



QUO VADIS SPECIALISED COURTS IN INDONESIA WITHIN CONSTITUTIONAL COURT DECISIONS CONFINES

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ABSTRACT

In Indonesia, special courts represent a phenomenon of judicial deference which is associated with an independent judicial system and supports the efficient and effective administration of justice. However, the practice in Indonesia shows that there is a need for further discursive research and thinking in the organization of the special justice system in Indonesia, based on internal and external issues in the realization of a special justice order that promotes substantive justice and is based on effectiveness, efficiency, and justice that is based on the needs of legal specificity under the specialized court context. This article utilizes dogmatic legal research based on a statutory approach, a case law approach, and a conceptual approach on a micro-legal research basis to examine the revamping of special courts in Indonesia, including the elaboration of Constitutional Court Decisions relevant to the strengthening of constitutional consolidation in post-reform Indonesia. Furthermore, the findings of this study show that the dynamics of special justice in Indonesia seem to be based on specific needs, international intervention in several cases, and ideas when the 1945 Constitution was amended by strengthening in accordance with conditions and times to achieve substantive justice. Similarly, the failure to build several special courts has become a discourse in recent decades, as various Constitutional Court decisions have directed topics that may be seen in the formation of special courts in the future. These include the existence of electoral and medical courts, which have also emerged as ideas for revamping specialized courts in Indonesia.

Keywords: constitutional court decisions; revamping court; special court

1. INTRODUCTION

The dynamics of the 1998 reform have shaped the life of the Indonesian nation over the past two decades. In addition, there has been a fundamental paradigm shift in Indonesia's constitutional order following the amendment of the 1945 Constitution, which has affected aspects of development in various fields. This also promotes the transition to democracy, the internalization of the rule of law and human rights, and the development of welfare in various respects, e.g. the amendments to the 1945 Constitution, involving several changes to the institutions and dynamics of justice and law enforcement in Indonesia¹.

There is no denying the importance of the judiciary in Indonesia. The 1945 constitution ushered in an era of authoritarianism. The Courts have a pernicious reputation for serving no purpose other than to validate and legitimize the political status quo, a singular example of how old forms and traditions have persisted into the modern age. The power of Soekarno and Soeharto, government interventionism, the banning of law enforcement agencies stacked with anti-government groups, and even the stagnation of substantive justice sought by pre-reform justice-seekers². These include changes to the institutions and dynamics of the country's judicial and law enforcement systems and the introduction of several new laws and regulations.

1 Bagus Hermanto, "Deliberate Legislative Reforms to Improve the Legislation Quality in Developing Countries: Case of Indonesia," *Theory and Practice of Legislation* 11, no. 1 (2023): 1–31, <https://doi.org/10.1080/20508840.2022.2080392>.

2 Marcus Mietzner, "Populist Anti-Scientism, Religious Polarisation, and Institutionalised Corruption: How Indonesia's Democratic Decline Shaped Its COVID-19 Response," *Journal of Current Southeast Asian Affairs* 39, no. 2 (2020): 227–49, <https://doi.org/10.1177/1868103420935561>.

There are internal issues, such as the backlog of cases in the courts, the institutional and structural issues of the Supreme Court, and extensive corruption issues associated with weak judicial governance, as well as external influences, such as international calls for judicial reform through the implementation of internationally agreed judicial principles, including the Bangalore Principles. This is in line with the developments in many countries during the 1980s and 1990s toward a more effective and efficient judicial system. As a result, there will be a need to ensure that all aspects of legal development, from legal formation to legal implementation, are taken into account. It refers to the institutional design of the judiciary, the judiciary's structure, the judiciary's process, the process's management, the internal and external oversight, and the evolution based on the practical transplants that have been developed in the modern era.

Judicial reform has also encouraged the mushrooming of special courts, moot courts, and quasi-judicial courts in Indonesia. In particular, post-reform special courts include at least several courts established based on specificity and regional autonomy (including the *Syari'ah* Court and the Papua Customary Court), Courts established in response to international demands and the dynamics of various international legal instruments (including the Human Rights Court, the Labour Relations Court, and the Commercial Court), as well as various courts established in response to time constraints and urgent needs (including the Tax Court, the Minor Criminal Court, the Juvenile Court, the Fisheries Court, and the Corruption Court). These three special courts were established during the New Order period to meet the demands of the international community for the state order required by the image of the New Order. This should be considered as future thinking based on the interpretation of the Constitution and the historical facts of the amendments to the 1945 Constitution.

Compared to previous studies, the present one stands out. **Firstly**, in line with Camubar (2021), there is a tendency to present the process of the formation of a special court, namely the special election court, as an *ius constituendum* model³. However, when this first paper is compared to the current research reviewed in this article, the analysis is still limited to the idea of establishing a specialized electoral court by law and simplifying the resolution of electoral disputes, as well as the need for an academic paper solely to further analyze this research. Similarly, **Secondly**, Spaltani (2018) conducted a comparative study to highlight the utility of special courts as an effective and resilient means of dispute resolution by comparing the practice of special environmental courts in various countries in Australia, New Zealand, China, Russia, Thailand, and Japan, although Spaltani tends to emphasize the role of the Supreme Court through the opening of special judicial chambers in the environmental domain⁴. On the other hand, when this second paper is compared to the current research reviewed in this article, the analysis of the dynamics of the existing special courts in Indonesia is not further explored in this study.

Thirdly, Crouch (2021) builds on previous research by focusing on the political transitions that led to judicial reform after 1998 and finds two main findings, namely the existence of institutional reform efforts and a paradigm shift in legal culture. Nevertheless, Melissa Crouch acknowledges that efforts to reform the judicial system through specialized courts have faced problems of rampant corruption, unprofessionalism, inexperience, and legal uncertainty as a result of not being accompanied by a judicial reform strategy⁵. In the meantime, when comparing the third work with the current research reviewed in this paper, the analysis did not yet classify Indonesia as a country with a civil law system, those judgments serve as a guide for constitutional interpretation in interpreting the existence of special courts in Indonesia, as well as in criticizing the placement of the Constitutional Court as an equal special court, considering that the construction in the 1945 Constitution indicates that the Supreme Court and the Constitutional Court are equal in status. **Fourth**, Asshiddiqie (2013) understands the phenomenon of special courts as a departure from the phenomenon of efforts to reorganize the functions of adjudication, both in the form of deconcentration, decentralization, and diffusion, based on the failure to integrate the functions of the national legal and judicial system⁶. Meanwhile, when the fourth paper

3 A. Nur Indah Amaliah Camubar, "Pembentukan Pengadilan Khusus Sebagai Sarana Penyelesaian Sengketa Proses Pemilihan Umum" (Fakultas Hukum Universitas Hasanuddin, 2021), 86-106.

4 Bitu Spaltani R Gadsia, "Pengadilan Khusus, Sebuah Perbandingan Di Berbagai Negara Dalam Penegakan Hukum" (Program Studi Magister Ilmu Hukum Sekolah Pascasarjana Universitas Muhammadiyah Surakarta, 2018), 12-19.

5 Melissa Crouch, "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia," *Constitutional Review* 7, no. 1 (2021): 1-25, <https://doi.org/10.31078/consrev711>.

6 Komisi Yudisial RI, *Bunga Rampai Putih Hitam Pengadilan Khusus*, Cetakan Pertama (Jakarta: Sekretariat Jenderal Komisi Yudisial RI, 2013), 3-32.

is compared to the current research reviewed in this article, there are no in-depth studies that reflect how the factors for using the Constitutional Court decision could be used as a guide for the future design of specialized courts in Indonesia. Through a comparison of the four previous studies, this article is positioned to examine the dynamics and improvement of special courts in Indonesia in general, using the parameters of the existence of constitutional court decisions and proposals that have developed in the community, as well as an exploration of the reasons behind the need for special courts in Indonesia.

Fifth, the article by Supriyadi and Aminuddin-Kasim specifically discusses the perspective of the Constitutional Court decision no. 97/PUU-XI/2013, which mandated the establishment of a special election court⁷. However, when compared to this article, their perspective is not broader than that of this article. This article is much broader and discusses the context of the problem that aims to change the paradigm due to the legislative omission and also the constitutional defiance of the legislator against the Constitutional Court Decision, thus triggering a change in the attitude of the Constitutional Court regarding the need for a special election court. **Sixth**, aspects of environmental state responsibility and the internalization of international documents into the pattern of environmental court formation are specifically highlighted in the article reviewed by Muhar Junef and Mohammad Husain⁸. However, in comparison to the article in this study, which emphasizes the context of strengthening the internalization of the content of the Constitutional Court decision, which is relevant to the future improvement of special courts in Indonesia, this article emphasizes the doctrinal context in terms of legal norms relevant to the standards outlined internationally. This article is about the dynamics of the Indonesian Special Courts, the reform of the Indonesian Constitution of 1945, and the regulation of the Special Courts in the Indonesian legal order. Referring to several previous studies that have been analyzed above, this article specifically places itself in the context of the issue of reforming special courts in the future, which is related to the absence of specific analysis referring to various Constitutional Court decisions that actually contain content that can be embodied in the reform of special courts in Indonesia in the future, which is important to conduct further and in-depth research in this article.

The fact that there are unorganized institutions, formed with different urgencies, the proliferation of post-reform special courts, and the absence of guidance or a roadmap or order in the existence of special courts in Indonesia, which is where this article places its position to focus on revamping special courts in Indonesia, which ensures judicial trilogy, access to justice in accordance with the legal needs of the community, and the realization of efficiency and effectiveness of special courts in the future, which makes evidence of the emergence of a strong legal gap to examine in this article. The article is specifically divided into two main issues, namely:

- (1) the dynamics of specialized courts in Indonesia after Reformasi and amendment of the 1945 Constitution, and
- (2) the interpretation of the decision of the Constitutional Court, and the elements of existential specialized courts in Indonesia.

2. FINDINGS AND DISCUSSION

2.1 Indonesia's Special Court Dynamics

According to Isaac Unah and Ryan Williams, specialized courts are courts with limited jurisdiction that are linked to the legal reform agenda of expanding, specializing and empowering the judiciary. The complexity of social and institutional rules and the need for expert-based solutions to social and economic problems are recognized as evolving. Specialist courts are courts that have a focus on one or a limited number of issue areas in their decision-making. This tends to make the law more predictable and uniform. They have also emerged as a response to the inadequate legal response to citizens' demands for justice, as illustrated by the rampant delays

7 Supriyadi Supriyadi and Aminuddin Kasim, "Desain Badan Peradilan Khusus Pemilihan Pasca Putusan Mahkamah Konstitusi Nomor 97/PUU-XI/2013," *Jurnal Konstitusi* 17, no. 3 (November 10, 2020): 676–98, <https://doi.org/10.31078/jk17310>.

8 Muhar Junef and Moh Husain, "Pembentukan Pengadilan Khusus Lingkungan Sebagai Wujud Tanggung Jawab Negara Pada Upaya Keadilan Ekologis," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021), <https://doi.org/10.30641/dejure.2021.V21.059-074>.

in dealing with cases in traditional courts, due to limited resources, caseloads, archaic procedural rules, and the convergence of social complexity and technological developments⁹. Specialized courts, as conceived by Ehud Guttel, Alon Harel & Yuval Procaccia, refer to courts that have limited and often exclusive jurisdiction in one or more areas of law, and it has been argued that specialized courts can develop better expertise in their respective areas and also contribute to the efficiency of the legal system. Specialized courts can be captive to professional interest groups promoting sectarian agendas, or isolated from general developments in the legal system. Specialized courts are also more likely to be ideological in their decisions. They may promote a particular worldview or advance the objectives of a particular interest group¹⁰.

Indonesia's paradigm shift from an authoritarian pattern and deviation from the constitutional order, towards a constitutionalism-based state and upholding the principle of the rule of law in its state administration, by emphasizing the importance of legal certainty and the realization of substantive justice by upholding legal truth and justice that is not only formal-procedural and guarantees the reflection of human rights¹¹, but the momentum of the amendments to the 1945 Constitution also brought about changes in constitutional life, particularly in the exercise of judicial power. Human rights and democratic values are upheld in the courts. The principle originally included in the explanation of the 1945 Constitution emphasized that it is not based on power alone and that there is a division of state power so that the basis of a state based on the law has a normative nature and is not just a mere principle. Thus, the principle of the rule of law is placed as a guarantee for the implementation of an independent judiciary, free from the influence of other powers, to administer justice to uphold law and justice. The amendments to the 1945 Constitution seek to provide better constitutional guarantees for a constitutional state as a result of the constitutional reform in the transitional period from the era of authoritarianism, where the fall of the previous regimes led to uncertain, impossible situations and turbulent conditions in managing the state during the transitional period. However, it was during this period that constitutional reform was carried out in Indonesia, and along the way there were efforts to take into account the existence of specialized court needs in Indonesia, as can be seen in several processes of discussion on amendments to the 1945 constitution¹².

First, in the plenum to discuss PAH I of the 1999 session year of the MPR (People Consultative Assembly or *Majelis Permusyawaratan Rakyat*), on Thursday, October 7, 1999, Zain Badjeber of the United Development Group (F-PPP) argued that it is necessary to confirm in Article 24 that the highest judicial authority is exercised only by a Supreme Court, only, and the position of a judge is not that of an official appointed by the Minister of Justice, but that of a state official appointed by the Head of State. Concerning the Supreme Court, there were no other bodies, or other organs of the judiciary during this period. Judicial power is exercised by an agency of the Supreme Court and other judicial bodies, according to Article 24(1). So there is the high court, and there are other judicial organs, so it can be interpreted that the fiscal arbitration agency is also a judicial organ outside the high court, because Article 24 allows for the possibility of another judicial organ. It is necessary to confirm that the Supreme Court of Justice is the holder of the highest judicial authority in the field of justice.

Secondly, only after the discussion on the Fourth Amendment to the 1945 Constitution during the 2002 session, the discussion on the Judicial Power during the 2002 session was carried out at the 4th Finalisation Meeting and the 5th Finalisation Meeting PAH I BP MPR RI, the provisions of Article 24(3) and Article 25 were given space. In Articles 24 and 25, however, there was not too much discussion. There was then a rather tough discussion on these Articles at the 6th Finalisation Meeting on 23 July 2002. Harun Kamil was the chairman of the meeting. At the 7th Finalisation Meeting of PAH I BP MPR RI on 24 July 2002, chaired by

9 Isaac Unah and Ryan Williams, "What Is So Special about Specialized Courts in the United States?," in *Routledge Handbook of Judicial Behavior*, ed. Robert M. Howard and Kirk A. Randazzo (New York: Routledge Inc., 2018), 2-13.

10 Ehud Guttel, Alon Harel, and Yuval Procaccia, "General Courts, Specialized Courts, and the Complementarity Effect," *Regulation and Governance* 17 (October 1, 2023): 1021-40, <https://doi.org/10.1111/rego.12479>.

11 Siripan Nogsuan Sawasdee, "A Tale of Two Hybrid Regimes: A Study of Cabinets and Parliaments in Indonesia and Thailand," *Japanese Journal of Political Science* 19, no. 2 (June 1, 2018): 269-92, <https://doi.org/10.1017/S1468109918000099>.

12 Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Perubahan UUD NRI Tahun 1945: Latar Belakang, Proses, Dan Hasil Pembahasan 1999-2002 Buku VI Kekuasaan Kehakiman*, vol. Cetakan Pertama (Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi RI, 2010), 23-121.

Harun Kamil, this discussion was again discussed. At the BP MPR PAH I Finalisation Small Team Meeting on 24 July 2002, chaired by Ali Masykur Musa, the wording of the amendment to Article 24(3) and the agreement to retain Article 25 were agreed. The results of PAH I were reported at the 4th BP MPR Meeting on 25 July 2002. The report was presented by Jakob Tobing¹³. The results of the report, as the fourth draft amendment to the 1945 Constitution, were then submitted to the meeting of Commission A (Komisi A). Several articles were amended and Article 24(3) was re-worded to read: "Other bodies related to the Judiciary are regulated by law". After the session, there was the formation of Commission A as a special assembly instrument for discussion. In addition, the discussion on Judicial Power was discussed at the 3rd meeting of ST MPR 2002 Commission A on 6 August 2002. The meeting was chaired by Hatta Mustafa. The discussion on Articles 24 and 25 proceeded without much discussion during the meeting. Many of the Groups had agreed on how to phrase this in previous meetings, and this continued to happen. In the end, Hatta Mustafa, as the chairman, announced the following. Then Article 24 paragraph (3), "Other bodies whose functions are related to the judicial power shall be regulated by law".

Thirdly, the PAH I BP MPR RI lobby meeting to discuss the formulation of judicial power on 8 June 2000, the "highest" debate on the Supreme Court. Slamet Effendy Yusuf was the chairman of the meeting. However, the chairman of the meeting, Slamet Effendy Yusuf, tried to clarify the issue, especially concerning the formulation of the specialized courts under the Supreme Court including, religious courts, military courts, and all sorts of things don't need to be mentioned. The difference between general courts, religious courts, military courts, state administrative courts, and the rest of the courts, which include general courts, state administrative courts, religious and military courts, a tax court, a human rights court, and the rest. The chairman of the session, Slamet Effendy Yusuf, argues that if the formula is such, then if you want to specify the functions of the Supreme Court with other courts, that means you also have to specify the functions of the other courts, even if that's just a reference to the functions of the other courts. In the discussion of amendments to the 1945 Constitution, the special court under construction is considered to be a court with the authority to analyze, judge, and decide on certain issues that can only be established within one of the judicial bodies under the Supreme Court, as specified by law. At present, there are eight special courts: six in the environment of the ordinary courts, one in the environment of the state administrative courts, and one in the environment of the religious courts.

This is also reflected historically in several existing laws and regulations concerning the special judiciary, namely The General Courts, the Special Courts, and the State Administrative Courts that are defined in Law No. 19 of 1964. The general courts include the Economic Court, the Subversion Court, and the Corruption Court. The religious courts and the military courts are two types of special courts. While the State Administrative Court is defined as "administrative justice" in Decree No. II/MPRS/1960 of the Provisional People's Consultative Assembly, it also includes "personnel justice" in Article 21 of Law No. 18 of 1961 on the Basic Provisions of Employment. Prior to this, an Economic Court for the settlement of economic offenses had been established by the government under an emergency law in 1955.

Law No. 14 of 1970 provides for four judicial environments, each with its specific competence, including trial and appeal courts. The religious courts, the military courts, and the state administrative courts are special courts because they hear specific cases concerning specific groups of people. The general courts are courts for the population in general, both for civil and criminal cases. During this period, the government established the State Administrative Court (1986) and the Religious Court (1989) under international pressure and the political cover of the New Order regime. Finally, the government established a Military Court (1997) to strengthen human rights-based law enforcement. This was in response to the international community's criticism of Indonesia's human rights record in the 1990s.

With the beginning of the reform era and constitutional amendments, as a phenomenon that shows the number of independent state institutions and specialized courts began to be formed, namely: Human Rights Court (in accordance with *Perppu* 1/1999, which was repealed and replaced by Law 26/2000); Commercial

13 Muhammad Nur Jamaluddin, "The Role of the People in the Amendment of the 1945 Constitution Based on Democratic Constitution Making: Future Prospects," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 1 (2020): 19–42, <https://doi.org/10.22304/pjih.v7n1.a2>.

Court (formed in 1999 as a result of Indonesia faced the currency crisis in 1998 and international pressure, especially IMF and WTO standards for adjustment and harmonisation of Indonesian law); Papuan Customary Court (UU 21/2001 became a forum for the realization of the special autonomy that belongs to the province of Papua), Aceh *Syari'ah* Court (Law 13 /2006 as a forum for implementing the special autonomy belonging to the province of *Nanggroe* Aceh Darussalam), Fisheries Court (Law 31/2004 replacing the Maritime Court and promoting integrated and fair enforcement of fisheries cases), The Labour Court (UU 2/2004 as a basis for the settlement of disputes between parties in labour relations, with priority given to human rights, justice and the welfare of all parties), the Tax Court (UU 14/2002 in the framework of action against violations by the tax administration). In Law No. 4 of 2004, the concept of specialized court is only explicitly used in Law No. 4 of 2004, which replaced Law No. 14 of 1970. Furthermore, in Act No. 4 of 2004, the position of a special court is not included in the explanatory part of the Act, but it is included in the body of the Act, namely in Art. 15, which states that a special court can only be established in one of the judicial environments referred to in Art. 10, which are regulated by law. Article 15 explains that the term "special courts" refers to juvenile courts, commercial courts, human rights courts, corruption courts, labor relations courts within the general jurisdiction, and tax courts within the State Administrative Court.

Pursuant to Act no. 48 of 2009, based on the new Judiciary Act, article 1, point 8, the court, has a specific significance. A special court is a court that can be formed only in one of the judicial bodies under the Supreme Court, as provided by law, and that has the authority to examine, hear, and decide certain cases. The position, status, and legitimacy of the special judiciary, which was not regulated in detail in the previous Judicial Powers Act, was further clarified and emphasized in the body of Law No. 48 of 2009. In this period, the Juvenile Court, which existed in 1997, was paradigmatically transformed into the Juvenile Court through the formation of the Small Court for Minor Crimes, which is based on the idea of restorative justice, to promote the achievement of the Trilogy of Justice in Indonesia. The Corruption Court (UU 46/2009, which is a follow-up to the Constitutional Court's Decision 012-016-019/PUU-IV/2006, and part of an extraordinary step to deal with deep-rooted acts of corruption on Indonesia's latent problems after the reform), and the Child Criminal Court through Law 11/2012, which also emphasizes substantive justice and the spirit of restorative justice for all parties in criminal cases involving children.¹⁴

2.2 The Existence of Special Courts in Indonesia: A Futuristic Thought

The existence of special courts in criminal prosecution, as seen from the process of democratization and institutionalization of state administration after the reforms and amendments to the 1945 Constitution, has promoted the existence of *de vierde macht* (the fourth branch of power in the 1945 Constitution), which is characterized by the many independent state institutions, and even the phenomenon of specialized court also reflects a paradigm shift in the administration of the state. In Indonesia, starting from the legal reform - constitutional reform, legislative reform, and large-scale institutional reform¹⁵ -It also promotes the establishment of a culture of judicial independence, judicial control over the budget and administration of the courts, freedom from interference by the executive, and much greater efficiency in the implementation of decisions and justice. In this way, the establishment of a special judicial institution is made possible¹⁶. These special courts have a special competence, a unique selection process and composition of judges, and a much higher level of efficiency than general courts in terms of investigation and evidence of possible influence of certain interests by certain judges, even a form of compromise with Indonesia's financial backers and agreements or international demands on Indonesia's constitutional order.

14 Sharyn Graham Davies and Jazz Robson, "Juvenile (In)Justice: Children in Conflict with the Law in Indonesia," *Asia Pacific Journal on Human Rights and the Law* (Martinus Nijhoff Publishers, 2016), <https://doi.org/10.1163/15718158-01701009>. Indonesia's Law No. 11/2012 on the Juvenile Criminal Justice System came into effect on 30 July, with the first minors being tried on 12 August 2014. Second, the United Nations Committee on the Rights of the Child (uncrc

15 Simon Butt, "Judicial Reasoning and Review in the Indonesian Supreme Court," *Asian Journal of Law and Society*, 2019, 67–97, <https://doi.org/10.1017/als.2018.26>.

16 Bagus Hermanto and Nyoman Mas Aryani, "Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice," *Theory and Practice of Legislation* 9, no. 3 (2021): 425–50, <https://doi.org/10.1080/20508840.2022.2027162>.

The reform of specialized courts in Indonesia is important. It is based on the unique characteristic of specialized courts. The redesign of specialized courts in this context concerns internal and external aspects, which can be broadly summarised as exercising care in the selection of the specialized subject matter; isolating the jurisdiction; defining the jurisdiction to promote judicial interest; carefully considering lifetime tenure; carefully considering the need for specialized courts¹⁷; minimizing the potential for diminution of judicial prestige and interest¹⁸; limiting the tendency to isolation; determining the appropriate organizational hierarchy; and making access as convenient as possible for all potential litigants¹⁹. By reference to the development of specialized courts in Indonesia, this paper, which focuses on the use of considerations in several Constitutional Court judgments as well as the dynamics of inhibitory factors or resistance that have triggered them, is developed using the following matrix of specialized courts that are deemed important to study in this paper.

Table 1. Indonesia's future specialized courts		
Referred specialized courts	Reasons for reforming specialized courts	Improving specialized courts: basic instruments and provisions
Special Court on Regional Elections	Two contradicting Court Decisions by the Constitutional Court. The absence, even in the status quo maintained by the Constitutional Court, of an institution to resolve electoral disputes.	Constitutional Court Decision Number 072-073/PUU-II/2004 Constitutional Court Decision Number 85/PUU-XV/2022
Ad Hoc Human Rights Court	Ongoing litigation to enforce gross human rights violations no longer requires parliamentary scrutiny.	Constitutional Court Decision Number 18/PUU-V/2007
Corruption Court	Corruption emergency. Eradicate corruption through effective law enforcement.	Constitutional Court Decision Number 012-016-019/PUU-IV/2006
Tax Court	Term of office of tax judges. Equation of the Tax Court with the Supreme Administrative Court. Existence of ad hoc tax judges. The attorney before the Tax Court does not have to be a tax advisor.	Constitutional Court Decision Number 6/PUU-XIV/2016 Constitutional Court Decision Number 63/PUU-XV/2017
Fisheries Court	Effectiveness of fisheries justice. Failure to use or optimize enforcement and prosecution tools.	Constitutional Court Decision Number 32/PUU-XII/2014 Constitutional Court Decision Number 26/PUU-XXI/2023

17 Agus Riewanto et al., *Hukum Tata Negara* (Jakarta: RajaGrafindo Persada, 2023), 267-290.

18 Alan Uzelac, "Mixed Blessing of Judicial Specialisation: The Devil Is in the Detail," *Russian Law Journal* 2, no. 4 (2014): 146–64, <http://www.just.ro/>.

19 Markus B Zimmer, "Overview Of Specialized Courts," *International Journal For Court Administration* 2, no. 1 (2009): 46–60, <https://doi.org/https://doi.org/10.18352/ijca.111>.

Medical Court	Problems encountered by the MKDKI and the KKI as ethical and disciplinary enforcers in enforcing health-related legislation Specificity of health law enforcement.	Constitutional Court Decision Number 14/PUU-XII/2014 Constitutional Court Decision Number 82/PUU-XIII/2015 Constitutional Court Decision Number 82/PUU-XIV/2016 Constitutional Court Decision Number 10/PUU-XV/2017 Constitutional Court Decision Number 119/PUU-XX/2022 Constitutional Court Decision Number 21/PUU-XXI/2023
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Source: processed from MKRI (Constitutional Court of Indonesia) decisions, 2003-2023

In the context of futuristic constructive thinking, at least several decisions of the Constitutional Court can be observed, namely concerning:

Decision of the Constitutional Court 18/PUU-V/2007 - Ad hoc Court of Human Rights, which is free from the interference of other institutions (executive branch)

The beginning of reform in Indonesia, starting with the MPR session that established the MPR Decree No. XVII/MPR/1998 on Human Rights (hereinafter referred to as the MPR HAM Decree), opened up a wider space, including human rights issues (especially gross human rights violations), Article 104(1) and (2) of Law No. 39 of 1999 on Human Rights (hereinafter referred to the “Human Rights Law”), and the international calls for Indonesia to promote democracy, including the resolution of some serious human rights violations in Indonesia.

In 1999, a governmental decree replaced Law No. 1 of 1999 on establishing a human rights court (hereafter: Perpu PHAM). Nevertheless, more appropriate plans were drafted and continued until Law No. 26 of 2000 on the Human Rights Court (hereafter referred to as the PHAM Law) was drafted as a positive legal basis for resolving gross domestic human rights violations. The PHAM Law allows for both judicial and non-judicial means of resolving grievances. This formulation of settlement channels, either through a permanent Human Rights Court for cases arising after its enactment, or through an ad hoc Human Rights Court for settlement through judicial and non-judicial channels, reflects a policy of social defense, which ultimately forms part of social policy. Similarly, the data submitted by *KontraS RI (Komisi untuk Orang Hilang dan Korban Kekerasan)* shows that since the PHAM Law was enacted (up to 2020), the PHAM Law has encountered numerous legal difficulties that led to delays in the resolution of many serious human rights violations, and out of 15 cases, only 3 cases were resolved by the ad hoc human rights court mechanism, namely the Tanjung Priok case, the East Timor case, and the Abepura case²⁰. This demonstrates the weaknesses found in enacting positive legislation to address gross human rights violations²¹.

The decision of the Constitutional Court is necessary to refer to when revising and rationalizing the PHAM Law. The Constitutional Court, in its decision no. 18/PUU-V/2007, considered that the term “accusation”, used by the Chamber of Deputies in the context of the establishment of an ad hoc human rights court falls outside the provisions of Articles 44 and 45 of the PHAMA Act and that the maintenance of this term may give rise to legal uncertainty. The House of Representatives would have to obtain the results of investigations and inquiries from the competent authorities, namely the National Human Rights Commission as the investigating body and the Office of the Public Prosecutor as the investigating body, in compliance with the provisions of the PHAM Law. There is an urgent need to consider redesigning the establishment of an ad hoc Human Rights Court, as the word “allegation” in the clarification of Article 43(2) of the PHAM Law may

20 KontraS RI, “Kertas-Posisi-20-Tahun-UU-Pengadilan-HAM” (Jakarta, 2020).

21 Louay Abdalbaki, “Democratisation in Indonesia: From Transition to Consolidation,” *Asian Journal of Political Science* 16, no. 2 (2008): 151–72, <https://doi.org/10.1080/02185370802204099>.

lead to legal uncertainty (*rechtsonzekerheid*) as a result of different interpretations of the word “allegation” than the mechanism in the PHAM Law. One of the regulatory designs in the Human Rights Law related to the Ad Hoc Human Rights Court has been changed by the design of the implementation of the powers of the Ad Hoc Human Rights Court according to the decision of the Constitutional Court. Constitutional Court Decision No. 18/PUU-V/2007 suggests that if an ad hoc Human Rights Court is to be maintained in a model of judicial settlement of gross human rights violations, it is necessary to reformulate a procedure for establishing an ad hoc Human Rights Court.

Decision of the Constitutional Court 012-016-019/PUU-IV/2006 - The Corruption Court will be established for a certain period of time in order to achieve a smooth transition

Constitutional Court Decision No. 012-016-019/PUU-IV/2006 conveys a message that the existence of judicial dualism prosecuting corruption (as formulated in Article 53 of Law No. 30 of 2002 on Corruption Eradication Commission) contradicts the 1945 Indonesian Constitution. To this end, Indonesia’s judiciary needs to improve the regulation of the Corruption Court. In this decision, the Constitutional Court suspended the enforcement of the decision and gave the legislature 3 years to draft the law on the Court, incorporated in Law No. 46 of 2009 on the Court of Criminal Acts. The plaintiff does not ask for delay at all. The Constitutional Court postulates that the ongoing, uninterrupted, and undisturbed investigation of corruption by the Corruption Eradication Commission and the Corruption Court is causing legal uncertainty concerning the Constitution, although Article 47 of the Law on the Constitutional Court states that “the decision of the Constitutional Court shall have permanent legal force from the moment it is pronounced in plenary session”. In this Court Decision, the Constitutional Court takes into account the need to allow time for a smooth transition process for the formation of new rules and the attitude of statesmanship and wisdom of the magistrates. In addition to the goal of achieving legal certainty, these breakthroughs include the values of expediency and fairness.

Decision of the Constitutional Court No. 6/PUU-XIV/2016 The term of office of a tax judge is the same as that of a judge of the Administrative Court of Appeal and Decision of the Constitutional Court No. 63/PUU-XV/2017 The attorney before the Tax Court does not have to be a tax advisor

The Constitutional Court granted a partial review of Law No. 14 of 2002 on the Tax Court (Tax Court Law), submitted by the Indonesian Association of Judges (IKAHI) of the Tax Court Division. The decision confirmed that the term for judges at the Tax Court is equal to that for judges at the State Administrative Tribunal. In terms of status, the Tax Court is a special tribunal within the State Administrative Tribunal, in terms of function, it is a state functionary exercising jurisdiction in a tribunal subordinate to the High Court, and in terms of institutional status, it is a court exercising jurisdiction on a par with High Court in three respects. In the absence of an interpretation, the term “65 years of age” in Art. 13, para. 1, letter c, of the Tax Court Law, “equates to the age of retirement of the Supreme Administrative Tribunal judges”. Judicial Review of Article 32(3a) of the KUP Law (Law on Taxation General Provisions), which is more than the Regulation of the Minister of Finance of the Republic of Indonesia No. 229/PMK.03 /2014 on 2 October 2017, with the decision of the Constitutional Court No. 63/PUU-XV/2017, concerning this request, the panel of judges of The Constitution decided to partially grant it, declaring that the expression “exercise the rights and obligations of the lawyer” in Article 32 paragraph (3a) of Law No. 28 of 2007 is contrary to the 1945 Indonesia Constitution conditionally.

According to its characteristics, as a technical-administrative delegation, on the one hand, such an arrangement must not contain any content that would affect the taxpayer’s right to grant a power of attorney to any party he or she considers capable of fighting for his or her rights as a taxpayer, and on the other hand, it must not contain any content that would affect the taxpayer’s right to grant a power of attorney to any party he or she considers capable of fighting for his or her rights as a taxpayer. The delegation of powers for the regulation of matters of a technical and administrative character is not intended to give the Minister of Taxation more powers (over his powers), but only to further specify the “conditions and procedures for the exercise of powers”. This means that the ordinance must not contain any content that should be the subject of higher-level regulations, in particular legal content. Therefore, the delegation of authority regarding “conditions and procedures for the exercise of power” as provided for in Article 32(3a) of the KUP Law can only be declared constitutional if the content material is solely technical-administrative, whether or not there is a specific case

such as the one experienced by the petitioner. The Petitioner’s argument regarding the unconstitutionality of the content of Article 32(3a) of the KUP Law is partly legal. “As long as the phrase “implementing the rights and obligations of the mandate” in Article 32(3a) of the KUP Law is not interpreted only in terms of technical-administrative matters, that is, as long as it does not limit the constitutional rights of citizens and does not limit and/or expand rights and obligations, the KUP Law is unconstitutional.

Constitutional Court Decision No. 32/PUU-XII/2014 and Constitutional Court Decision No. 26/PUU-XXI/2023 - The Existence of Fisheries Courts

The existence of the Fishery Court, which was established after the reform, in particular on the basis of Law No. 31 of 2004, as amended by Law No. 45 of 2009 on Fishery, was also confirmed by a number of rulings of the Constitutional Court, such as the one related to the limitations of the special court in Constitutional Court Decision No. 26/PUU-XXI/2023, which confirmed that the Fishery Court is a special court within the scope of the general court, also on the basis of the Explanatory Memorandum to Article 27(1) of the Law on the Judiciary (48/2009). The Constitutional Court, through Constitutional Court Decision No. 32/PUU-XII/2014, related to ad hoc judges appointed to special courts, questioned the existence of Fisheries Courts, established with a permanent nature (vide No. 12 page 21), by comparing the existence of other special courts. The principle is confirmed in the expert opinion in this Constitutional Court Decision, that the expertise is in line with the complexity of the case, especially the modus operandi, evidence, and execution of decisions, especially considering the needs of the development of demands for justice, which must be accommodated with the specificity of this special judicial institution.

In the facts of the trial, there were legal facts that encouraged the strengthening of fisheries justice concerning the issue of ad hoc judges, including the fact that until 2014, there were 56 ad hoc judges of the Fisheries Court and cases that entered the Supreme Court, from the Fisheries Court, when the Constitutional Court Decision No. 32/PUU-XII/2014 found cases from the Fisheries Court to the Supreme Court in 2012, namely cassation of 31 cases and judicial review of 2 cases. In 2013, on the other hand, there were 26 cases of cassation, and there were even 2 district courts that did not have a single case, namely the North Jakarta Fisheries Court (at Special Province of Jakarta) and the Tual Fisheries Court (at Province of Moluccas). In terms of cases handled, there is also a problem regarding the spearhead of investigation and prosecution, especially since the Fisheries Court received only 23 cases in 2012 and 83 cases in 2013 (see pages 95 and 97). Of course, there is indeed confusion in the area of the formation of the law related to the power of the judiciary and the law related to special courts, which is purely the legislative domain to translate the needs of law enforcement into the basis of a special court framework, including the Fisheries Court in Indonesia, which is urgent to ensure law enforcement for the vast marine territory of Indonesia and very complex aspects of harm and potential threats to national sovereignty.

Several special tribunals did not come into being and were merely discussed due to strong inhibiting factors and resistance to the formation of subsequent special courts²², such as the Defence Court, the Domestic Violence Court, the Environmental Court, and the Forestry Court²³.

Table 2. Prospective Specialised Courts in Indonesia	
Referred specialized courts	Reasons for the urgency of the establishment of special courts
Special Court on Regional Elections	The inconsistency of the decisions of the Constitutional Court and the lack of legal certainty in the enforcement of the resolution of electoral disputes.
Medical Court	The lack of transparency in the enforcement process in the MKDKI and KKI and the need for separate mechanisms and institutions to deal with health cases with legal aspects.

Source: processed from MKRI (Constitutional Court of Indonesia) decisions, 2003-2023

22 Khairil Azmin; Mokhtar, Iwan; Satriawan, and Muhammad Nur Islami, “A Comparison of Constitutional Adjudication Institutions in Malaysia and Indonesia,” *Pertanika J. Soc. Sci. & Hum* 25 (2017): 85–96.

23 Windu Kisworo, “A Framework for the Establishment of An Environmental Court in Indonesia: Opportunities and Challenges” (Macquarie University, 2019), 85-122.

Medical Court (recommended by IDI (Ikatan Dokter Indonesia), MKDKI (Majelis Kehormatan Disiplin Kedokteran Indonesia))

Several aspects related to the existence of the MKDKI, i.e. the consideration of the necessity of a special tribunal in the field of health law, i.e. the medical tribunal, attempted through the submission of the Medical Tribunal Act, and the questions related to the strengthening of the substance of health law, whether in the form of a codification or the form of the formulation of omnibus legislation, including the aspects of actors, standards, ethics, occupation, degree of health, and the aspects of the special dimensions of civil, criminal and administrative matters related to health law²⁴.

The Constitutional Court only focused on following the issuance of Constitutional Court Decision No. 119/PUU-XX/2022 and Constitutional Court Decision No. 21/PUU-XXI/2023 that strengthened previous judgments especially Constitutional Court Decision No. 82/PUU-XIV/2016, the MKDKI was established as a final and binding disciplinary court, as a professional judicial pillar with a mixed or dual function, as a typical counterweight to the KKI's (Konsil Kedokteran Indonesia) function as a regulator/legislator and executive, as well as a guarantor of the truth value of medicine and the interests of patients, namely for the Disciplinary Court, procedures for handling cases, procedures for complaints, and the examination and issuance of decisions. The KKI, as a medical disciplinary enforcement agency, is an autonomous unit of the KKI, which is independent and accountable to the KKI. The Constitutional Court's decision Number 14/PUU-XII/2014 affirmed MKDKI and MKEK in the implementation of the complaint flow for violations of medical discipline and medical professional ethics. The existence of MKDKI and MKEK, which cannot be separated in the framework of ethics enforcement and medical discipline, is confirmed by the Constitutional Court's Decision Number 10/PUU-XV/2017. Finally, according to the Constitutional Court's decision No. 82/PUU-XIII/2015, it intended to preserve the specificity and uniqueness of the profession of doctors and dentists or the distinctive features in a rapidly evolving medical system and health care practice system.

Other considerations are also related to considerations on how to implement a law that can be just, beneficial, and provides legal certainty in various cases, disputes, criminal acts, and administrative violations that occur in the practice of health services in Indonesia. Finally, there is a need to develop a Health Law that can effectively address current issues in the health sector that contain potential legal issues to be considered in developing various regulations related to the health sector in Indonesia. Finally, this proposal emerged in the legal planning stage through the inclusion of the Medical Court Bill in the Medium Term *Prolegnas* (Program Legislasi Nasional or National Legislation Program) 2015-2019 and 2020-2024, as well as through the Association of Medical Law Consultants/PKHMK at the end of 2022 as a means of law enforcement and settlement of health law cases.

Special Court for Regional Election Dispute Resolution

The beginning of a political year becomes a momentum that drains energy and thought and often brings the Indonesian people into conflict over different choices and political beliefs in the general election campaign. Although the general election is a means of legitimacy in the democratic process of a nation, the frequent changes in the general election law, the large number of voters with simultaneous general elections, the complexity of the pre-election, election, and post-election periods, and the potential for fraud and malpractice have created several challenges in Indonesia.

Concerning the two previous Constitutional Court rulings, it has been an academic discourse due to the disagreement in the interpretation of the 1945 Constitution, these will then become a number of things that underlie the Constitutional Court in ensuring the realization of substantial justice in the settlement of local election disputes, but also become an input to the process of establishing a special court that must reflect the legal requirements, in accordance with a fair, democratic, legal and democratic state.

The existence of a special judiciary body for general elections is an intriguing question, bearing in mind the provisions of Section 157 (1) to (3) of Law Number 10 of 2016 on *Pilkada*, (Chief of Regional Elections

24 Ontran Sumantri Riyanto, "Urgensi Pembentukan Pengadilan Khusus Dalam Penyelesaian Sengketa Medis Sebagai Upaya Perlindungan Hak Asasi Manusia Bagi Dokter" (Magister Hukum, Universitas Katolik Soegijapranata, 2017), 146-169.

or *Pemilihan Kepala Daerah*) requiring the existence of a special judiciary body to be formed prior to the holding of simultaneous national elections, temporarily administered by the Constitutional Court to avoid a legal vacuum. This arrangement is part of the Constitutional Court's interpretive dynamics in handling disputes over general election results, especially regional head elections, marked by the first, Constitutional Court Decision 072-073/PUU-II/2004 (vide pp. 125-130 Decision 072; p. 114 -115 Decision 073), which became the first landmark for the consideration of the Court in the interpretation of the *Pilkada* through the principle of constitutional unity, could be a broadening of the meaning of the term "election" from Article 22E of the 1945 Constitutional Law based on Article 18(4) of the 1945 Constitutional Law, or non-formal depending on the open legal policy of the legislature so that authority in disputes over election results can be transferred to the Constitutional Court (in case of broadening) or to the Supreme Court (as additional authority). As a result of this ruling, Act No. 27 of 2007 on electoral commissions, (Art. 236c) of Act No. 12 of 2008 as an amendment to electoral law, and (Art. 29 (1) (e) of Act No. 48 of 2009 on jurisdiction), as an open-policy interpretation of legislation, regional elections as an electoral system, and transfer of jurisdiction from Supreme Court to Constitutional Court. Interestingly, in the second decision, Constitutional Court Decision No. 97/PUU-XI/2013, based on the interpretation of the original intent of Article 22E of the 1945 Constitution, even local elections are not included as an electoral regime, and the limited powers of state institutions determined by the Constitution cannot be added to or reduced by laws as well as court decisions, including the Constitutional Court decision, which took the role of forming the 1945 Constitution, so the a quo articles were declared unconstitutional, but the Court still has temporary powers until a special judicial institution is established for post-conflict local elections²⁵.

The regulation of the Act No. 10 of 2016, according to the change of art. 157 of the Act No. 10 of 2016, from the original formulation in Act No. 1 of 2014, leaving the matter to the authority of the Supreme Court, and then in Act No. 8 of 2015, formulating the same standards as the Act No. 10 of 2016, transferring the matter to specialized court, and for the time being the handling was handed over to the Constitutional Court, before a special court was formed for the handling of regional election disputes, which were simultaneously arranged in its entirety in 2027 (article 201 paragraph (7) law 8/2015) to be November 2024 (article 201 paragraph (8) law 10/2016). Concrete steps for the formation of this special judicial institution have not yet been taken, which has created the problem that the mandate of the Constitutional Court decision and previous laws must be properly considered and followed up, as was the case with the arrangement for the formation of a special regional election court, which should have been formed before the simultaneous regional elections were not held, it does not appear in the *Prolegnas*, as well as in various legislative drafting and procedural administrative steps for the formation of institutions, Procedures, aspects of the composition of the recruitment of judges, aspects of human resources and administrative judicial infrastructure facilities, and other formal technical aspects to form special regional electoral courts were not followed after the Constitutional Court decision no. 85/PUU-XX/2022.

A lesson can be learnt from the journey of the special judicial arrangements for *Pilkada*, which were not institutionally formed, but were confirmed by the dynamics of the interpretation of the establishment of the Constitutional Court in the three rulings, both Constitutional Court Ruling 072-073/PUU-II/2004, Constitutional Court Decision 97/PUU-XI/2013 and Constitutional Court Ruling 85/PUU-XX/2022. It is expected that in the future the Constitutional Court will confirm its status as an institution for those seeking justice concerning the results of the simultaneous regional elections by asserting itself as the institution authorized to examine, hear, and decide on disputes concerning the results of the regional elections. However, the problems that arose concerning the General Election Court are inextricably linked to the legislative omission committed by the legislators in the period between the first and the last Constitutional Court decision²⁶, which seemed to annul the sequence in the previous Constitutional Court decision that created space for the formation of the Special

25 Camden Kelliher et al., "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes," *Election Law Journal: Rules, Politics, and Policy* 18, no. 3 (September 1, 2019): 297–308, <https://doi.org/10.1089/elj.2018.0535>.

26 Novendri M. Nggilu, "Menggagas Sanksi Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 1 (April 1, 2019): 43, <https://doi.org/10.31078/jk1613>.

Election Court²⁷, and this is also evident in the constitutional defiance or disobedience of the legislators to the Constitutional Court's decision²⁸ by not conducting a political policy to form a Special Election Court in time.

The two cases show that the process of judicial involvement, especially in the establishment of a specialized court system, must be based on efforts to meet a sense of justice for the community at large and, above all, must be able to make law enforcement efforts effective in specific areas, in the structural differentiation of the justice system, albeit based on studies that are not exhaustive, and in the lack of integration and a strong coordination framework between government bodies²⁹, encourage the growth and expansion of special courts in Indonesia, so that this is not more important than restructuring the adjudication function for the effectiveness and efficiency of existing judicial institutions³⁰. The existence of a special court is a necessity and can be justified, but if it does not fulfill the spirit of strengthening the fulfillment of a sense of justice, it even tends to hinder the effectiveness of the judiciary, it can trigger various problems leading to budgetary policy issues, the problem related to the number of new institutions, including a new special court within the framework of the reform, even the fundamental issue of the need for law enforcement to create certainty, benefit, especially justice.

3. CONCLUSION

The conclusion that can be drawn from this paper is that the dynamics of specialized court in Indonesia coincide with the currents of reform and the amendments to the 1945 Constitution. The phenomenon of the proliferation of special justice is inseparable from internal factors and external factors that are related to the promotion of the formation of specialized courts. However, this paper also mentions that there are several decisions of the Constitutional Court which are at least signs of the selectivity, urgency, comprehensiveness, and utility of the establishment of a special court. It also reflects on the failures, obstacles, and resistance in the establishment of several special courts. The recommendations proposed in this paper are the need to think ahead to re-position the special courts to be formed based on the scale of legal requirements, strategic planning, and not triggering potential legal problems in the future. There is also a need to reform the legal substance segment and legal culture, especially on issues related to specialized court, as well as to improve policy formulation by policymakers to mainstream special justice and prioritize existing judicial powers to make them effective and efficient.

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27 Tri Sulistyowati, Muhammad Imam Nasef, and Ali Rido, "Constitutional Compliance Atas Putusan Pengujian Undang-Undang Di Mahkamah Konstitusi Oleh Adressat Putusan," *Jurnal Konstitusi* 17, no. 4 (January 25, 2021): 699–728, <https://doi.org/10.31078/jk1741>.

28 Marian Grzybowski, "Legislative Omission in Practical Jurisprudence of the Polish Constitutional Tribunal," *Observatório de Jurisdição Constitucional* 13, no. 6 (2013): 1-14.

29 Rachael Diprose, Dave McRae, and Vedi R. Hadiz, "Two Decades of Reformasi in Indonesia: Its Illiberal Turn," *Journal of Contemporary Asia* 49, no. 5 (October 20, 2019): 691–712, <https://doi.org/10.1080/00472336.2019.1637922>.

30 Simon Butt, "The Indonesian Constitutional Court: Reconfiguring Decentralization for Better or Worse?," *Asian Journal of Comparative Law* 14, no. 1 (July 1, 2019): 147–74, <https://doi.org/10.1017/asjcl.2018.19>.

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