

DEFENDER OF DEMOCRACY: THE ROLE OF INDONESIAN CONSTITUTIONAL COURT IN PREVENTING RAPID DEMOCRATIC BACKSLIDING

Adfin Rochmad Baidhowah*

Institute of Home Affairs Governance, Indonesia
adfinbaidhowah@ipdn.ac.id

Received: 20 October 2020 | Last Revised: 26 May 2021 | Accepted: 28 May 2021

Abstract

Debate on the quality and durability of Indonesia's democracy has intensified in recent years. Political scholars had generally praised the country's democratic achievements and stability in the two decades following the 1998 resignation of long-serving president Suharto. But more recently, a growing number of academics have noted that elements of Indonesia's democracy are being eroded. While the issue of Indonesia's democratic backsliding has gained considerable attention and generated much academic literature, few scholars have analyzed why Indonesia has not entered a phase of rapid backsliding or a return to authoritarianism. This article argues the role of the Indonesian Constitutional Court in the consolidation of democracy has been frequently overlooked. By using a qualitative approach involving archival research of the Constitutional Court's sessions on disputed results in Indonesia's 2019 elections, this article finds the Constitutional Court has been able to prevent rapid democratic backsliding and even a reversion to authoritarianism, by ensuring competitiveness, participation and accountability in elections.

Keywords: Democracy, Elections, Indonesia, Judicial Politics.

* Lecturer at the Faculty of Politics and Governance and Researcher at the Centre for Government Study, Institut Pemerintahan Dalam Negeri (Institute of Home Affairs Governance), Indonesia.

I. INTRODUCTION

Following the 1998 downfall of authoritarian president Suharto after more than three decades in power, Indonesia undertook four constitutional amendments over 1999–2002. In the ensuing years of this reform era, Indonesia began to consolidate its status as a democratic country. In 2009, political scientist Larry Diamond praised the country's democratic stability, as he considered there were no obvious threats to its democracy.¹ In recent years, however, scholars have shown evidence that elements of democracy in Indonesia are experiencing regression. The level of electoral competitiveness has declined, at least insofar as there have been increasingly higher electoral thresholds and fewer presidential candidates.² Also concerning was the rise of a populist challenge in the figure of Prabowo Subianto during the presidential election campaigns in 2014 and 2019, indicating that Indonesia is susceptible to 'authoritarian-populism'.³ Regression was also evident in President Joko Widodo's mobilization of state resources in the 2019 election, while religious polarization has caused public tension and conflict.⁴ Additionally, the quality of participation in democracy has decreased due to the government's use of the Electronic Transactions and Information Law, the Blasphemy Law and the Criminal Code to limit political opposition. This was evidenced by the arrests of government critics, who had sought to '*ganti presiden*' (change the president), and by the dissolution of the pro-caliphate Islamic organization Hizbut Tahrir Indonesia by issuing a Government Regulation in lieu of law without judicial process.⁵

Despite the empirical evidence confirming a level of democratic erosion, Indonesia is still acknowledged as being within the ranks of electoral democracies

¹ Larry Diamond, "Indonesia's Place in Global Democracy," in *Problems of Democratisation in Indonesia: Elections, Institutions, and Society*, ed. Edward Aspinall and Marcus Mietzner (Singapore: Institute of Southeast Asian Studies, 2010), 21-52.

² Mietzner, "Authoritarian Innovations in Indonesia," 1-16.

³ Eve Warburton and Edward Aspinall, "Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion," *Contemporary Southeast Asia* 41, no. 41 (August 2019): 257.

⁴ Edward Aspinall and Marcus Mietzner, "Indonesia's Democratic Paradox: Competitive Elections amidst Rising Illiberalism," *Bulletin of Indonesian Economic Studies* 55, no. 3 (November 2019): 295; Thomas Power, "Jokowi's Authoritarian Turn and Indonesia's Democratic Decline," *Bulletin of Indonesian Economic Studies* 54, no. 3 (December 2018): 307.

⁵ Aspinall and Mietzner, "Indonesia's Democratic Paradox."

and is not sliding rapidly into authoritarianism.⁶ Nevertheless, there have been few empirical studies into why Indonesia is not shifting rapidly into authoritarianism or experiencing swift democratic backsliding. More specifically, there has been little examination of how Indonesia's democracy is being safeguarded to prevent rapid backsliding.

Existing studies seem insufficient to explain the deterrents against rapid backsliding. Instead, political scholars have devoted much energy to discussing illiberal developments in Indonesian politics. On the one hand, some political scholars note that elections remain competitive because the incumbent president's re-election in 2019 was not by a vast margin, despite the mobilization of state resources, although this competitiveness resulted in societal polarization and increasing illiberalism.⁷ On the other hand, Stott argues that Indonesia has made considerable progress in democratic consolidation, noting the military's removal from politics, a flourishing civil society, media freedom and the growth of political parties.⁸

These explanations contribute greatly to the discussion on the quality of Indonesian democracy, yet the function of the Constitutional Court has been frequently overlooked as one of the notable components of the issue. In this article, I acknowledge that Indonesia is experiencing democratic backsliding, while also arguing the Constitutional Court serves as a bastion of democracy to prevent rapid backsliding. The Constitutional Court has become a crucial player in Indonesian politics, as it functions to adjudicate election disputes and ensure election law is in line with the Constitution. Most notably, since its establishment in 2003, the Constitutional Court has been categorized as an 'agent of democratization'⁹ with a high degree of independence.¹⁰

⁶ Edward Aspinall and Marcus Mietzner, "Southeast Asia's Troubling Elections: Nondemocratic Pluralism in Indonesia," *Journal of Democracy* 30, no. 4 (October 2019): 115.

⁷ Aspinall and Mietzner, "Southeast Asia's Troubling Elections."

⁸ David Adam Stott, "Indonesia's 2019 Elections: Democracy Consolidated?" *The Asia-Pacific Journal* 17, no. 6 (March 2019): 16-17.

⁹ Marcus Mietzner, "Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court," *Journal of East Asian Studies* 10, no. 3 (December 2010): 397-424.

¹⁰ Bjoern Dressel, "Governance, Courts and Politics in Asia," *Journal of Contemporary Asia* 44, no. 2 (February 2014): 264.

The fact that an independent constitutional court can prevent or deter democratic backsliding is not a new concept or theory, and is not restricted to Indonesia. Gibler and Randazzo have proved that independent judiciaries have positive and significant effects on preventing the possibility of democratic backsliding. They used a statistical analysis of 163 countries over 1960–2000 with a dataset of judicial checks on politics and military, regime history, and wealth. Among the underlying findings of their analyses are: (i) well-established independent judiciaries, during economic and military crises, can prevent the political executive from using a crisis to gain greater or entrenched power (authoritarian); and (ii) judiciaries can use their checks and balances function through the annulment of executive decisions, thereby favoring participatory democracy as well as minority and human rights.¹¹

Unlike previous research, which used statistical analysis, this article draws on recent data from legal challenges to the results of Indonesia's April 2019 simultaneous legislative and presidential elections. It also analyses how Indonesia's Constitutional Court has prevented the rapid backsliding of democracy, particularly in its handling of 251 legal challenges to the 2019 election results. This prevention of backsliding is examined in relation to Waldner and Lust's three indicators of democratic quality: competition, participation and accountability.¹² All 251 of the election disputes involved competitiveness and accountability, while two also involved participation.

Arguments in this article confirm that due to its independence, the Constitutional Court was able to prevent democratic backsliding by countering: (i) efforts to limit participation in elections; (ii) efforts to make elections less competitive; and (iii) efforts to loosen accountability for electoral violations, such as by state organizations.

I develop these arguments in three sections. First, I briefly review existing literature to identify the degree of the Constitutional Court's independence.

¹¹ Douglas Gibler and Kirk Randazzo, "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding," *American Journal of Political Science* 55, no. 3 (July 2011): 696-704.

¹² David Waldner and Ellen Lust, "Unwelcome Change: Coming to Terms with Democratic Backsliding," *Annual Review of Political Science* 21, no. 1 (May 2018): 93-113.

Next, I identify the concepts and debates on the causal mechanism of an independent judiciary in preventing democratic backsliding. Finally, to show this causal mechanism in its empirical realm, I outline how the Constitutional Court prevents rapid democratic backsliding and a return to authoritarianism, within the indicators of competitiveness, participation and accountability.

II. INDONESIA'S DEMOCRATIC QUALITY

2.1. From Emerging Democracy over 1997–2004 to Stable and Stagnant Democracy over 2004–2014

In 1997, Indonesia was severely impacted by the Asian financial crisis. This triggered a political crisis, causing Suharto to resign in May 1998, which marked the beginning of Indonesia's transition from an authoritarian era to a democratic era.

To pave the way for Indonesia to become a democratic country, the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR) conducted a series of comprehensive amendments to the Constitution 1945 – the highest law in Indonesia. The amendments were designed with the aim of preventing a return to authoritarian leadership and to ensure the principles of democracy would be implemented.

The constitutional amendments were a fundamental element toward developing Indonesian democracy after more than three decades of authoritarian rule under Suharto's administration. To ensure that democracy would function, the constitutional amendments included three major elements of reform: (i) improving the function of state agencies to conduct checks and balances on the executive, legislature, and judiciary; (ii) ensuring direct elections of the president, vice president, governors, mayors, regents, the People's Representative Council, and the Regional Representative Council; and (iii) assuring freedom through protecting human rights.

In 2004, Indonesia held its first direct popular election for President and Vice President, giving every Indonesian citizen with a national identity card

the right to vote. Previously, the President and Vice President were elected by the MPR. The 2004 presidential election was won by Susilo Bambang Yudhoyono, who was re-elected in 2009 for a second five-year term.

During the 2004–2014 decade of Yudhoyono’s presidency, several political scientists argued that Indonesia had achieved stable democracy. Diamond praised Indonesia’s ‘stable democracy’ and ‘relatively liberal democracy’, in which there were no ‘obvious threats or potent anti-democratic challenges on the horizon.’¹³ In reaching this conclusion, he conducted a comparative analysis between Indonesia and other countries. On the variable of democracy and governance, his comparative analysis used indicators of political rights and civil liberties, voice and accountability, state quality (comprising government effectiveness and regulatory quality), rule of law, and corruption control.¹⁴ Diamond found that from 1998 to 2008, Indonesia’s score on all indicators increased steadily, better than other older democracies such as Thailand, the Philippines, India, Bangladesh, Argentina, Brazil, Mexico, South Africa and Turkey, all of which had experienced a reduction in at least one of the indicators. Indonesia’s most striking progress among the indicators was that of political rights and civil liberties. On Freedom House’s 1–7 scale (where 7 is “least free” and 1 is “most free”), Indonesia received a score of 7.5 in 1997 and improved to 2.3 in 2009.¹⁵

Moreover, Aspinall, Mietzner, and Tomsa acknowledged positive signs of Indonesia’s democracy, by arguing that in this 2004–2014 period, Indonesia did not experience major political disruptions.¹⁶ Direct elections (in which every registered citizen has the right to vote for a provincial governor, regent and mayor) were implemented. The military, which had been involved in politics during the Suharto era, was kept outside the political fray. The Corruption Eradication Commission received high support from the state to eradicate elite-level corruption.

¹³ Diamond, “Indonesia’s Place in Global Democracy,” 21–52.

¹⁴ Diamond, “Indonesia’s Place in Global Democracy.”

¹⁵ Diamond, “Indonesia’s Place in Global Democracy.”

¹⁶ Edward Aspinall, Marcus Mietzner and Dirk Tomsa, *The Yudhoyono Presidency: Indonesia’s Decade of Stability and Stagnation* (Singapore: Institute of Southeast Asian Studies, 2014), 1–21.

Similarly, other political scholars also noted that Indonesia was a democracy. These scholars, however, described Indonesia's democratic status with negative adjectives. Slater pinned Indonesia's democracy as 'delegative' or 'collusive' due to the existence of political cartels.¹⁷ 'Consolidated' but 'patrimonial' were the terms used by Webber to describe Indonesia's democracy because of the country's weak rule of law and limited capacity for effective governance.¹⁸ Indonesia's quality of democracy was deemed low because political faults which existed before 2004 still occurred in subsequent local government elections.¹⁹

Some scholars argued Indonesia's democracy had become stagnant, evidenced by little change to long-standing issues in political party life; continuing impunity of violent anti-democracy groups;²⁰ repression of government critics; appointment of elite politicians to the Election Commission (*Komisi Pemilihan Umum*, KPU), which affected the commission's independence;²¹ and limited changes to weak rule of law.²²

2.2. Democratic Regression, 2015-2021

Joko Widodo, popularly known as Jokowi, was elected president in July 2014 and sworn-in three months later, upon the completion of Yudhoyono's second term as president. Jokowi did not come from Indonesia's political or military elite, a fact that prompted hopes he would initiate progressive reforms. Nevertheless, signs of democratic backsliding remained and even increased, especially after high tensions in the period surrounding Jakarta's 2017 gubernatorial election. Power argues that Jokowi made an 'authoritarian

¹⁷ Dan Slater, "Indonesia's Accountability Trap: Party Cartels and Presidential Power after Democratic Transition," *Indonesia* 78, no. 1 (October 2004): 64.

¹⁸ Douglas Webber, "A Consolidated Patrimonial Democracy? Democratization in post-Suharto Indonesia," *Democratization* 13, no. 3 (July 2006): 396.

¹⁹ Marcus Mietzner, "Indonesia and the Pitfalls of Low-Quality Democracy: A Case Study of the Gubernatorial Elections in North Sulawesi," in *Democratization in Post-Suharto Indonesia*, eds. Marco Bunte and Andreas Ufen, (London and New York: Routledge, 2009), 124-149.

²⁰ Dirk Tomsa, "Indonesian Politics in 2010: The Perils of Stagnation," *Bulletin of Indonesian Economic Studies* 46, no. 3 (November 2010): 309.

²¹ Greg Fealy, "Indonesian Politics in 2011: Democratic Regression and Yudhoyono's Regal Incumbency," *Bulletin of Indonesian Economic Studies* 47, no. 3 (November 2011): 333.

²² Dave McRae, "Indonesian Politics in 2013: The Emergence of New Leadership?" *Bulletin of Indonesian Economic Studies* 49, no. 3 (December 2013): 290.

turn' by manipulating security and law enforcement institutions for pragmatic political purposes and by making a systematic effort to weaken and suppress political opposition ahead of the 2019 presidential election.²³ He states that this authoritarian turn stemmed from the polarizing events surrounding the 2017 Jakarta gubernatorial election, in which the national political elite cleaved into an Islamist bloc versus a pluralist nationalist bloc. Ahead of the election, Jakarta's governor was Basuki Tjahaja Purnama, a Chinese Christian, popularly known as Ahok and a close ally of Jokowi. His political opponents, allied with Prabowo, had also aligned themselves with Islamist groups in order to attack Ahok for blasphemy against Islam. A study by Mietzner and Muhtadi examined the depth of intolerance of Indonesians toward racial and religious minorities before, during and after the 2017 Jakarta election.²⁴ Using a series of surveys, they found the 2017 anti-Ahok protests had increased the level of intolerance among Indonesian Muslims. This intolerance, initially against a religious minority in the government, then spread against all religious minorities in the larger public space, even cultural-religious events and the activities of minorities. Mietzner and Muhtadi's 2018 survey revealed that 30.7 percent of Indonesian Muslims were very intolerant toward religious and ethnic minorities, and that the LGBT community was the least liked social group in Indonesia. Even supporters of Nahdlatul Ulama, Indonesia's largest Islamic organization, which is famous for its pluralist stance, were found to be generally no more tolerant than other Indonesian Muslims.²⁵

Against this backdrop of rising religious intolerance and polarization, Jokowi responded with measures that raised questions over his reformist credentials. Aspinnall and Mietzner confirmed that Jokowi mobilized the state apparatus for his campaign ahead of the 2019 presidential election.²⁶ Heightened religious polarization influenced voting behavior and played

²³ Power, "Jokowi's Authoritarian Turn," 307.

²⁴ Marcus Mietzner and Burhanuddin Muhtadi, "The Mobilisation of Intolerance and Its Trajectories: Indonesian Muslims' Views of Religious Minorities and Ethnic Chinese," in *Contentious Belonging: The Place of Minorities in Indonesia*, ed. Greg Fealy and Ronit Ricci (Singapore: Institute of Southeast Asian Studies, 2019), 1-18.

²⁵ Marcus Mietzner and Burhanuddin Muhtadi, "The Myth of Pluralism: Nahdlatul Ulama and The Politics of Religious Tolerance in Indonesia," *Contemporary Southeast Asia* 42, no. 1 (April 2020), 58-84.

²⁶ Aspinnall and Mietzner, "Southeast Asia's Troubling Elections," 115.

a role in post-election violence.²⁷ In Indonesia's 2019 legislative election, personalization further weakened the political parties.²⁸ Thus, for instance, the problem of political corruption persisted as a legacy of Suharto's authoritarian era.²⁹

This democratic backsliding was due to several factors. First, there are the three factors of 'political structures, elite agency, and public attitudes'.³⁰ In terms of political structures, Warburton and Aspinall have described how the transition from Suharto's authoritarian era (pre-1998) to the reform era (post-1998) was continually occupied by the same political elites.³¹ The interests of the Suharto era elites were structurally preserved in the reform era's democracy and decentralization. The reform era can be viewed as a blend of reform demands from non-elites and accommodation of the elites' interests.

On the phenomena of elite agency, Warburton and Aspinall note that elites and leaders have narrowed the space for electoral competition and damaged the principles of checks and balances in Indonesia's democracy.³² Yudhoyono's presidency defended his status quo with a lack of progress in democracy. Jokowi and his former rival Prabowo both implemented illiberal acts in their presidential campaigns and political actions.

Furthermore, Mietzner has shown that the Jokowi government fought 'illiberalism with illiberalism' by pursuing a strategy of criminalization against populist opposition figures and groups deemed to have violated the law, yet Jokowi also endeavored to persuade some opposition figures to join his administration through patronage-oriented accommodation.³³ This was the main reason why the government's efforts to protect democracy become a threat to democracy. Mietzner also showed that illiberal strategy has been

²⁷ Aspinall and Mietzner, "Southeast Asia's Troubling Elections."

²⁸ Aspinall and Mietzner, "Southeast Asia's Troubling Elections."

²⁹ Aspinall and Mietzner, "Southeast Asia's Troubling Elections."

³⁰ Warburton and Aspinall, "Explaining Indonesia's Democratic Regression," 257.

³¹ Warburton and Aspinall, "Explaining Indonesia's Democratic Regression."

³² Warburton and Aspinall, "Explaining Indonesia's Democratic Regression," 257.

³³ Marcus Mietzner, "Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia," *Pacific Affairs* 91, no. 2 (June 2018): 261-282.

used by all Indonesian political elites – ‘the executive, elites as a collective, and opposition’.³⁴ This illiberal strategy is mainly focused on narrowing competitiveness in elections, mobilizing people by using narratives of identity politics, and executive efforts in concentrating and maximizing power.

On public attitudes, Warburton and Aspinall note that polling shows Indonesians have maintained high levels of support for democracy in the two decades since Suharto’s fall.³⁵ However, Indonesians showed low support for liberal values. Most Indonesians believe democracy is only meant to distribute socio-economic programs fairly, rather than to protect human rights and freedoms.

A second factor behind democratic backsliding is the deep polarization between Indonesians since Jakarta’s divisive 2017 gubernatorial election. Warburton and Muhtadi explain that politicians have sought to exploit high economic inequalities in Indonesia to influence voters.³⁶ While notions of inequality have become more widespread during the Jokowi presidency, supporters of the political opposition are more likely to view the income gap as unfair, compared to Jokowi’s supporters.³⁷ Polarization also tends to be driven by religious issues, as Indonesia’s political parties share similar positions on economic issues but have differing political ideologies when it comes to religious issues.³⁸ Support for Islam has a strong correlation with populist attitudes, but it has not had a positive effect on Indonesia’s democracy; rather, it has contributed to posit setbacks.³⁹

Moreover, values of democracy among Indonesians are low. Neither the elites nor the public are a bulwark for the defense of liberal values; on

³⁴ Marcus Mietzner, “Authoritarian Innovations in Indonesia: Electoral Narrowing, Identity Politics, and Executive Illiberalism,” *Democratization* 27, no. 6 (December 2019): 1-16.

³⁵ Warburton and Aspinall, “Explaining Indonesia’s Democratic Regression,” 257.

³⁶ Eve Warburton and Burhanuddin Muhtadi, “Politicizing Inequality in Indonesian Elections,” *Brookings*, April 8, 2019 <https://www.brookings.edu/blog/order-from-chaos/2019/04/08/politicizing-inequality-in-indonesian-elections/>.

³⁷ Burhanuddin Muhtadi and Eve Warburton, “Inequality and Democratic Support in Indonesia,” *Pacific Affairs* 93, no. 1 (March 2020): 31.

³⁸ Fossati, Diego et al., “Ideological Representation in Clientelistic Democracies: The Indonesian Case,” *Electoral Studies* 63, no. 6 (February 2020): 1-12.

³⁹ Diego Fossati and Marcus Mietzner, “Analyzing Indonesia’s Populist Electorate: Demographic, Ideological, and Attitudinal Trends,” *Asian Survey* 59, no. 5 (October 2019): 769.

the contrary, the general public is less liberal than legislators.⁴⁰ Declining support among the public for democratic values is mainly influenced by the cues from political parties and their leaders⁴¹. Low education levels might also contribute to this condition. Warburton et al. found the political elites were far more educated than voters, as 78 percent of voters came from the working class, whereas 86.6 percent of the elites were professional class.⁴²

III. JUDICIAL INDEPENDENCE AND DEMOCRATIC BACKSLIDING

3.1. The Independence of Indonesia's Constitutional Court

Indonesia's Constitutional Court was established in 2003. It has five authorities: (i) to review whether laws are in line with constitution, (ii) to decide on the dissolution of political parties, (iii) to decide on disputes of authority between state institutions, (iv) to decide on impeachment cases against the president and/or the vice president, and (v) to decide on disputed election results.

Evidence of the Constitutional Court's level of independence has been recorded by political and legal scholars. Political scholars assess the Constitutional Court's independence by analyzing the effect of its institutional design on its performance. Mietzner points out that to exercise its powers, the Court is equipped with budgetary autonomy, a slim bureaucratic structure, and a multiple-track appointment for its nine judges.⁴³ This institutional setting provides space for the Constitutional Court to play its role independently. Mietzner also notes Ginsburg and Stephenson's argument that diffuse and competitive politics contribute to the independence of Indonesia's Constitutional Court.⁴⁴

⁴⁰ Aspinall, Edward et al., "Elites, Masses, and Democratic Decline in Indonesia," *Democratization* 27, no. 4 (October 2019): 1-22.

⁴¹ Diego Fossati, Burhanuddin Muhtadi and Eve Warburton, "Why Democrats Abandon Democracy: Evidence from Four Survey Experiments," *Party Politics* 1, no. 1 (February 2021): 1-13.

⁴² Warburton, Eve et al., "When Does Class Matter? Unequal Representation in Indonesian Legislatures," *Third World Quarterly* 1, no. 1 (March 2021): 1-24.

⁴³ Mietzner, "Authoritarian Innovations in Indonesia," 1-16.

⁴⁴ Mietzner, "Authoritarian Innovations in Indonesia.," Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (New York: Cambridge University Press, 2003), 90-105; Matthew Stephenson,

Similarly, Dressel has classified Indonesia's Constitutional Court as having a high degree of 'judicial activism', along with the constitutional courts of South Korea and the Philippines, where the courts have a high level of 'de facto independence' – structural, institutional, and behavioral – and a high level of involvement in mega-political cases.⁴⁵ Moreover, by drawing on an analysis of informal judicial networks, Dressel and Inoue found little statistical evidence that appointment trajectory and work background have influenced the decision-making of the Indonesian Constitutional Court's judges, suggesting the Court's independence is actually higher than is perceived by the public.⁴⁶

Meanwhile, legal scholars have reviewed the Constitutional Court's independence by using contextual analysis of its decision-making. Most of the Constitutional Court's judges are Muslim, which might be thought to influence their decisions. Rather than impair the objectivity of the judges' decision-making, their Islamic background encourages them to uphold the Constitution.⁴⁷ For instance, in a review of the Blasphemy Law, the Constitutional Court decided to maintain the law, which means the state retains its authority to forbid any person to blaspheme any religion, thereby upholding protection of religious values.⁴⁸

In addition, the Constitutional Court's performance is influenced by the leadership and intellectual capacity of its chief justice.⁴⁹ Given that courts were a second-class institution in Suharto's authoritarian era, Jimly Asshiddiqie – the first chief justice of the Constitutional Court – demonstrated through his actions that the Constitutional Court was worthy of being on

"When the Devil Turns...: The Political Foundations of Independent Judicial Review," *Journal of Legal Studies* 32, no. 1 (2003): 59.

⁴⁵ Bjoern Dressel, "Governance, Courts and Politics in Asia," 264.

⁴⁶ Bjoern Dressel and Tomoo Inoue, "Mega Political Cases before the Constitutional Court of Indonesia since 2004: An Empirical Study," *Constitutional Review* 4, no. 2 (December 2018): 157-187.

⁴⁷ Nadirsyah Hosen, "The Constitutional Court and 'Islamic' Judges in Indonesia," *Australian Journal of Asian Law* 16, no. 2 (March 2016): 1.

⁴⁸ Melissa Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7, no. 1 (May 2012): 1.

⁴⁹ Stefanus Hendrianto, *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes* (New York: Routledge, 2018), 74-89.

the same level as the president. His intellectual capacity pushed the Court to be involved in economic and political reforms.

Jimly, who led the Court from 2003 to 2008, was committed to upholding human rights, evidenced by the Court's decision to rehabilitate the political rights of former members of the banned Indonesian Communist Party (PKI). Human rights activists had protested an article in the Election Law banning former members of PKI and its affiliated organizations from running for local and national elections. The Constitutional Court ruled the article unconstitutional and that former members of PKI and its affiliates must be treated without discrimination.⁵⁰ In another decision, the judges ruled that Local Election Commissions (*Komisi Pemilihan Umum Daerah*, KPUD) should not report to local parliaments, as such a move would jeopardize their independence.

Under Jimly's leadership, the Constitutional Court was described as 'activist' and 'active', while under his successor, Mahfud MD (who was chief justice from 2008–2013), the Court was deemed 'brave'.⁵¹ Much academic literature from foreign legal scholars was used to support the Court's decisions under Jimly. Under Mahfud, the Court shifted toward substantive justice, rather than the procedural justice that had marked Jimly's tenure.

The Constitutional Court's independence is also indicated in how it annuls laws. The Court conducts constitutional interpretation as the indicator to assess whether a law is unconstitutional or not, rather than following the private preferences of the judges.⁵² The Constitutional Court's methodologies for interpreting cases of constitutionality are: (i) 'textual interpretation', which is used to make decisions toward 'the meanings of the constitutional provisions' in the current context; (ii) 'original intent interpretation', which seeks to articulate the intention of the constitutional drafters; (iii) 'pragmatic interpretation', which analyzes the effect of a constitutional provision in

⁵⁰ Susi Dwi Harijanti and Tim Lindsey, "Indonesia: General Elections Test the Amended Constitution and the New Constitutional Court," *International Journal of Constitutional Law* 4, no. 1 (January 2006): 149.

⁵¹ Simon Butt, *The Constitutional Court and Democracy in Indonesia* (Leiden: Brill Nijhoff, 2015), 61-62.

⁵² Fritz Edward Siregar, "Indonesia Constitutional Court Constitutional Interpretation Methodology (2003-2008)," *Constitutional Review* 1, no. 1 (May 2015): 1-12.

practice; (iv) ‘proportionality interpretation’, which is about justifying limits on fundamental democratic rights; and (v) ‘structural interpretation’, which focuses on ‘the clause and its relation to the whole text’.⁵³

3.2. Judiciary and Democratic Backsliding

Judicialization of politics, a concept in which judges contribute to public policy-making through their judicial reviews,⁵⁴ has positively impacted the state’s performance in terms of governance and democracy. In terms of good governance, Dressel’s comparative study of Japan, Singapore, South Korea and Thailand presented empirical evidence on how the institutional, behavioral and structural conditions of courts influence their handling of mega-political cases. Courts with a high degree of independence and involvement in mega-political cases could ensure good governance.⁵⁵ Another issue of governance from the rule of law aspect is when courts (subject to institutional processes) protect the ‘popular interest’.⁵⁶

Scholars have debated whether the judicialization of politics strengthens democracy. For instance, Mietzner makes the point that some of the Indonesian Constitutional Court’s decisions on election rules have not always increased electoral competitiveness, as legislators can subsequently take measures leading to less competitiveness.⁵⁷ In addition, Horowitz states that more than three-quarters of the world’s countries in 2005 had some form of judicial review for constitutionality, including many undemocratic regimes.⁵⁸

While the debate focuses much on the single dimensional spectrum of whether or not courts play a role in strengthening democracy, few see how judicialization of politics contributes to preventing democratic backsliding, given the global trend among third-wave democracies facing backsliding.

⁵³ Siregar, “Indonesia Constitutional Court Constitutional Interpretation Methodology,” 1-12.

⁵⁴ Neal Tate and Torbjorn Vallinder, *The Global Expansion of Judicial Power* (New York: New York University Press, 1995), 1-13. and Rachel Sieder, Line Schjolden and Alan Angell, *The Judicialization of Politics in Latin America* (New York: Palgrave Macmillan, 2005), 1-20.

⁵⁵ Bjoern Dressel, “Governance, Courts and Politics in Asia,” 264.

⁵⁶ Lisa Hilbink, “Assessing the New Constitutionalism,” *Comparative Politics* 4, no. 2 (January 2008): 227-245.

⁵⁷ Marcus Mietzner, “Authoritarian Innovations in Indonesia,” 1-16.

⁵⁸ Donald Horowitz, “Constitutional Courts: A Primer for Decision-Makers,” *Journal of Democracy* 17, no. 4 (October 2006): 125-130.

One study which proves that courts can prevent democratic backsliding is from Gibler and Randazzo, who focus on the role of courts in: deterring abuse of executive power in times of military and economic crises, demanding the executive be accountable for what they do, and protecting minority rights.⁵⁹ While that study was a significant contribution to the field of judicialization of politics and democratic backsliding, more current phenomena and empirical methods of analysis are needed, particularly for the Indonesian context. For instance, Gibler and Randazzo's study uses data from 1960–2000, at which time Indonesia had not yet implemented judicialization of politics, as its Constitutional Court was not created until 2003. In addition, their study relies on statistical data of world's countries to examine the effect of courts in preventing democratic backsliding, which does not unpack the dynamics of how courts deter regime reversals. The relationship between judicial systems, politics and law is dynamic and fluid, so the degree of judicial involvement varies between countries and even within a country over time.⁶⁰ Therefore, empirical analysis of how Indonesia's Constitutional Court actually prevents rapid backsliding of the democracy is useful.

The Constitutional Court can deter rapid democratic backsliding in two ways. First, established judiciaries are likely to deter all concerned parties – candidates and state election organization bodies – from eroding competitiveness, participation and accountability in elections. The judiciary can do this by upholding the electoral principle known in Indonesia by the acronym '*Luber Jurdil*' (*langsung, umum, bebas, rahasia, jujur and adil* – direct, public, free, confidential, honest and fair). If this principle is implemented, parties will be less likely to risk taking political strategies that could bring their legality into question. Second, the Constitutional Court deters backsliding by overtly checking all concerned parties in regard to election disputes, as the Court favors free and fair elections.

⁵⁹ Gibler and Randazzo, "Testing the Effects of Independent Judiciaries," 696-704.

⁶⁰ Bjoern Dressel, "Governance, Courts and Politics in Asia," 263.

3.3. Deterring Rapid Democratic Backsliding or Even Authoritarianism

A ‘modern consolidated democracy’ requires five interacting arenas to enable such consolidation to occur, namely: (i) lively civil society created by freedom of communication and association; (ii) political society supported by free and inclusive electoral contestation; (iii) rule of law with the existence of constitutionalism; (iv) state apparatus with rational-legal bureaucratic norms; and (v) economic society with an institutionalized market.⁶¹ When a country faces democratic regression, the quality of these arenas will erode. Waldner and Lust conceptualize democratic backsliding as a series of incremental elements that gradually undermine the quality of democracy, especially in regard to free, inclusive and competitive elections. Specifically, they note that backsliding involves: limiting electoral participation without explicitly abolishing the universal norms of democracy; making elections less competitive without completely undermining electoral mechanisms; and erasing accountability, such as a violations by state apparatus.⁶²

As explained in the previous section of this article, several scholars have showed how the elements of democracy, as identified by Linz and Stepan, have been eroding in Indonesia. Nevertheless, it is in the arena of free and inclusive electoral contestation that Indonesia’s Constitutional Court is able to best deter rapid democratic backsliding or even a revival of authoritarianism. Election law in Indonesia requires that elections must be direct, public, free, confidential, honest and fair. Through its decisions on disputed election results, especially its annulments of results deemed invalid, the Constitutional Court can discourage electoral manipulation, un-inclusive participation, and procedural violations.

3.3.1. Competitiveness

This section illustrates the Indonesian Constitutional Court’s decisions that promote free and fair elections. The Constitutional Court’s role is most

⁶¹ Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: Johns Hopkins University Press, 1996), 3-15.

⁶² Waldner and Lust, “Unwelcome Change: Coming to Terms with Democratic Backsliding,” 93-113.

vividly illustrated by its rulings on election lawsuits. In April 2019, Indonesia held its first simultaneous elections for the local, provincial and national legislative assemblies, as well as regional representatives, and for the president and vice president. After the Election Commission (KPU) announced the results of the 2019 elections, 251 lawsuits from losing electoral candidates were submitted to the Constitutional Court. There were 250 cases from the legislative elections and one from the presidential election.⁶³

The 250 lawsuits from legislative candidates included allegations of electoral fraud by rival candidates and the KPU, as well as procedural errors and inaccurate counts by the KPU. To ensure that elections are free and fair under Indonesian law, the Constitutional Court has the authority to adjudicate such lawsuits and alter election results if evidence provided by the plaintiffs is credible and proven.

Drawing on evidence provided by the plaintiffs, the Constitutional Court rejected 238 of the lawsuits because they were not supported by credible evidence of fraud, manipulation or inaccuracies, while 12 were granted because they were supported by credible evidence of electoral fraud or inaccurate counting and procedural errors.

One of the lawsuits, submitted by a candidate for a local legislature in Central Sulawesi Province, resulted in the Constitutional Court ordering a re-vote. KPU was ordered to hold the re-vote at Polling Station 1 in Bolobia Village, Sigi District, because the C7 form (an official form listing voter attendance at a polling station) had been lost and the ballot box contained no list of voters.

Re-counts were ordered at five locations because the Constitutional Court found KPU had conducted administrative violations. The five locations were: Trenggalek District and Surabaya City, both in East Java Province; North Sumatra Province; Arfak Mountains District in West Papua Province; and Bekasi City in West Java Province. The administrative violations in those

⁶³ "The Constitutional Court's Decisions on the 2019 Election Disputes," The Election Commission of the Republic of Indonesia, accessed October 15, 2020, <https://jdih.kpu.go.id/putusan-pengadilan-mk>.

locations included discrepancies in results between C₁ forms (individual polling station vote tabulation forms), DA₁ forms (for recording vote counts of multiple polling stations under a single sub-district), and DAA₁ forms (for recording vote counts of multiple polling stations under a single village/urban village administration or *desa/kelurahan*). In some cases, administrative violations had caused candidates to be denied legitimate victory until recounts were conducted.

In Trenggalek, the Indonesian Democratic Party of Struggle (PDIP) saw its number of votes increase by 18 as a result of the recount, which was approved by all parties. In Surabaya, Golkar Party candidate Agoeng Prasodjo had originally lost by one vote to his Golkar colleague Aan Ainur Rofiq, who had received an additional 30 votes because of a data entry error on the DAA₁ form. As a result of the recount from three polling stations, Agoeng emerged victorious. It was a different scenario in North Sumatra, where Robert Lumban Tobing, a candidate of Gerindra Party, argued his number of votes had declined from 3,971 to 2,135 because of a tabulation error in the DA₁ form. After the Constitutional Court ordered a recount, Robert's number of votes actually declined to 1,684. At a village polling station in Arfak Mountains District of West Papua, 30 votes won by National Awakening Party (PKB) candidate Goliat Manggesuk had been moved to Prosperous Justice Party (PKS) candidate Yeskiel Toansiba. After a recount was ordered, PKS still ranked higher than PKB. In Bekasi District, the National Democratic Party (NasDem) argued its votes from three polling stations in Telagamurni Village had been incorrectly tabulated between the C₁ and DAA₁ forms. The Court responded by ordering a recount.

In the six other granted lawsuits, the Constitutional Court invalidated or revised certain election results. In Banda Aceh City, Aceh Province, the KPU was found to have committed an administrative violation because votes had been transferred from one Golkar Party candidate to another at Tibang Village. Four votes received by candidate Maulidawati had been transferred to candidate Kasumi Sulaiman, enabling the latter to defeat a rival party's

candidate by one vote. The Court invalidated a KPU decree on that election's outcome and ordered KPU to reinstate Maulidawati's four votes.

In Bintan District, Riau Islands Province, the Constitutional Court adjudicated separate lawsuits involving Golkar Party and PKS. In one case, a Golkar Party candidate, Amran, was initially recorded as receiving a winning majority of 34 votes at Polling Station 12 in Sungai Lekop Village. He complained his votes were reduced to 24 on a subsequent data form and then reduced further to 16 during a recount. The Constitutional Court ordered KPU to present the ballot box in question and found that several ballots for Amran had been punched twice, so that his actual tally was just 11 votes. The PKS dispute involved a complaint from PDIP that a PKS candidate's votes had been inflated when polling station data was tabulated at a district level. The Court discovered an error in the recording of votes and therefore corrected the vote tally.

In Riau Province, an internal dispute occurred between rival candidates from Gerindra Party: Nyanyang Haris Pratamura and Asnah. Nyanyang complained the KPU had denied him 13 votes, leaving him with 7,521 votes, and that Asnah had received 26 additional votes, giving her a narrow victory with 7,523 votes. The Constitutional Court examined all evidence and the actual ballot tallies, finding Nyanyang's votes had been undercounted and Asnah's had been overcounted. Hence Nyanyang emerged victorious with 7,529 votes.

In West Kalimantan Province, a local KPU official was found to have violated procedures by not providing copies of DAAI forms for 19 villages. This case resulted in the Constitutional Court correcting the number of votes won by Gerindra Party candidate Hendri Makaluasc from 5,325 to 5,384 votes.

All petitioners involved in the 2019 legislative election disputes accepted the Constitutional Court's decisions without significant protests, indicating the public and electoral candidates alike trusted the Court had made evidence-based decisions.

The lawsuit from losing presidential candidate Prabowo Subianto was more challenging, not only because it involved more allegations and demands than the legislative candidates' individual lawsuits, but also because of high tensions between supporters of Jokowi and Prabowo. Upon completing the vote count, the KPU declared Jokowi had won the 2019 election by 55.5 percent to 44.5 percent. Prabowo claimed the result was illegitimate, accusing Jokowi and his team of structured, systematic and massive electoral fraud. The six allegations made by Prabowo's legal team against Jokowi were: (i) manipulation of voting results, as Prabowo believed he should have received 52 percent of votes and Jokowi 48 percent; (ii) Ma'ruf Amin, Jokowi's vice-presidential running mate, had not resigned as chairman of the Syariah Supervisory Council at two state-owned banks, Bank Syariah Mandiri and BNI Syariah, whereas by law, he should have resigned from the positions after accepting the vice-presidential nomination; (iii) campaign donations were manipulated, as Jokowi's campaign received donations of Rp19.5 billion in funds and Rp25 million in goods, whereas on April 12, 2019, Jokowi's wealth was only Rp6.1 billion; (iv) Jokowi's team and the KPU had manipulated voter data; (v) some votes and voter lists had been doubled to 22.03 million, which correlated with 'additional votes illegally given' to Jokowi-Ma'ruf; (vi) KPU's vote-counting system had been manipulated so results were invalid, and C7 forms of voter attendance in many areas were lost; and (vii) Jokowi abused his powers over the bureaucracy and state-owned enterprises to achieve his victory.

Examining the evidence provided by Prabowo's team, the Constitutional Court decided the first six claims were not supported by credible evidence and the last claim had already been handled by the Elections Supervisory Agency (Bawaslu).⁶⁴ Thus, the Court rejected the Prabowo team's lawsuit outright and declared the presidential election result legitimate. The Court also confirmed the presidential election was competitive and held freely

⁶⁴ "Disputes Over the Result of the Presidential and Vice-Presidential Election of 2019, by Prabowo et al.," The Constitutional Court of the Republic of Indonesia, accessed October 15, 2020, https://mkri.id/public/content/persidangan/putusan/putusan_mkri_5390.pdf.

and fairly without structured, systematic, and massive electoral fraud. The Court's decision was received by Prabowo and his team without significant protests. The Court's decision not only deterred unfree and unfair elections in Indonesia, but also helped to de-escalate a situation that could have caused chaos or even a coup, as Prabowo's supporters had previously staged violent riots that led to destruction of public facilities and deadly clashes with police. After the Court's decision, however, the protests ceased and Prabowo met with Jokowi for reconciliation.

Therefore, there is no doubt the Constitutional Court can deter rapid democratic backsliding or even a return to authoritarianism by preventing one of Waldner and Lust's indicators of democratic backsliding: making elections less competitive.

3.3.2. Participation

In addition to deterring rapid democratic backsliding by upholding valid election results and rejecting spurious claims of cheating, the Constitutional Court has also acted to prevent the emergence of Waldner and Lust's second indicator of democratic backsliding: limiting participation. For Waldner and Lust, limiting participation in elections is an obvious indication of regression in the quality of democracy. In this case, the Court's verdicts deterred the limitation of participation in elections.

In the 2019 simultaneous elections, the Constitutional Court prevented some 4 million Indonesians from being denied the right to vote because they lacked an electronic identity card (e-KTP). Amid concerns over the accuracy of the official electoral roll of voters, the KPU had maintained that people not on the roll could vote if they showed their e-KTP. However, not all Indonesian people have an e-KTP (which is compulsory on turning age 17 or marriage) as it can take three months to obtain the e-KTP.⁶⁵ The Constitutional Court therefore made an annulment (No. 20/PUU-XVII/2019)

⁶⁵ Ryana Umasugi, "Almost 3 Months Since Applying for e-KTP, But Still on the Waiting List," *Kompas*, published November 24, 2018, <https://megapolitan.kompas.com/read/2018/11/24/06470001/-sudah-hampir-3-bulan-urus-e-ktp-masih-masuk-daftar-tunggu--?page=all>.

that possession of an e-KTP was the only administrative requirement for someone to be able to vote at a polling station. The Court decided that a person could use their 'letter of statement of e-KTP' – a letter issued by the government to show that a person's e-KTP is being processed.

In 2015, the Constitutional Court issued a decision (No. 135/PUU-XIII/2015) that gave mentally disabled people right to vote. This decision resulted in 54,295 mentally disabled people being registered on the electoral roll for the 2019 simultaneous elections.⁶⁶

The Constitutional Court's decisions are important for the development of Indonesia's democracy. By reducing some of the limitations on public participation in elections, the Court has maintained inclusiveness in terms of people who can vote. This inclusiveness saw the 2019 simultaneous elections have the highest national voter turnout in Indonesia's electoral history, namely 80.9 percent.⁶⁷

3.3.3. Accountability

The last indicator of Waldner and Lust to analyze democratic backsliding is the regression of accountability, particularly regarding the organization authorized to hold an election. Elections can become chaotic and cause conflict when the election organizer is not neutral.

In this area, the Constitutional Court has played crucial roles through its annulments of results where fraud or procedural violations occurred, as such actions deter accountability regression of the KPU. This was evident in the Court's granting of 12 lawsuits that challenged results in the 2019 legislative elections. Most of the cases involved losses of vote tabulation forms or discrepancies in data between forms. Such intense scrutiny of electoral procedures and conduct is crucial because organizers sometimes violate

⁶⁶ "The Progressive Role of the Constitutional Court in Protecting the Voting Right of the Mentally Disabled and its Influence on Increasing Voter Participation in Elections," The Constitutional Court of the Republic of Indonesia, accessed October 15, 2020, https://www.mkri.id/public/content/infomum/penelitian/pdf/hasilpenelitian_105_Laporan%20Penelitian%20Kompetitif%20Jember.pdf.

⁶⁷ "Indonesia Sees Record Turnout in Historic Election, Braces for Fallout," Jakarta Globe, accessed October 15, 2020, <https://jakartaglobe.id/context/indonesia-sees-record-turnout-in-historic-election-braces-for-fallout>.

procedures or even break the law, as seen when a KPU commissioner was jailed in 2020 for taking bribes from a PDIP politician.⁶⁸ The Constitutional Court's decisions that remedied the KPU's work can prevent the negative consequences that come from weak implementation of election management. In Papua Province's Asmat District, a disputed local election result caused a riot in which four people were shot dead in May 2019.⁶⁹ In the absence of an independent constitutional court overseeing election challenges, there is strong possibility riots could occur elsewhere if there is no avenue for appealing disputed results.

IV. CONCLUSION

This article illustrates the Constitutional Court has played a crucial role in deterring rapid backsliding of Indonesia's democracy or even in thwarting a return to authoritarianism. Through its powers to resolve disputed election results, review the constitutionality of laws, and correct state institutions, the Constitutional Court has been able to discourage unfree and non-inclusive elections, and prevent electoral violations. By doing so, the Court ensured that Indonesia did not move into Waldner and Lust's three indicators of democratic backsliding: restricting participation without explicitly abolishing the norms of universal democracy; making elections less competitive without entirely undermining electoral mechanisms; and loosening accountability by eroding the norms of punishment and answerability for electoral violations.

The presence of the Constitutional Court, which ensures that Indonesia does not move into the three indicators of democratic backsliding, answers the question of why Indonesia has not reverted to authoritarianism. Specifically, the Court functions as a safeguard to democracy by exercising powers that can prevent rapid democratic backsliding and a return to authoritarianism.

⁶⁸ Ghina Ghaliya, "Former KPU commissioner gets six years in prison for election bribery," *The Jakarta Post*, published August 24, 2020, <https://www.thejakartapost.com/news/2020/08/24/former-kpu-commissioner-gets-six-years-in-prison-for-election-bribery.html>.

⁶⁹ "Riot in Protest of Local Election Result in Asmat, Four People Allegedly Shot Dead," *Seputar Papua* [Papuan newspaper], accessed October 15, 2020, https://seputarpapua.com/view/6985-rusuh_protes_hasil_pileg_di_asmat_empat_orang_tewas_diduga_tertembak.html.

This article has sought to contribute to the debate on Indonesia's democratic condition by explaining the conditions and the institution that have prevented Indonesia from shifting rapidly into authoritarianism. While empirical evidence has confirmed a degree of democratic erosion, Indonesia is still acknowledged as a country within the ranks of electoral democracies and is not shifting rapidly into authoritarianism. Moreover, this article complements previous research on the Constitutional Court's role amid the political fray of the post-Suharto era. In preventing Indonesia from experiencing rapid democratic backsliding, the Court has signified its presence as an 'agent of democratization'.

In showing the Constitutional Court's independence and prevention of un-competitiveness, limited participation, and unaccountability in elections, this article has adopted Gibler and Randazzo's statistical evidence on an independent constitutional court acting as a deterrent to the likelihood of democratic backsliding. In doing so, this article has explained how the Constitutional Court prevents rapid democratic backsliding or even authoritarianism. I conclude by giving credit to the Indonesian Constitutional Court for its role in countering actions that can undermine Indonesia's democratic achievements.

BIBLIOGRAPHY

- Aspinall, Edward and Marcus Mietzner. "Indonesia's Democratic Paradox: Competitive Elections amidst Rising Illiberalism." *Bulletin of Indonesian Economic Studies* 55, no. 3 (November 2019).
- Aspinall, Edward, and Marcus Mietzner. "Southeast Asia's Troubling Elections: Nondemocratic Pluralism in Indonesia." *Journal of Democracy* 30, no. 4 (October 2019).
- Edward Aspinall et al. "Elites, Masses, and Democratic Decline in Indonesia." *Democratization* 27, no. 4 (October 2019).
- Aspinall, Edward, Marcus Mietzner, and Dirk Tomsa. *The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation*. Singapore: Institute of Southeast Asian Studies. 2014.

Butt, Simon. *The Constitutional Court and Democracy in Indonesia*. Leiden: Brill Nijhoff. 2015.

The Constitutional Court of the Republic Indonesia. “The Progressive Role of the Constitutional Court in Protecting the Voting Right of the Mentally Disabled and its Influence on Increasing Voter Participation in Elections [*Peran Progresif Mahkamah Konstitusi dalam Melindungi Hak Pilih Disabilitas Kategori Orang dengan Gangguan Jiwa dan Pengaruhnya terhadap Peningkatan Partisipasi Pemilih dalam Pemilu*].” Accessed October 15, 2020. https://www.mkri.id/public/content/infoumum/penelitian/pdf/hasilpenelitian_105_Laporan%20Penelitian%20Kompetitif%20Jember.pdf.

The Constitutional Court of the Republic Indonesia. “Disputes Over the Result of the Presidential and Vice-Presidential Election of 2019, by Prabowo et al. [*Perselisihan Hasil Pemilihan Umum Presiden dan Wakil Presiden Tahun 2019, oleh Prabowo dkk*].” Accessed October 15, 2020. https://mkri.id/public/content/persidangan/putusan/putusan_mkri_5390.pdf.

Crouch, Melissa. “Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law.” *Asian Journal of Comparative Law* 7, no. 1 (May 2012).

Diamond, Larry. “Indonesia’s Place in Global Democracy.” In *Problems of Democratisation in Indonesia: Elections, Institutions and Society*, edited by E. Aspinall and M. Mietzner. Singapore: Institute of Southeast Asian Studies, 2010.

Dressel, Bjoern and Tomoo Inoue. “Mega Political Cases before the Constitutional Court of Indonesia since 2004: An Empirical Study.” *Constitutional Review* 4, no. 2 (December 2018).

Dressel, Bjoern. “Governance, Courts and Politics in Asia.” *Journal of Contemporary Asia* 44, no. 2 (February 2014).

The Election Commission of the Republic of Indonesia. “The Constitutional Court’s Decisions on the 2019 Election Disputes [*Putusan Mahkamah Konstitusi pada Sengketa Pemilu 2019*].” Accessed October 15, 2020. <https://jdih.kpu.go.id/putusan-pengadilan-mk>.

- Fealy, Greg. "Indonesian Politics in 2011: Democratic Regression and Yudhoyono's Regal Incumbency." *Bulletin of Indonesian Economic Studies* 47, no. 3 (November 2011).
- Fossati, Diego, Burhanuddin Muhtadi and Eve Warburton. "Why Democrats Abandon Democracy: Evidence from Four Survey Experiments." *Party Politics* 1 (February 2021).
- Fossati, Diego and Marcus Mietzner. "Analyzing Indonesia's Populist Electorate: Demographic, Ideological, and Attitudinal Trends." *Asian Survey* 59, no. 5 (October 2019).
- Diego Fossati et al. "Ideological Representation in Clientelistic Democracies: The Indonesian Case." *Electoral Studies* 63, no. 6 (February 2020).
- Ghaliya, Ghina. "Former KPU commissioner gets six years in prison for election bribery." *The Jakarta Post*, August 24, 2020. <https://www.thejakartapost.com/news/2020/08/24/former-kpu-commissioner-gets-six-years-in-prison-for-election-bribery.html>.
- Gibler, Douglas and Kirk Randazzo. "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding." *American Journal of Political Science* 55, no. 3 (July 2011).
- Ginsburg, Tom. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. New York: Cambridge University Press, 2003.
- Harijanti, Susi Dwi and Tim Lindsey. "Indonesia: General Elections Test the Amended Constitution and the New Constitutional Court." *International Journal of Constitutional Law* 4, no. 1 (January 2006).
- Hendrianto, Stefanus. *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes*. New York: Routledge, 2018.
- Hilbink, Lisa. "Assessing the New Constitutionalism." *Comparative Politics* 4 (January 2008).
- Horowitz, Donald. "Constitutional Courts: A Primer for Decision Makers." *Journal of Democracy* 17, no. 4 (October 2006).

- Hosen, Nadirsyah. "The Constitutional Court and 'Islamic' Judges in Indonesia." *Australian Journal of Asian Law* 16, no. 2 (March 2016).
- Jakarta Globe. "Indonesia Sees Record Turnout in Historic Election, Braces for Fallout." Accessed October 15, 2020. <https://jakartaglobe.id/context/indonesia-sees-record-turnout-in-historic-election-braces-for-fallout>.
- Linz, Juan and Alfred Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press, 1996.
- McRae, Dave. "Indonesian Politics in 2013: The Emergence of New Leadership?" *Bulletin of Indonesian Economic Studies* 49, no. 3 (December 2013).
- Mietzner, Marcus and Burhanuddin Muhtadi. "The Mobilisation of Intolerance and Its Trajectories: Indonesian Muslims' Views of Religious Minorities and Ethnic Chinese." In *Contentious Belonging: The Place of Minorities in Indonesia*, edited by G. Fealy and R. Ricci. Singapore: Institute of Southeast Asian Studies, 2019.
- Mietzner, Marcus and Burhanuddin Muhtadi. "The Myth of Pluralism: Nahdlatul Ulama and The Politics of Religious Tolerance in Indonesia." *Contemporary Southeast Asia* 42, no. 1 (April 2020).
- Mietzner, Marcus. "Authoritarian Innovations in Indonesia: Electoral Narrowing, Identity Politics, and Executive Illiberalism." *Democratization* 27, no. 6 (December 2019).
- Mietzner, Marcus. "Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia." *Pacific Affairs* 91, no. 2 (June 2018).
- Mietzner, Marcus. "Indonesia and the Pitfalls of Low-Quality Democracy: A Case Study of the Gubernatorial Elections in North Sulawesi." In *Democratization in Post-Suharto Indonesia*, edited by M. Bunte and A. Ufen. London and New York: Routledge, 2009.
- Mietzner, Marcus. "Political Conflict Resolution and Democratic Consolidation

- in Indonesia: The Role of the Constitutional Court.” *Journal of East Asian Studies* 10, no. 3 (December 2010).
- Muhtadi, Burhanuddin and Eve Warburton. “Inequality and Democratic Support in Indonesia.” *Pacific Affairs* 93, no. 1 (March 2020).
- Power, Thomas. “Jokowi’s Authoritarian Turn and Indonesia’s Democratic Decline.” *Bulletin of Indonesian Economic Studies* 54, no. 3 (December 2018).
- Seputar Papua [Papuan newspaper]. “Riot in Protest of Local Election Result in Asmat, Four People Allegedly Shot Dead [*Rusuh Protes Hasil Pileg di Asmat, Empat Orang Tewas Diduga Ditembak*].” Accessed October 15, 2020. https://seputarpapua.com/view/6985-rusuh_protes_hasil_pileg_di_asmat_empat_orang_tewas_diduga_tertembak.html.
- Sieder, Rachel, Line Schjolden and Alan Angell. *The Judicialization of Politics in Latin America*. New York: Palgrave Macmillan, 2005.
- Siregar, Fritz Edward. “Indonesia Constitutional Court Constitutional Interpretation Methodology (2003-2008).” *Constitutional Review* 1, no. 1 (May 2015).
- Slater, Dan. “Indonesia’s Accountability Trap: Party Cartels and Presidential Power after Democratic Transition.” *Indonesia* 78, (October 2004).
- Stephenson, Matthew. “When the Devil Turns...: The Political Foundations of Independent Judicial Review.” *Journal of Legal Studies* 32, no. 1 (2003).
- Stott, David Adam. “Indonesia’s 2019 Elections: Democracy Consolidated?” *The Asia-Pacific Journal* 17, no. 6 (March 2019).
- Tate, Neal and Torbjorn Vallinder. *The Global Expansion of Judicial Power*. New York: New York University Press, 1995.
- Tomsa, Dirk. “Indonesian Politics in 2010: The Perils of Stagnation.” *Bulletin of Indonesian Economic Studies* 46, no. 3 (November 2010).
- Umasugi, Ryana. “Almost 3 Months Since Applying for e-KTP, But Still on the Waiting List [*Sudah Hampir 3 Bulan Urus e-KTP, Masih Masuk Daftar Tunggu*].” *Kompas*, November 24, 2018. <https://megapolitan.kompas.com/>

read/2018/11/24/06470001/-sudah-hampir-3-bulan-urus-e-ktp-masih-masuk-daftar-tunggu--?page=all.

Waldner, David and Ellen Lust. "Unwelcome Change: Coming to Terms with Democratic Backsliding." *Annual Review of Political Science* 21, no. 1 (May 2018).

Warburton, Eve and Edward Aspinall. "Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion." *Contemporary Southeast Asia* 41, no. 2 (August 2019).

Warburton, Eve and Burhanuddin Muhtadi. "Politicizing Inequality in Indonesian Elections." *Brookings*, April 8, 2019.

Eve Warburton et al. "When Does Class Matter? Unequal Representation in Indonesian Legislatures." *Third World Quarterly* 1, (March 2021).

Webber, Douglas. "A Consolidated Patrimonial Democracy? Democratization in post-Suharto Indonesia." *Democratization* 13, no. 3 (July 2006).