

## Age Limit for Presidential Election (Legal Analysis of MKRI Decision No. 92/PUU-XXI 2023)

Majda El Muhtaj<sup>1</sup>, Anisa Amelia Purba<sup>2</sup>, Iwidy Risti Sinaga<sup>3</sup>, Nabila Fri Cahyani<sup>4</sup>,  
Nur Cahyu Azizah<sup>5</sup>, Mikha Valdo Tambunan<sup>6</sup>, Putriana Sinaga<sup>7</sup>

<sup>1-7</sup>Universitas Negeri Medan

E-mail: [elmuhaj@unimed.ac.id](mailto:elmuhaj@unimed.ac.id)<sup>1</sup>, [purbaanisaamelia@gmail.com](mailto:purbaanisaamelia@gmail.com)<sup>2</sup>, [iwidyaristi265@gmail.com](mailto:iwidyaristi265@gmail.com)<sup>3</sup>,  
[nabilafricahyani2507052005@gmail.com](mailto:nabilafricahyani2507052005@gmail.com)<sup>4</sup>, [Nurcahyuazizah@gmail.com](mailto:Nurcahyuazizah@gmail.com)<sup>5</sup>, [Valdotambunan101005@gmail.com](mailto:Valdotambunan101005@gmail.com)<sup>6</sup>,  
[putrianasinaga822@gmail.com](mailto:putrianasinaga822@gmail.com)<sup>7</sup>

**Abstract.** This study is a normative juridical research, which is a research method by examining library materials in the form of secondary data which will be analyzed qualitatively to achieve clarity regarding the decision issued by the Constitutional Court regarding the age limit of Presidential and vice presidential Candidates from the law of the Republic of Indonesia decision no. 92/PUU-XXI/2023. This research aims to analyze in depth the legal aspects related to the decision, including its relation to Law Number 7 of 2017 concerning the Election of Age Limits for Candidates for President and Vice President. The results of this in-depth analysis are expected to provide a comprehensive understanding of the legal implications of the Constitutional Court's decision in the context of the Indonesian constitutional system. Thus, this research is expected to contribute to the understanding and analysis of legal issues relevant to the Indonesian constitutional system.

**Keywords:** Constitutional Court, Age Limit, Vice Presidential Candidate

### INTRODUCTION

The age limit for presidential and vice presidential candidates (Capres/Cawapres) is an issue that receives serious attention in the context of democracy and law in Indonesia. This debate arose after the Constitutional Court Decision Number 92/PUU-XXI/2023 regarding the minimum age for presidential and vice presidential candidates. This decision raises deep questions regarding the legal implications and political impact on the democratization process and the country's political stability.

In this context, it is important to carry out an in-depth analysis of the legal aspects of the decision. This analysis not only covers the legal basis on which the decision is based, but also the implications and consequences that may arise from its implementation in the Indonesian political system.

Thus, this article aims to comprehensively outline and analyze the Constitutional Court Decision Number 92/PUU-XXI/2023 regarding the age limit for presidential/cawapres candidates. Through in-depth legal analysis, it is hoped that it can provide a better understanding of the controversy that has arisen around the age rules for presidential and vice presidential candidates, as well as their impact on the political system and democracy in Indonesia.

## **RESEARCH METHODS**

This research regarding the juridical review of the Constitutional Court decision Number 90/PUU-XII/2023 is normative juridical research, namely a research method by examining library materials in the form of secondary data which will be analyzed qualitatively. That is, the data obtained will then be compiled systematically and will then be analyzed qualitatively to achieve clarity regarding legal products or decisions issued by the Constitutional Court. The research approach is carried out through the statutory regulations approach, the theory of legislative change, the theory of law enforcement and norms related to judicial review, as well as the theory of law enforcement because the problems to be examined in this research are related to the authority of the Constitutional Court and the Indonesian constitutional law system. The specifications of this research are descriptive analysis because it is expected to be able to provide a detailed, systematic and comprehensive picture of the object to be studied, namely related to legal research regarding the Constitutional Court's decision.

## **RESULTS AND DISCUSSION**

As the deadline for registration of presidential and vice presidential candidates approached, the public was shocked by the decision of the Constitutional Court (MK) number 90/PUU-XXI/2023 which was considered controversial. In this decision, the Constitutional Court stated that regional heads under 40 years of age could only nominate themselves as presidential or vice presidential candidates if they had previously served as regional heads or were currently serving as regional heads. This decision is the result of JR Law Number 7 of 2017 concerning the Election of Age Limits for Presidential and Vice Presidential Candidates proposed by a Severus Mallet University (UNS) student named Almas Tsakibil. (Muhdar & Susilowati, 2023, p.156) This debate was written by a constitutional expert from Muhammadiyah University of Yogyakarta (UMY), Dr. Raja Faisal Sulaiman, LL.M, said the decision was sensitive and political because it was related to the dynamics of the 2024 presidential election and was full of conflict, interests. He strongly suspects that this is related to the interests of the president's son, Gibran Rakabumin Raka, as Mayor of Solo. Raka wants to run as a vice presidential candidate with Prabowo Subiyanto, but constitutional provisions prevent him because of his age. It is also seen as a violation of constitutional democracy, which requires regular elections and competition between political parties. Judges are the main pillars of society who fight for justice through legal procedures. As part of the judicial institution that receives, reviews and decides cases, judges are expected to provide justice to those who seek

it. Of course the judge has a big responsibility in this matter. It is not surprising that judges, in carrying out and carrying out their duties, bear great responsibility in deciding cases in their jurisdiction. This process is supervised internally and externally by the Honorable Panel of Judges and the Judicial Commission. These two institutions were established with the aim of ensuring that judges always act honestly, with integrity and responsibility, both in handling cases and in everyday life. Constitutional Court Decision Number 90/PUU-XXI/2023 concerning Age Limits for Presidential and Vice Presidential Candidates which was handled and decided by the Chairman of the Constitutional Court Anwar Usman clearly violates the principle of impartiality and is a clear violation. This is because judicial power must not be tied to parties who do not have judicial power, such as the executive or legislative. This principle must be upheld so that judges can carry out their duties objectively and decide cases based on the values of justice and integrity (Subandri, 2024)

Judicial independence can be understood as autonomy or independence in the sense of complete freedom and no violation of judicial power. The judiciary is an independent organ, independent of state power, and no party may interfere with the implementation of its duties and authority. This decision of the Constitutional Court caused an uproar in political circles, and gave rise to strong opposition from many circles of society, because the decision announced by the Chief Justice of the Constitutional Court was considered to be influenced by family interests. This decision is seen as an attempt to field one of his vice presidential candidates for the 2024 election. The Constitutional Court's decision allows a vice presidential candidate to run as a vice presidential candidate even though he does not meet the age requirements because he currently serves as a regional head in Indonesia. (Hafizatul Ulum, 2023)

Considering that the Petitioner submitted a petition dated 7 August 2023 and was received at the Registrar's Office of the Constitutional Court on 7 August 2023 based on the deed of Submission of Petition Number 88/PUU/PAN. MK/AP3/08/2023 and recorded in the Electronic Constitutional Case Registration Book (e-BRPK) with Number 92/PUU-XXI/2023 on 16 August 2023, which has been corrected and accepted by the Court on 18 September 2023, which basically explains the matter -the following:

1. Whereas Article 169 letter q of the Election Law regulates: "The requirements for becoming a presidential candidate and vice presidential candidate are: q. be at least 40 (forty) years old";
2. Whereas from the provisions of Article 169 letter q of the Election Law mentioned above, it can be ascertained that even though the Petitioners are both Indonesian citizens, they are still. aged under 40 (forty) years, also have the right to be elected and vote in

elections of course

3. The fact that there is indeed an age limit for presidential and vice presidential candidates can be read again from the language of the expert team regarding the minimum age limit in the minutes of the discussion of the 1945 Amendment to the Constitution of the Republic of Indonesia. Alternatively, some have suggested reducing the age limit from a minimum of 40 years to a minimum of 35 years. Of course, on that basis, we can still discuss the minimum age limit for presidential and vice presidential candidates. Because, it can be measured, for example based on working age, legal competency, etc. The MKRI considers Article 169q of the Election Law and whether it remains like that or Article 169q is declared status quo, as long as the expression "at least 40 years old" violates the law. This is the 1945 Constitution of the Republic of Indonesia, and has no legal force unless it is interpreted as at least 25 years old and above as stated in determined by the applicant.

According to Joen Bodin, to see the essence of the state, it lies in its sovereignty, namely the highest power that exists in a political unity. The government system mechanism implemented by the state government to realize the sovereignty of the people over the state is called a democratic state. A democratic government system has foundations and values that are upheld to regulate government procedures, the main characteristics of a democratic country include: fair and regular elections, upholding and protecting human rights, government run based on law, separation of powers, freedom of the press and media, legitimacy of power by the people, and a competitive and healthy political system. One of the aims of the 1998 reform was to change democracy by restoring citizens' rights that had not been guaranteed by the state. Because power during the New Order era was centered on the President who did not have effective political control, both from the legislative institution because of Golkar's hegemony which dominated the DPR and the judicial institution which had structural limitations. After the 1998 Reform era, the 1945 Constitution underwent four amendments to be perfected, namely in 1999, 2000, 2001 and 2002. After the amendment, Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia changed the measure of the constitutional democracy, namely that it is based on constitutional legal norms and is no longer determined by the MPR, previously recognized as a highest state institution in the Orde Baru regime. To maintain the constitutional democracy, the Constitutional Court (MK) is present as the guardian and the sole interpretation of the constitution. The state provides space for citizens to criticize state administrators regarding constitutional rights that are threatened with being harmed by laws made by the legislature. In accordance with the authority of the Constitutional Court as

stated in the 1945 Constitution, the third amendment to Article 24C paragraph (1). Judicial review of the Constitutional Court is to examine the procedures for the formation or substance of the norms of a law that has been passed by the DPR and the President in accordance with or contrary to the 1945 Constitution of the Republic of Indonesia. The constitutionality of a law is reviewed to produce a binding and final decision. Towards the 2024 general election, there are Constitutional Court decisions that invite controversy and become discussion material for jurists, especially in the field of Constitutional Law. On Monday, 16 October 2023, the Constitutional Court pronounced its decision on Case Number 90/PUU-XXI/2023 regarding testing the age requirements for presidential and vice presidential candidates Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections (hereinafter referred to as the Case for the Age of the Vice Presidential Candidates (2023)). The Case for the Age of the Vice Presidential Candidates (2023) is one of the factors in the decline of democracy in Indonesia today, the decision made by the judges was not taken unanimously, four judges voted to grant it, but three judges thought to reject it, and two other judges had different opinions. Apart from that, the lawmaker's spiritual atmosphere was revealed to the public regarding how the same case was previously rejected but specifically the Age of Vice Presidential Candidates Case (2023) was accepted with the involvement of the Chief Justice of the Constitutional Court, this illustrates that the Constitutional Court as a law enforcer was affected by political desires. The presence of the Constitutional Court as the guardian of democracy is to frame democracy in Indonesia as running with constitutional norms, so that the measure of the truth of judicial review at the Constitutional Court is the truth of constitutional legal norms. Judicial review or testing of statutory regulations carried out by the judiciary is a review of laws/government regulations in lieu of law against the 1945 Constitution of the Republic of Indonesia which is carried out by the Constitutional Court, while the review of statutory regulations under the law against the law is carried out by Supreme Court. The judicial review at the Constitutional Court aims to ensure that a law does not contradict/violate the 1945 Constitution of the Republic of Indonesia. The judicial review proposed by Almas Tsaqibbiru Re A regarding the age case for presidential and vice presidential candidates (2023) is a material review of Article 169 letter (q) of the Election Law, which Almas idolizes. Gibran Rakabuming Raka as Mayor of Surakarta for the 2020-2025 period who succeeded in increasing economic growth in Solo to 6.25 percent so that he tried to be able to elect Gibran in the 2024 General Election contest. The request submitted by Almas was partially granted by the Constitutional Court. The ruling of the Constitutional Court states that Article 169 letter (q) of the Election Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it

is not interpreted as "being at least 40 (forty) years old or having/currently held a position elected by general election including regional head elections". According to Almas, Article 169 letter (q) discriminates because it violates his constitutional rights as a citizen to elect presidential and vice presidential candidates under 40 years of age in the 2024 elections. The Petitioner demands the right to be free from discriminatory treatment and the right to have equal opportunities in government which is guaranteed by Constitution. This is different from the ten other cases which were declared rejected by the Constitutional Court for several reasons, including: the principal of the petition was unreasonable according to law, it could not be accepted because the Petitioner's Petition lost its object, and the legal position of the Petitioner and the principal of the petition were not considered. The ten cases regarding the age limit for presidential and vice presidential candidates include: Case 29 filed by the Indonesian Solidarity Party (PSI) asking to be changed to 35 years; Case 51 by the Garuda Party; and Case 55 by five regional heads requesting the additional requirement of having experience as a state administrator; Case 91 was filed by Law Students at Sebelas Maret University, Surakarta, seeking to be changed to 21 years; and Case 92 by citizens who want to change it to 30 years. After the decision on the Age of Presidential Candidates (2023), Cases 93, 96, 102, 104 and 106 which were heard on October 23 2023, the Constitutional Court declared the Petitioners' petitions in the five cases unacceptable. Apart from the inappropriate legal standing, there are differences in the Petitioner's petition with the ruling in the Age of Vice Presidential Candidate Case (2023). The MK's reason for revising the petition of the Petitioner's petition is to adjust the appropriate meaning to realize the main legal considerations of the Constitutional Court based on the optional/replacement petition *ex aequo et bono*. Revising the petition is likened to a thesis student who is in the process of being supervised, then because there are errors in the contents of the thesis, the supervisor corrects the contents himself. Guiding students' theses so they graduate. The MK gave the impression that the case was urgent to pass. The Constitutional Court in the Age of Presidential and Vice Presidential Candidates Case (2023) played a positive role as a legislator, in contrast to ten other cases which played a negative role as a legislator. Initially, the Constitutional Court was only a negative legislator, only stating whether a law or its contents were constitutional or unconstitutional. Positive legislator The Constitutional Court is seen as a form of judge's discretion in carrying out its duties, but in carrying out the judge's discretion, the Constitutional Court as a positive legislator must be based on moral reading and be careful in making decisions because the nature of the decision is final and binding so the public can accept, obey or reject it. Resistance to the Constitutional Court's decision, because the Constitutional Court's decision is final and binding, in accordance with the principle of *res*

judicata pro veritate habetur, the decision has binding legal force which must be followed and implemented by all members of the community, not only the parties involved in the Age of Vice Presidential Candidates (2023) case in considerations M. Guntur Hamzah stated that the age restrictions set were considered to hinder the development and progress of the younger generation in the national leadership contest, apart from that the age requirement of under 40 years degraded the opportunities of the young generation's dream figures to become Presidential or Vice Presidential candidates. With that, it was created There are two "entrance points" to becoming a presidential or vice presidential candidate, namely being 40 years old or having held/currently held a position chosen through an election, so that there is room for opportunities for the millennial generation who are broader, fair, rational and accountable with fair legal certainty framed by the constitution. life, a different reason (concurring opinion) was conveyed by Enny Nurbaningsih that the age limit issue based on statements from the DPR and the President is an open legal policy to decide by involving wider public participation, handing over open legal policy to the discretion of the Constitutional Court if the case The age limit violates the intolerable values of morality, rationality and injustice, so it must be declared contrary to the 1945 Constitution Constitutional supremacy makes the 1945 Constitution of the Republic of Indonesia at the highest hierarchy in statutory regulations so that the legal system must be in accordance with and not conflict with the constitution. To maintain the rules contained in the constitution, after the amendment to the 1945 Constitution, a new state institution was formed, namely the Constitutional Court (MK). Article 24C of the 1945 Constitution of the Republic of Indonesia explains that the Constitutional Court has the authority to safeguard constitutional principles so that they are not violated or deviated from through judicial supervision. The Constitutional Court has the "right to review" (toetsingsrecht) a law to be declared contrary or not to the provisions of the 1945 Constitution of the Republic of Indonesia. Indonesia as a legal state based on the principle of popular sovereignty guaranteed by the constitution has two essences. First is the concept of rule of law which states that legal authority overcomes state power and controls politics, and not vice versa; secondly, the concept of guaranteeing the civil rights of citizens by the constitution and protected by the state and government, apart from that the power of state administrators is limited by the constitution. The idea of constitutionalism guarantees the rights of citizens by limiting the government's power so that state administrators are not arbitrary because collective agreement contained in the constitution. The Constitutional Court has the authority to review the material or formal nature of laws against the 1945 Constitution of the Republic of Indonesia at the first and last level, and the nature of its decisions is final and binding. The decision of the Constitutional Court is different from the

decision of the Supreme Court (MA), the Supreme Court's decision can be subject to legal action but the Constitutional Court's decision since it was pronounced in a plenary session open to the public, is final and binding not only on the litigants, but also on the entire community and population of Indonesia. There are no legal remedies in this Constitutional Court Decision due to several reasons, namely: first, the resolution of cases at the Constitutional Court must be carried out quickly and the general judiciary cannot fully reach the issues submitted to the Constitutional Court; secondly, it has been agreed that the Constitutional Court's authority to interpret the contents of the 1945 Constitution of the Republic of Indonesia is the basis for resolving problems in accordance with the Constitutional Court's authority, as the interpretation can only be done once and is binding; and thirdly, the cases submitted to the Constitutional Court are cases related to state administration so that to create legal certainty the decisions must be binding with time limitations.

The irregularities in the Age of Vice Presidential Candidates Case (2023) were then proven to be that the Reported Judge (Anwar Usman) had violated the principle of independence by deliberately opening up room for intervention by outside parties in making decisions in the Case of the Age of Vice Presidential Candidates (2023), evidence of this violation was the indication of influence, external and also conflicts of interest that influence the decision because it is directly related to the interests of the family of the Reported Judge, namely Gibran Rakabuming Raka (Decision of the Honorary Council of the Constitutional Court, 2023). The constitution is obliged to have integrity and a personality that is fair and beyond reproach. Apart from that, constitutional judges are statesmen who master the constitution and state administration. So that constitutional judges have an impact on the function and dynamics of the Constitutional Court the decline in the performance of the Constitutional Court which is no longer considered an independent institution to uphold law and justice. The Constitutional Court as a judicial institution should be present to strengthen the basic ideas of constitutionalism in the 1945 Constitution of the Republic of Indonesia, this is a form of implementing checks and balances between state institutions so that there is a balance of power (Ministry of Law and Human Rights, 2017). The main characteristic of a modern democratic state is recognizing the term "constitutional state" that state administrators in deciding everything must be based on legal rules and the constitution, so that the constitution is not just a 'dead' paper document that only has semantic value and cannot function properly. Democratic life in Indonesia can be implemented in a healthy and clean manner if state administrators can respect the position of the people by including participation in the context of democratic procedures and in terms of the practice of state power in general, and the level



of democratic practice must implement the values of justice, non-discrimination, transparency and empowerment. (Angie Angel Lina, 2024)

## CONCLUSION

The establishment of the Constitutional Court is a form of implementation of the idea of a rule of law, one of the characteristics of which is placing the constitution as the highest book and even makes a big contribution to the creation of a democratic rule of law. As the agent of judicial power, the 1945 Constitution regulates the authority of the Constitutional Court to review laws where its decisions are final. Because the authority and existence of the Constitutional Court is very important in the nation and state, every decision issued by the Constitutional Court should be a decision that can present a sense of justice and can be truly accepted as a fair legal solution for all parties involved in the case and by the wider community at large. generally. This just legal solution will be created if Constitutional Judges carry out and apply the principles of independence and impartiality that have been established in the Constitutional Court Regulations, so that the independence and independence of Constitutional Judges both individually and as an institution can be free from various influences. Constitutional judges who have integrity and a personality that is beyond reproach, are fair, and are statesmen who master the constitution and state administration will make the Constitutional Court an authoritative, dignified and trustworthy judiciary.

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