

Interpretation of Term of Office by the KPU in Regional Elections: Analysis from the Perspective of Legal Interpretation and Legal Certainty

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ABSTRACT

The interpretation of the term of office of Regional Heads has become a crucial issue in the implementation of Regional Head Elections (Pilkada) in Indonesia, particularly when there is a discrepancy in the methods used by the General Election Commission (KPU) and the Constitutional Court (MK) in interpreting the term of office. In practice, the Constitutional Court adopt a combination of systematic, teleological, and historical interpretative approaches, which consider the substantive meaning of the term of office and the purpose of limiting power. Conversely, the KPU tends to employ a grammatical approach that emphasizes methodologies but also has serious implications for legal certainty, electoral legitimacy, citizens political right, and the credibility election results. The study aims to analyze the construction of legal interpretations regarding the term of office from the perspectives of the KPU and MK and its implications for the conduct of Pilkada. The method used is a normative juridical approach through a literature review of legislation, MK decisions, and legal literature. The results of the study indicate that a lack of harmonization in interpretation has the potential to create legal and administrative conflicts and opens the door to abuse of power. Therefore, harmonization of interpretation is necessary through regulations based on constitutional principles to ensure fair, democratic elections that uphold legal certainty.

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Keywords:

Term of Office;
Regional Elections;
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INTRODUCTION

Regional Head Elections (Pilkada) are part of Indonesia's democratic system, requiring fair, transparent, and legally binding implementation. One crucial issue in the implementation of Pilkada is the provisions regarding the term of office of regional heads, particularly regarding the expiration of the term and the right to run for reelection. Although the provisions regarding the term of office are stipulated in legislation, in practice, diverse interpretations often arise, both from election organizers and stakeholders.

The General Elections Commission (KPU), as the election organizing body, plays a crucial role in interpreting and implementing legal provisions, including establishing requirements for regional head candidacy. The KPU's interpretation of terms of office often generates controversy, particularly when it concerns term calculations, which affect candidacy eligibility or the scheduling of regional elections. This disparity in interpretation creates legal uncertainty and has the potential to lead to legal and social conflict.

Within the framework of a state based on the rule of law, interpretation of legal norms cannot be arbitrary. Appropriate legal interpretation methods, such as grammatical, systematic, historical, and teleological, are required to ensure consistent

and fair application of the law (Shidarta, 2020). One concrete form of limiting power within the legal system is limiting the term of office through legislation. This highlights the importance of examining how the General Elections Commission (KPU) interprets the term of office and whether this approach aligns with the principle of legal certainty as mandated by the legal principles (Aulia, 2020).

Legal certainty is a crucial foundation for democratic elections. When legal interpretations are open to multiple interpretations, they create uncertainty, diminish the legitimacy of elections, and even harm citizens' political rights. Therefore, it is crucial to thoroughly analyze how the General Elections Commission (KPU) implements legal interpretation practices and whether they ensure fairness and legal certainty in the regional election process.

The issue of regional head tenure becomes increasingly complex when faced with specific political events such as impeachment, resignation, delayed inauguration, or interim replacement. The General Elections Commission (KPU) is often faced with the need to make swift decisions regarding nominations, without explicit technical guidance in legislation. In these situations, the KPU's interpretation becomes crucial. However, if this interpretation is not grounded in accountable legal interpretation methods, it may lead to legal conflicts and undermine public trust in election management institutions.

One concrete example that demonstrates the importance of a clear interpretation of the term of office of regional heads is the Constitutional Court Decision Number 132/PHPU.BUP-XXIII/2025. In this case, the Court granted part of the petition of the candidate pair Cecep Nurul Yakin–Asep Sopari regarding the Tasikmalaya Regency Pilkada, by disqualifying the incumbent Ade Sugianto–Iip Miptahul Paoz. The Constitutional Court considered that Ade Sugianto's term of office as Regent of Tasikmalaya had been counted as two terms of office, because he had served as regional head for more than two years and six months in two different periods, including when carrying out duties as acting head. This decision confirms that the term of office is factually, not only definitively, counted towards the maximum limit of two terms of office of regional heads.

This situation necessitates a deeper examination of the KPU's practices in interpreting regional head terms of office. This will determine whether these interpretations are carried out consistently, in accordance with applicable legal principles, and in a manner that adheres to the general principles of good governance. In this context, a legal analysis of the legal basis and implementation practices of term interpretations is crucial. Furthermore, it is crucial to investigate any inconsistencies between laws and regulations and KPU practices.

Furthermore, this research is also important for assessing the legal interpretation methods used by the General Elections Commission (KPU) when addressing the issue of tenure. These methods are normative, textual, or emphasize the goals and principles of justice. This analysis will demonstrate whether the KPU's approach aligns with the principle of legal certainty, one of the objectives of the law.

This research attempts to examine the practice of interpreting the term of office by the KPU through a legal interpretation approach and assess its implications for the principle of legal certainty, with the hope of contributing to the formation of more orderly and just election practices.

In the field of law and constitutional law, interpretation is understood as a way to discover the law (*rechtsvinding*) when a legal norm already exists, but is still too abstract or unclear to be applied to a concrete event (Kusumaatmadja, 2003). The process of legal discovery is related to efforts to actualize the results of legal formation so that they can be used in practice. Legal discovery is a process of making concrete legal decisions, which directly produce legal consequences for individual situations, for example in the form of a judge's decision, a decree, or even the creation of a deed by a notary. From a certain perspective, as stated by Meuwissen, legal discovery reflects the process of law formation itself (Shidarta, 2020).

With this approach, this research is expected to make a tangible contribution to developing more transparent and accountable election practices, as well as encouraging the establishment of more stringent and uniform legal interpretation guidelines for election management institutions. Furthermore, the results of this study can also be used as input for policy formulation or regulatory revisions related to regional elections, particularly regarding the term of office of regional heads. Research questions: (1) What is the legal construction of the interpretation of the term of office from the perspective of the General Elections Commission (KPU) and the Constitutional Court?, and (2) What are the implications of the differences in interpretation of the term of office by the KPU and the Constitutional Court for legal certainty and the implementation of regional elections?

METHOD

This research uses a normative legal approach based on the principle of comparison. In the context of normative legal research that focuses on principles, the primary data sources come from library materials, which are classified as secondary data in the research method (Soekanto, 2004). This secondary data includes various official documents, academic literature relevant to the object of study, research reports, undergraduate theses, dissertations, and applicable laws and regulations.

This research aims to examine the structure and systematics of law, namely by analyzing specific statutory regulations or written legal forms. The data collection process is conducted through a literature review, requiring researchers to be meticulous and selective in identifying information from legal documents and scientific references that is directly relevant to the issue being studied.

RESULTS AND DISCUSSION

Legal Construction of the Interpretation of the Term of Office from the Perspective of the KPU and the Constitutional Court

The term of office of a regional head is a fundamental element in the implementation of regional elections, directly impacting the accuracy of the election schedule, the leave of the incumbent, and the inauguration of the new regional head. The interpretation of the term of office is crucial because it concerns legal certainty and electoral justice, especially in the context of simultaneous regional elections, which were once the mainstay of local democracy in Indonesia.

Normatively, the term of office for regional heads is regulated in Article 162 of Law Number 10 of 2016, which states that regional heads serve for five years from the date of inauguration. However, this provision does not technically explain how this time is calculated in concrete situations, such as during phased inaugurations, interim

replacements (PAW), or resignations. The General Elections Commission (KPU), as the technical election organizer, often takes an interpretive stance regarding these gaps or ambiguities.

In constitutional practice, the Constitutional Court and the General Elections Commission (KPU) have shown different approaches in interpreting the calculation of the term of office of regional heads, particularly in non-ideal conditions such as gradual inaugurations, interim replacements (PAW), or adjustments to the schedule for simultaneous regional head elections. The KPU, as the technical organizer of elections, formulates the calculation of the term of office through internal regulations, including KPU Regulation Number 8 of 2024, which states that the term of office of regional heads is calculated from the date of inauguration (Gunawan & Mujahidah, 2024; Mahmud & Supriyadi, 2025). However, this interpretation tends to be administrative and procedural, thus creating potential legal uncertainty if it does not consider constitutional principles.

This is in contrast to the Constitutional Court, which in a number of its decisions, such as Decision Number 129/PUU-XXII/2024 and Decision Number 143/PUU-XXI/2023, emphasized that the interpretation of the term of office must always be in line with the principles of the rule of law, democracy, and the protection of citizens' political rights. The Constitutional Court even explicitly annulled norms in KPU regulations deemed contrary to the 1945 Constitution, if these norms cause injustice or harm citizens' political rights, especially regarding the re-nomination of regional heads. Thus, in the context of testing norms, the Constitutional Court plays a corrective role against the KPU's administrative interpretation to ensure that the calculation of regional heads' terms of office is carried out constitutionally, fairly, and guarantees legal certainty.

This difference in interpretation is even more stark when compared to the perspective of the Constitutional Court (MK), which places greater emphasis on constitutional aspects and the principle of popular sovereignty. In Decision Number 67/PUU-XIX/2021, the Constitutional Court emphasized that legal interpretation should not be solely administrative, but must also consider the principles of democracy, electoral justice, and legal certainty as the primary foundations of a state based on the rule of law. The Constitutional Court rejected this narrow interpretation of the term-of-office norm, as it could violate political rights and undermine the legitimacy of election results.

Furthermore, the Constitutional Court, in Decision Number 132/PHPU.BUP-XXIII/2025 in the Tasikmalaya Regency election dispute case, set an important precedent regarding the interpretation of terms of office. In this case, the Constitutional Court disqualified incumbent candidate Ade Sugianto because he was deemed to have served for two terms. The Constitutional Court emphasized that the calculation of terms of office is not solely based on inauguration, but rather from the time the regional head legally and factually obtained power, including as an interim replacement (PAW).

In its considerations, the Constitutional Court explained that Ade Sugianto had served as Regent of Tasikmalaya since September 5, 2018, following the inauguration of Uu Ruzhanul Ulum as Deputy Governor of West Java. Ade Sugianto's appointment was based on a Letter from the Governor of West Java and through a valid legal mechanism. Although the official inauguration as definitive Regent (remaining term)

was only carried out on December 3, 2018 by the Governor of West Java Ridwan Kamil, Ade Sugianto has carried out all regional government functions fully since the date of replacement. The Constitutional Court emphasized that the term of office that has been carried out in fact and in reality, even though it has not been ratified through a definitive inauguration, must still be counted as one term of office if it has exceeded half the term of office of the regional head. This affirmation is in line with Constitutional Court Decision Number 22/PUU-VII/2019, which states that:

"If a person has served as regional head or deputy regional head for half a term or more, then he is deemed to have served one term."

This principle was later reaffirmed in Decisions No. 67/PUU-XVIII/2020 and No. 2/PUU-XXI/2023, and was used as the legal basis by the Court in Decision No. 129/PHP.BUP-XXIII/2024, which specifically examined the Tasikmalaya Regency Pilkada case. In this final decision, the Constitutional Court stated that:

"The term of office of the replacement Regent in the PAW position is calculated from the actual (factual) implementation of the duties, and not from the inauguration, if the person concerned has fully exercised the authority of the regional head."

The Constitutional Court stated that the definition of a term of office is not solely determined by the formal inauguration, but also by the legitimate, effective, and sustained exercise of governmental power. In this case, a replacement candidate serving for more than two years and six months is considered to meet the qualifications for a single term in office. Therefore, Ade Sugianto's renomination in the next regional election, which could potentially lead to a third term, is deemed to violate the constitutional requirement for a two-term term.

As a legal consequence, the Constitutional Court ordered the Tasikmalaya Regency Election Commission (KPU) to disqualify Ade Sugianto from the race and hold a revote (PSU) without listing him as a candidate. The Constitutional Court also ordered the KPU to allow the political parties supporting the election to replace their regent candidates, while retaining their vice regent candidates.

This ruling affirms the interpretive direction that terms of office must be interpreted substantively and factually, not merely administratively and formally. The Constitutional Court has consistently upheld the principle of term limits to prevent the concentration of power, ensure leadership rotation, and maintain the quality of local democracy. On the other hand, the General Elections Commission (KPU)'s approach, which uses inauguration as the sole reference, is deemed inadequate to guarantee the principle of electoral fairness.

In the context of legal theory, Sudikno Mertokusumo and A. Pitlo explain that there are several methods of legal interpretation commonly used by judges or other legal interpretation institutions. Among them are: (1) Grammatical interpretation, namely interpretation based on the linguistic meaning of a legal norm; (2) Teleological or sociological interpretation, namely interpreting norms based on social goals or values to be achieved; (3) Systematic or logical interpretation, namely interpretation by looking at the relationship between norms in a legal system; (4) Historical interpretation, namely interpretation by tracing the intention of forming laws when the norms were drafted; (5) Comparative interpretation, namely interpreting norms by comparing between legal systems; (6) Futuristic interpretation, namely interpretation that takes into account future legal developments (Mertokusumo & Pitlo, 1993).

In the context of the differing interpretations between the General Elections Commission (KPU) and the Constitutional Court (MK) regarding the term of office of regional heads, it is apparent that the MK combines several interpretive approaches, namely systematic, teleological, and historical interpretations, which consider the substantive meaning of the term of office and the purpose of limiting power. In contrast, the KPU tends to use a grammatical approach oriented toward procedural certainty. This difference in approach is at the core of the legal construction regarding the interpretation of the term of office of regional heads in the implementation of regional elections.

Thus, the legal construction of the interpretation of the term of office from the KPU's perspective tends to be normative-administrative and technically operational, while the Constitutional Court emphasizes constitutional principles oriented towards the substance of power and term limits of leadership. MK Decision No. 132/PHPU.BUP-XXIII/2025 is an important starting point that the term of office cannot be interpreted unilaterally by technical institutions, but must be based on legal principles that guarantee justice, equality, and legal certainty comprehensively.

The General Elections Commission (KPU), as part of the regional election administration system, cannot carry out its duties solely based on administrative technicalities, without considering higher legal principles within the constitutional framework (Ansori, 2017). In practice, administrative decisions that are inconsistent with the principles of justice and equality can harm citizens' political rights. Therefore, in the context of legal interpretations regarding terms of office and candidacy requirements, it is important for the KPU to not only refer to normative texts but also consider their impact on the principles of the rule of law and substantive democracy.

Implications of Differences in Interpretation of Term of Office by the KPU & MK on Legal Certainty and the Implementation of Regional Elections

The differing interpretations between the General Elections Commission (KPU) and the Constitutional Court (MK) regarding the term of office of regional heads not only reflect differing methodological approaches but also directly impact legal certainty and stability in the implementation of regional elections. Legal certainty, as stated by Gustav Radbruch in his classical legal theory, is one of the fundamental values of law, alongside justice and expediency (Radbruch¹, 2017). When there is a lack of harmony in interpretation between institutions, the potential for legal uncertainty increases.

The General Elections Commission's (KPU) approach, which utilizes grammatical interpretation and focuses on administrative certainty by establishing inauguration as the basis for term-of-office tenure, offers advantages in terms of efficiency and predictability of election stages. However, this approach tends to ignore the substantial context of the power exercised by regional heads, particularly in cases of interim replacements (PAW) or non-simultaneous inaugurations. The immediate implication is confusion in determining when terms end and who is eligible to run for reelection.

In contrast, the Constitutional Court's approach, which uses teleological and historical interpretation methods, actually strengthens aspects of justice and constitutional conformity. In Constitutional Court Decision Number 132/PHPU.BPU-XXIII/2025, the Constitutional Court explicitly stated that the term of office is calculated from the moment a person legally and effectively assumes power, not merely from inauguration. This sets a precedent that the substance of power is more important

than formal procedures, and that the interpretation of norms must be directed towards upholding democratic principles.

Another implication of these differing interpretations is the potential for legal and administrative conflict. If the General Elections Commission (KPU) persists in its grammatical interpretation without adhering to the logic of the Constitutional Court's ruling, it is understandable that overlapping authority and legal challenges from aggrieved parties will occur, as occurred in the 2024 regional elections in Tasikmalaya Regency. This has led to local political instability, delays in the election process, and even the delegitimization of election results, even leading to a revote (PSU).

In the context of regional elections, the principle of legal certainty is not only interpreted as procedural clarity, but must also encompass predictability, fairness, and accountability in the application of legal norms. The law is not merely a tool for regulation, but also an instrument that must be responsive to social change and community aspirations (Aprilianti et al., 2024). Therefore, in situations of multiple interpretations, the law must be formulated and implemented inclusively and ensure that every citizen has certainty regarding their rights, particularly in exercising their right to vote and be elected.

From the perspective of Luhmann's legal system theory, the legal system must be able to provide predictability regarding the actions of legal subjects (Radbruch¹, 2017). When inconsistent interpretations occur, public trust in the legal system is eroded. In this regard, legal interpretation should be conducted not only based on normative texts but also through a hermeneutical approach that considers the values of justice and the clarity of the legal structure as a whole.

The ambiguity of the formulation of norms in election regulations, as evident in the phrase "other criminal acts" in the KPU Regulation, demonstrates the wide latitude of interpretation held by the General Elections Commission (KPU). Unspecified interpretations can lead to restrictions on citizens' political rights without a just legal mechanism (Hermansyah, 2024; Nabela & Arfa'i, 2023). In the case of regional heads' terms of office, a similar situation can arise when the KPU unilaterally implements administrative interpretations without constitutional consideration. Therefore, normative limitations are necessary through the principle of due process of law to ensure that legal interpretations by election organizers do not violate constitutional rights.

Furthermore, in practical terms, the KPU's interpretation, which disregards Constitutional Court precedent, could impact election logistics planning, the preparation of the final candidate list, and even the mechanism for replacing candidates. This legal loophole also opens up room for abuse of power and the politicization of election management bodies. Therefore, there is a need for harmonization of interpretation through regulations or technical guidelines that clarify how to calculate terms of office constitutionally and operationally.

If the limits of legal interpretation are not explicitly defined, the legal process in regional election disputes can become overly broad and uncontrolled. Uncontrolled interpretations open the door for anyone to challenge various technical aspects of the election process, not just the final results. This situation not only creates legal uncertainty but also paves the way for liberal legal practices that deviate from the primary goal of democratic and fair elections. Therefore, in addition to harmonizing regulations, it is also necessary to strengthen the boundaries of legal interpretation to

prevent it from being exploited as a political loophole that undermines the democratic order (Hantoro, 2016).

The implications of interpretation for legal certainty and the implementation of regional elections also reflect the important role of the judiciary as the guardian of the constitution. In Hans Kelsen's theory of the hierarchy of norms, Constitutional Court decisions hold a higher position than administrative interpretations by technical institutions such as the General Elections Commission (KPU). Therefore, in situations of interpretative conflict, constitutional interpretation should be the primary reference to maintain the unity of the national legal system.

The ambiguity of norms in laws and their implementing regulations often leads to multiple interpretations at various levels, including regarding terms of office. Interpretations that focus solely on administrative matters risk ignoring substantive aspects such as professional ethics, the principle of justice, and popular sovereignty (Zainuri, 2019). Therefore, legal interpretation in the context of regional head terms of office must be inseparable from the constitutional framework that prioritizes legal certainty and the principle of checks and balances between institutions.

Disagreements in interpretation between election organizers and legal institutions regarding the norms of nomination and term of office in regional elections have the potential to create legal uncertainty and conflicts over the legitimacy of election results. When election organizers lack a unified and constitutional basis for interpretation, court decisions often become the only corrective mechanism. In this regard, the Constitutional Court's role is not merely to assess procedures but also to ensure that the election process is based on the principles of equality, legal certainty, and the protection of voting rights (Kartika Nabela, 2022).

In situations of multiple interpretations and potential conflicting norms, the Constitutional Court's role as a guardian of constitutional principles is crucial. The Constitutional Court does not merely examine articles for formality, but also acts as a corrector of legal norms that could potentially harm citizens' constitutional rights. Through its authority, the Constitutional Court can abolish or reaffirm norms that are inconsistent with the values of justice and legal certainty as outlined in the 1945 Constitution. In the context of calculating the term of office of regional heads, the Constitutional Court's corrective role is crucial to ensure that the rights of office are exercised in accordance with constitutional principles, not merely administrative or technical considerations (Wardhana, 2018).

The unclear norms used by the General Elections Commission (KPU) in technical regulations, particularly those using optional phrases such as "can" or "if necessary," often give rise to multiple interpretations that seriously impact the validity of a regional election stage (Prayoga, 2021). In several decisions, the Constitutional Court has even had to correct the consequences of these weak interpretations, including by ordering a revote. This demonstrates that weaknesses in KPU regulations, both in substance and in the formulation of norms, can undermine the principle of legal certainty and the integrity of regional election implementation.

Thus, the differences in interpreting the term of office between the General Elections Commission (KPU) and the Constitutional Court (MK) not only reflect conflicting legal perspectives but also have systematic implications for the legitimacy of regional elections and the principles of a democratic, rule-of-law state. Therefore, a harmonious interpretation is needed through a constitutional and normative approach

that guarantees legal certainty, fairness, and order in the implementation of elections at the local, regional, and national levels.

CONCLUSION

The differing interpretations between the General Elections Commission (KPU) and the Constitutional Court regarding the term of office of regional heads have created legal inconsistencies that impact legal certainty and the stability of regional elections. The KPU's grammatical interpretation, while oriented toward administrative efficiency, often ignores the substance of the powers exercised by regional heads. In contrast, the Constitutional Court, which uses a systematic, teleological, and historical approach, emphasizes the importance of constitutional conformity with substantive justice. This discrepancy has the potential to lead to legal conflicts, uncertainty about election stages, and even the delegitimization of election results. As a suggestion, I recommend that harmonization between these institutions be achieved through the KPU's issuance of technical regulations that directly refer to the Constitutional Court's ruling, or through the establishment of interpretative norms in the revised regional election law. This will ensure legal certainty, strengthen election integrity, and ensure electoral justice for all election participants.

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