post-Suharto election. At this time, the people did not have the right to directly elect the President, but significant changes occurred after the Fourth Amendment to the 1945 Constitution in 2002. Article 6A paragraph (1) of the 1945 Constitution affirms that the President and Vice President are elected in one pair directly by the people, which then became the basis for the first direct presidential election in 2004 (Santoso & Budhiati, 2021). This open election system is a new milestone in which sovereignty is fully in the hands of the people, not only in electing the President but also the legislative candidates directly. This change in the system also has an impact on the election of regional heads which was previously determined by the central government, now it has turned into direct elections by the people as a manifestation of the principles of democracy and regional autonomy.

The simultaneity of elections in Indonesia continues to be a constitutional debate to find the most appropriate form. The Constitutional Court Decision Number 14/PUU-XI/2013 states that Indonesia implements a simultaneous election system, which combines legislative and executive elections. The peak will occur in the 2024 election, where the Presidential Election, the Central Legislative Election, and the Regional Head Election are scheduled at the same time for one year. However, the application of this total simultaneity model raises various serious problems. Based on the considerations in the Constitutional Court Decision Number 135/PUU-XXII/2024, the holding of all types of general elections, including the election of regional heads in the same year, results in a number of stages that cannot be avoided, thus causing a pile of workload for election organizers which within reasonable reasoning limits affects the quality of the implementation of general elections.

The problem of the five-box simultaneous elections implemented in 2024 is the background of urgency for the evaluation of the election system in Indonesia. First, the high cognitive burden of voters who are faced with the complexity of choices in a limited time, where voters tend to focus only on the presidential election while legislative ballots are often voted on without rational consideration of the candidate's track record. Second, technical failures such as the Recapitulation Information System (Sirekap) which is actually a source of noise due to the unpreparedness of technological infrastructure and the many data input errors, thus giving rise to the delegitimization of the election results in the eyes of the public (Cintanesa et al., 2025). Third, the health and safety problems of election organizers, where data from the General Election Commission recorded that 894 KPPS officers died and thousands of others experienced serious health problems due to excessive workload in the implementation of the 2019 Election (Aisyah & Wulandari, 2025). Fourth, the weakening of the institutionalization of political parties due to the simultaneous system triggers the party's dependence on the figure of presidential candidates (coattail effect), where medium and small parties have difficulty building ideological identities because the energy is absorbed for the presidential election coalition (Gunawan et al., 2025).

Responding to these problems, the Constitutional Court issued Decision Number 135/PUU-XXII/2024 on June 26, 2024 as a new milestone (landmark decision) that reconstructs the constitutional schedule. This decision was born from the application for testing of Law Number 7 of 2017 concerning General Elections and Law Number 8 of 2015 concerning the Election of Regional Heads submitted by the Association for Elections and Democracy Foundation (Perludem). The Constitutional Court, in its position as a single constitutional court that has the nature of final and binding decisions, has decided that the upcoming elections, namely in 2029, will no longer adhere to the simultaneous election system between the National Election and the Local (Regional) Election. This decision stipulates the separation between the two election regimes with a minimum time gap of 2 (two) years or a maximum of 2 (two) years and 6 (six) months (Constitutional Court Decision Number 135/PUU-XXII/2024).

The constitutional basis of this decision refers to Article 24C of the 1945 Constitution of the Republic of Indonesia which gives the authority to the Constitutional Court to test the law against the Constitution. The Court is of the opinion that the simultaneous implementation of National and Regional Simultaneous Elections is not in line with the principle of people's sovereignty and reduces the effectiveness of democracy. This separation aims to create more effective and efficient election conditions so that it can reduce the workload of elections and produce a healthier quality of democracy. Former Chairman of the Constitutional Court, Prof. Jimly Asshiddiqie, in his opinion said that doctrinally and conceptually, the separation of the National Election and Regional Election regimes is the right and ideal legal step. This decision restores the essence of governance that is in harmony with the division of central-regional affairs in the 1945 Constitution and is considered to be able to rationalize the technical burden of elections and restore voters' focus on regional issues that are often drowned out by the issue of national presidential elections. The Constitutional Court also plays the role of the protector of democracy and the final interpreter of the constitution who has the obligation to ensure that the implementation of democracy in Indonesia is always in accordance with the principles of democracy contained in the constitution.

The Constitutional Court's decision stated that Article 167 paragraph (3) and Article 347 paragraph (1) of Law Number 7 of 2017 and Article 3 paragraph (1) of Law Number 8 of 2015 are contrary to the 1945 Constitution of the Republic of Indonesia and do not have conditionally binding legal force, as long as in the future it is not interpreted that voting for the National Election and Regional Elections will be held separately with a certain time gap. Thus, future elections will be divided into two major groups: National General Elections to elect the President and Vice President, members of the House of Representatives, and members of the DPD which will be held in 2029; and Regional General Elections (Local) to elect Governors, Regents/Mayors, and members of the Provincial and Regency/City DPRD which will be held in 2031. This separation is not just a change in schedule, but an attempt to engineer the electoral system to create a healthier democratic ecosystem where voters are smarter, organizers are more professional, and political parties are more strongly institutionalized.

The juridical implications of this decision on the duration of the term of office of regional heads are a central issue that requires in-depth study. Fundamentally, the Constitutional Court Decision Number 135/PUU-XXII/2024 does not reduce the term of office of officials/regional heads even though the election and inauguration processes are separated from national elections. The Court expressly emphasized that the principle of efficiency of the election schedule cannot be used as a justification for reducing the right of fixed-term office for five full years or sixty months, as mandated by the people's mandate. This is supported by Article 60 of Law Number 23 of 2014 concerning Regional Government which states that the term of office of the Regional Head is for 5 (five) years from the inauguration, as well as Article 162 paragraphs (1) and (2) of Law Number 10 of 2016 concerning Regional Elections which affirms that the Regional Head holds office for 5 (five) years from the date of inauguration until the inauguration of the new Regional Head. Thus, although the Constitutional Court Decision Number 135/PUU-XXII/2024 has given birth to a new constitutional standard, it remains on the principle that the difference in election time must not hurt the fixed-term term that has been determined by law.

However, the logical consequence of the separation of the election schedule is the emergence of a time gap between the end of the term of office of the regional head as a result of the 2024 Regional Elections which ends in 2029 and the implementation of the next Regional Election in 2031. This condition creates a transition period of about 2 (two) years to 2 (two) years and 6 (six) months where there is a vacuum of power for regional heads. The power vacuum or *bestuursvacuüm* from the perspective of constitutional law is a serious threat to legal certainty, because every legal action of the government must come from the authority inherent in the position filled. Referring to Jan M. Otto's thoughts, legal certainty requires clear, consistent, and enforceable rules by authorities that have legal legitimacy (Harahap, 2015). If there is a vacancy in the local government due to an insynchronous election design, then there will automatically be a discontinuity of authority that harms the principle of legal certainty. The theory of legal certainty

put forward by Gustav Radbruch also emphasizes that in law there are three basic values, namely justice, utility, and legal certainty itself, where legal certainty is a key element of law without which law cannot exist (Jullyano & Sulistyawan, 2019).

Efforts to overcome the vacancy of regional head positions during the transition period are a crucial aspect in ensuring government stability and legal certainty. Some alternative solutions that can be taken include the appointment of Acting Regional Heads based on Article 201 paragraph (9) to paragraph (11) of Law Number 10 of 2016 and Law Number 23 of 2014 concerning Regional Government, strengthening the legitimacy and limitation of the authority of Acting Heads through Government Regulations, legislative review or revision of the Election and Regional Election Law, and the issuance of Government Regulations in Lieu of Law (Perppu) in the event of a crisis that coercion as stipulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, the appointment of Acting Officials for too long is often criticized for the weak democratic legitimacy because the Acting President is not directly elected by the people, thus creating a paradox in Indonesia's democratic system which is built on the basis of decentralization and direct elections (Nababan et al., 2025). Research (Andana, 2025) also revealed that this condition requires a clear transition period arrangement, a legal basis for the extension of the term of office, and a mechanism for the temporary filling of the position of Acting Regional Head.

The dynamics after this decision also highlight the role of the Constitutional Court as a negative legislator who only cancels unconstitutional articles without making new technical rules regarding the filling of the transition of positions. As reminded by Mahfud MD, the success of the new paradigm of electoral separation initiated by the Constitutional Court is highly dependent on the alertness of lawmakers. Without a quick and careful synchronization of regulations after the Constitutional Court Decision No. 135/PUU-XXII/2024, the transition period for filling the position of regional head has the potential to give birth to new legal problems that hurt the principle of legal certainty itself. Lawmakers are obliged to draft new Transitional Provisions (Transition Articles) in the Election/Regional Elections Law to cover the transition period in the future, either through a limited extension of the term of office of regional heads until the new local election schedule arrives or the preparation of a rigid transition schedule so that filling by the Acting Chair does not last too long which can disrupt regional political stability.

The separation of national elections from regional elections has a positive impact on the quality of democracy, including making voters focus their attention on issues relevant to the election level, making the work of election organizers more manageable so that the quality of election implementation is more guaranteed, and providing a time gap for political parties to consolidate and regenerate without having to prepare candidates at three levels at the same time (Decision Constitutional Court Number 135/PUU-XXII/2024). However, this separation also has consequences for the continuity of local government which requires serious handling so as not to disrupt political stability and public services at the regional level. Research (Pamungkas & Asmorojati, 2024) shows that the two options that emerged, namely the appointment of acting regional heads and the extension of the term of office of the DPRD, both pose legitimacy problems, but the option of appointing acting regional heads is considered more proportionate to maintain the continuity of local government and avoid power vacancies, with the note that it must be based on clear, limited, and constitutional transitional regulations.

METHOD

This research uses a type of juridical-normative research, which is a scientific research procedure to find the truth based on legal scientific logic from the normative side. Juridical-normative research is considered a theoretical research because in its analysis it always involves doctrines or principles related to legal science (Ibrahim, 2006). This type of research was chosen because it is in accordance with the object of the study being studied, namely the implications of the Constitutional Court Decision Number 135/PUU-XXII/2024 which is a normative legal product that needs to be studied from the perspective of laws and regulations and constitutional law doctrines. This research

is studied based on positive law in Indonesia which is adjusted to the problem to be analyzed through differences and similarities between legal sources and one another (Muhaimin, 2020). Using a juridical-normative approach, this study is not intended to test empirical truth in the field, but to analyze the consistency and coherence of applicable legal norms and their implications for the filling of regional head positions after the Constitutional Court's decision.

The research approach used in this juridical-normative research consists of two main approaches. First, the statute approach which is an approach to study and study laws and regulations related to the Constitutional Court and Elections. This approach is used to analyze in depth the Constitutional Court Decision Number 135/PUU-XXII/2024 concerning the Separation of National and Local General Elections, Law Number 7 of 2017 concerning General Elections, Law Number 10 of 2016 concerning Regional Elections, Law Number 23 of 2014 concerning Regional Government, and other laws and regulations relevant to the subject matter. Second, the conceptual approach is an approach that uses views or doctrines that have developed in the field of law, aiming to produce interesting objects from a practical perspective and knowledge. The conceptual approach helps to determine the meaning of words precisely and explain a discussion more clearly, especially in understanding concepts such as juridical implications, a vacuum of power, legal certainty, and democracy which are the theoretical foundations of this study.

The sources of legal materials used in this study consist of three types of legal materials. Primary legal material is legal material consisting of applicable legal rules and it has been ensured that these rules must be based on a hierarchical order starting from the 1945 Constitution, the MPR Tap, Laws, Government Regulations, and other regulations under it. The laws used in writing this thesis are the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Decision Number 135/PUU-XXII/2024, Law Number 7 of 2017 concerning General Elections, Law Number 10 of 2016 concerning the Election of Regional Heads, Law Number 23 of 2014 concerning Regional Government, and other implementing regulations such as relevant Government Regulations and Regulations of the Minister of Home Affairs. Secondary legal materials are legal materials obtained through texts, journals, expert opinions, and previous related writings or research, including constitutional law textbooks, scientific articles, and previous research results that discuss the Constitutional Court, elections, and local government. Tertiary legal materials are legal materials that provide instructions or explanations of primary and secondary legal materials, such as the Great Dictionary of the Indonesian Language (KBBI) and legal dictionaries used to clarify terminology and legal terms used in research.

The technique of collecting legal materials used by the author to compile this research is a literature study, which is to look for concepts, principles, theories, expert or expert opinions as well as writing or discoveries that are related to the problems discussed. The literature can be in the form of laws and regulations, scientific papers, articles, writings by scholars, and other similar sources. Based on legal materials obtained through literature studies, laws and regulations, journals, previous research, articles and other related materials, the researcher will process these materials using descriptive-analysis techniques. Descriptive-analysis technique is a method to describe the problem that is being researched through description, then compiled through writing in the form of a thesis based on legal materials that have been collected. This descriptive-analysis approach allows the researcher to systematically describe the implications of the Constitutional Court Decision Number 135/PUU-XXII/2024 on the duration of the term of office of regional heads, as well as critically analyze various legal remedies that can be taken to overcome the vacancies that arise, while adhering to the principles of constitutional law and legal certainty as the basis of the analysis.

RESULT AND DISCUSSION

New Paradigm of Election Simultaneity After the Constitutional Court Decision Number 135/PUU-XXII/2024

The Constitutional Court Decision Number 135/PUU-XXII/2024, which was read on June 26, 2024, is a new landmark *decision* in the Indonesian constitutional system. This decision was born from a request for a law test submitted by the Association Foundation for Elections and Democracy (Perludem) against a number of articles in Law Number 7 of 2017 concerning General Elections and Law Number 8 of 2015 concerning Regional Head Elections. The Constitutional Court, in its position as *the guardian of the constitution* and *the final interpreter of the constitution*,

ruled that the five-box simultaneous election system that has been implemented in the 2019 and 2024 elections is no longer in accordance with the principles of people's sovereignty and the effectiveness of democracy.

This decision expressly states that Article 167 paragraph (3) and Article 347 paragraph (1) of Law Number 7 of 2017 and Article 3 paragraph (1) of Law Number 8 of 2015 are contrary to the 1945 Constitution of the Republic of Indonesia and do not have conditionally binding legal force, as long as in the future it is not interpreted that voting for the National Election and Regional Elections will be held separately with a minimum time interval of 2 (two) years or a maximum of 2 (two) years 6 (six) months. Thus, this decision ends the five-box election era and divides the electoral regime into two different clusters: the National Election (electing the President/Vice President, members of the House of Representatives, and members of the DPD) which will be held in 2029, and the Regional/Local Elections (electing Governors, Regents/Mayors, and members of the Provincial and Regency/City DPRD) which will be held in 2031 (Constitutional Court Decision Number 135/PUU-XXII/2024).

Table 1. Scheme for the Implementation of National and Regional Simultaneous Elections After the Constitutional Court Decision Number 135/PUU-XXII/2024

Grouping of Implementation	Election	Types of Elections	Current Term of Tenure	Next Election
National Elections		President	2024-2029	2029
National Elections		DPR	2024-2029	2029
National Elections		DPD	2024-2029	2029
Regional Elections		Governors, Regents, and Mayors	2025-2031	2031
Regional Elections		Provincial Parliament	2025-2031	2031
Regional Elections		Regency/City DPRD	2025-2031	2031

Source: Processed from Constitutional Court Decision Number 135/PUU-XXII/2024

The constitutional basis used by the Court in this decision refers to Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia concerning the sovereignty of the people, Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia concerning the democratic election of regional heads, Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia concerning the principle of elections, and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia concerning fair legal certainty. The Court held that the five-box simultaneous elections have created an excessive cognitive burden on voters, technical failures that have triggered a crisis of trust, health and safety concerns for election organizers, and undermined the institutionalization of political parties because the concurrent system has triggered the party's dependence on the figure of presidential candidates (*coattail effect*) (Gunawan et al., 2025).

The separation of the electoral regime is not just a change in schedule, but an effort to engineer the electoral system to create a healthier democratic ecosystem. Former Chairman of the Constitutional Court, Prof. Jimly Asshiddiqie, in his opinion said that doctrinally and conceptually, the separation of the National Election and Regional Election regimes is the right and ideal legal step. This decision restores the essence of governance that is in line with the division of central-regional affairs in the 1945 Constitution and is considered to be able to rationalize the technical burden of elections and restore voters' focus on regional issues that are often drowned out by the issue of national presidential elections.

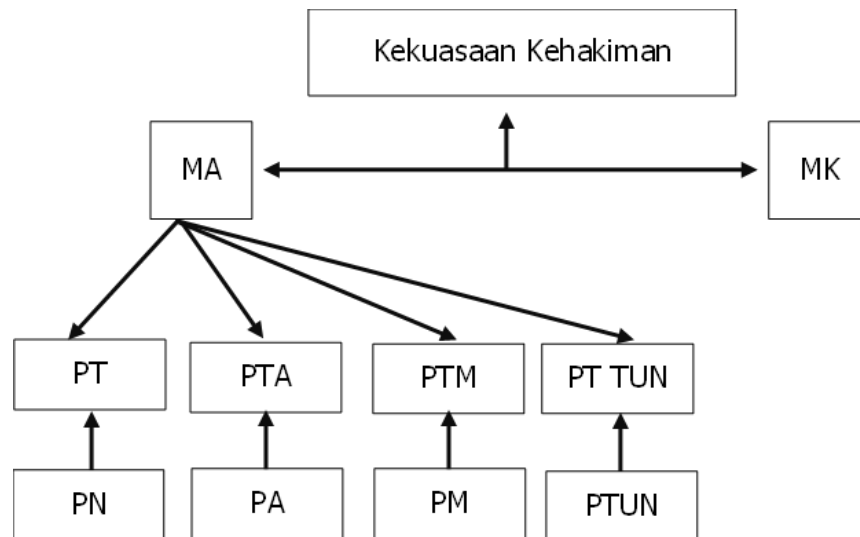


Figure 1 Structure of Judicial Power in Indonesia

The picture above shows the position of the Constitutional Court as one of the actors of judicial power that is equal and equal to the Supreme Court of the Republic of Indonesia. The Constitutional Court and the Supreme Court are both executors of the judicial branch (*Judiciary*) which is independent and separate from other branches of power, namely the government (*Executive*) and deliberative-representative institutions (*Legislature*). As a single constitutional court, the Constitutional Court has the nature of a final and binding decision (*Final and binding*) which automatically acquires permanent legal force (*force of res judicata*) immediately after it is read in an open plenary session, thus closing all loopholes for further and binding legal remedies in general (*erga omnes*) to all organs of the state (Konstitusi, 2010).

The new paradigm of election simultaneity formed through the Constitutional Court Decision Number 135/PUU-XXII/2024 can be analyzed using Juridical Implications Theoryst submitted by (Simbolon & Sh, 2022). According to this theory, legal consequences have three main elements: the emergence of legal circumstances as a result of legal acts, the emergence of legal relationships involving rights and obligations between legal subjects, and the emergence of sanctions when a violation of the law occurs. This Constitutional Court decision is a legal action (*Legal act*) which is *constitutive*, that is, to change, abolish, or create a new state of law. In this case, the Constitutional Court has created a new legal situation in the form of the separation of national and regional election regimes that were previously carried out simultaneously. The legal consequences of this judgment are generally binding (*erga omnes*) and must be implemented by all state institutions including the President and the House of Representatives.

This decision also reflects the function of the Constitutional Court as a *Negative Legislators* Explained by (Asshiddiqie, 2011), i.e. an institution that has the authority to invalidate unconstitutional legal norms without making new technical rules that are regulatory (*Regulating*). This function is in line with the position of the Constitutional Court as the guardian of the constitution (*The Guardian of the Constitution*) which ensures that any legal product does not contradict the basic norms of the state. However, this decision has drawn criticism because it is considered to have exceeded the limits of judicial authority by entering the realm of legislative policy through the formation of new norms that should be the authority of lawmakers. As reminded by Mahfud MD, the success of the new paradigm of electoral separation initiated by the Constitutional Court is highly dependent on the promptness of lawmakers in drafting adequate transitional regulations.

Implications of the Decision on the Duration of the Regional Head of Term and the Occurrence of Vacancies

The Constitutional Court Decision Number 135/PUU-XXII/2024 has significant juridical consequences for the duration of the term of office of regional heads. Fundamentally, this decision does not reduce the term of office of officials/regional heads even though the election and inauguration process are separated from the national elections. The Court expressly emphasized that the principle of election schedule efficiency cannot be used as a justification for reducing the right *to hold fixed term* positions for five full years or sixty months, as mandated by the people's mandate (Constitutional Court Decision Number 135/PUU-XXII/2024). This is supported by Article 60 of Law Number 23 of 2014 concerning Regional Government which states that the term of office of the Regional Head is for 5 (five) years from the inauguration, as well as Article 162 paragraphs (1) and (2) of Law Number 10 of 2016 concerning Regional Elections which affirms that the Regional Head holds office for 5 (five) years from the date of inauguration until the inauguration of the new Regional Head.

However, the separation of the election schedule causes a *time gap* between the end of the term of office of the regional head and the implementation of the next regional election. Regional heads as a result of the 2024 Regional Elections will complete their term of office in 2029 (for those inaugurated in 2024) or in 2030 (for those inaugurated in 2025), while the next Regional Election will only be held in 2031 in accordance with the new design set by the Constitutional Court (Constitutional Court Decision Number 135/PUU-XXII/2024). This condition creates a transition period of about 2 (two) years to 2 (two) years and 6 (six) months where there is a vacancy in the position of regional head throughout Indonesia.

Table 2 Duration of Term of Office and Potential Vacancies of Regional Head Positions

Types of Regional Heads	Year of Inauguration	End of Term	Implementation of the Next Election	Duration of Vacancy
Governor (2024 Regional Election Results)	2025	2030	2031	1 year
Regent/Mayor (results of the 2024 Regional Elections)	2025	2030	2031	1 year
Governor (2024 Regional Election Results)	2024	2029	2031	2 years
Regent/Mayor (results of the 2024 Regional Elections)	2024	2029	2031	2 years

Source: Processed from Constitutional Court Decision Number 135/PUU-XXII/2024 and Law Number 10 of 2016

The scope of constitutional law affirms that the existence of vacancies or *Board vacuum* constitutes a serious threat to the fulfilment of the principle of legal certainty (*Principle of Reasonableness*). If there is a vacancy in the local government due to an insynchronous election design, then there will automatically be a discontinuity of authority that harms the principle of legal certainty. This is because every government legal action (*Administrative act*) must be sourced from the authority attached to the position being filled (Nababan et al., 2025).

In addition, the separation of the election schedule also has an impact on the term of office of DPRD members as a result of the 2024 election which is not in sync with the 2031 Regional Election schedule. Members of the DPRD who are inaugurated in 2024 will end their term of office in 2029, while the next regional legislative election will only be held in 2031. The potential for the extension of the term of office of the DPRD without a new mandate from the people raises legitimacy problems and has the potential to reduce the quality of regional democracy (Enrico Gustian Isvardo & Ridham Priskap, 2022).

The implications of the decision on the duration of the term of office of regional heads can be analyzed using Legal Certainty Theory presented by Gustav Radbruch. Radbruch stated that in the law there are three basic values, namely justice (*Right to Vote*), benefits (*zweckmassigkeit*), and legal certainty (*Rechtssicherheit*) itself. These

three basic values are key elements of law, without which law cannot exist (Julyano & Sulistyawan, 2019). In the context of this Constitutional Court decision, there is a clash between the three basic values.

From the point of view of legal certainty (*Rechtssicherheit*), the Constitutional Court's decision has created new uncertainty regarding the mechanism for filling the position of regional head during the transition period. The absence of clear rules regarding the filling of vacancies creates a vacancy of norms (*vacuum or standard*) which has the potential to cause abuse of authority by the central government in appointing Acting Regional Heads. From the point of view of justice (*Right to Vote*), the appointment of the Acting President for too long is often criticized because the Acting President is not directly elected by the people, so that it is weak in direct democratic legitimacy and has the potential to reduce the spirit of local democracy. From the point of view of usefulness (*zweckmassigkeit*), the separation of elections aims to improve the quality of democracy and reduce the technical burden on election organizers, but on the other hand it poses a new problem in the form of long vacancies (Aisyah & Wulandari, 2025).

Referring to Jan M. Otto's thoughts, legal certainty requires clear, consistent, and enforceable rules by authorities that have legal legitimacy (Andana, 2025). If there is a vacancy in the local government due to an insynchronous election design, then there will automatically be a discontinuity of authority that harms the principle of legal certainty. Radbruch in book quotes belonging to (Mertokusumo, 1986) emphasized that when there is a major clash during the constitutional transition, legal certainty must be prioritized over justice and utility, on the grounds that order and certainty are the main prerequisites for justice and utility itself to be realized in the future.

Research (Andana, 2025) also revealed that this decision has implications for the vacancy of the position of Regional Heads and DPRD members due to the term of office that ends in 2029 with the schedule for Regional Elections to be held in 2031. This condition requires a clear transition period arrangement, a legal basis for the extension of the term of office, and a mechanism for the temporary filling of the position of Acting Regional Head in anticipation of a power vacuum. Research (Br Sitepu, 2024) also emphasized that both the appointment of the Acting Governor and the extension of the DPRD position reflect the dilemma between maintaining government stability and maintaining the principle of electoral democracy, so clear, limited, and constitutional transitional regulations are needed.

Legal Remedies to Overcome Regional Head Vacancies in the Transition Period

The presence of the Constitutional Court Decision Number 135/PUU-XXII/2024 has crucial consequences for the stability of local government, namely the occurrence of vacancies in the position of regional heads in the transition period between the end of the term of office of regional heads as a result of the 2024 Regional Elections and the implementation of the 2031 Regional Elections. Efforts to overcome the vacancy of the position (*bestuursvacuüm*) of regional heads during this transition period is a crucial aspect in ensuring government stability and legal certainty. Based on the results of the research, there are four legal remedies that can be taken to overcome vacancies and provide legal certainty.

First, the appointment of the Acting Regional Head. The government in filling the vacancies of regional heads whose terms of office expired during the transition period appointed Acting Governors, Acting Regents, and Acting Mayors. This is based on Article 201 paragraph (9) to paragraph (11) of Law Number 10 of 2016 which stipulates that to fill the vacancy of the position of Governor, the Acting Governor is appointed from the position of intermediate high leadership, while for the Regent/Mayor, the Acting Governor is appointed from the position of primary high leadership until the inauguration of the regional head as a result of the election. This is also supported by Law Number 23 of 2014 concerning Regional Government and Permendagri Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors which technically regulate the requirements, appointment procedures, term of office (maximum 1 year and can be extended 1 time), as well as performance evaluation of Acting Regional Heads.

Second, strengthening the legitimacy and limits of the authority of the Acting Judge. Because the transition period after the Constitutional Court Decision is quite long (it can reach 2 years to 2 years and 6 months), the appointment of the Acting Acting Representative is often criticized for the weak democratic legitimacy (not directly

elected by the people). This has been anticipated by the regulation of Article 132A of Government Regulation Number 49 of 2008 which states that Acting Regional Heads are prohibited from mutating employees, canceling permits that have been issued by previous officials, making policies that are contrary to the policies of previous officials, or making regional expansion policies, unless they have received written approval from the Minister of Home Affairs.

Third, *Legislative Review* (revision of the Law). The Constitutional Court in its function as a *Negative Legislator* only repealed the unconstitutional article (separating the election schedule), but did not make new technical rules on how to fill the transition of the position (*Open Legal Policy*). (Jimly, 2009) explained that if the Constitutional Court goes too far by creating new technical norms that are regulatory (*Regulating*), then the Constitutional Court has taken over the legislative function (DPR/President) and violated the principle of separation of powers (*separation of powers*). Therefore, the burden of settlement is in the hands of the House of Representatives and the President as the lawmaker. Law Number 12 of 2011 concerning the Establishment of Laws and Regulations Article 10 paragraph (1) letter d states that one of the content materials that must be regulated by the Law is a follow-up to the decision of the Constitutional Court. Lawmakers are obliged to draft new Transitional Provisions (Transition Articles) in the Election/Regional Elections Law to cover the transition period in the future.

Fourth, Government Regulation in Lieu of Law (Perppu). Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that in the event of a compelling emergency, the President has the right to stipulate government regulations in lieu of laws. If in its implementation the separation of regional elections causes a political impasse or mass vacancy that threatens national stability before the House of Representatives has time to revise the law, the President can take emergency steps by issuing a Perppu to provide legal certainty regarding the procedures for filling positions during the transition period in the event of a *legislative vacuum*.

Table 3. Analysis of Legal Remedies to Overcome Regional Head Vacancies

Yes	Legal Remedies	Legal Basis	Pros	Disadvantages
1	Appointment of Acting Regional Head	Law No. 10/2016 Article 201 paragraph (9)-(11); Law No. 23/2014; Permendagri No. 4/2023	Legal certainty, government stability, continuity of public services	Weak democratic legitimacy, vulnerable to politicization
2	Strengthening the Legitimacy and Limits of Acting Authority	Government Regulation No. 49/2008 Article 132A	Limiting the authority of the Acting President, preventing abuse of authority	Not addressing the problem of basic legitimacy
3	<i>Legislative Review</i>	Law No. 12/2011 Article 10 paragraph (1) letter d	Permanent, general binding solution	It takes time, a long political process
4	Government Regulation in Lieu of Law (Perppu)	1945 Constitution of the Republic of Indonesia Article 22 paragraph (1)	Fast, responsive to emergencies	It is temporary, requiring the approval of the House of Representatives

Source: Processed from various laws and regulations

Legal remedies to overcome the vacancy of the position of regional head can be analyzed using Theory of Democracy and Legal Certainty Theory simultaneously. In the perspective of the theory of democracy explained by (Triningsih et al., 2021), the direct election of regional heads is a manifestation of the people's sovereignty as mandated by Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states that governors, regents, and mayors are democratically elected. The appointment of Acting Regional Heads who are not directly elected by the people creates a paradox in Indonesia's democratic system which is built on the basis of decentralization and direct elections. This opens up opportunities for political intervention by the central government that can weaken the principle of people's sovereignty in the regions (Simamora, 2011).

Both the appointment of the Acting Governor and the extension of the DPRD reflect the dilemma between maintaining government stability and maintaining the principles of electoral democracy. If not regulated with clear transitional regulations, this situation can cause a crisis of public trust and reduce the accountability of local governments in carrying out the development agenda (Apri Andana, Arfa'i, & Muhammad Amin, 2025).

From the perspective of legal certainty theory, as reminded by Mahfud MD, the success of the new paradigm of electoral separation initiated by the Constitutional Court is highly dependent on the promptness of lawmakers. Without a quick and careful synchronization of regulations after the Constitutional Court Decision No. 135/PUU-XXII/2024, the transition period for filling the position of regional head has the potential to give birth to new legal problems that hurt the principle of legal certainty itself. If it is not immediately dexterous in revising the law, the decision can actually give birth to new legal uncertainty (*legal uncertainty*) in the technical aspects of filling positions during the transition period.

The government and the House of Representatives can revise Law No. 10 of 2016 by including Constitutional Court Decision No. 135/2024 in consideration and revise several articles to accommodate the qualifications of the acting head who will fill the vacancy of the position of regional head. The power of the President through the Minister of Home Affairs will be very large in determining his people to become officials, so this must be regulated in a clear, transparent, and democratic manner (Nababan et al., 2025). To reduce political risks that benefit the elected President and his coalition in filling the Acting Regional Heads throughout Indonesia, it is worth considering the Constitutional Court Decision No. 15/PUU-XX/2022 which emphasizes that there must be measurable, clear, and non-negligible mechanisms and requirements to produce leaders who are competent, have integrity, are in accordance with regional aspirations and work sincerely for the people and the progress of the region. Handling the vacancy of the position of regional head after the Constitutional Court Decision Number 135/PUU-XXII/2024 can be carried out through regulatory synchronization through the revision of the law, the appointment of accountable Acting Officials, or the scenario of a snap election to ensure the legitimacy of the leadership, which is a crucial instrument to ensure that there is no pause in authority (*vacuum of power*) which can stop public and administrative service functions at the regional level.

CONCLUSION

Based on the results of the research and discussion that has been described, it can be concluded that the Constitutional Court Decision Number 135/PUU-XXII/2024 has brought fundamental changes in the Indonesian election system through the separation of the National Election and Regional Election regimes with a time gap of 2 (two) years to 2 (two) years and 6 (six) months. The main implication of this decision is the emergence of a vacancy in the position of regional head in the transition period between the end of the term of office of regional heads as a result of the 2024 Regional Elections in 2029 or 2030 and the implementation of Regional Elections in 2031. The Constitutional Court expressly emphasized that the separation of the election schedule does not reduce the fixed-term term of office of regional heads for a full five years, because the principle of efficiency cannot be used as an excuse to reduce the rights of office mandated by law. Efforts to overcome vacancies can be carried out through four legal mechanisms, namely the appointment of Acting Regional Heads, strengthening the legitimacy and limits of the authority of the Acting Governor, legislative review (revision of the law), and the issuance of Government Regulations in Lieu of Law (Perppu) in conditions of compelling urgency, so that government stability and legal certainty are maintained.

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