



DISSENTING OPINION OF JUDGES IN THE PERSPECTIVE OF SIYASAH SYAR'IIYAH: A Study of the Constitutional Court Decisions No. 1/PHPU.PRES-XXI/2024 and No. 2/PHPU.PRES-XII/2024 (the Presidential Election Results)

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Abstract: This study delves into the significance and impact of dissenting opinions in Indonesia's constitutional legal framework, specifically through an analysis of Constitutional Court Decisions No. 1/PHPU.PRES-XXI/2024 and No. 2/PHPU.PRES-XII/2024. In Indonesia, dissenting opinions, though non-binding, play an essential role in the judicial process by offering alternative interpretations and critiques of the majority's rulings. These opinions allow judges to express disagreements rooted in different legal reasoning, often contributing to a richer and more nuanced understanding of the law. By applying the perspective of *Siyasah Syar'iyah*—an Islamic governance concept emphasizing justice (*'adl*) and public welfare (*maslahah*)—this study frames dissenting opinions as a vital tool for promoting justice and ethical governance within the legal system. The principles of justice and consultation (*syura*) in *Siyasah Syar'iyah* align with the objectives of dissenting opinions, encouraging decision-making processes that are transparent, inclusive, and aligned with the broader interests of society. This research finds that dissenting opinions in the Constitutional Court not only provide critical viewpoints that can refine legal interpretations but also contribute to the legitimacy and resilience of legal policies. Furthermore, dissenting opinions often serve as a corrective mechanism, inspiring future reforms and guiding policymakers toward decisions that uphold equity and societal welfare. This alignment with *Siyasah Syar'iyah* underscores the importance of dissenting opinions in fostering a legal environment that remains responsive to evolving social dynamics and rooted in the pursuit of substantive justice. Ultimately, this study highlights how dissenting opinions can act as a bridge between contemporary legal practice and foundational Islamic principles, ensuring that the ideals of *Siyasah Syar'iyah* are meaningfully integrated into Indonesia's legal landscape.

Keyword: Dissenting Opinion, *Siyasah Syar'iyah*, Constitutional Court, Justice, Consultation, Islamic Law, Legal Development.



A. Introduction

Dissenting opinions have a very important role in legal decision-making at the Constitutional Court, especially in enriching the judicial process and ensuring transparency and legitimacy of the decisions taken (Kelemen, 2013). Although not legally binding, dissenting opinions reflect a diversity of views among the judges that can be a constructive contribution to the development of future law. In the Constitutional Court, where the issues decided often touch on fundamental constitutional rights, the decisions made not only affect the parties involved, but also the stability and legitimacy of the legal system as a whole. In this context, dissenting opinions serve as a tool to correct or provide an alternative perspective to the legal interpretations taken by the majority of judges. Dissenting opinions may express concerns or criticisms that need to be further considered in the evaluation of the decision, and in some cases, may influence the formulation of similar decisions in the future, or even pave the way for legal change and reform (Mendes, 2013).

In addition, dissenting opinions also play an important role in creating space for the development of legal thinking that is more dynamic, transparent and responsive to the needs of society. This shows that the Constitutional Court is not an institution trapped in a single mind, but an institution that promotes pluralism of ideas and space for debate within the legal framework (Walker, 2002). In dissenting opinions, judges have the opportunity to convey legal reasoning that may not have been sufficiently revealed in the majority decision, and this can enlighten the public and other decision-makers on various dimensions in the application of the law. Thus, dissenting opinion is not just a minority note, but an instrument that enriches the substance of the law with a broader perspective, which ultimately encourages improvement and progress in the legal and justice system in Indonesia.

As a democratic country, Indonesia conducts elections as a constitutional mandate, as outlined in Article 22E of the 1945 Constitution. The values that must be present in elections are elaborated in Article 22E, paragraph (1) of the 1945 Constitution, which states that elections are to be held directly, universally, freely, confidentially, honestly, and fairly (Arifin & Hidayat, 2019). Elections are held to elect members of the DPR, DPD, President and Vice President, as well as DPRD every five years, providing space or opportunity for the people to choose the nation's leaders and rulers every five years (Wahyono, 2022). The principles/values in the conduct of elections are crucial to ensuring justice in the the process. According to HLA Hart, justice is merely one segment of morality, specifically the segment of morality that concerns itself not with the actions of individual human beings, but with the actions of individuals within a class or group in society (Popovic, 2022).

This is understandable given Indonesia's vast territory, large population, and democratic system, which allows for disagreements or disputes to arise following the elections (Kelliher, et al., 2019).

To minimize the misuse of power by those in authority, it is essential to have an institution specifically tasked with safeguarding the constitution. This ensures that all issues related to the administration of the state are handled democratically and in accordance with progressive law (Purwadi, et,al 2022).

In the process of resolving election result disputes, the state institution authorized to carry out the constitutional mandate is the Constitutional Court. The legal basis for this is found in Article 24C, paragraph (1) of the 1945 Constitution, which states, "The Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final, to review laws against the Constitution, decide disputes concerning the authority of state institutions whose powers are granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding the results of general elections (Sari, Hidayat, & Sari, 2023)." Provisions related to election result disputes are also detailed in Constitutional Court Regulation (PMK) No. 4 of 2023 on Procedures for Disputes Concerning the Results of Presidential and Vice-Presidential Elections, which replaces PMK No. 4 of 2018 (Rochmawanto & Sakuroikan, 2024).

The Constitutional Court, when issuing decisions on election result disputes (PHPU), often delivers rulings that are not unanimous. This means that the decisions are not fully agreed upon by all the judges on the panel. With the large composition of judges, the arrangement of judges handling constitutional cases in the Constitutional Court is based on Article 24C, paragraph (3) of the 1945 Constitution, which states that the Constitutional Court has nine constitutional judges, forming the composition of the judges in the Constitutional Court's panel. This differs from the composition of panels in criminal, civil, or administrative cases, which typically consist of three judges, including the presiding judge (Asmawi & Faizin, 2017).

Differences of opinion among Constitutional Court judges are a logical consequence of the composition of the panel and are common outcomes of the discourse that takes place within a panel. As cited in the Foreword by Jimly Asshiddiqie, differing opinions are categorized into two types: Dissenting Opinions and Concurring Opinions (or Consenting Opinions). A Dissenting Opinion is a differing viewpoint that influences the conclusion and results in a different ruling. In contrast, a Concurring Opinion or Consenting Opinion is a differing viewpoint in terms of the arguments or rationale used, but it leads to the same conclusion and the same ruling (Indrati, 2021).

Judicial independence has an intertwining external and internal aspect. One can analyze the independence of the judiciary from the other powers (the external aspect) or the judges' independence from their colleagues and superiors (the internal aspect). Furthermore, a distinction can also be made between the institutional and the individual aspects of judicial independence (Kelemen, 2013)

One of the petitions submitted to the Constitutional Court related to the 2024 election result dispute (PHPU) was filed by the presidential and vice-presidential candidates numbered 01 and 03 against the results of the candidates numbered 02. After the dispute process, the Constitutional Court's decision on petitions No. 1/PHPU.PRES-XII/2024 and No. 2/PHPU.PRES-XXI/2024 was to reject the petitions in their entirety. However, it is notable that there was a Dissenting Opinion in the decision, with 3 out of 8 judges on the Constitutional Court expressing differing views. The Dissenting Opinion in the presidential and vice-presidential election result dispute was provided by Constitutional Judges Saldi Isra, Enny Nurbaningsih, and Arif Hidayat. According to Perludem's Executive Director, Khoirunnisa Nur Agustyati, the decision on the presidential election result dispute should be read in its entirety, not just the ruling but also the legal considerations and differing opinions (Thea DA, 2024).

Therefore, based on the background above, in the author's view, there has been a disparity both in the legal basis used by each judge of the Constitutional Court and in the interpretation of the results of the election result dispute hearings (PHPU). The author is interested in writing about the dissenting opinions of the judges and exploring how the perspective of *Siyasah Syar'iyah* views these differing opinions (dissenting opinions) provided by the judges (Hasanah, et.al 2018)

The relevant legal basis for analyzing dissenting opinions in Indonesia involves several regulations and laws underpinning the judiciary system and decision-making process. First, Law No. 24 of 2003 on the Constitutional Court regulates the authority and functions of the Constitutional Court in resolving election disputes, including its role and limitations in assessing reported violations. Second, Law No. 14 of 1985 on the Supreme Court governs decisions and judicial mechanisms, covering how dissenting opinions can be expressed in the context of high-level courts. Third, Constitutional Court Regulation No. 2 of 2020 on Procedural Rules in Constitutional Court Proceedings also provides guidelines on how dissenting opinions can be incorporated into decisions. From an Islamic law perspective, principles of justice and consultation, as outlined in the Quran, Surah An-Nisa (4:58) and Surah Ash-Shura (42:38), also form an important foundation supporting the notion that differing opinions in legal rulings are a legitimate and constructive part of the justice process. These legal bases, together with sharia principles, create a framework that accommodates and analyzes dissenting opinions within the Indonesian legal system.

This research aims to analyze the dissenting opinions of constitutional court judges in deciding the results of presidential and vice presidential election disputes from a *siyasah* perspective. so that it can become literature material for future learning.

The relevance of *Siyasah Shar'iyah* in assessing different views among judges in the Islamic legal system lies in the basic principle that differences of opinion (*ikhtilaf*) in legal decisions are not only acceptable, but also considered an important part in enriching a broader and deeper understanding of the law (Ibrahim, 2020). *siyâsah syar'iyah* is a system and legislation in government that is in accordance with the basics of the Islamic religion even though there are no specific arguments governing it. The scope of *siyâsah syar'iyah* is very broad, covering issues regarding government structure, foreign relations, and financial institutions. In *siyâsah syar'iyah*, the general principles of sharia, such as eliminating difficulties (*raf' al-haraj*), closing the door to evil (*sadd al-dzari'ah*), deliberation, and returning complicated problems to experts are the normative foundations of sharia. must be held firmly (A & Faizin, 2016). In *Siyasah Shar'iyah*, differences of opinion among scholars or judges are legitimate and even expected, as each individual brings a different perspective that is influenced by their understanding of legal texts, social contexts and moral principles. In the context of the Islamic justice system, these different views provide room for *ijtihad* (legal interpretation) that is more flexible and adaptive to the needs of society. Dissenting opinions in Indonesian constitutional courts, in this case, reflect a form of legitimate *ikhtilaf*, where judges provide different perspectives in achieving justice. In *Siyasah Shar'iyah*, this dissenting opinion can be considered as a step to maintain balance in society and support the achievement of *maslahah* (public good), as well as upholding the principle of *'adl* (justice).

The selection of Constitutional Court Decisions No. 1/PHPU.PRES-XXI/2024 and No. 2/PHPU.PRES-XII/2024 as the object of study in this research is based on the importance

of these cases in the context of Indonesian constitutional law, especially regarding disputes over the results of presidential elections that involve political interests and the constitutional rights of the people. These cases involve decisions that affect the political legitimacy of the state and the voting rights of citizens, thus affecting the stability of democracy and the principles of justice in society. In both decisions, there were dissenting opinions among the judges, which provide insight into how Indonesian constitutional law is applied in the face of major issues related to elections and constitutional rights. The dissenting opinions in these two decisions are relevant to analyze because they provide alternative views that can illustrate how principles of law, justice and public policy are confronted with social and political realities. In addition, these cases provide an opportunity to examine the extent to which *Siyasah Shar'iyah*- with its principles of justice and benefit - can be applied in the context of positive law in Indonesia. Through analysis of the dissenting opinions in these two judgments, this research seeks to explore how dissenting opinions within the legal system can contribute to the development of principles of justice that are more profound and relevant to broader social values.

B. Method

This study employs a qualitative research approach with a case study focus, specifically examining Constitutional Court Decisions No. 1/PHPU.PRES-XXI/2024 and No. 2/PHPU.PRES-XII/2024, as described by Assyakurrohim et al. (2023). The qualitative approach allows for an in-depth exploration of the underlying legal reasoning, values, and implications of dissenting opinions within these significant decisions. This research draws on both primary and secondary data sources. Primary data sources consist of official Constitutional Court decision documents and the dissenting opinions expressed by the judges involved. These documents provide critical insights into the reasoning behind each judge's perspective, revealing the interpretative divergences that contribute to a more pluralistic understanding of constitutional law. Additionally, the study incorporates interviews with legal experts to gain a comprehensive perspective on the practical applications of the law and the relevance of dissenting opinions in shaping Indonesia's legal discourse. These expert insights offer a deeper understanding of how dissenting opinions influence broader legal interpretations and the evolving legal standards in Indonesia.

Secondary data sources supplement the primary data by providing a strong theoretical foundation for understanding the role of *Siyasah Syar'iyah*, dissenting opinions, and Islamic law principles within Indonesia's constitutional framework. Relevant literature on *Siyasah Syar'iyah* a branch of Islamic governance that emphasizes justice ('*adl*), public welfare (*maslahah*), and consultative decision-making (*syura*) serves to contextualize dissenting opinions as expressions of ethical governance within the legal system. By analyzing how these principles intersect with contemporary jurisprudence, the study aims to reveal how dissenting opinions can align with *Siyasah Syar'iyah* to promote substantive justice and the public good.

The data analysis will proceed through a content analysis approach, focusing on the Constitutional Court decision documents and the accompanying dissenting opinions. This approach allows for an in-depth examination of the motives, arguments, and implications present in the dissenting opinions. By identifying patterns, themes, and distinctive legal arguments, the content analysis sheds light on how dissenting opinions contribute to a richer understanding of constitutional principles and judicial independence. Moreover,

the analysis will apply a normative approach to explore the relevance of *Siyasah Syar'iyah* principles in the dissenting opinions, identifying the extent to which these principles influence dissenting legal views within the Constitutional Court's decisions. This normative framework enables the study to examine how *Siyasah Syar'iyah* values such as equity, welfare, and consultation are reflected in the dissenting opinions, assessing their potential to influence Indonesia's legal system toward greater justice and responsiveness.

The findings from this analysis are expected to provide new insights into the dynamic interaction between positive law and Islamic legal principles within the context of modern jurisprudence. By illustrating how dissenting opinions serve as a bridge between secular legal principles and Islamic values, this study highlights the potential for *Siyasah Syar'iyah* to inform contemporary legal practice in Indonesia. The broader implications of this research extend beyond the Constitutional Court decisions in question, suggesting that dissenting opinions grounded in Islamic principles can play a transformative role in the development of a more inclusive and ethically grounded legal system. Through these insights, the study aspires to contribute to ongoing debates about the harmonization of positive law with Islamic values, offering a framework for integrating ethical principles within a pluralistic legal environment that respects both secular and religious influences.

C. Result and Discussion

Dissenting opinion in Indonesian constitutional law refers to a different opinion expressed by one or more constitutional judges against a majority decision. This concept is widely recognized in the judicial system of countries that adhere to the collegial principle in decision making, including Indonesia (Akbar, 2020). Dissenting opinions provide a platform for judges who disagree with the majority decision to convey their different legal reasons, arguments and analysis. In Indonesia, especially in the judicial system of the Constitutional Court (MK), dissenting opinions have been recognized since the establishment of the Constitutional Court in 2003 as a constitutional court institution. The Constitutional Court has the main task of testing laws against the Constitution, resolving disputes over the authority of state institutions, dissolving political parties, and deciding disputes over election results, which often involve sensitive issues and have a major impact on the legal and political stability of the country. In carrying out this function, differences of opinion among judges often arise due to different interpretations of the constitution, principles of justice, and evidence presented. Therefore, dissenting opinions have an important place as part of the freedom of each judge to maintain the integrity of his or her views without being bound by the majority (Butt, 2012).

The function and role of dissenting opinions in Constitutional Court decisions are very significant, both within the internal judicial framework and for the development of law in Indonesia. First, dissenting opinions provide space for judges to express different legal views, making the decision-making process more transparent and open. This not only reflects the principle of judges' independence, but also helps to increase the Court's credibility and accountability in the eyes of the public. Secondly, dissenting opinions serve as an important documentation of minority views, which may not form the basis of current decisions but could be influential in the future. In a dynamic legal system, initially minority views can be taken into consideration in changing or updating the law in line with social and political changes. Third, dissenting opinions have educational and academic value because they open up space for discussion and deep reflection on

constitutional issues and principles of justice. In some cases, dissenting opinions provide alternative, more progressive perspectives, which then inspire legislators, academics and the public in understanding law and justice. At the international level, dissenting opinions also demonstrate that judges have strong freedom of thought and independence in carrying out their duties, an important characteristic in a democratic rule of law. Thus, the existence of dissenting opinions in the Indonesian Constitutional Court not only demonstrates the plurality of thought in the judiciary, but also maintains a balance between conservative and innovative interpretations of the law.

Siyasah Shar'iyah in the Islamic legal system refers to political policies and government administration that are based on the principles of sharia and aim to achieve the public good or welfare of society. In language, *siyasah* means politics or policy, while *syar'iyah* refers to sharia or Islamic law. The basic concept of *Siyasah Shar'iyah* refers to the efforts of the government or leader in regulating society and making policies in accordance with Islamic principles, especially in upholding justice, maintaining security, and protecting people's rights (Ariffin, 2023). In *Siyasah Shar'iyah*, the government has the authority to make regulations that may not be specifically regulated in the Qur'an or Hadith, as long as the decision does not contradict the basic principles of sharia and aims to achieve the public good. This concept was born from the idea that Islam not only regulates ritual worship, but also regulates social and political life as a whole, including how the state is managed and how justice is enforced to protect society from injustice. Islam is very concerned with trustworthy leadership, so that in the process of selecting a leader (caliph) strict conditions and criteria are determined, these provisions apply to voters and the candidates to be elected. This is done to avoid giving trust to people who are not experts. (Hasanah et al., 2018)

The principles of *Siyasah Shar'iyah* are very relevant to the formation of law and the enforcement of justice, especially in efforts to maintain public welfare and respond to evolving socio-political challenges. One of the main principles is *maslahah* or benefit, which emphasizes that every policy or law made must aim for the public interest and provide benefits to the wider community. This principle encourages policy makers to prioritize the needs of the people and ensure that the rules made do not harm them. Furthermore, there is the principle of *'adl* or justice, which is a pillar in *Siyasah Shar'iyah*. This justice should be reflected in all government decisions and policies, including in the settlement of disputes and in the granting of individual and collective rights. The principle of justice requires the government to be impartial and to provide punishment appropriate to the deeds of lawbreakers. Another principle underlying *Siyasah Shar'iyah* is *shura* or deliberation, which means that every important policy or decision should go through a process of consultation or deliberation with competent parties or with the community. *Shura* strengthens accountability and ensures that policies reflect the will of the people. In addition, there is the principle of *istihsan* or consideration of convenience, which allows flexibility in the application of Islamic law so that it can be adaptive to the context and situation at hand. With these principles, *Siyasah Shar'iyah* becomes a framework that enables Islamic governments to make policies that are effective, responsive, and still based on sharia values in achieving justice and benefit for the entire community (Moten, 2017).

In the perspective of Islamic law, dissenting opinion, although it does not have the same formal term or system as in modern law, has its roots in the tradition of discussion

and difference of opinion known as *ikhtilaf*. *Ikhtilaf* is recognized in Islamic law as a natural and even necessary thing to enrich the understanding of the law, given the various interpretations in the holy book and sunnah that underlie Islamic law. The principle of deliberation (*shura*) in *Siyasah Shar'iyah* supports the emergence of diverse views among scholars and shar'i judges, where each opinion can be a reflection of the various understandings and contexts at hand. Unlike modern constitutional law which makes dissenting opinions part of the official ruling, dissenting views in Islamic law are not always recorded as "minority opinions." In practice, however, dissenting scholarly views are often recognized as legitimate alternatives, and the community or decision-maker can choose the view that best suits the interests of the community (*maslahah*), justice (*'adl*) and the local context (Zuhdi, 2019).

In principle, both Islamic law and Indonesian constitutional law share a common respect for justice, fairness and the public good, although there are differences in how they are applied. In Islamic law, justice is a very fundamental principle and encompasses deep moral and spiritual dimensions, where every decision must reflect the values of sharia and have a positive impact on society as a whole. On the other hand, Indonesian constitutional law also upholds the principles of justice and welfare, but within a secular framework that emphasizes more formal and procedural rules to maintain legal order and distributive justice. In the context of dissenting opinions, constitutional law views it as the right of judges to express different views aimed at enriching legal interpretation and providing alternative views, especially in cases concerning fundamental rights or complex political disputes. In Islam, dissenting opinions are implicitly understood in the form of *ijtihad* and *ikhtilaf*, where these differences are considered a blessing that can help the ummah find the best path in diverse situations.

The main difference lies in the authority and formal impact of the dissenting opinion itself. In Indonesian constitutional law, a dissenting opinion is recorded as part of an official legal document and although it is not binding, it has the potential to influence future precedents or become the basis for legal reform. Whereas in Islamic law, dissenting opinions are not always enshrined in formal rulings, but tend to be part of legal discourse that can influence people's views or legal practice in different places. In addition, Indonesia's constitutional law functions within a secular legal state structure, so legal interpretation is based on formal principles and political agreements, while Islamic law relies more on the absolute principles of sharia and moral values drawn from the Qur'an and Hadith. Although different in implementation, both Islamic law and Indonesian constitutional law basically aim to realize justice and welfare, with dissenting opinions serving as an important tool to maintain a diversity of views and enrich legal understanding in order to achieve mutual benefit.

Dissenting opinion, or the dissenting opinion of a judge who disagrees with the majority decision in a case, is an important concept in the legal system that has a long history and significant role in jurisprudence (Fajrin, 2023). In essence, a dissenting opinion is a viewpoint expressed by one or more judges that differs from the official court decision. This concept first gained attention in common law systems, such as in England and the United States, where judges who disagree with the majority opinion present their arguments in writing. Historically, dissenting opinions have become notable through various important rulings, such as those by the U.S. Supreme Court that established significant precedents. For example, in the case of *Plessy v. Ferguson* (1896), Justice John

Marshall Harlan's dissenting opinion opposing the "separate but equal" doctrine was later regarded as the correct viewpoint in the decision of *Brown v. Board of Education* (1954), which overturned racial segregation in schools (Kusumawardani, 2019).

The function of dissenting opinions in jurisprudence is vital, as it provides space for constructive differences in legal views and allows for an ongoing dialog in legal interpretation. Dissenting opinions often serve as an internal critique of the court's decision, which can highlight weaknesses or imperfections in the majority's decision (Varsava, 2019). Moreover, dissenting opinions serve as a guide for future courts and can be a source of inspiration for legal change, as seen in historical cases. The influence of dissenting opinions extends beyond legal boundaries, as they can affect public opinion and legal debate among scholars and policymakers. Therefore, dissenting opinions not only enrich legal discourse but also contribute to the development of law and justice as a whole by opening the possibility for revision or reconsideration of decisions in the future.

Siyasah Syar'iyah is a concept in Islamic law that refers to policies or government administration conducted in accordance with the principles of sharia. The literal definition of Siyasah Syar'iyah means "sharia politics," where *siyasah* refers to the management of public affairs by leaders or rulers, and *shar'iyah* refers to adherence to Islamic laws (Nurhalisa, 2023). The fundamental principles of Siyasah Syar'iyah include several key elements, such as justice (*'adl*), public interest (*maslahah*), and the protection of individual rights as well as community interests. These principles must be implemented within the framework of sharia law, which includes primary sources such as the Quran, Sunnah, *Ijma'* (consensus of scholars), and *Qiyas* (analogy). Siyasah Syar'iyah emphasizes the importance of leaders or governments acting justly and wisely while maintaining the welfare of the community in adherence to religious teachings. (Putra, 2023)

The application of Siyasah Syar'iyah in Islamic legal decisions involves ensuring that policies or decisions made by the government or judiciary not only adhere to Islamic law textually but also consider the overall welfare and interests of the community. In practice, Siyasah Syar'iyah provides flexibility for rulers to make decisions that may not be explicitly covered in sacred texts, as long as these decisions remain consistent with the fundamental principles of sharia and aim to achieve the public good. For example, in certain cases, a leader may establish laws or regulations not directly found in the Quran or Hadith but deemed necessary to protect the community or maintain social justice. Siyasah Syar'iyah also plays a role in state affairs such as legislation, law enforcement, and public finance management, where all policies must be based on efforts to achieve the objectives of sharia (*maqasid al-shariah*), which include the protection of religion, life, intellect, lineage, and property. Thus, Siyasah Syar'iyah is not merely the application of Islamic law in a political context but also serves as an ethical and legal guide for leaders to manage the state in a manner that is just and oriented toward the welfare of the community.

The relationship between positive law and Islamic law is a complex and often contentious topic, especially in the context of countries with dualistic or pluralistic legal systems, where positive law and Islamic law interact with each other (Sugitanata, et.al 2023). Positive law, which derives from state legislation, is secular and based on universal principles of rationality and justice. In contrast, Islamic law is rooted in divine revelation found in the Qur'an, Hadith, *Ijma'*, and *Qiyas*, and aims to uphold justice based on sharia

(Amelia & Luthfi, 2018). In legal decision-making, positive law systems tend to emphasize written rules and legal precedents developed through jurisprudence, while Islamic law focuses on the interpretation of sacred texts and the application of moral principles aligned with *maqasid al-shariah* (objectives of sharia). Despite differences in sources and methodologies, these two legal systems can complement each other, especially in Muslim countries where Islamic law is often applied in family, inheritance, and civil law matters, while positive law governs other aspects of public life and state administration.

The relationship between positive law and Islamic law is a complex and often debated topic, especially in the context of countries that implement a dualistic or pluralistic legal system, where positive law and Islamic law interact with each other¹. Positive law, which derives from state legislation, is secular and based on universal principles of rationality and justice. In contrast, Islamic law is rooted in divine revelation found in the Qur'an, Hadith, Ijma', and Qiyas, and aims to uphold justice based on sharia (Sugitanata, Karimullah, & Al Hamid, 2023). In legal decision-making, positive law tends to emphasize written rules and legal precedents developed through jurisprudence, while Islamic law focuses on the interpretation of sacred texts and the application of moral principles consistent with *maqasid al-shariah* (objectives of sharia). Although they differ in sources and methodology, these two legal systems can complement each other, especially in Muslim countries where Islamic law is often applied in the domains of family, inheritance, and civil law, while positive law governs other aspects of public life and state administration.

In the context of dissenting opinions, Islamic law also recognizes the concept of differences of opinion among scholars (*ikhtilaf*), where Islamic jurists (*fuqaha*) can have different interpretations of sharia texts. Dissenting opinions in Islamic law typically arise in fatwas or sharia court rulings, where there are differences of opinion among judges or muftis regarding legal interpretation. For example, in cases involving inheritance or marriage laws, there are often disagreements on how Islamic law should be applied in specific situations, which are then accommodated through *ijtihad* or rulings based on deep legal reasoning. Although Islamic law is more normative and based on religious beliefs, the principle of dissenting opinion remains relevant as it allows for flexibility and adaptation in applying the law according to social and temporal contexts. Thus, the comparison between positive law and Islamic law in legal decision-making shows that both systems have unique ways of handling differences of opinion, yet both offer frameworks that enable the creation of dynamic justice and legal certainty.

Decisions of the Constitutional Court (MK) No. 1/PHPU.PRES-XXI/2024 and No. 2/PHPU.PRES-XII/2024 are two important decisions in resolving the dispute over the results of the presidential election that surfaced in the 2024 elections in Indonesia. These disputes arose as a result of claims by relevant parties regarding alleged systematic, structured and massive violations and fraud that affected the results of the vote. In this context, the applicant demands the cancellation or change of the election results on the grounds that there are irregularities in the voting and vote counting process that have the potential to benefit one of the candidate pairs. The Constitutional Court, as the highest institution in resolving disputes over election results, holds hearings to listen to witness testimony, submitted evidence, and views from legal experts. After a long and in-depth

process, the Court issued two decisions with several different opinions among the constitutional judges, known as dissenting opinions.

The dissenting opinions that appeared in these two decisions reflect the significant differences in views among the constitutional judges regarding the facts and evidence presented. Some judges argued that the evidence presented by the petitioners was strong enough to show that there were serious violations that could affect the election results. They considered that the Court should have been more decisive in issuing a decision that corrected or even changed the results in order to maintain the principles of fairness and honesty in elections. The judges who issued the dissenting opinion considered that evidence of alleged systematic and massive violations could not be ignored because it involved the basic rights of citizens to elect leaders honestly and fairly. In contrast, the majority of the judges were of the opinion that although there were a number of violations, the evidence presented by the petitioners was not sufficient to prove the existence of structured, systematic and massive fraud that could affect the outcome of the presidential election as a whole. They argued that a decision that was not in line with the majority view would impact political stability and potentially create public distrust of the democratic system.

This difference of view underscores the dilemma between the interests of political stability and efforts to maintain the integrity of the democratic process. The dissenting opinion in this decision represents the critical attitude of several judges who feel that the electoral process and results must be evaluated more rigorously in order to provide substantial justice to all parties. With the dissenting opinion, the Constitutional Court showed its openness to different views in interpreting the law and the values of justice. These different views are important in the history of constitutional justice in Indonesia because they can set precedents for the handling of similar cases in the future.

Analysis of Dissenting Opinions in Constitutional Court Rulings

The description and analysis of dissenting opinions in Constitutional Court Rulings Number 1/PHPU.PRES-XXI/2024 and Number 2/PHPU.PRES-XII/2024 provide deep insights into how differing judicial views influence the interpretation and application of law in the context of electoral disputes. In Ruling Number 1/PHPU.PRES-XXI/2024, the dissenting opinion highlights disagreement with the majority decision, which is seen as insufficiently accounting for procedural and substantive violations affecting the integrity of the presidential and vice-presidential election results. The dissenting judges argue that the evidence presented by the plaintiffs reveals significant inconsistencies and inaccuracies in the electoral process, which should have been more thoroughly considered. They criticize the majority decision for being too rigid in evaluating these violations and for focusing more on technical interpretation rather than substance, potentially neglecting the principles of justice and transparency in elections. By emphasizing the need for a more comprehensive review, this dissenting opinion offers an alternative perspective that prioritizes the integrity of the electoral process over short-term political stability.

Meanwhile, in Ruling Number 2/PHPU.PRES-XII/2024, the dissenting opinion highlights disagreement with the limitations placed on the Constitutional Court's authority to review election results. The dissenting judges argue that the majority decision narrowly defines the role and powers of the Constitutional Court in assessing

technical and procedural aspects of elections. They contend that the Court should have a broader role in ensuring fairness in the electoral process, including evaluating technical details that could impact the overall election results. This dissenting opinion reflects disagreement with the majority's restrictive view of the Court's authority and suggests that the Constitutional Court should be more proactive in examining all aspects of election results to ensure justice and integrity. In this context, the dissenting opinion underscores the importance of flexibility and a more holistic interpretation of the Court's role to safeguard democratic principles and justice. Both dissenting opinions, by presenting differing perspectives, reflect a profound debate on the limitations of constitutional court authority and the importance of integrity in the electoral process, highlighting how divergent views can influence the development of law and election policy in Indonesia.

The comparison between the majority arguments and dissenting opinions in Ruling Number 1/PHPU.PRES-XXI/2024 and Ruling Number 2/PHPU.PRES-XII/2024 illustrates the deep differences in the approaches and legal priorities adopted by the judges involved. In Ruling Number 1/PHPU.PRES-XXI/2024, the majority opinion focuses on adherence to legal procedures and technical interpretation of electoral regulations. They argue that the violations reported by the plaintiffs are not substantial enough to affect the overall election results, emphasizing that political stability and legal certainty must be maintained. From the majority's perspective, preserving the integrity of the election results as conducted according to procedures is the primary priority, and they believe that delving into a more detailed examination of technical aspects could undermine the stability of the electoral system (Adam, 2017).

Conversely, the dissenting opinion in this ruling emphasizes the importance of evaluating violations substantively and thoroughly. The dissenting judges argue that the majority's decision places too much emphasis on procedural aspects and neglects the impact of the violations, which they believe could undermine the integrity of the electoral process. They contend that although the violations may appear technical, they have the potential to affect the fairness of the election results and must be seriously considered to ensure that principles of justice and transparency are not compromised. In Ruling Number 2/PHPU.PRES-XII/2024, the difference in views is more evident in the limitations on the Constitutional Court's authority. The majority argues for limiting the Court's role to a formal review of election results, on the grounds that technical and procedural aspects fall within the domain of the election administration bodies, such as the General Elections Commission (KPU). They maintain that the Court should keep its focus on the general legality without getting entangled in technical details that might exceed its authority (Yusuf, 2021).

Conversely, the dissenting opinion in this ruling considers the limitation of the Constitutional Court's authority imposed by the majority to be too narrow and inadequate for ensuring justice in the electoral process. The dissenting judges argue that the Court should have broader authority to examine all aspects of the election process, including technical details, to ensure that no violations are overlooked and that the election results genuinely reflect the will of the people fairly. They view the majority's approach as potentially ignoring issues that could impact the fairness and integrity of the election. Overall, the comparison between the majority arguments and dissenting opinions in these rulings reflects the tension between legal stability and substantive justice, as well as the limitations on the Court's authority in overseeing the electoral process. Dissenting

opinions often provide a more critical and comprehensive perspective, which can influence legal thinking and policy development in the future (Suat, 2023).

Continuing the comparison between the majority argument and the dissenting opinion, it can be expanded that in Constitutional Court Decision Number 1/PHPU.PRES-XXI/2024, the majority argument prioritized the pragmatic interests of stability and legal certainty. They considered that interference in election results, based on procedural violations, could disrupt political stability and public confidence in the democratic process. This approach focuses on the technical and legal aspects of electoral procedures, prioritizing compliance with existing provisions and avoiding potential conflicts that could arise from an in-depth assessment of reported violations.

On the other hand, the dissenting opinion emphasizes that while stability is important, the principle of substantive justice should be prioritized. The dissenting judges argue that the integrity of elections as a legitimate democratic process depends not only on adherence to procedures but also on the enforcement of deep principles of justice. They believe that violations overlooked by the majority, although seemingly technical, have the potential to alter election outcomes and undermine public trust in the legitimacy of the results. By focusing on substantive justice, the dissenting opinion provides a more critical and comprehensive view of how violations can impact the legitimacy of election results.

In Decision No. 2/PHPU.PRES-XII/2024, differing views emerge regarding the Constitutional Court's authority to oversee and evaluate election results. The majority of judges adopt a more limited approach, arguing that the Court's authority only extends to formal legal aspects and that technical details related to the conduct of elections fall under the responsibility of election organizers such as the General Election Commission (KPU). They assess that the Court's involvement in technical details might exceed the authority granted by law and potentially disrupt the division of responsibilities among state institutions.

In contrast, the dissenting opinion in this case argues that the Constitutional Court should play a more proactive role in ensuring election justice. The dissenting judges believe that the Court's involvement in evaluating all technical and procedural aspects is crucial for ensuring election integrity. They view that the limitations on the Court's authority imposed by the majority might overlook potential violations that could significantly impact the election results. Therefore, the dissenting opinion emphasizes the importance of the Court's role in overseeing not only formal aspects but also the technical details that affect the final outcome of the elections.

The comparison between the majority arguments and dissenting opinions in these cases illustrates the tension between practicality and justice, as well as the limits of judicial authority. Majority opinions often focus more on procedural compliance and restricted legal authority, while dissenting opinions emphasize the importance of thorough and comprehensive evaluation to ensure substantive justice. Both perspectives offer differing viewpoints that can influence legal and policy development and contribute to a better understanding of how justice and legal integrity can be upheld in the context of elections.

Siyasah Shar'iyah Perspective on Dissenting Opinion

The assessment of dissenting opinions based on the principles of *Siyasah Shar'iyah* focuses on how the dissenting opinion is in line with the main objectives of sharia, namely achieving justice (*al-'adl*), public benefit (*maslahah*), and protection of the rights of individuals and society (Ahmad, *Dissenting Opinion dalam Putusan Ditolaknya Perceraian: Perspektif Hukum Positif dan Hukum Islam (Studi Kasus Putusan Nomor 683/Pdt. G/2020/PA. Ktp Perkara Cerai Gugat Pengadilan Agama Ketapang)*, 2023). In *Siyasah Shar'iyah*, decisions made by leaders or legal authorities must strike a balance between adherence to Islamic law and adaptation to dynamic social conditions to achieve public welfare. In this context, dissenting opinions can be seen as efforts to evaluate whether the majority decision has truly considered aspects of justice and public welfare. For example, if a dissenting opinion highlights procedural or substantive violations that may have been overlooked by the majority, this can be viewed as a reflection of the principle of justice in *Siyasah Shar'iyah*, where truth and justice must be upheld even if they conflict with the majority view.

Additionally, dissenting opinions that focus on the protection of individual or minority group rights, which might be overlooked in the majority decision, can be seen as efforts to uphold the principle of public welfare in Islamic law. *Siyasah Shar'iyah* teaches that the law should be adaptive and responsive to changes in social, political, and economic conditions to ensure that the interests of the community as a whole are protected. In this context, dissenting opinions that emphasize the need for a more contextual and relevant interpretation of the law in light of current situations can be considered in line with the objectives of *maqasid al-shariah*, which include the protection of religion, life, intellect, lineage, and property. Therefore, evaluating dissenting opinions through the lens of *Siyasah Shar'iyah* can provide legitimacy to differing viewpoints as efforts to uphold justice and public welfare, even if it means challenging the majority decision. This also highlights the importance of flexibility in the enforcement of Islamic law, where dissenting opinions serve as an internal control mechanism to ensure that the final decision truly reflects the fundamental principles of sharia and does not merely adhere rigidly to formal rules.

In the perspective of *Siyasah Shar'iyah*, dissenting opinions have a significant impact on justice and public welfare, two primary principles that guide the enforcement of Islamic law. In *Siyasah Shar'iyah*, justice (*'adl*) is not only understood as formal equality before the law but also as the fair distribution of rights and appropriate treatment of individuals and society according to the demands of sharia. When a judge delivers a dissenting opinion, they often do so with the belief that the majority decision does not fully reflect the justice required by sharia. Thus, dissenting opinions can function as corrective instruments that seek to restore or rectify substantive justice that might be overlooked in the majority ruling. This is crucial in the context of *Siyasah Shar'iyah*, where justice is considered the fundamental foundation of legitimate governance and law (Pratama, 2024).

Additionally, dissenting opinions can have a positive impact on *maslahah* (public welfare), which in *Siyasah Shar'iyah* encompasses efforts to achieve social well-being and protect community rights. In many cases, dissenting opinions offer alternative perspectives that are more attuned to the needs and interests of the broader society, which may not be fully considered by the majority decision. Such views can create space for a more inclusive and adaptive interpretation of the law in response to dynamic social

conditions, ultimately enhancing public welfare. For example, a dissenting opinion that highlights the potential negative impacts of the majority decision on vulnerable or minority groups can prompt revisions or reconsiderations of the policies adopted, leading to outcomes that better serve the overall community.

In the context of *Siyasah Shar'iyah*, a dissenting opinion also has an educative function, in that it triggers deeper discussion and reflection among scholars, judges and the public on the just and beneficial application of the law. This reflects the principle of *shura* (consultation) in Islam, where dissenting opinions are considered part of a decision-making process that is collective and oriented towards the common good. As such, dissenting opinions not only enrich legal discourse, but also ensure that policies adopted truly reflect justice and benefit, in accordance with the basic principles of *Siyasah Shar'iyah* (Wulandari, Masykuroh, & Furqon, 2024).

Dissenting opinions have a significant impact on the development of law in Indonesia, even though they are not binding like the majority decisions. In the Indonesian legal system, dissenting opinions, expressed by judges who disagree with the majority ruling, serve as official records that contain alternative legal arguments. Their influence on legal development primarily lies in their ability to stimulate further discussion among academics, legal practitioners, and policymakers, who often revisit established legal principles and assess their relevance and fairness in changing contexts. These dissenting opinions also provide alternative perspectives, which may be more progressive or conservative, and can, in turn, influence the direction of future legal development.

Additionally, dissenting opinions can serve as important references in similar cases in the future, where other judges or courts might adopt the arguments presented in dissenting opinions as a basis for reconsideration or changes in precedents. In Indonesia, although the majority decisions are legally binding, dissenting opinions are often revisited in the context of social and legal changes, where the minority views may better align with the evolving needs and expectations of society. This reinforces the role of dissenting opinions as a dynamic element in jurisprudence that can help balance and update the law to remain relevant and responsive to new challenges.

Furthermore, dissenting opinions also play a role in strengthening accountability and transparency in the judicial process. By documenting differing views, dissenting opinions demonstrate that the Indonesian legal system values pluralism in thought and approaches to law enforcement. This also helps build public trust in the judiciary, as the public can see that decisions have undergone thorough and comprehensive consideration. In the long term, dissenting opinions contribute to the evolution of law in Indonesia by introducing new legal concepts, expanding existing legal interpretations, and encouraging changes toward fairer and more inclusive legal practices.

The social impact of implementing dissenting opinions within the framework of Islamic law is highly significant, especially in the context of societies that uphold values of justice, welfare, and public interest. In Islamic law, dissenting opinions reflect *ikhtilaf* (difference of opinion), which has long been recognized as an integral part of Islamic jurisprudence. *Ikhtilaf* is not merely a difference in views but is also considered a mercy as it allows flexibility in legal interpretation, which is crucial for addressing the diverse and dynamic needs of society. When dissenting opinions are acknowledged and considered in the legal decision-making process, it creates space for broader and more

inclusive dialogue, which in turn can strengthen social cohesion by accommodating the various perspectives within the community (Suhendar, 2016).

The application of dissenting opinions can also positively impact public perception of the legal system. When the public sees that differences of opinion are valued and considered, it can enhance their trust in the integrity and fairness of the judicial system. From the perspective of Islamic law, where justice is a primary goal, the acceptance of dissenting opinions can be viewed as a way to ensure that legal decisions are not based on a single interpretation but also consider views that might be fairer or more relevant to specific social contexts. This is crucial for balancing individual and public interests, as well as between legal stability and the need for legal reform.

Additionally, dissenting opinions can serve as an educational tool for the public, helping them understand the complexities of the law and demonstrating that the application of law is not always black-and-white but involves various ethical and moral considerations. This can also encourage discussions and community engagement in legal matters, motivating people to be more critical and aware of their rights and the role of law in everyday life. In the long run, the use of dissenting opinions can foster a more inclusive and participatory legal culture, where the public is not merely passive recipients of legal decisions but actively engaged in the decision-making process that affects their lives.

However, dissenting opinions can also create complex social impacts, especially if such differences lead to tension or polarization within society. Therefore, it is important for dissenting opinions in the context of Islamic law to be expressed wisely and with consideration for the overall public interest. In this way, dissenting opinions can serve not only as critiques of majority decisions but also as constructive contributions to the development of a more just and sustainable legal system, aligned with the principles of Sharia.

From the perspective of *Siyasah Shar'iyah*, dissenting opinions hold significant value in shaping a just and effective legal system, as they align with the core principles of Islamic governance, which emphasize justice, public welfare, and the importance of collective consultation (Murphy & M. Smolarski, 2020). *Siyasah Shar'iyah* refers to the application of Shariah principles to public policy and governance, ensuring that legal decisions promote the common good (*maslahah*) and uphold justice (*'adl*). Dissenting opinions within this framework are seen as a legitimate and constructive aspect of the decision-making process, as they provide an opportunity to explore alternative views and prevent the dominance of a singular, potentially flawed perspective. In Islamic governance, the diversity of opinion is not only tolerated but encouraged, as it reflects the dynamic and multifaceted nature of legal interpretation and application. This pluralism allows for a more robust and comprehensive approach to legal issues, ensuring that decisions are not made in haste or without considering all aspects of a matter (Ahmad, 2023).

In the context of *Siyasah Shar'iyah*, dissenting opinions are consistent with the principles of *shura* (consultation) and *ijtihad* (independent reasoning). *Shura* encourages deliberation and consultation among different parties to arrive at a decision that reflects collective wisdom, and dissenting opinions contribute to this process by introducing alternative perspectives that can lead to more balanced and well-rounded decisions. Similarly, *ijtihad* allows for individual interpretation and legal reasoning, and dissenting

opinions often represent the application of *ijtihad* by judges or scholars who seek to apply the law in a manner they believe is more consistent with Islamic principles or better suited to the circumstances of the case.

Moreover, dissenting opinions in *Siyasah Shar'iyah* can serve as a mechanism for promoting accountability and preventing unjust rulings. In Islamic legal tradition, *maslahah* (public welfare) is a key consideration, and dissenting opinions often focus on highlighting how a decision may negatively impact society or fail to serve the public good. By providing a counterpoint, dissenting opinions help ensure that the majority's decisions are scrutinized and that all potential consequences are thoroughly considered. This reflective process contributes to a more ethical and just legal system, where rulings are not merely a reflection of majority power but are based on deeper analysis, fairness, and a commitment to upholding the principles of Shariah. Ultimately, in the framework of *Siyasah Shar'iyah*, dissenting opinions are not viewed as a challenge to authority but as a valuable tool for ensuring the law remains flexible, responsive, and in alignment with the broader objectives of justice and societal welfare.

In analyzing dissenting opinions in the context of Islamic law, several key principles from the Qur'an and Hadith are integral to understanding how these opinions align with the broader objectives of justice, consultation, public welfare, and careful consideration in legal decision-making.

1. **Principle of Justice (al-'Adl):** Justice, or *al-'adl*, is a cornerstone of Islamic law, and it underscores the importance of impartiality, fairness, and integrity in legal decisions. The Qur'anic verse in Surah An-Nisa (4:58) clearly outlines the divine command to judge between people with justice: "Indeed, Allah commands you to render trusts to their owners and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is Knowing and Wise." This verse reinforces that every decision must be made with an unwavering commitment to justice, and it serves as a foundational principle for dissenting opinions, which often arise when judges or scholars believe that the majority view fails to fully account for the fairness of a case. Dissenting opinions can be seen as a form of emphasizing justice when the majority opinion might overlook key factors or fail to consider the full implications of a case, particularly in matters that directly affect individuals' rights or the integrity of the legal system.
2. **Consultation (Shura):** The principle of *shura*, or consultation, is crucial in both governance and legal decision-making in Islam. This concept is grounded in the Qur'an, as seen in Surah Ash-Shura (42:38): "And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what We have provided them, they spend." This verse highlights the importance of collective decision-making, reflecting that a decision made after consultation brings about greater justice and wisdom. In the context of dissenting opinions, *shura* acknowledges that differing viewpoints, including those of minority judges, are an essential part of a legitimate decision-making process. In Islamic law, consultation ensures that decisions are not made in isolation but are reflective of multiple perspectives, ensuring that all aspects of a case are thoughtfully considered. Dissenting opinions, therefore, contribute to the broader discourse, promoting thoroughness and inclusivity in the legal process.

3. **Principle of Policy and Public Consideration (Maslahah):** *Maslahah*, or public welfare, is a core concept in Islamic jurisprudence that emphasizes the importance of decisions being made with regard to the common good and the well-being of society. A hadith reported by Ahmad ibn Hanbal states: "Indeed, every action that is not in accordance with our matter is rejected," referring to actions that are inconsistent with the broader public interest or the principles of Shariah. This aligns with the notion that legal decisions should consider their impact on society, and dissenting opinions that focus on the broader implications of a ruling are consistent with this principle. When dissenting judges argue that a decision may cause harm to the public or fail to safeguard the greater good, they are invoking *maslahah* as a guiding principle. Their views highlight the need to balance individual rights, societal welfare, and the objectives of Shariah in every legal ruling.
4. **Importance of Considering All Aspects in Decision-Making:** Another crucial concept in Islamic law is the comprehensive consideration of all factors involved in a decision, especially in matters of contract, obligations, and disputes. Surah Al-Baqarah (2:282) offers an essential guideline for careful deliberation: "O you who have believed, when you contract a debt for a specified term, write it down." This verse not only emphasizes the need for documentation and transparency but also underscores the broader principle of considering every aspect of an agreement, ensuring clarity, fairness, and protection for all parties involved. In the context of dissenting opinions, this Qur'anic principle stresses that judges must take all relevant details into account, considering the full scope of the issue before rendering a judgment. Dissenting opinions often arise when a judge perceives that certain elements of a case, such as the nuances of an agreement or the potential consequences of a ruling, have not been adequately considered by the majority. These opinions help ensure that no important aspect is overlooked, promoting decisions that are more just and comprehensive.

In sum, these references from the Qur'an and Hadith illustrate the foundational principles that support the legitimacy and importance of dissenting opinions in the context of Islamic law. Justice (*al-'adl*), consultation (*shura*), public welfare (*maslahah*), and careful consideration (*tadabbur*) are all key values in Islamic jurisprudence that validate the role of dissenting opinions as essential to ensuring fairness, accountability, and comprehensive legal reasoning. These principles encourage a legal system that values diverse viewpoints, fosters critical engagement, and ultimately seeks to promote justice and the common good.

Dissenting opinions have an important impact on precedent setting in Indonesian constitutional law as they reflect the diversity of legal interpretations among constitutional judges. Although a dissenting opinion is not as binding as a majority decision, it provides an alternative view that often becomes an important reference point in legal discussions, both in the academic and practical realms. In certain cases, a previously minority view may form the basis for future legal policy changes or updates. In Indonesia, where the legal system is constantly evolving and seeking to be more responsive to social and political issues, dissenting opinions act as a catalyst for critical reflection on legal decisions. For example, in cases relating to human rights or sensitive political disputes, dissenting opinions often offer a more progressive perspective or grounded in principles of substantive justice that can encourage improved regulation. By

recording different views, dissenting opinions help maintain accountability and transparency in the judiciary and remind the public that constitutional law is not monolithic, but rather a system open to debate and improvement. This has positive implications for the development of constitutional law that is increasingly democratic and adaptive to the needs of society (Scalia, 1994).

In the context of applying the principles of *Siyasah Shar'iyah*, dissenting opinions can provide inspiration for the formulation of legal regulations and policies that are more based on justice and benefit. *Siyasah Shar'iyah*, which prioritizes the principles of benefit (*masalahah*), justice (*adl*), deliberation (*shura*), and flexibility (*istihsan*), can be a guide for legislators and judges to pay attention to the ethical and moral dimensions in every policy or decision (Pill, 2018). By applying the principle of benefit, legal regulations and policies can focus more on the welfare of the people, ensuring that every law or decision made actually provides broad benefits and protects public interests. The principle of justice in *Siyasah Shar'iyah* can help increase the sensitivity of the law to issues of social justice, especially in cases concerning human rights or the protection of minority groups. In addition, the principle of deliberation underscores the importance of public participation and consultation in the policy formation process, so that people have a say in decisions that impact their lives. Flexibility or *istihsan* also allows the law to remain relevant to the times without having to violate the basic principles of sharia. By integrating these principles, dissenting opinions can serve as a model for the implementation of adaptive, responsive and justice-oriented legal policies that are in line with Islamic values, potentially strengthening the legitimacy of constitutional law in Indonesia.

D. Conclusion

The conclusion of this analysis highlights that dissenting opinions in Constitutional Court decisions, when viewed from the perspective of *Siyasah Syar'iyah*, have an important role in strengthening legal integrity and achieving substantive justice. *Siyasah Shar'iyah*, which emphasizes the principles of justice (*adl*), benefit (*masalahah*), and deliberation (*shura*), supports the existence of space for dissenting opinions among judges as a means of reaching decisions that are more comprehensive and responsive to the needs of society. In the context of Constitutional Court decisions No. 1/PHPU.PRES-XXI/2024 and No. 2/PHPU.PRES-XII/2024, dissenting opinions function as critical reflections that provide alternative legal interpretations. This not only enriches the national legal discourse but also opens up opportunities for policy reforms that are more in favor of social justice. Through dissenting opinions, judges can express different views that are sometimes closer to the principles of substantive justice and the protection of individual rights, which in turn can influence future legal formulations.

This analysis also shows that the application of *Siyasah Shar'iyah* values in dissenting opinions can create a balance between positive law and moral values, ultimately strengthening the legitimacy of the law in the eyes of society. Dissenting opinions, although not legally binding, have great potential to influence legal interpretations in the long run and establish more inclusive precedents. This is in line with the principle of benefit in *Siyasah Shar'iyah*, which places the welfare of society as the primary goal in policy-making. With dissenting opinions based on justice and benefit, the law can be more adaptive to social change and more sensitive to the needs of diverse communities. In conclusion, dissenting opinions in the perspective of *Siyasah Syar'iyah* function not only as a mechanism to maintain a plurality of views within the court, but

also as a tool to direct the development of a more ethical and responsive law in Indonesia. This analysis underscores the importance of integrating the principles of *Siyasah Shar'iyah* in modern legal practice to build a judicial system that is more just, transparent and accountable to the wider community.

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