

Age Limit For Presidential and Vice Presidential Candidates in the Constitutional Court Decision Number 90/PUU-XXI/2023; A Legal Approach

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ABSTRACT

The Constitutional Court decision Number 90/PUU-XXI/2023 has sparked controversy. The reason is, many parties are linking this decision with the son of the President of the Republic of Indonesia who will be a Presidential Candidate in 2024, namely Gibran Raka Bumingraka, who is still under 40 years old. As for the discussion of this research, the researcher focuses on discussing the considerations of Constitutional Court judges in decision Number 90/PUU-XXI/2023 regarding the age limit for Presidential-Vice Presidential Candidates, and how the juridical review of the considerations of Constitutional Court judges in decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates. The type of research in writing this thesis is normative legal research, with a statutory approach (statue approach). The results of this research are as follows; First, in consideration of the Constitutional Court decision Number 90/PUU-XXI/2023 there are different reasons (concurring opinion) from 2 (two) Constitutional judges, namely; Constitutional Justice Enny Nurbaningsih and Constitutional Justice Daniel Yusmic P. Foekh, and there are also different opinions (dissenting opinion) of 4 (four) Constitutional Justices, namely; Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Arief Hidayat, and Constitutional Justice Suhartoyo. Second, the decision of the Constitutional Court Number 90/PUU-XXI/2023 is not in line with Article 51 Paragraph (3) letter b of Law Number 24 of 2003 concerning the Constitutional Court, which regulates the material review of the content of paragraphs, articles and/or Parts of the Law that are deemed to be in conflict with the 1945 Constitution may be requested to be declared as having no legal binding force.

Keywords: Age Limit, Presidential, Vice Presidentia, Constitutional Court

Introduction

In realizing a state of law that runs in accordance with the 1945 Constitution, Indonesia implements a democratic system, that the true owner of the highest power in the Indonesian state is the people. That power must be based on the people, by the

people, and for the people. Even power must be held together with the people, which is known as the concept of democracy.¹

One form of democracy is general elections, which in Indonesia are held every 5 (five) years. General elections are an ideal and maximum picture for a democratic government in modern times. In addition, general elections as a democratic procedure or often referred to as general elections as a democratic party are to form a state power system that is sovereign of the people and representative deliberation outlined by the constitution or the 1945 Constitution of the Republic of Indonesia. State power that is born through general elections is power that is born according to the will of the people and is used according to the wishes of the people by the people, and for the people in order to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional People's Representative Council.²

In Indonesia, general elections are divided into two types, namely general elections to elect legislative members and general elections to elect executive members. Both elections are inseparable from political parties, where political parties nominate legislative and executive candidates. Regarding this matter, the important point is the nomination of presidential and vice presidential candidates, where political parties are given the right to nominate presidential and vice presidential candidates, but in nominating presidential and vice presidential candidates, of course there are several provisions that must be met by political parties, one of which is called the minimum limit for presidential and vice presidential nominations. The rules regarding the minimum limit for nominations that must be met by political parties are obtaining at least 20% (twenty percent) of the total number of DPR seats or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member elections, as stated in Article 222 of Law Number 7 of 2017 concerning General Elections.

In addition, there are requirements that must be met by presidential and vice presidential candidates, one of which is stated in Article 169 letter q of Law Number

¹ Jimly Asshiddiqie. *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika. Jakarta. 2014. h. 58.

² A. Sahid Gatara. *Ilmu Politik Memahami dan Menerapkan*. Pustaka Setia. Bandung. 2008. h. 207.



7 of 2017 concerning Elections. The article explains that presidential and vice presidential candidates are a) at least 40 (forty) years old. However, over time, the Indonesian people were shocked by the Constitutional Court's decision Number 90/PUU-XXI/2023. In the ruling, the Constitutional Court stated that Article 169 letter q of Law Number 7 of 2017 concerning Elections had changed, namely that presidential and vice presidential candidates were at least 40 (forty) years old or had/are currently holding a position elected through general elections including regional head elections.³

The Constitutional Court Decision Number 90/PUU-XXI/2023 has sparked controversy. The reason is, many parties have linked this decision to the son of the President of the Republic of Indonesia who will be a Presidential Candidate in 2024, namely Gibran Raka Bumingraka, who is still under 40 years old. Thus, the interesting phenomenon in the Constitutional Court Decision Number 90/PUU-XXI/2023 has motivated researchers to conduct research on the judges' considerations in the Constitutional Court Decision in Decision Number 90/PUU-XXI/2023.

Research Method

This type of research is normative legal research, namely library research that examines document studies, where researchers use library materials as the main data to analyze cases, and researchers do not conduct field research. The approach in this study is the statute approach. This approach means a research approach that is carried out by reviewing all laws and regulations related to the legal issues being handled by the researcher. This study uses primary legal materials, namely; The 1945 Constitution of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court, Law Number 7 of 2017 concerning General Elections, Constitutional Court Decision Number 90 / PUU-XXI / 2023. While secondary legal materials come from textbooks containing legal principles and views of scholars, such as; seminar results, papers, theses and opinions from legal experts.

³ Lihat Amar Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023.

Results and Discussion

Judge's Basis in Decision Number 90/PUU-XXI/2023

In the decision of the Constitutional Court Number 90/PUU-XXI/2023 there are different reasons (concurring opinions) from 2 (two) Constitutional Justices, namely; Constitutional Justice Enny Nurbaningsih and Constitutional Justice Daniel Yusmic P. Foekh, and there are also different opinions (dissenting opinions) from 4 (four) Constitutional Justices, namely; Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Arief Hidayat, and Constitutional Justice Suhartoyo who stated the following:⁴

Judge Daniel Yusmic P. Foekh

Daniel Yusmic P. Foekh based on the age requirements for Presidential and Vice Presidential Candidates, that although determining the amount or number is the authority of the legislators (open legal policy), in the latest developments, the Court has relaxed the age limit for holding public office with the requirement of "having experience or being experienced" as in the Constitutional Court Decision Number 112/PUU-XX/2022, which was pronounced in a plenary session open to the public on May 25, 2023.

Based on the latest decision, the Court emphasized that the requirements for education, expertise, and especially experience are requirements that are substantially essential rather than the age limit requirement which is merely formal. Moreover, before the ruling, the Court had stated that the principle of legal policy can be set aside if it is contrary to morality, rationality, or causes intolerable injustice. Constitutional Court Decision Number 93/PUU-XVI/2018, which was pronounced in a plenary session open to the public on March 28, 2019, constitutes an abuse of authority (detournement de pouvoir), or is carried out arbitrarily (willekeur) and exceeds the authority of the legislator.

⁴ Lihat putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023.

Justice Wahiduddin Adams

Constitutional Justice Wahiduddin Adams based on the fact that the Court carried out a practice commonly known as “legislating or governing from the bench” without being supported by sufficient constitutional reasons within reasonable reasoning limits, so that this caused the Court to go very far and very deep into one of the most fundamental dimensions and areas for the implementation of good and constitutional legislative power, namely the function of parliamentary representation as one of the main reflections and implementations of the principle of “people's sovereignty” as regulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Therefore, in examining, trying, and deciding this case, the Court should (once again) convince the public and especially the Applicant that sometimes the independence of judicial power is carried out in the form of “the freedom not to do something” (The Dont’s; judicial restraint) which is relatively more difficult to do humanly, because humans naturally tend to be more interested in doing something rather than refraining from doing something.

Justice Saldi Isra

The Constitutional Court Judge based on the fact that the legislators explicitly conveyed and had similar desires as the Applicants, so that changes or additions to the requirements for presidential and vice presidential candidates should have been made through a legislative review mechanism by revising the Law requested by the Applicants, not throwing this "hot potato" to the Court. Unfortunately, this simple matter and the clearly visible nature of its opened legal policy, was actually taken over and made a "political burden" for the Court to decide. If this approach in deciding similar cases continues to be carried out, I am very, very worried and concerned that the Court is actually trapping itself in a political vortex in deciding various political questions which will ultimately undermine public trust and legitimacy towards the Court.

Judge Arief Hidayat

Constitutional Court Judge Arief Hidayat based on Article 75 paragraph (1) letter b, paragraph (3) letter c of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (abbreviated as PMK No. 2/2021), an application that has been withdrawn cannot be resubmitted, even though there has been no decision in the form of a decision on withdrawal issued by the Court, but there is sufficient reason for the Court to reject the letter of cancellation of the withdrawal of the case and grant the withdrawal of the Petitioner's case because the Petitioner has been proven not to be serious and sincere in filing the a quo application.

Moreover, the legal issue whose constitutionality was tested is a major issue that is sensitive because it is full of political interests and attracts public attention even though the legal issue in question is not the only application submitted. Therefore, the Court should issue a Decree granting the withdrawal of the a quo application on the grounds that the Petitioner was not serious and professional in filing the application and can be suspected of playing with the authority and dignity of the Court. Therefore, it is the obligation of the constitutional judge to provide education to the justice seekers to be careful, precise and serious and not to take this matter lightly, so that similar cases do not happen again in the future. Thus, as a legal consequence of the withdrawal of the case, the Applicant cannot cancel the withdrawal of the a quo case and the case that has been withdrawn or withdrawn cannot be resubmitted.

Judge Suhartoyo

Constitutional Court Judge Suhartoyo based on the quotation of the legal considerations of the dissenting opinion in case 29/PUU-XXI/2023 as mentioned above against the Applicant in the a quo application, I also have an opinion against the Applicant who requested that the norm of Article 169 letter q of Law Number 7 of 2017 be interpreted as fully in the petitum of his application which is not for his own benefit, is also not relevant to be given legal standing to act as the applicant in the a quo application, so that the legal considerations of the dissenting opinion in case Number 29/PUU-XXI/2023, mutatis mutandis as an inseparable part of the legal



considerations in my dissenting opinion in the decision on the a quo application. Judge Suhartoyo is of the opinion that regarding the a quo application, the Constitutional Court should also not give legal standing to the Applicant and therefore it is not relevant to consider the main points of the application, so that in the a quo decision "declares the Applicant's application cannot be accepted".

Judge Enny Nurbaningsih

Constitutional Court Judge Enny Nurbaningsih based on the considerations associated with Constitutional Court Decisions Number 29/PUU-XXI/2023, Number 51/PUU-XXI/2023 and Number 55/PUU-XXI/2023, where the Court has decided to reject the Petitioners' (Applicants') application, even though specifically in cases Number 51/PUU-XXI/2023 and Number 55/PUU-XXI/2023, the argument is that they are experienced as state administrators, where in the scope of state administrators there are regional heads.

In the legal considerations of Constitutional Court Decision Number 51/PUU-XXI/2023 which *mutatis mutandis* applies to the legal considerations of Constitutional Court Decision 55/PUU-XXI/2023, the Petitioners' application does not clearly explain the limits to which the state administrators in question are said to be experienced equivalent to the position of President or Vice President. Meanwhile, my different reason in the a quo Applicant's application is because the Applicant's argument has specifically outlined the connection with being experienced as a regional head at both the provincial and district/city levels, but in accordance with the level in the implementation of government affairs, in this context the governor as the head of an autonomous region and also the representative of the central government is relevant to approach the level of the organizer of higher government affairs.

So that the reason for Judge Enny Nurbaningsih does not negate my view as part of the decision making case Number 51/PUU-XXI/2023 and Number 55/PUU-XXI/2023. Thus, Enny Nurbaningsih has a different reason in granting part of the Applicant's petition, namely "being at least 40 (forty) years old or having experience as a governor whose requirements are determined by the legislator".

Judge Anwar Usman

Constitutional Court Judge Anwar Usman based on the fact that the age limit is not expressly regulated in the 1945 Constitution, but by looking at the practices in various countries, it is possible for the president and vice president or head of state/government to be entrusted to figures under the age of 40, and based on the experience of regulation both during the RIS government (30 years) and during the reform era, in casu Law Number 48 of 2008 has regulated the age limit for the president and vice president at a minimum of 35 (thirty-five) years.

Judge Manahan M.P. Sitompul

Constitutional Court Judge M.P. Sitompul based on the fact that the age limit is not expressly regulated in the 1945 Constitution, but by looking at the practices in various countries, it is possible for the president and vice president or head of state/government to be entrusted to figures under the age of 40, and based on the experience of regulation both during the RIS government (30 years) and during the reformation period, in casu Law Number 48 of 2008, the age limit for the president and vice president has been regulated at a minimum of 35 (thirty-five) years.

Judge M. Guntur Hamzah

Constitutional Court Judge M. Guntur Hamzah based on the fact that the age limit is not expressly regulated in the 1945 Constitution, but by looking at the practices in various countries, it is possible for the president and vice president or head of state/government to be entrusted to figures under the age of 40, and based on the experience of regulation both during the RIS government (30 years) and during the reformation period, in casu Law Number 48 of 2008, the age limit for the president and vice president has been regulated at a minimum of 35 (thirty-five) years..

Legal Review of Judge's Considerations in Decision Number 90/PUU-XXI/2023

Legal review is a way of studying carefully examining (to understand), a view or opinion from a legal perspective. The definition of legal review according to criminal law is that it can be equated with reviewing material criminal law, which means a careful examination of all provisions and regulations that indicate which actions can be punished. Legal review can be interpreted as a careful examination

activity, data collection or investigation carried out systematically and objectively on something according to or based on law and statutes.⁵

As for the problem studied by the researcher, after the Constitutional Court read out several decisions on the application for judicial review regarding the constitutionality of Article 169 letter q of Law No. 7 of 2017 concerning General Elections which regulates the minimum age limit for Presidential and Vice Presidential candidates, various opinions emerged from the community who also provided assessments of these decisions. There are those among the community who are pro and con of the Constitutional Court Decision, especially case Number 90/PUU-XXI/2023.

In the Constitutional Court Decision Number 90/PUU-XXI/2023, it is stated that the minimum age of 40 (forty) years is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "at least 40 (forty) years old or has/is currently holding a position elected through general elections including regional head elections". The researcher assumes that the case that has been decided by the Constitutional Court is a final and final decision, so that no other legal remedies can be taken. The researcher assesses that there are inconsistencies in the Constitutional Court's decision, namely as follows:

First, the researcher assessed that the Constitutional Court Decision Number 90/PUU-XXI/2023 had added norms that should not be in accordance with the initial concept of the Constitutional Court Decision, namely testing existing norms to be assessed as constitutional or unconstitutional. However, in Decision Number 90/PUU-XXI/2023, it granted the case's request to add new norms that previously did not exist or were not regulated. The Constitutional Court Decision Number 90/PUU-XXI/2023) is not in accordance with the initial concept of the existence of the Constitutional Court, whose function is to test existing norms. However, the request (petitum) is to add norms. If testing existing norms, then the alternative is to test (whether) the norm is constitutional or not. This means that if what is being tested is the age requirement of 40 years, then the age of 40 years must be decided whether it is in accordance with the constitution or not in accordance with the constitution.

⁵ Marwan, SM., & Jimmy. *Kamus Hukum*. Reality Publisher. Surabaya. 2009. h. 651.

Second, the researcher assessed that the Constitutional Court Decision Number 90/PUU-XXI/2023 was not decided unanimously, because there were dissenting opinions and concurring opinions between the panel of judges. There were several judges who considered that the case should be granted, while others argued that it should be rejected, or even should not be accepted. Thus, if we read it not from a legal perspective, then which opinion should be followed? Whereas if from a legal perspective, then the majority opinion of the judges should be followed..

Legal Consequences of Decision Number 90/PUU-XXI/2023

Legal consequences are consequences caused by the law, against an act committed by a legal subject. Legal consequences are the consequences of an action taken, to obtain a result expected by the legal actor. The consequences referred to are the consequences regulated by law, while the actions taken are legal actions, namely actions that are in accordance with applicable law.⁶

Regarding the legal consequences of the Constitutional Court Decision Number 90/PUU-XXI/2023 Concerning the Age Limit for Presidential and Vice Presidential Candidates, Law Number 7 of 2017 concerning Elections initially regulated the age limit for Presidential and Vice Presidential Candidates. Article 169 letter q states that Presidential and Vice Presidential Candidates must be at least 40 (forty) years old. Thus, the minimum age limit for Presidential and Vice Presidential Candidates in Indonesia is at least 40 (forty) years old.

However, with the issuance of the Constitutional Court Decision Number 90/PUU-XXI/2023 Concerning the Age Limit for Presidential and Vice Presidential Candidates in effect, the regulation applies and must be obeyed. Thus, the age limit for Presidential and Vice Presidential Candidates is no longer only at least 40 (forty) years old, but has been changed and replaced to at least 40 (forty) years old and currently/having served as a regional head. Thus, the changes regarding the age limit for presidential and vice presidential candidates in the future must be obeyed by everyone in Indonesia..

⁶ Soeroso. *Pengantar Ilmu Hukum*. Sinar Grafika. Jakarta. 2006. h. 295.

Conclusion

In deciding a case, the judge considers factors including formal and material factors. In the Constitutional Court decision Number 90/PUU-XXI/2023, there are differences of opinion from each judge. Thus, this is included in formal considerations, because each judge provides reasons based on the existing legal basis.

The Constitutional Court's decision with different reasons (concurring opinion) from 2 (two) Constitutional Justices, namely; Constitutional Justice Enny Nurbaningsih and Constitutional Justice Daniel Yusmic P. Foekh, and there are also different opinions (dissenting opinions) from 4 (four) Constitutional Justices, namely; Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Arief Hidayat, and Constitutional Justice Suhartoyo.

Then, the legal consequences of the decision are final and binding. If it meets the requirements and provisions of the legislation during the trial. However, if in the future there is something contained in the provisions of the legislation that is violated, then the Constitutional Court Decision Number 90/PUU-XXI/2023 is declared null and void by law.

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