Purcell Principle and Constitutional Court's Limits in Reviewing Election Laws

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Article Info
Dates:

Accepted: 28-09-2025
Revised: 7-10-2025
Published: 30-12-2025

Keywords:
Constitutional Court, Elections, Justice, Legal Certainty, Purcell Principle

Abstract

The Indonesian legal system has not yet adopted the Purcell Principle, a key doctrine in U.S. election jurisprudence that serves as a judicial restraint, preventing courts from changing election rules during the election period. Applying this principle is essential to ensure legal certainty, fairness, and stability for election stakeholders, including organizers, candidates, political parties, and voters. In Indonesia, the Constitutional Court holds broad authority to review election laws. This study examines the urgency of applying the Purcell Principle within the Constitutional Court's jurisdiction and proposes a conceptual framework for its integration into Indonesia's legal system. Using a normative legal approach, the research draws on primary, secondary, and tertiary legal materials through literature review and qualitative-descriptive analysis. The study concludes that the Purcell Principle is necessary to prevent judicial interference during election stages. The proposed framework includes: (1) limiting the Court's authority to review election laws, except in cases involving voting rights; (2) applying this limitation throughout the entire election process until the official announcement of results; and (3) incorporating the Purcell Principle into relevant laws such as the election law, the judicial power law, and the constitutional court law to ensure its legal force.

1. Introduction

Money The Purcell Principle is a crucial doctrine in maintaining the stability of electoral regulations, preventing them from being altered arbitrarily, particularly once the election process has commenced. This principle asserts that courts should exercise caution when modifying election rules in the period leading up to an election.[1] The rationale behind this principle is to prevent confusion among voters and election organizers, which could undermine the legitimacy of election results. This principle finds relevance in various electoral contexts, including Indonesia, where legal disputes concerning elections frequently arise close to voting day. The Purcell Principle was first established in the U.S. Supreme Court's ruling in Purcell v. Gonzalez (2006).[2] It emerged from the necessity of ensuring stability in electoral processes, as sudden changes to election rules or procedures can create uncertainty and confusion among voters and election administrators. As a reflection of the principle of legal certainty, the Purcell Principle ensures that electoral rules remain unchanged during the election process, allowing participants a fair and equal opportunity to adapt to the existing regulations.

In Indonesia, legal controversies often arise concerning changes in electoral regulations, including issues such as the calculation of women's candidate quotas,[3] presidential candidacy requirements, [4] and parliamentary seat thresholds. [5] The Constitutional Court (MK), which holds the authority to conduct judicial review of laws [6] —including election laws—has issued several controversial rulings during ongoing election stages. These rulings have sparked public debates and suspicions that the Court's powers have been used to advance certain political interests. One of the most controversial decisions was Constitutional Court Decision No. 90/PUU-XXI/2023, which altered the age requirement for presidential and vice-presidential candidates in the 2024 election.[7] The ruling was issued just days before candidate registration, reviewing Article 169(q) of Law No. 7 of 2017 on Elections, which initially required candidates to be at least 40 years old. The ruling changed this requirement, allowing candidates under 40 years old to run [8] ultimately benefiting Gibran Rakabuming Raka, the eldest son of President Joko Widodo, who was 35 years old at the time. This decision was widely criticized as politically motivated and led to the

[1] Harry B Dodsworth, "The Positive and Negative Purcell Principle," *Utah Law Review* 5, no. 5 (2022): 1081–1134.
[2] Dodsworth.
[3] Ogie Nuggraha and Durohim Amnan, "Distorsi Keterwakilan Perempuan Melalui Pasal 8 Ayat (2) PKPU Nomor 10 Tahun 2023," *Jurnal Hukum Dan Sosial Politik* 1, no. 4 (2023), https://doi.org/10.59581/jhsp-widyakarya.v1i4.1446.
[4] Rahmat Muhajir Nugroho et al., "The Presidential Candidacy Threshold in Indonesia and Its Implications," *International Journal of Social Science Research and Review* 5, no. 8 (2022), https://doi.org/10.47814/ijssrr.v5i8.513.
[5] Mahesa Rannie, Retno Saraswati, and Fifiana Wisnaeni, "Does the Reform of the Parliamentary and Presidential Threshold Strengthen the Presidential System in Indonesia?," *Sriwijaya Law Review* 8, no. 1 (2024), https://doi.org/10.28946/slrev.Vol8.Iss1.3157.pp133-151.
[6] Dinda Agustin Wulandari and Winarno Budyatmojo, "Pengujian Undang-Undang (Judicial Review) Dalam Kewenangan Mahkamah Konstitusi," *Souvereignty* 1, no. 4 (2022).
[7] Arif Sugitanata, "Dinamika Keputusan Mahkamah Konstitusi Terkait Batas Usia Calon Presiden Dan Wakil Presiden," *Qaumiyyah: Jurnal Hukum Tata Negara* 4, no. 2 (2023), https://doi.org/10.24239/qaumiyyah.v4i2.79.
[8] Elva Imeldatur Rohmah and Zainatul Ilmiyah, "Dinamika Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Usia Calon Presiden Dan Wakil Presiden," *PROGRESIF: Jurnal Hukum* 8, no. 1 (2024): 100–131.

dismissal of Anwar Usman, Gibran's uncle, as Chief Justice of the Constitutional Court's Honorary Council (MKMK) due to a conflict of interest. [9] The ruling was deemed to violate judicial impartiality, integrity, competence, independence, and ethical conduct principles.[10]

These judicial decisions demonstrate how modifying electoral regulations during the election process leads to legal uncertainty and raises suspicions of legal manipulation for pragmatic political interests. Had the Purcell Principle been strictly applied in Indonesia's legal system, such rulings might not have been issued. Electoral rule adjustments should be made after an election cycle, not during the process, to ensure fairness and prevent suspicions of legal engineering that may advantage or disadvantage specific candidates. Therefore, restricting the Constitutional Court's authority to review election laws during ongoing election stages is an urgent necessity that must be regulated by law.

The Purcell Principle[11] advises against implementing changes to the electoral system too close to voting day or election phases to avoid confusion among voters and election administrators. By preventing last-minute amendments to electoral rules, this principle upholds legal certainty for all election participants and safeguards election integrity. Despite its benefits, previous research indicates that the Purcell Principle also has limitations, as it restricts opportunities for improving the electoral system during the election process. A notable example occurred in Wisconsin, United States, where strict voter ID requirements were challenged in court for allegedly disenfranchising student voters. However, the district court refused to consider whether these changes unjustly restricted voting rights.[12] Instead, it upheld the Purcell Principle, arguing that the critical issue was not whether the ruling benefited the plaintiffs or defendants, but rather whether it could cause confusion before the election. This rigid application of the principle limited legal interventions that could have protected voting rights.[13]

In contrast, Indonesia's legal system is overly flexible in modifying election laws, as there are no clear restrictions on judicial power—whether in the Constitutional Court or Supreme Court—to review electoral regulations. Implementing the Purcell Principle in Indonesia would provide stability in electoral regulations by preventing significant legal changes during election periods, including near voting day. The adoption of this principle is essential for maintaining public trust in the electoral process. This paper aims to examine the urgency of implementing the Purcell Principle within Indonesia's electoral legal system and propose a conceptual framework for its

[9] Cantika Dhea Marshanda Zulqarnain, Nararya Salsabila Zamri, and Raesa Mahardika, "Analisis Pelanggaran Kode Etik Dalam Kasus Pemberhentian Ketua Mk Anwar Usman Terkait Putusan Batas Usia Capres Dan Cawapres Pada Pemilu 2024," *Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 2 (2023).

[10] Sri Pujianti, "MKMK Berhentikan Anwar Usman Dari Jabatan Ketua Mahkamah Konstitusi," Www.Mahkamahkonstitusi.Go.Id, 2023.

[11] Danika Elizabeth Watson, "Free and Fair: Judicial Intervention in Elections Beyond The Purcell Principle and Anderson-Burdick Balancing," *Fordham Law Review* 90, no. 2 (2021).

[12] Ruoyun Gao, "Why The Purcell Principle Should Be Abolsihed," *Duke Law Journal* 71, no. 5 (2022).

[13] David Herman, "Reviving the Prophylactic VRA: Section 3, Purcell, and the New Vote Denial," *Yale Law Journal* 132, no. 5 (2023).

application. This analysis takes into account the potential weaknesses that may arise as a consequence of restricting the Constitutional Court's authority in adjudicating petitions for changes to electoral regulations during an ongoing election process.

2. Research Methods

This study uses a normative legal research method. This method was chosen because the object of the study is the principles and principles of law, legal rules, legal theories and doctrines.[14] The data sources used are secondary data sources in the form of primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations, as well as several decisions of the Constitutional Court. Secondary legal materials include reference books, journal articles, and research reports. Tertiary legal materials include English dictionaries and legal dictionaries. The object of this study is the decisions of the Constitutional Court on judicial review of the Election Law. This study uses a legislative approach, a conceptual approach, and a comparative approach. Data collection is carried out through literature review, while data analysis uses qualitative descriptive analysis.

2. Results and Discussion

The Urgency of Applying the Purcell Principle in the Constitutional Court's Authority to Limit Judicial Review of Election Laws in Indonesia.

As part of the judicial power, the constitutional function of the Constitutional Court (MK) is to uphold law and justice.[15] This function is carried out through its authority to examine, adjudicate, and decide specific cases based on constitutional considerations. Consequently, every Constitutional Court decision constitutes an interpretation of the Constitution.[16] One of the primary authorities of the Constitutional Court is judicial review—assessing the constitutionality of laws (UU) against the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). [17] Additionally, the Court resolves disputes between state institutions, dissolves political parties, and adjudicates electoral disputes, as stipulated in Article 24C of the UUD NRI 1945.[18] The Court also has the duty to rule on the House of Representatives' (DPR) opinion regarding alleged violations by the President and/or Vice President under the Constitution.[19] The purpose of judicial review is to assess whether a law aligns with constitutional norms.[20]

Over time, the Constitutional Court's authority has expanded beyond being a mere "negative legislator"—which only invalidates unconstitutional legal norms—into a

[14] Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021), https://doi.org/10.51749/jphi.v2i1.14.
[15] Gayatri Dyah Suprobowati Adna Maurilla Maharani, "Mahkamah Konstitusi: Tinjauan Kewenangan Dan Fungsi Dalam Negara Hukum Demokratis Berdasarkan UUD 1945," *Jurnal Demokrasi Dan Ketahanan Nasional* 1 (2022).
[16] Dodi Haryono, "Metode Tafsir Putusan Mahkamah Konstitusi Dalam Pengujian Konstitusional Undang-Undang Cipta Kerja," *Jurnal Konstitusi* 18, no. 4 (2022), https://doi.org/10.31078/jk1843.
[17] Tanto Lailam and M. Lutfi Chakim, "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 2 (2023), https://doi.org/10.22304/pjih.v10n2.a1.
[18] Ibnu Sina Chandranegara, *Hukum Acara Mahkamah Konstitusi*, Cetakan 1 (Jakarta: Sinar Grafika, 2021).
[19] Chandranegara.
[20] Mohammad Mahrus Ali, *Tafsir Konstitusi*, Cetakan ke (Depok: Rajawali Pers PT RajaGrafindo Persada, 2019).

"positive legislator"—which also creates new legal norms through its decisions.[21] This shift has raised concerns that the Court is encroaching upon the legislative authority of the House of Representatives (DPR). Given its profound impact on rule of law, human rights, and democracy, the Court's dynamic and non-conservative approach to decision-making has sparked debates. Some decisions introduce limited new norms with constitutional conditions, resembling statutory regulations and creating tensions with the DPR.[22]

In the past 11 years, the Constitutional Court's role as a positive legislator has become more pronounced. It began with Decision No. 48/PUU-IX/2011, which expanded judges' authority to issue regulatory rulings. As a result, out of 198 decisions, 107 (54%) had a positive legislative impact. However, this practice remains ineffective, as only 26 decisions have been implemented.[23] Despite the lack of full compliance, the Court has continued issuing norm-creating decisions to address legal gaps where merely annulling a norm would cause constitutional issues in its implementation.[24]

Nonetheless, in certain circumstances, the Court must exercise self-restraint to avoid issuing rulings that intrude into legislative powers by applying the principle of judicial restraint. This principle requires courts to refrain from making decisions that interfere with the legislative domain.[25] Indonesia, judicial review by the Constitutional Court serves not only as a judicial check but also triggers tensions in the separation of powers. The interaction between the judiciary and the legislature in judicial review depends on the Court's philosophy. Therefore, to maintain constitutionalism and democracy, the Constitutional Court must impose limitations on its rulings.[26]

Aligned with the judicial restraint principle, the Purcell Principle is specifically used to limit judicial intervention in election laws. This principle originates from the U.S. Supreme Court case Purcell v. Gonzalez (2006), which held that courts should not issue rulings that alter election regulations immediately before an election. In Purcell v. Gonzalez, the U.S. Supreme Court overturned a Ninth Circuit decision that temporarily blocked Arizona's strict voter identification law.[27] The Court criticized the Ninth Circuit for failing to provide clear reasoning and issuing a ruling close to the election, which risked confusing voters and election officials. The Purcell Principle thus seeks to ensure electoral stability by prohibiting last-minute judicial changes to election laws, which could lead to chaos and legal uncertainty.

However, the Purcell Principle has also faced criticism for being overly rigid and

[21] Martitah, *Mahkamah Konstitusi: Dari Negative Legislature Ke Positive Legislature*, *Mahkamah Konstitusi: Dari Negative Legislature Ke Positive Legislature*, vol. 3, 2023.
[22] Raden Muhammad Mihradi et al., "The Decision of the Constitutional Court Which Is Positive Legislature and Their Implications on Substantial Democracy in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 8, no. 12 (2021), https://doi.org/10.18415/ijmmu.v8i12.3269.
[23] Muhammad Alief Farezi Efendi, Muhtadi, and Ahmad Saleh, "Positive Legislature Decisions by the Constitutional Court," *Jurnal Konstitusi* 20, no. 4 (2023), https://doi.org/10.31078/jk2044.
[24] Ni'matul Huda, *Kekuatan Eksekutorial Putusan Mahkamah Konstitusi*, Cetakan 1 (Yogyakarta: FH UII Press, 2018).
[25] Syaifullahil Maslul, "Judicial Restraint Dalam Pengujian Kewenangan Judicial Review Di Mahkamah Agung," *Jurnal Yudisial* 15, no. 3 (2023), https://doi.org/10.29123/jy.v15i3.496.
[26] Radian Salman, Sukardi Sukardi, and Mohammad Syaiful Aris, "Judicial Activism or Self-Restraint: Some Insight into The Indonesian Constitutional Court," *Yuridika* 33, no. 1 (2018), https://doi.org/10.20473/ydk.v33i1.7279.
[27] L. Hasen Richard, "Reining in The Purcell Principle," *SSRN* 43, no. 2 (2016).

failing to accommodate urgent electoral law reforms that protect voters' rights. By and large, the Court has interpreted the principle as a bright-line rule barring any judicial intervention close to elections and has overwhelmingly used the principle to uphold voting restrictions. The U.S. Supreme Court has often interpreted it as a strict rule that bars judicial intervention near elections, predominantly to uphold voting restrictions. Critics argue that the principle should not serve as a blanket justification for maintaining restrictive voting laws.[28] For instance, in Republican National Committee v. Democratic National Committee (formerly Democratic National Committee v. Bostelmann), a Wisconsin district court issued a temporary order extending the deadline for requesting and receiving absentee ballots. However, the U.S. Supreme Court, in a 5–4 decision, ruled that this extension violated the Purcell Principle.[29]

The Court interprets the Purcell Principle as a prohibition on judicial intervention in the period leading up to an election and applies it to restrict voting rights. When parties seek injunctive relief to suspend or alter these types of election requirements, courts sometimes reject their requests based on the "Purcell principle." The Purcell principle provides that courts should not alter election rules "on the eve of an election." While a last-minute change can certainly lead to more electoral confusion and chaos, the ambiguous Purcell principle causes even more political and social problems.[30] When parties seek a suspension or modification of election requirements through legal action, courts sometimes reject their requests based on the Purcell Principle. This principle holds that courts should not alter election rules "close to Election Day." While last-minute changes can indeed cause confusion and disruption in elections, the ambiguity of the Purcell Principle has, in turn, created even greater political and social challenges.

In the Indonesian context, the discourse on applying the Purcell Principle explicitly emerged in Constitutional Court Decision No. 60/PUU-XXII/2024, as presented by Constitutional Justice Guntur M. Hamzah in his dissenting opinion. Guntur argued that the Constitutional Court should begin applying the Purcell Principle to restrain itself from altering electoral rules close to the nomination or election period, except in special circumstances that could undermine the principle of justice itself. Moreover, both the public and political parties have started exploiting legal loopholes by filing judicial review petitions just before election day. [31] This argument is reasonable, as several Constitutional Court decisions have altered electoral rules mid-process. Decision No. 60/PUU-XXII/2024, for instance, lowered the threshold for regional head nominations from the original requirement of at least 20% of parliamentary seats or 25% of valid votes to a lower threshold of 6.5% to 10%, depending on the number of registered voters.[32]

However, the author considers Guntur M. Hamzah's argument somewhat late. The Purcell Principle should have already been applied in Decision No. 90/PUU-XXI/2023,

[28] Dodsworth, "The Positive and Negative Purcell Principle."
[29] Watson, "Free and Fair: Judicial Intervention in Elections Beyond The Purcell Principle and Anderson-Burdick Balancing."
[30] Ruoyun Gao, "Why The Purcell Principle Should Be Abolished," *Duke Law Journal* 71, no. 5 (2022).
[31] Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024 (2024).
[32] Jicn Jurnal, Cendikiawan Nusantara, and Hasim Hartono, "Urgensi Putusan MK Nomor 60 / PUU-XXII / 2024 Terhadap Penyelenggaraan Pilkada Tahun 2024 The Urgency Of Mk Ruling Number 60 / PUU-XXII / 2024 Regarding The Organization Of The 2024 Election," no. September (2024): 5374–83.

which altered the age requirement for presidential and vice-presidential candidates. At that time, Guntur M. Hamzah supported granting the petition, allowing the rule change to take effect. Therefore, Constitutional Court justices must maintain consistency in deciding when to exercise judicial restraint and when to engage in judicial activism. A clear, measured, and accountable regulation is needed to guide the Constitutional Court in applying the Purcell Principle while ensuring legal certainty and justice.

Changes to electoral regulations during the election process have far-reaching consequences for candidates, voters, and election organizers, potentially creating legal uncertainty and injustice. Candidates may struggle to adjust to the new rules, while the Election Commission (KPU) must enforce regulations that have not yet been formally revised. A notable example is when KPU accepted Prabowo and Gibran's candidacy despite pending legal changes, leading to sanctions from the Election Organizers Ethics Council (DKPP) for violating ethical standards.[33]

Amending election rules mid-process disrupts legal order, contradicting the law's primary function of establishing stability. In the formation of legal rules, the main principle is built to create clarity regarding legal regulations, the principle is legal certainty. The idea of the principle of legal certainty was initially introduced by Gustav Radbruch in his book entitled "*einführung in die rechtswissenschaften*". Radbruch wrote that in law there are 3 (three) basic values, namely: (1) Justice (*Gerechtigkeit*); (2) Benefit (*Zweckmassigkeit*); and (3) Legal Certainty (*Rechtssicherheit*).[34]

Sudden changes to electoral rules also impact KPU's performance. The Constitutional Court's ruling on nomination requirements left KPU with insufficient time to amend KPU regulations (PKPU), as they first needed to consult with parliament (DPR). With registration deadlines looming, KPU was forced to provisionally accept presidential candidates, ultimately leading to DKPP sanctions.[35] Therefore, applying the Purcell Principle is essential to prevent courts from ruling on electoral regulations mid-process, ensuring legal certainty and election stability.

Election participants may see their campaign strategies disrupted, benefiting or disadvantaging certain candidates.

a. Voters may become confused about last-minute regulatory changes, particularly if they affect voting procedures.

b. Election organizers (KPU) face operational challenges, as sudden regulatory changes impact technical implementation, outreach efforts, staffing, and election logistics.

The Purcell Principle underscores the importance of judicial consistency in decision-making, as inconsistencies undermine public trust and institutional credibility. [36] Therefore, integrating the Purcell Principle into election regulations is crucial to uphold

[33] Vitorio Mantalean dan Icha Rastika, "Ketua KPU Diputus Langgar Etik Karena Loloskan Pencalonan Gibran," Kompas.com, 2024.
[34] Mario Julyano and Aditya Yuli Sulistyawan, "Pemahamah Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *CREPIDO* 1, no. 1 (2019), https://doi.org/10.14710/crepido.1.1.13-22.
[35] Vitorio Mantalean dan Icha Rastika, "Ketua KPU Diputus Langgar Etik Karena Loloskan Pencalonan Gibran."
[36] Aep Hendar Cahyad et al., "2024 Elections and the Power Struggle: Legal and Political Perspectives," *Formosa Journal of Sustainable Research (FJSR)* 3, no. 6 (2024): 1317–32.

legal certainty and electoral justice.

The Application of the Purcell Principle in the Constitutional Court's Authority to Review Electoral Laws Based on the Principles of Legal Certainty and Justice

The electoral justice system is designed to prevent and identify irregularities in elections, serving as both a mechanism for rectifying such irregularities and a means of imposing sanctions on violators.[37] Actions, procedures, or decisions that violate electoral laws are considered electoral irregularities. Since such irregularities can lead to electoral disputes, the electoral justice system plays a key role in preventing disputes and ensuring fair elections.The application of the Purcell Principle in the Constitutional Court's authority to review electoral laws can help reduce electoral injustice caused by petitioners seeking to modify election rules for their own interests. Electoral justice can be called the basis of a modern system of democratic elections based on the principles of protecting the rights and freedoms of citizens and equal access for all to the electoral process on the terms of transparency, impartiality, and justice.[38] The Purcell Principle serves to temporarily limit the Constitutional Court's authority, preventing it from issuing significant rulings during ongoing electoral stages. This would also encourage lawmakers to ensure that electoral laws comprehensively regulate all aspects of elections, preventing last-minute changes once the election process has begun. No amendments to election-related regulations, especially at the statutory level, should be made during the election period. This includes KPU regulations, Election Monitoring Body regulations, and DKPP regulations, all of which should remain aligned with electoral laws. Such limitations are necessary to maintain electoral stability, legal certainty, and fairness.

The nature of the Constitutional Court's decision is applicable going forward, meaning that the Constitutional Court's decision is valid after being read out by the Panel of Judges in the plenary session for the reading of the decision. [39] The Constitutional Court's decision is not retroactive but prospective. The nature of the Constitutional Court's decision has the same meaning as the Purcell Principle which requires that court decisions on changes to election rules apply to the future. The court must be careful and may not even change election rules during the ongoing election stages. The Purcell Principle limits the court from intervening in the election rules that are currently being used, because it can cause confusion for voters and organizers. In this case, the Purcell Principle is relevant to the prospective nature of the Constitutional Court's decision.

Dian Agung concluded that the Purcell Principle concept is compatible to be applied to the authority of the Constitutional Court (MK) in testing laws, because there is a conformity in the nature of the decision between the Purcell Principle and the MK decision as a legal consequence. Although there is a difference in the time span of its

[37] Kamal Fahmi Kurnia, "Menakar Penegakan Hukum Praktik Politik Uang (Money Politic) Dalam Mewujudkan Keadilan Pemilu (Electoral Justice)" 25, no. 2 (2024): 80–100.
[38] Alexey Szydlowski, "The Brasilian Electoral Justice," *Legal Concept*, no. 4 (2021), https://doi.org/10.15688/lc.jvolsu.2021.4.10.
[39] M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final Dan Mengikat Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 2 (2019): 339, https://doi.org/10.31078/jk1627.

validity, namely the MK decision is valid from the time it is read, while the Purcell Principle is interpreted as valid outside the election stage or for the next election. [40] However, both show similar characteristics in terms of caution to avoid legal instability. The Purcell Principle states that the court should not change election rules during the election period or near the vote, while judicial restraint is interpreted as the court being careful and limiting itself in canceling the actions of the legislative or executive institutions. Judicial restraint emphasizes the importance of reticence, namely the attitude of silence or restraint, based on the assumption that judges should not make policy decisions. [41] Meanwhile, the Purcell Principle aims to maintain stability, predictability, and smooth implementation of elections, by avoiding sudden changes to election laws. On the other hand, judicial restraint is intended to maintain the balance of power between state institutions and respect the decisions of democratically elected political institutions. Therefore, the concept of judicial restraint is translated as restrictions on the judiciary.[42]

Several Constitutional Court decisions have implicitly reflected the application of judicial restraint, although the principle is not explicitly recognized. For example, the Court has repeatedly refused to change the electoral threshold for presidential nominations (Presidential Threshold). More than 32 judicial review applications have been filed against Article 222 of Law Number 7 of 2017 concerning Elections, but the Constitutional Court has never granted a single one of these applications, on the grounds that the provision falls under the "open legal policy" (discretionary policy left to lawmakers). This stance has been widely criticized by academics and democracy activists, because the concept of "open legal policy" is not explicitly recognized in the 1945 Constitution. [43] Furthermore, the Presidential Threshold provides discriminatory obstacles for political parties in nominating presidential and vice-presidential candidates by requiring at least 20% of parliamentary seats or 25% of the popular vote in the previous election. The Constitutional Court's rejection of these applications was based on judicial restraint, so the Court did not want to get involved in the area of authority of lawmakers. However, in early 2025, the Constitutional Court changed its view and position on the constitutionality of the Presidential Threshold, ultimately revoking the provision in Decision No. 62/PUU-XXII/2024.[44]

Another case that implicitly demonstrates the application of the Purcell Principle is Decision No. 116/PUU-XXI/2023, which addressed the Parliamentary Threshold. This case was filed by Association for Elections and Democracy (*Perludem*), challenging Article 414 (1) of Law No. 7/2017, which set a 4% electoral threshold for political parties to gain parliamentary seats. The Constitutional Court ruled to modify this provision, yet delayed

[40] Dian Agung Wicaksono and Garuda Era Ruhpinesthi, "Inisiasi Penerapan Purcell Principle Oleh Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terkait Pemilihan Umum," *Jurnal Konstitusi* 22, no. 1 (March 1, 2025): 109–136, https://doi.org/10.31078/jk2216.
[41] Maslul, "Judicial Restraint Dalam Pengujian Kewenangan Judicial Review Di Mahkamah Agung."
[42] Maslul.
[43] Rahmat Muhajir Nugroho, *Ambang Batas Pencalonan Presiden Dalam Sistem Pemilu, Politik Hukum, Implikasi Dan Rekonstruksi*, 1st ed. (Depok: Rajawali Pers PT RajaGrafindo Persada, 2024).
[44] Achmad Zuhdi, Serhii Ablamskyi, and Arya Anggara, "Judicial Review of Presidential Threshold Decisions: The Dynamics of Constitutional Injury," *Kosmik Hukum* 25, no. 1 (January 2025): 48, https://doi.org/10.30595/kosmikhukum.v25i1.24476.

its enforcement until the 2029 election, rather than applying it to the 2024 election. The decision was issued on February 29, 2024, at a time when the 2024 election results had not yet been officially determined by the KPU.[45] Yance Arizona argues that this ruling demonstrates the application of the Purcell Principle, as the Court refrained from interfering in electoral politics. Although the ruling eliminated the 4% Parliamentary Threshold, it was issued in 2024 but scheduled for implementation in 2029, reflecting judicial restraint in electoral matters.[46] This indicates that the Constitutional Court has, in practice, applied the Purcell Principle, albeit without formal institutionalization through legislation. Currently, the principle is applied only on a case-by-case basis, rather than systematically embedded within the Constitutional Court's judicial framework. The following analysis provides an overview of the Constitutional Court's decision-making on electoral laws during ongoing electoral stages, in relation to the Purcell Principle.

Table 1.
Comparison of Constitutional Court Decisions Related to the Purcell Principle

Decision Number	Subject	Election	Remarks
Constitutional Court Decision No. 90/PUU-XXI/2023	Amendment to the Age Requirement for Presidential and Vice-Presidential Candidates in Law No. 7 of 2017	2024 General Election Phase	Did not apply the Purcell Principle
Constitutional Court Decision No. 60/PUU-XXII/2024	Amendment to the Threshold for Regional Head Candidacy in Law No. 10 of 2016	2024 Regional Elections Phase	Did not apply the Purcell Principle
Constitutional Court Decision No. 70/PUU-XXII/2024	No amendment to the Age Requirement for Governor and Deputy Governor Candidates in Law No. 10 of 2016	2024 Regional Elections Phase	Applied the Purcell Principle (indirectly), impacting Supreme Court Decision No. 23 P/HUM/2024
Constitutional Court Decision No. 116/PUU-XXI/2023	Amendment to the Parliamentary Threshold in Law No. 7 of 2017	2024 General Election Phase	Applied the Purcell Principle (indirectly)

Source: Compiled by the author from various sources.

Thus, it is crucial to establish binding regulations that prevent the Constitutional Court (MK) from issuing decisions during the election or regional election stages

[45] Mahakamah Konstitusi, "Putusan Mahkamah Konstitusi Nomor 116/PUU-XXI/2023" (2024).
[46] CNN Indonesia, "Apa Itu Purcell Principle Terkait Putusan MA Batas Usia Pilkada 2024?," *CNN Indonesia*, 2024.

(delaying decisions) or, at the very least, require caution when ruling on cases during an ongoing election, based on specific parameters, especially concerning citizens' constitutional rights. Regarding voter registration, in 2009, many Indonesian citizens were not listed in the Permanent Voter List (DPT),[47] putting their voting rights at risk. Therefore, the Constitutional Court issued Decision Number 102/PUU-VII/2009 which protects citizens' voting rights by providing alternative proof of participation using the Population Identity Card (KTP) or Passport, even though not registered in the DPT. Amazingly, this decision was issued only two days before the voting day, namely on July 8, 2009.[48]

While this decision does not align with the Purcell Principle, it serves as an exception, as it pertains to protecting citizens' voting rights. In such cases, the Constitutional Court must conduct expedited hearings and issue rulings that uphold citizens' constitutional rights. In contrast, in the United States, the 2020 election season placed immense pressure on the U.S. electoral system. Amid a politically polarized nation grappling with the COVID-19 pandemic, American voters challenged various election regulations and sought judicial relief from laws that made voting exceptionally difficult under extraordinary circumstances. However, the Supreme Court rejected these petitions, adhering to the Purcell Principle, thereby disadvantaging voters' rights.[49] This raises an important consideration if Indonesia aims to adopt the Purcell Principle.

Therefore, the electoral legal system must evolve toward ensuring greater legal certainty and fairness. In principle, the function of law as a tool for social engineering plays a crucial role, particularly in intended or planned legal changes. [50] The Purcell Principle is a relatively new concept and is not yet widely recognized within Indonesia's legal system, but it has begun to gain traction as a legal discourse.

The concept of the Purcell Principle proposed by the author in the context of restricting the Constitutional Court's authority in reviewing electoral laws is as follows:

1. The Purcell Principle serves to limit the Constitutional Court's authority in deciding judicial review petitions related to electoral laws. The Constitutional Court has three alternative decisions when adjudicating a case of judicial review of the Election Law during the election stages. First, stating that it cannot accept the case submitted (*Niet Ontvankelijke Verklaard*). Second, stating that it rejects the case. Third, granting the case and applying it for the next election (prospective). These three options are decided based on the reasons for applying the Purcel Principle during the election period.
2. This limitation applies to both formal and substantive reviews of electoral laws, except in cases involving citizens' voting rights. In principle, the Court may not reject a case submitted to it. However, in applying the Purcell Principle, the Constitutional Court

[47] Risdiana Izzaty and Xavier Nugraha, "Perwujudan Pemilu Yang Luberjurdil Melalui Validitas Daftar Pemilih Tetap," *Jurnal Suara Hukum* 1, no. 2 (2019), https://doi.org/10.26740/jsh.v1n2.p155-171.

[48] Bagus Anwar Hidayatulloh, "Implikasi Putusan Mahkamah Konstitusi Terkait Penggunaan KTP Dan Paspor Dalam Pemilihan Presiden Dan Wakil Presiden Dalam Kerangka Menjamin Hak Memilih Dalam Pemilu," *Justisi Jurnal Ilmu Hukum* 3, no. 1 (2019), https://doi.org/10.36805/jjih.v3i1.505.

[49] W U Codrington III, "Purcell in Pandemic," *New York University Law Review* 96, no. 4 (2021).

[50] Harpani Matnuh, "Law as a Tool of Social Engineering," in *Advances in Social Science, Education and Humanities Research (ASSEHR)*, vol. 147 (Atlantis Press, 2018), 118–20, https://doi.org/10.2991/icsse-17.2018.28.

can limit itself so as not to try cases of testing the Election Law with the three decision options above, except in cases of Election Law norms related to citizens' voting rights. Thus, it can be said that this concept is a limited Purcell Principle. This is in line with one of the functions of the Constitutional Court as a protector of citizens' constitutional rights.

3. The restriction on the Constitutional Court's authority applies from the commencement of the election stages until the national election results are officially determined, in accordance with the election schedule set by the General Elections Commission (KPU). For example, in the 2024 Election, the General Election Commission stipulated KPU Regulation Number 3 of 2022 concerning the Stages and Schedule for the Implementation of the 2024 Election. There are 9 stages in the implementation of the Election, including:

- Program and budget planning and preparation of implementing regulations for the implementation of the Election;
- Updating of Voter data and preparation of the Voter list;
- Registration and verification of Election Participants;
- Determination of Election Participants;
- Determination of the number of seats and determination of electoral districts;
- Nomination of the President and Vice President and members of the DPR, DPD, provincial DPRD, and district/city DPRD;
- Election Campaign period;
- Quiet Period;
- Voting and vote counting;
- Determination of Election results; and
- Taking of the oath/pledge of the President and Vice President and members of the DPR, DPD, provincial DPRD, and district/city DPRD.

The stages and schedule start from June 14, 2023 to October 20, 2024.[51] So during this time period, the Constitutional Court implemented the Purcell Principle in reviewing the Election Law.

Purcell Principles that will be applied in the Indonesian legal system require a more in-depth and comprehensive study. Purcell Principles into the Indonesian election system. Some integration of Purcell Principle legal norms into several laws to bind the Constitutional Court in their application, including:

1. Revising the Election Law to include the Purcell Principles based on the three points above.
2. Revising the Judicial Power Law and the Constitutional Court Law to formally adopt the Purcell Principles, so that the authority of the Constitutional Court becomes legal and legitimate
3. Building a common understanding between the legislative institution, election organizers, and the judiciary to ensure that the Election Law, the Judicial Power Law,

[51] Komisi Pemilihan Umum Repbulik Indonesia, "Peraturan Komisi Pemilihan Umum Nomor 3 Tahun 2022 Tentang Tahapan Dan Jadwal Waktu Penyelenggaraan Pemilihan Umum Tahun 2024" (2022).

and the Constitutional Court Law reflect the Purcell Principles, so that legal certainty and election stability can be maintained.

Adopting the Purcell Principle in Indonesia's legal system has significant potential benefits. Its application would not only ensure fairness for election organizers and voters but also provide legal certainty in alignment with the ideals of constitutional democracy.[52] This is consistent with the view that electoral justice is not only about creating fair rules and legal certainty but also serves as a mechanism to protect the people's votes. [53] By doing so, all stakeholders—both election organizers and participants—would operate within a clear legal framework, reinforcing fairness and integrity in the democratic process while serving as a legal solution to limit judicial intervention in the lead-up to elections.[54] The implementation of the Purcell Principle is expected to deliver both legal certainty and benefits consistent with the vision of Indonesia as a constitutional, just, and democratic state.

3. Conclusion

The application of the Purcell Principle is crucial to be incorporated into election regulations to ensure legal certainty and electoral justice in Indonesia, as well as to prevent political manipulation for specific interests. The concept and strategy for implementing the Purcell Principle in election regulations to achieve legal certainty and electoral justice in Indonesia should be carried out by incorporating the doctrine into the Election Law (Law No. 7 of 2017), the Judicial Authority Law (Law No. 48 of 2009), and the Constitutional Court Law (Law No. 24 of 2003). By doing so, it is expected that in the future, the Constitutional Court (MK) will no longer issue rulings that alter provisions in the Election Law or the Regional Election Law through judicial review during the election stages, except in emergency situations concerning citizens' voting rights. The legislators (the House of Representatives and the President) should immediately formulate new norms in the Election Law, the Judicial Authority Law, and the Constitutional Court Law, which substantively limit the Constitutional Court's authority in adjudicating judicial review cases of election laws based on the Purcell Principle.

[52] Konstitusi, Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024.
[53] Mohammad Syaiful Aris, "Penataan Sistem Pemilihan Umum Yang Berkeadilan Untuk Penguatan Sistem Presidensiil Di Indonesia," *Yuridika* 33, no. 2 (2018): 290, https://doi.org/10.20473/ydk.v33i2.7379.
[54] Indonesia, "Apa Itu Purcell Principle Terkait Putusan MA Batas Usia Pilkada 2024?"

is essentially a conflict between the norm of protecting individual interests and the norm of protecting public interests. In the Indonesian legal system, this conflict can be resolved through the application of the principle of legal preference, specifically the principles of lex specialis derogat legi generali and lex superior derogat legi inferiori. The provisions of laws and regulations concerning the prevention and eradication of money laundering as specific and imperative laws override the general provisions concerning the confidentiality of the notary's position. Thus, the fulfillment of the obligation to report suspicious financial transactions by Notaries cannot be classified as a violation of professional secrecy, but rather constitutes a legitimate and legally justified exception. As long as the reporting is carried out in accordance with the provisions of laws and regulations, the principle of prudence, and good faith, Notaries are granted legal protection for the performance of this obligation. This also confirms that the principle of professional secrecy of Notaries is not absolute, but can be limited to the interests of a broader legal interest, namely the prevention and eradication of money laundering crimes.

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