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# THE INDONESIAN CONSTITUTIONAL COURT DECISIONS, DECENTRALIZATION, AND LOCAL AUTONOMY: A SYSTEMATIC REVIEW CONCERNING ARTICLE 18 OF THE 1945 CONSTITUTION

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## ABSTRACT

The enactment of the 1999 Decentralization Law in Indonesia established that legislation advances faster than constitutional provisions on local decentralization. Following the 1999 Decentralization Law, the second amendment to the 1945 Constitution was enacted in 2000, providing provisions for local government in the Constitution. Due to the fact that the provisions related to local autonomy rights must be understood and be legally binding without contradicting the Constitution, constitutional interpretation is unavoidably required. Thus, the Constitutional Court presents itself as an institution charged with the responsibility of interpreting laws. However, prior research, to our knowledge, has concentrated on the reform process, its effectiveness, and its limitations. Therefore, this paper aims to shed light on the current state of constitutional court decisions on local autonomy and its primary themes through describing the Constitutional Court interpretation of Article 18 of the 1945 Constitution. This systematic study adopted a normative (dogmatic) research, seeking the science of law by observing written regulations as the main object of analysis. We followed the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) guidelines, which include four phases: identification, screening, eligibility, and inclusion for data collection. The collected data were then read through repeatedly, including data checking, data marking and patterning, data reconstruction, and finally data systematization. They were analyzed descriptively using legal interpretation and construction techniques. The findings indicate that among its numerous decisions, 71 are related to local autonomy under three categories: formation of local government, definition of local democracy, and recognition of *adat* (customary) rights. The findings of the study imply that the 1945 Constitution can succeed in Indonesia's pluralistic society without creating conflicts. This means that Indonesians who live in diverse communities should be protected, rather than neglected, by both customary law and constitutionalist principles.

**Keywords:** Interpretation; Constitutional Court Decision; the 1945 Constitution; Local Autonomy; Indonesia

## 1. Introduction

It is publicly known that the 1997 Asian Financial Crisis had led to the changes in the Indonesian state administration—from a centralized to a decentralized state (Hadiz, 2004; Hill & Shiraishi, 2007). The history of changes in governance patterns began with the failure of the centralized decision-making system, in which the central government failed to provide solutions for provinces/regions, leading to demands for local autonomy policies (Hill & Shiraishi, 2007). In 1999, the Indonesian government responded to the demand by enacting a single set of local decentralization laws. This set of laws vested additional authority in the regions under the guise of decentralization, leaving the central government with little authority (Hidayat, 2017; Rudy, 2012; Rudy et al., 2017). In other words, it is the constitutional amendment that transfers some responsibilities from higher-level government institutions to the lower (Falleti, 2010).

It is mainstream in the literature that countries implementing decentralization policies tend to give greater power to local governments so that they can regulate public policies in their respective regions according to the unique conditions in each region (Firman, 2009; Harguindéguy et al., 2021). Decentralization is also related to sharing of resources and authority in determining a public policy (Cheema & Rondinelli, 2007; Grindle, 2009; Heo, 2018; Hidayat, 2017; Jun & Wright, 1996; Smith, 1997). Furthermore, it also benefits the development of the region through economic and political stability involving local communities by providing various policies as options so that they become more effective and efficient (Cheema & Rondinelli, 2007; Escobar-Lemmon & Ross, 2014; Smith, 1985; Smoke, 2015). Thus, local governments become more independent and have their own democratic systems, especially for participatory local governments (Conyers, 1986; Manor, 1999; Smoke et al., 2006).

To improve the quality of government, decentralization policies also need to consider the accountability of local officials, public officials' knowledge of local potential, and be able to adapt policies to local conditions (Treisman, 2002). Decentralization policies have resulted in an increase in the economy, demographics, and entrepreneurship in South Africa because adequate local government and good coordination with local government can provide an effective governance system (Debela, 2020; Toerien, 2015). In Indonesia, the enactment of the 1999 Decentralization Law established that legislation advances faster than constitutional provisions on local decentralization in this case. Following the 1999 Decentralization Law, the second amendment to the 1945 Constitution was enacted in 2000, providing provisions for local government in the 1945 Constitution (Article 18). To be precise, the local government chapter incorporates the original Article 18 and adds Articles 18A and 18B (1945 Constitution, 2000). Prior to the amendment, the 1945 Constitution contained only one article defining constitutional provisions. The second amendment resulted in the creation of three articles relating to local autonomy, with Article 18 containing seven paragraphs, Article 18A containing two paragraphs, and Article 18B containing two paragraphs. It demonstrates unequivocally that the 1945 Constitution amendment has paved the way for the decentralization to take place.

Simultaneously, the modern era's development of state administration has recognized the fundamental rights enshrined in the 1945 Constitution and regarded as constitutional rights (Harliansyah et al., 2021). Therefore, any policy or legislation in force should not violate or nullify these fundamental rights. Due to the fact that the provisions relating to local autonomy rights must be understood and be legally binding without contradicting the 1945 Constitution, constitutional interpretation is unavoidably required (Amsari, 2011). Thus, the Constitutional Court presents itself as an institution charged with the responsibility of interpreting laws (Asshidique, 2011; Huda, 2012). In other words, any matter related to the examination of laws that violate the 1945 Constitution falls under the authority of the Constitutional Court. Due to the fact that the 1945 Constitution contains no explanations for its articles, the Constitutional Court judgement serves as a source of constitutional interpretation, provided that the judge's analysis is consistent with the 1945 Constitution explanation (Asshidique, 2011; Huda, 2012; Nurhayati, 2020).

Since the Constitutional Court's inception, its decisions have been regarded as extraordinary. Numerous decisions have altered the meaning of articles of the 1945 Constitution, including one on natural resource management and several others on fundamental rights (Faiz, 2008; Harliansyah et al., 2021). The changes are referred to as informal changes because they are brought about by judges' interpretations and then by the Constitutional Court's decision. In summary, the Constitutional Court decision is a source of constitutional law because it has a significant impact on the Indonesian constitutional structure (Huda, 2012; Nurhayati, 2020). However, constitutional court decisions concerning decentralization and the provision of local autonomy in the foundation law of the 1945 Constitution are largely unexplored in the Indonesian context, let alone any that use a systematic review.

Therefore, this article seeks to evaluate and clarify the 1945 Constitution's constitutional interpretation of local autonomy. In this regard, the Constitutional Court has ruled on a total of 3,341 constitutional review cases since its inception in 2003. Of this total, 71 decisions were reviewed under the chapter on local autonomy. Given that the constitution is subject to change as a result of the justices' constitutional interpretation, this article will attempt to shed light on the interpretation of local government provisions by addressing the following research questions:

1. What is the current state of constitutional court decisions in the field of local autonomy?
2. What are the primary themes of constitutional court decisions in the field of local autonomy?

In addition, to the best of our knowledge, prior research on the topic of our investigation is uncommon. Prior research has concentrated on the reform process, its effectiveness, and its limitations (Aspinall & Mietzner, 2010; Firman, 2009; Furqan & Som, 2010; Hadiz, 2004; Heo, 2018; McCarthy, 2004). Therefore, this paper is critical, as the implementation of local government-related legislation must adhere to the 1945 Constitution. More importantly, Indonesia has changed its local government legislation three times since the reforms era. Thus, it is believed that an understanding of constitutional principles governing the implementation of local autonomy is necessary for local autonomy and decentralization to be successful in the super-diversity of Indonesia.

## 2. Literature Review

The rights to decentralization and local autonomy are constitutional rights with a long history in the administration of the Indonesian state (Usui & Alisjahbana, 2003). The founding fathers of Indonesia fully recognized decentralization as an exceptional right for all regions in Indonesia when they drafted the 1945 Constitution. As a constitutional right, the right to decentralization has gained national acceptance as a fundamental right (Timasheff, 1946).

More precisely, Article 18 of the 1945 Constitution guarantees local government autonomy. As a Unitary State, the constitution's guarantees of local autonomy reflect Indonesia's commitment to fundamental constitutional rights of local communities. Local governments are formed in autonomous regions in this context. Additionally, Indonesia respects special region status, and thus all state regulations affecting these special regions will take into account their indigenous and local rights.

In addition, autonomy must also be consistent with its objectives, which include equitable development across the country in accordance with given directions, political development and national unity, ensuring harmonious relations between regions, and enabling regions to participate in regional development. In other words, constitutional rights are those that are guaranteed by the 1945 Constitution. It is a legal safeguard against acts committed by those in positions of state authority in their interactions with citizens. It becomes a part of the 1945 Constitution when it is incorporated, requiring compliance by all branches of state power.

Thus, recognizing and respecting constitutional rights enshrined in the 1945 Constitution implies limitations on state power. Constitutional rights and constitutional obligations are inextricably linked; the existence of constitutional rights is explained by the 1945 Constitution's constitutional obligations. Constitutional obligations obligate society to carry out state-requested policies as a condition of citizenship (Harliansyah et al., 2021). They have been granted constitutional protection by the 1945 Constitution in relation to local government. Local government and autonomy are enshrined in the 1945 Constitution under four constitutional principles: (1) structure and authority of local government; (2) local democracy and authority; (3) fiscal and natural resource sharing among government tiers; and (4) recognition of customary rights. Moreover, Indonesia is established as a unitary state, not a federation, under Article 18. Therefore, there is no state within a state in this structure, and the principle of decentralization is used to establish autonomous local governments. Additionally, the Article establishes the groundwork for local democracy by demonstrating how to democratically elect a regional head. This provision vests local governments with the authority to enact their own regulations.

In addition, the provision of Article 18A of the 1945 Constitution enshrines the principle of shared authority, fiscal responsibility, and natural resource management. Article 18A is critical to the implementation of local autonomy because it establishes the authority and relationship of each tier of government. Not only does this

provision address authority relationships, but also fiscal and natural resource profit sharing. This provision was enacted in response to provincial governments' demand for fiscal and natural resource surpluses.

Related to local autonomy, principles of customary rights recognition are enshrined in Article 18B of the 1945 Constitution, establishing a constitutional guarantee for the recognition and respect of special government units such as Yogyakarta and Aceh. Additionally, the 1945 Constitution guarantees the customary community's autonomy; however, the document preparing the 1945 Constitution amendment makes no further reference to this customary community.

Because the 1945 Constitution is abstract, contextualizing its norms requires a broader interpretation. The Indonesian Constitutional Court is empowered to make constitutional interpretations in this regard. Due to the fact that justices have the authority to interpret constitutional articles, the standing of their decision is equivalent to the constitutional interpretation. This decision may be diametrically opposed to the explanation offered by the 1945 Constitution's framers, as there was no shared intent during the constitution-making process. This view is supported by Tom Ginsburg, who views parliament as a political entity that frequently seeks to remain in government in order to advance its own interests. Ginsburg goes so far as to argue that even the constitution's authors are politicians seeking to maintain their power within the framework of the constitution (Ginsburg, 2003, 2011; Ginsburg & Moustafa, 2008). These constitutionally protected political interests are then declared null and void by the court decision.

The Constitutional Court demonstrates extraordinary growth through its decisions. However, several of its contentious decisions are deemed to have altered the meaning of the 1945 Constitution's articles. Numerous conclusions can be drawn from existing constitutional court decisions. To begin, the Indonesian Constitutional Court's constitutional interpretation has given new meanings to constitutional articles. These modifications take the form of: (1) changes in the legal definition, which was previously regarded as the official interpretation of the 1945 Constitution. This type of change is evident in decisions number 008/PUU-II/2004 (Abdurrahman Wahid Case) and number 066/PUU-II/2004 (Annulment of Article 50 of the Law on the Constitution). The constitution's meaning, which was originally determined by law, has been altered by constitutional court rulings; and (2) changes in the interpretation of the 1945 Constitutional provision can also be seen in decision number 005/PUU-IV/2006 and decision number 23/PUU-V/2007 (Capital punishment constitutionality). The constitutional court rulings in these cases results in meaning alteration of the 1945 Constitutional provisions.

Given that constitutional court rulings serve as references for the implementation of a legal provision, they appear to have equal standing with the law. In light of the context, we examined constitutional court rulings, focusing on article 18 of the 1945 constitution, which deals with local autonomy. Due to the interpretative nature of the Constitutional Court's decisions, it is necessary to discuss these interpretations. Albert H. Y. Chen, a professor at Hong Kong University's Faculty of Law, coined the term constitutional interpretation to distinguish it from the term statutory interpretation. Constitutional interpretation is used to interpret the constitution or the Basic Law's provisions. It is inextricably linked to what is referred to as judicial review. It is defined as a method for establishing law in accordance with the constitution (Chen, 2000). In this regard, an interpretation method is required, as not all legal provisions are expressed explicitly.

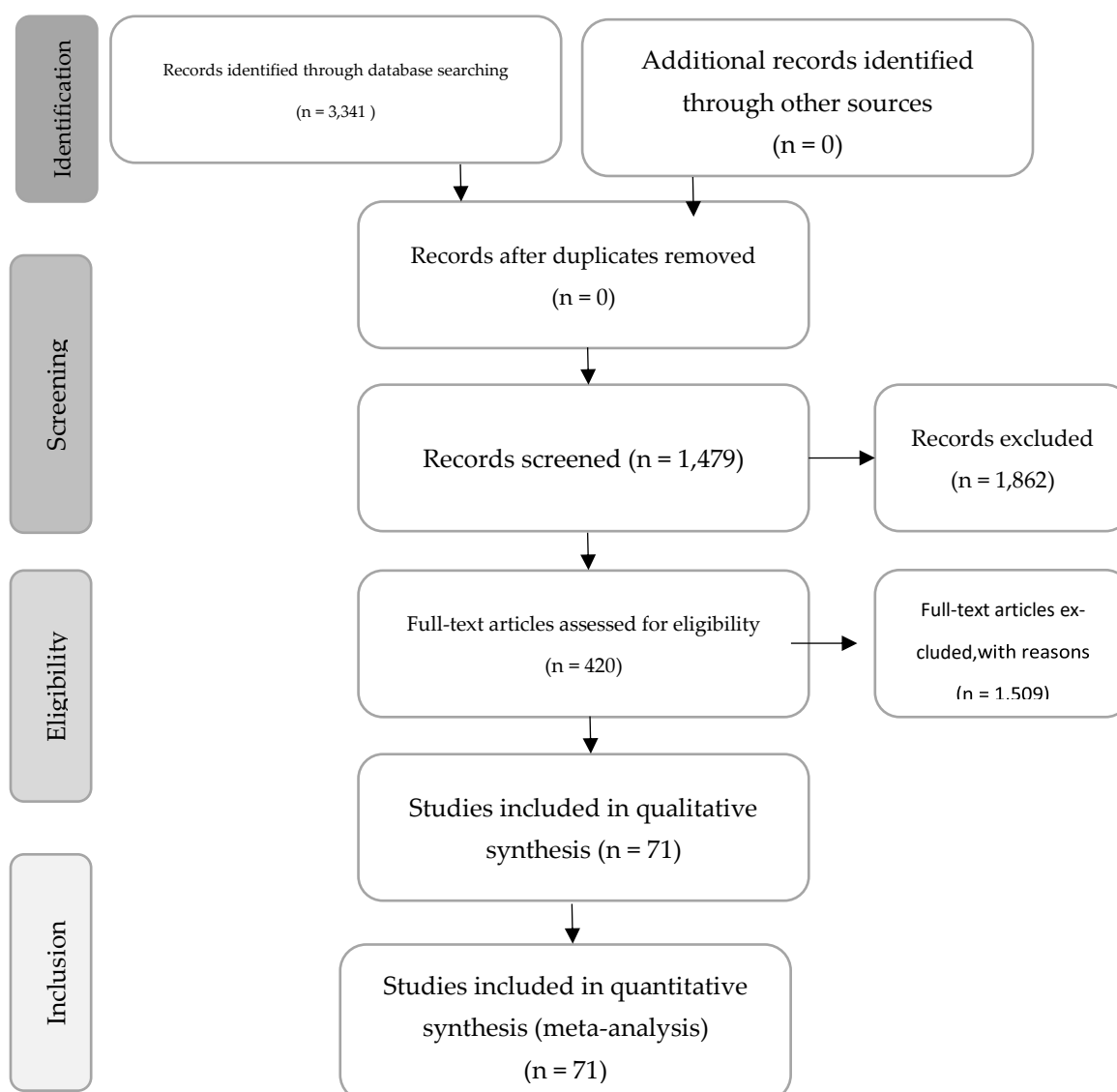
### **3. Materials and Methods**

#### **3.1. Study design**

This paper focuses on constitutional court rulings, focusing on article 18 of the 1945 constitution, which deals with local autonomy. This systematic review adopted a normative (dogmatic) research, seeking the science of law by observing written regulations as the main object of analysis (Abdulkadir, 2004; Soekanto & Mamudji, 2001; Suratman & Dillah, 2013). Through a case study approach, this paper investigated the Indonesian Constitutional Court decisions issued between 2003 and 2021.

### 3.2. Data collection

We followed the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) guidelines, which include four phases: identification, screening, eligibility, and inclusion for data collection (Moher et al., 2009), when selecting constitutional court decisions on local autonomy. To identify the collection of literature, we used both inclusive and exclusive filters. The following were the requirements for inclusion: official constitutional court decisions published between 2003 and 2021; the keywords used in the search were "the 1945 Constitution," "decentralization," and "local autonomy." In order to be considered, publications had to meet the criteria.



**Figure 1.** The PRISMA flow diagram

(Source: (Moher et al., 2009))

When identifying documents, they were all retrieved from the official Constitutional Court of the Republic of Indonesia database (<https://www.mkri.id>). For the first stage, there were a total of 3,341 records generated in the process. The results were refined by removing duplicate records and documents that did not contain the adopted keywords from the results. From January 1, 2003 to December 31, 2021, the publication period was covered. More than one thousand records were deleted during the second phase. It was then determined that only those records with full-text readings were eligible for consideration. Thus, the final phase included only 71 records after 3,243 records were dropped from the third phase. The final collection included 71 documents in Excel format (Figure 1).

### **3.3. Data analysis**

The collected data were then read through repeatedly, which included data checking, data marking and patterning, data reconstruction, and finally data systematization. They were analyzed descriptively using legal interpretation and construction techniques. Legal discovery was used to conduct the legal interpretation (*recht-vinding*). Then, a *contrario* legal argument was adopted to resolve legal issues. In so doing, the legal discovery analysis would be able to generate legal arguments capable of resolving legal issues via logical and systematic legal reasoning (Abdulkadir, 2004).

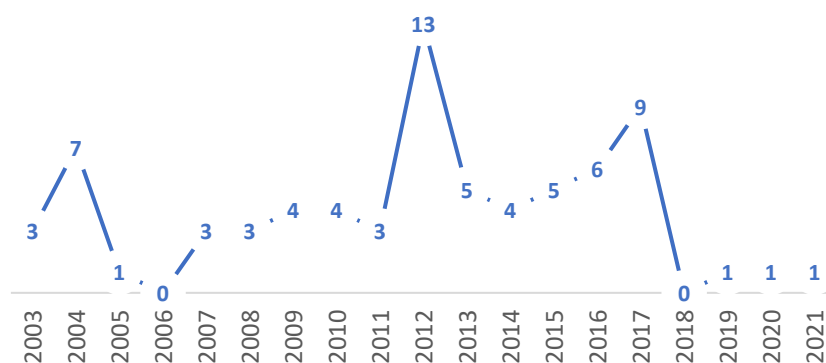
### **3.4. Ethics**

This research was approved by the Institutional Review Board (IRB) of Universitas Lampung's Institute of Research and Community Services. Due to the fact that this research did not involve animal or human experimentation but rather relied on archival data, the IRB approved a waiver of consent based on four criteria: (1) this study poses no more than minimal risks; (2) the waiver will have no adverse effect on the rights or welfare of the people; (3) the research could not be carried out practically without a waiver; and (4) it would not be appropriate to provide any subjects with information about the results of the research because no human or animal subjects were involved.

## **4. RESULTS AND DISCUSSION**

### **4.1. The total number of constitutional court decisions related to local autonomy**

Between 2003 and 2021, local autonomy-related constitutional court decisions experienced a fluctuate each year, indicating that the people of Indonesia paid close attention to the topic. As shown in Figure 2, the local autonomy-related constitutional court decisions followed a nearly identical pattern over the first decade, with a peak of 13 decisions in 2012. The number of decisions tends to decrease between 2013 and 2021, with a peak of nine in 2017.



**Figure 2.** Number of constitutional court decisions on local autonomy between 2003 – 2021 (n=71)

Since its inception, the Constitutional Court has been very active in receiving case requests for additional interpretations. The Court has received 3,341 cases in four categories, including Judicial Review, State Institution Authority Disputes, General Election Results Disputes, and Regional Head Election Results Disputes. A total of 1,501 judicial review cases have been received out of 3,341 total cases (Rosikin et al., 2022). This study found that 71 of the Court's numerous decisions have been devoted to the interpretation of local autonomy. Over a period of 18 years, on average, four decisions regarding local autonomy were made per year, with no decisions being made in 2006 and 2018 and the greatest number of decisions being made in 2012.

## 4.2. Primary themes of the Constitutional Court decision in the field of local autonomy

Following an analysis of the 1945 Constitution's constitutional guarantee of local autonomy, we found constitutional court decisions in terms of several categories, including the formation of local government, the definition of local democracy, and the recognition of customary rights (*adat*). The following are additional explanations of these categories:

### 4.2.1. The formation of local government

The following provision appears in Article 18 paragraph (1) of the 1945 Constitution.

“The Unitary State of the Republic of Indonesia is divided into provinces, each of which is further divided into districts and municipalities, with each province, district, and municipality having its own administration governed by law”.

As a unitary state, this provision means that the entire Indonesian region is considered to be the territory of the Unitary State of the Republic of Indonesia. This interpretation is contained in the Constitutional Court decision number 32/PUU-X/2012 on the Judicial Review of Law number 31 of 2003 Establishing the Lingga Regency in Riau Province.

The applicants in this case were the Regent of Jambi, Head of House of Representatives of Jambi Province, Regent of Tanjung Jabung Timur, Head of House of Representatives of Tanjung Jabung Timur Regency, Head of Sadu District of Tanjung Jabung Timur Regency, Head of Sungai Itik Village, Heads of Pulau Berhala, Sungai Itik Sub-Village, Kalik, H. Hasip Kalimuddin Syah, Sayuti, and R. Muhammad. The applicants contended that Article 5 paragraph (1) point c of Law No. 31 of 2003 Establishing Lingga Regency in Riau Province does not establish clear territorial boundaries for Lingga Regency. Thus, the applicants contended

that the Article violates Article 18 paragraph (1) of the 1945 Constitution. However, according to Constitutional Court decision, the application lacked sufficient legal justification.

The Constitutional Court emphasizes and concludes in this case that the Unitary State of the Republic of Indonesia comes before the region. The division indicates that the province and/or district and/or municipality is part of the Unitary State of the Republic of Indonesia's territory and that the province and/or regency and/or city is given authority to rule over certain matters.

The 1945 Constitution's lawmakers purposefully used the term "divided" rather than "consist of" to avoid legal construction that the province and/or district and/or municipality existed prior to the Republic Indonesia's unitary state. That is, provinces, districts, and municipalities are merely administrative regions of the Unitary State of the Republic of Indonesia, which is distinct from federal states. Provincial or regional boundaries are relative. These regions' boundaries are not fixed in stone and can be altered.

This Constitutional Court position is motivated by one of the founding fathers, Hatta, that Article 18 divides Indonesian territory into small and large regions (Nurcholis & Kridasakti, 2018). Additionally, the Court explains that the implementation of Article 18 paragraph (1) of the 1945 Constitution is a function of the legislator's authority to divide the regions and define their territorial boundaries. This view is also expressed in Constitutional Court Decision No. 112/PUU-X/2012 on Judicial Review of Law No. 3 of 2003 Establishing Mukomuko, Seluma, and Kaur Regencies in Bengkulu Province.

#### **4.2.2. The meaning of local democracy**

Article 18 paragraph (4) of the 1945 Constitution provides as follows.

A Governor, Regent, and Mayor shall be democratically elected to head the administration of a province, a district, or a municipality, respectively.

The Constitutional Court provides an explanation for the provision in Decision No. 40/PUU-VIII/2010 on the Judicial Review of Regional Government Law No. 12 of 2008. The Constitutional Court explains that the phrase "democratically elected" does not obligate lawmakers to use a single method of election. Additionally, in light of the numerous petitions filed to review the term "democratically," the Constitutional Court attempts to define the term from its origins. The term "democracy" derives from the Greek words *demos* and *kratos* or *cratein*. The term *demos* refers to the populace, whereas *kratos* or *cratein* refers to sovereign power. Thus, democracy can be defined literally as the sovereignty of the people.

Two significant mandates regarding the fulfilment of the regional head position are contained in Article 18 paragraph (4) of the 1945 Constitution. To begin, fulfilment shall be accomplished through an election. Second, election should be conducted democratically, that is, in accordance with democratic principles. Article 18 paragraph (4) of the 1945 Constitution imposes no obligation on lawmakers (House of Representatives and President) to use a single election procedure, directly or indirectly.

Direct election is unquestionably a democratic method of election. Regional House of Representatives election is unmistakably democratic, as members are directly elected by voters. When a law elects a regional head through the Regional House of Representatives, it can be considered democratic. In other words, a regional head is elected by the elected members of Regional House of Representatives through a representative democracy. Thus, election, whether direct or representative democracy, is considered a democratic method of election.

Regarding the difference in regional head election systems, namely the direct or indirect method, the Constitutional Court expresses its consideration in paragraph [3.20] of its decision No. 22/PUU-VII/2009 dated 17 November 2009 that the distinction in the regional head election system does not imply that the indirect election system is less democratic or less representative than the direct election system. Both systems reflect the state's policy toward democratic elections, as defined in Article 18 (4) of the 1945 Constitution. After direct and indirect regional head elections (based on laws number 32/2004 and 22/1999, respectively) and their consequences, the idea of implementing indirect elections resurfaces.

Additionally, Article 22E paragraph (1) of the 1945 Constitution provides for a general election every five years, and article 1 number 4 of Law 22/2007 on the General Election Organizer specifies that the regional head election is included in the general election regime. The general election issue is also the subject of a



remarkable Constitutional Court ruling, in which three constitutional court justices express their dissenting opinions. It is case No. 072-073/PUU-II/2004 for Judicial Review of Regional Government Law No. 32 of 2004 petitioned by Yayasan Pusat Reformasi Pemilu (Cetro), represented by Smita Notosusanto and Hadar Nafis Gumay. The Constitutional Court argues in its legal consideration that in order to define the term "democratically elected" as defined in Article 18 paragraph (4) of the 1945 Constitution, the article must be linked to Article 18B paragraph (1) of the 1945 Constitution. Article 18B paragraph (1) states that the State shall recognize and respect entities of regional administration that are regulated by law due to their uniqueness or distinctiveness. The phrase "democratically elected" indicates that a regional head election should take into account regional head's exercise in special regions as defined in article 18B paragraph (1) of the 1945 Constitution. To carry out the provisions of Article 18 of the 1945 Constitution, a regional government law containing provisions on regional head elections is required.

In this regard, the Constitutional Court maintains that lawmakers have the authority to determine whether a direct election system or other democratic means should be used. Given that the 1945 Constitution mandates a democratic regional head election, the implementation of direct election or alternative methods should be based on generally applicable election principles. Given that the lawmakers chose a direct regional head election method to define the term "democratically elected," the logical conclusion, according to the Constitutional Court, is that the regional head election should be conducted in accordance with the general principle of election, namely, a direct, public, free, secret, fair, and just election organized by an independent institution.

Concerning the scope of Article 22E of the 1945 Constitution, the Constitutional Court argues that direct regional head elections do not fall within the definition of a general election as defined in that article. A direct regional head election enacts Article 18 of the 1945 Constitution in its entirety. As a result, its implementation may differ from that contemplated by Article 22E of the 1945 Constitution.

From a constitutional standpoint, lawmakers have the authority to determine whether direct regional head elections are an extension of a general election contemplated in Article 22E of the 1945 Constitution, and whether their resolution will be a function of the Constitutional Court's authority, as specified in Article 24C paragraph (1) of the 1945 Constitution. On the other hand, lawmakers may determine that direct regional head elections do not meet the formal definition of general election as defined in Article 22E of the 1945 Constitution, and thus that their resolution will fall under the authority of the Supreme Court.

### **4.2.3. Recognition of customary rights (adat)**

Article 18 was amended and enriched in 2000, with the addition of provisions on local autonomy and customary rights. Additional Articles 18A and 18B ensure the continuation of customary law: (1) the State shall recognize and respect entities of regional administration that are regulated by law due to their uniqueness or distinctiveness; (2) the State shall recognize and respect, in accordance with applicable law, the homogeneity of societies governed by customary law and their traditional rights for as long as they continue to exist and are consistent with societal development and the Unitary State principle of the Republic of Indonesia. Both provisions bolster positivism's position on customary law. The 1945 Constitution establishes a number of criteria for recognizing the existence of customary law.

When these stipulations are examined more closely, they differ slightly from the previous recognition in that they require a law to recognize the existence of customary law. Additionally, these provisions do not spell out the specifics of customary law recognition. The most recent amendment establishes an institution with the authority to interpret the 1945 Constitution, namely the Constitutional Court, which did not exist prior to this amendment. In terms of customary law recognition, the Constitutional Court bridges the divide through its interpretation of customary rights. We argue that positivism's hegemony can be diminished by establishing the Constitutional Court and mediating between formal positive law and customary law. This is critical, as changes and modernization should not obliterate customary law's critical role.

Throughout the post-Soeharto era, Indonesian ethnic groups and communities have pressed for the right to implement customary values in their region. Certain of these customary laws have been demonstrated to be effective at protecting natural resources. Among these customary laws is the well-known Sasi marine resource management, which has developed into a tool for government regulation and reporting. Despite their unique

legal status, the Krui's resin agroforest has not been immune to government and private sector interest, with ninety Krui villages becoming the target of "expulsion" campaigns.

The problem with customary law is that there is no legislative or judiciary institution that expressly recognizes it. Concerning the existence of customary law, some believe that judicial pronouncements are critical in preventing fictitious customary law. The legislative body should make the law, while the court should interpret it. It is worth noting that Ter Haar emphasizes the importance of court recognition of customary law, its evolution, and legal standing when discussing customary law recognition (Bellace & Ter Haar, 2019; Rudy et al., 2021). Currently, Indonesia's customary laws urgently require the Constitutional Court to explain the procedure for customary law recognition under the amended constitution. This occurs in a Papua province regency. Almost every location in Papua is de facto governed by the customary law community, which is comprised of approximately 262 indigenous languages. The Yahukimo people are one of these indigenous communities.

The people of Yahukimo Regency participated in the 2009 general election using their own method, rather than adhering to the positive law on general elections. Prior to the election, the clan leaders convened a meeting with all clan members to determine who would be elected. Following that, the clan leaders cast their vote on behalf of all clan members in front of all clan members. After that, the customary chief placed the ballot in a Noken. A party then brought the process to a close. This is a common occurrence in customary law, where the community takes precedence over individuals in order to maintain harmony.

The Noken model was developed in response to the petition filed by Rev. Elion Numberi and Hasbi Suaib in the Constitutional Court Trial No. 47-81/PHPU.A/VII/2009. Both petitioners questioned the outcome of the general election but made no mention of the Noken voting model's recognition. However, the Noken voting model is inextricably linked to the main case because it is directly related to the outcome of the general election. By recognizing Yahukimo's customary law by accepting the number of votes obtained through the customary legal method, the Constitutional Court has recognized Yahukimo's customary law. In other words, the Constitutional Court decision acknowledges and respects Papua's customary law and the Yahukimo people's election method. The Court accepts Yahukimo collective voting on the grounds that recognizing a different voting method will bring harmony to the Yahukimo people. The court believes that relying exclusively on positive law can result in discord, which contradicts the ultimate goal of law and justice.

This is believed to be the first decision in Indonesia to recognize the existence of customary law. One of the Constitutional Court's justices contains two contradictory values: legal certainty and public harmony. On the one hand, enforcing formal law in this case may disrupt the Yahukimo community's harmony and provide no benefit to them. The court thoughtfully considered the benefits of these two contradictory values and determined that the most important value is a harmonious community based on its customary law (Sodiki, 2009).

Following the landmark decision on Noken voting, the decision No. 35/PUU-X/2012 on constitutional review of Forestry Law No. 41/1999 reinforces the recognition of customary law. According to the Court, there are four distinct typologies and standards for the existence and constitutional rights of customary law community units based on Article 18B paragraph (2) of the 1945 Constitution: (1) it continues to exist; (2) it is consistent with society's advancement; (3) it is consistent with the Republic of Indonesia's founding principles; and (4) it is governed by the law.

This Article establishes two obligations on the part of the state toward indigenous peoples: recognition and respect. Since the debate over the Indonesian Constitution amendment began, the debate over indigenous peoples has gotten more heated, culminating in Article 18B Paragraph (2). The debate raises concerns about indigenous peoples' survival, as changes and developments threaten their very existence. The inclusion of a provision recognizing and respecting indigenous and tribal peoples in Article 18, a chapter on Regional Government, demonstrates that the practice of recognizing and respecting indigenous and tribal peoples is more prevalent in regulatory regimes governing local autonomy. Additionally, there has never been a single law governing communities governed by customary law. Currently, community arrangements based on customary law are dispersed across several sectoral laws. The Constitutional Court stated in its decisions that the local regulation that developed prior to the establishment of the Law on Customary (*Adat*) Law Society was justified as a means of filling the legal void and ensuring legal certainty. Finally, numerous regions have developed indigenous and tribal peoples-related legal products.

## 5. Conclusions

Local autonomy has been a central feature of the Indonesian constitution. However, with a brief and abstract constitutional provision, the provision's meaning is necessary. We found that among the numerous decisions made by the Constitutional Court, 71 are related to local autonomy. After analyzing those decisions, this paper, as we found, categorizes our interpretations into three categories: formation of local government, definition of local democracy, and recognition of customary (*adat*) rights. The Court's decisions demonstrate that it has clarified the meaning of obscure constitutional provisions.

The findings of the study imply that the 1945 Constitution can succeed in Indonesia's pluralistic society without creating conflicts. This means that Indonesians who live in diverse communities should be protected, rather than neglected, by both customary law and constitutionalist principles (Rudy et al., 2021). However, in terms of customary law, *adat* can be seen in many different ways by people with different goals and agendas. From the point of view of legal pluralism, it includes not only how *adat* and the state work together, but also how religious law and other types of law work together. Thus, legal pluralism is important in a pluralistic society where state law is less rigid and unclear. It can be used in both rural and urban areas, both inside and outside of a country (Roth & Moniaga, 2021).

Therefore, this study includes several recommendations for additional research in the future. Future research should focus on the interaction of state law, democracy, and customary law in practice, for example, how a customary court operates. In addition, research into legal recognition of indigenous peoples' rights and the translation of these rights into sustainable and meaningful social change is critical. Finally, future research should look into how customary rights and local authority work together to solve other local issues.

### **Author Contributions:**

Conceptualization, Rudy; Methodology, Rudy and I Ketut Dharma Putra Yoga; Validation, Rudy, I Ketut Dharma Putra Yoga and Afrintina; Formal Analysis, Rudy, Rudi Wijaya, Martha Riananda; Resources, Rudy; Data Curation, Afrintina, Rudi Wijaya, and Martha Riananda; Writing—Original Draft Preparation, Rudy; Writing—Review and Editing, I Ketut Dharma Putra Yoga and Rudi Wijaya; Supervision, Rudy; Project Administration, Afrintina. All authors have read and agreed to the published version of the manuscript.

### **Informed Consent Statement:**

Due to the fact that this research did not involve animal or human experimentation but rather relied on archival data, our Institutional Review Board granted a waiver of the consent process, stating that there was no risk associated with this research. The waiver will have no adverse effect on the rights or welfare of the people.

### **Data Availability Statement:**

The data presented in this study are available on request from the corresponding author.

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### **Conflicts of Interest:**

The authors declare no conflicts of interest.

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