

Analysis of the Constitutional Court Decision No. 90/PUU-XXI/2023 about the age limit requirements for Presidents and Vice Presidents

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Abstract

The Constitutional Court Decision Number 90/PUU-XXI/2023, which opens up opportunities for presidential and Vice-Presidential candidates under the age of 40 if they have served or are currently serving as regional heads is one of the most controversial decisions in the history of Indonesian constitutionalism. This study aims to analyze the legal and political implications of the decision on the democratic system, the principle of the rule of law, and constitutional justice. In addition, this study examines the age limit provisions of presidential and Vice-Presidential candidates in the perspective of the 1945 Constitution, laws and regulations, and comparative practices of various countries. The methods used are normative legal research with a legislative approach, a case approach, and a conceptual approach. The results of the study show that the Constitutional Court Decision No. 90/PUU-XXI/2023 not only interprets norms, but also substantively adds new norms, causing a shift in the function of the Constitutional Court from negative legislators to positive legislators. This condition gives birth to the problem of legal certainty and opens up the space for unequal political access for citizens who do not have a background as regional heads. From the point of view of constitutional justice, the ruling is considered discriminatory because it only benefits certain groups and has the potential to strengthen the practice of political dynasties. Comparative analysis with a number of countries shows that the age limit of heads of state varies, but Indonesia is a country with a high age limit, which is 40 years old. However, the change in the age limit should be carried out through legislation products, not through judicial decisions that are full of interpretation and political interests. This study concludes that the Constitutional Court Decision No. 90/PUU-XXI/2023 has caused tension between the principles of constitutionalism, electoral justice, and judicial independence. Therefore, the reformulation of the age requirements for presidential and Vice-Presidential candidates needs to be placed within the framework of electoral law reform that is participatory, transparent, and free from conflicts of interest, in order to ensure that Indonesian democracy runs in a fair and constitutional manner.

Keywords: Constitutional Court, age limit, President and Vice President, constitutional justice, state of law

Introduction

Indonesia as a democratic country regulates the requirements for presidential and Vice-Presidential candidates through the 1945 Constitution of the Republic of Indonesia (1945 Constitution) ^[4]. One of the conditions set is the minimum age limit for presidential and Vice-Presidential candidates, which has been 40 years old. This provision aims to ensure that prospective state leaders have sufficient maturity, experience, and knowledge about the country's political and economic dynamics ^[28]. In the perspective of democratic theory, as described by Robert Dahl, this age restriction serves to maintain a balance between political participation and the quality of competent leadership. Then, this age limit is challenged, even more so in the realm of political dynamics that continue to develop ^[1].

This age restriction reduces opportunities for the younger generation who have great potential to lead the country. This is in line with the theory of political participation put forward by Sidney Verba, which explains the importance of access and involvement of all levels of society in the political process ^[6].

Changes to the age requirements for presidential and Vice-Presidential candidates, as exemplified in the Constitutional Court Decision Number 90/PUU XXI/2023, are relevant to open up wider opportunities for young candidates who want to contribute to the government ^[3].

Then, a polemic arose when the Constitutional Court granted part of the request for a material review of the age provision in Article 169 letter q of Law Number 7 of 2017 concerning General Elections ^[29]. The Constitutional Court Decision Number 90/PUU-XXI/2023 opens opportunities for a person under the age of 40 to run as a presidential or Vice-Presidential candidate, as long as he has or is currently occupying a position elected through elections, such as a regional head. This verdict is in the spotlight because it is considered to be directly related to Gibran Rakabuming Raka, the Mayor of Solo who is the son of President Joko Widodo. With this decision, Gibran can run as a Vice-Presidential candidate in the 2024 election, even though he is not yet 40 years old ^[5].

The problem is the legality and constitutionality of changing the minimum age limit for presidential and Vice-Presidential candidates by the Court. the Constitution, as well as its impact on the principles of democracy and constitutional justice. Then, the question arises about whether the age limit, both minimum and maximum, is still relevant and fair in the realm of modern democracy. So far, most studies in Indonesia have only discussed the impact of the Constitutional Court decision on the legal and political system, especially regarding the age limit requirements for presidential and Vice-Presidential candidates.

From the results of the initial observations, various media in Indonesia reported that the Constitutional Court's decision

was very controversial and caused criticism from various circles, including academics, students, and civil society. That the family relationship between the Chairman of the Constitutional Court at that time, Anwar Usman, and Gibran Rakabuming Raka. This raises allegations of violations of judicial ethics and strengthens the impression of political intervention in the constitutional judiciary.

Issues related to the age limit for young presidents are often related to the potential for political dynasties. If a young president continues to rule with the support of his incumbent family, this can strengthen the political dominance of one family and hinder a healthy transition of power. Then, the lack of experience and emotional maturity in a young president is considered a risk to the stability of the country, as important decision-making can be affected by immaturity. Then, decisions taken in a caustic manner, without clear constitutional considerations, can set a bad precedent in state law^[8].

Hertler later revealed that there are issues related to the age limit of older presidents more often related to the risk of cognitive and physical decline that could affect critical decision-making abilities. As he ages, an aging president may face difficulties in carrying out the duties of the country optimally. Then, leadership that tends to maintain the status quo can hinder the leadership regeneration needed for the country's progress. The inequality between the needs of the younger generation and the policies taken by the old president can create social and political tensions, which ultimately disrupt a more inclusive and progressive development process^[11].

This research is important because it concerns the sustainability of democracy, constitutional justice, and the institutional integrity of the Constitutional Court. In the state of law, changes to election norms, especially regarding the requirements for candidates for heads of state, should be guarded from practical political interests. It is hoped that the public and policymakers can objectively assess whether the decision is in accordance with the spirit of the constitution and the principle of justice.

Based on the above background, there are problems that need to be identified, namely: 1). What are the legal implications of the Constitutional Court Decision Number 90/PUU-XXI/2023 on the democratic system in Indonesia? 2). How are the minimum and maximum age limits for presidential and Vice-Presidential candidates viewed from the perspective of the constitution? 3). Is the change in the age limit in accordance with the principle of constitutional justice?

Theoretical Review

Constitutional Law Theory and Principles

Within the framework of the Constitutional Law, the regulation of the age requirements for presidential and Vice-Presidential candidates is closely related to the principles of the state of law (*rechtsstaat*), people's sovereignty, and constitutional justice. Hans Kelsen emphasized that the state of law must stand on hierarchical, consistent, and non-multi-interpreted legal norms. This principle requires that all the conditions for the candidacy of the President and Vice President be clearly regulated in positive law, not through casuistic interpretation.

The theory of people's sovereignty initiated by Jean Jacques Rousseau states that the legitimacy of power comes from the people^[12]. Therefore, the conditions for the nomination of

national leaders must reflect the will of the people, not the interests of a few elites.

In addition, the theory of constitutional justice emphasizes that the rule of law is not only formally valid, but also fair in substance^[13]. In the context of age requirements, the key question is whether the age limit provision provides fair access for all citizens.

a. People's Sovereignty Theory

In the modern constitutional law system, the theory of people's sovereignty is the main foundation in the formation of constitutional norms. This theory asserts that the legitimacy of state power comes from the people as the owner of the highest sovereignty, while state leaders only carry out the people's mandate through democratic mechanisms. Jean-Jacques Rousseau in his work *Du Contrat Social* explains that the public will (*volonté générale*) is the main source of political legitimacy, and that law is only valid if it reflects the collective aspirations of the people.

b. The Theory of the State of Law (*Rechtsstaat*)

The concept of the state of law (*rechtsstaat*) outlines that every action of a state administrator must be based on law, not on absolute power. According to A.V. Dicey, the main characteristics of the rule of law are the rule of law, equality before the law, and the guarantee of basic rights of citizens. Meanwhile, Hans Kelsen in *Reine Rechtslehre* states that law must be arranged hierarchically with the Constitution as the highest norm that is the basis for the validity of all norms under it. In relation to the age requirements of the President and Vice President, the theory of the state of law requires the clarity of norms that are not multi-interpreted. Changing or casically-interpreted age requirements have the potential to create legal uncertainty (*rechtsonzekerheid*).

c. Theory of Constitutional Justice In addition to being formally legal, every constitutional norm is also required to be substantially fair. The theory of constitutional justice emphasizes that the rule of law must protect the interests of all citizens without discrimination. According to John Rawls in *A Theory of Justice*, justice must be understood as fairness, which is the equitable distribution of political rights and obligations so that all citizens have an equal opportunity to participate in government. In the context of age requirements, constitutional fairness is questioned when the rules only give certain age groups the opportunity to run for President and Vice President.

d. Political Ethics Theory Political ethics functions as a moral watchdog in legal and political practice. According to Immanuel Kant, moral action is an action based on good faith and can be used as a universal law (categorical imperative). In constitutional law, political ethics teaches that public officials and state institutions must be free from conflicts of interest, moral corruption, and abuse of power.

Constitutional Provisions

Article 6 of the 1945 Constitution leaves the regulation of the requirements for presidential and Vice-Presidential candidates to the law, without explicitly mentioning the age limit. On that basis, Law No. 7 of 2017 sets a minimum age of 40 years, a provision intended to ensure maturity, experience, and leadership capacity^[32]. This flexibility shows that Indonesia adheres to the principle of open legal

policy, where lawmakers can adjust technical requirements according to the needs of the times.

In international comparisons, the age requirements for presidential candidates vary widely, such as 35 years old in the United States and 18 years old in France, which reflects the influence of each country's political culture and constitutional design. In Indonesia, the provision of the age limit has always triggered a debate between the need for political maturity and the desire to open up the participation of the younger generation, so it is often tested materially in the Constitutional Court ^[24].

Historically, the age requirement for presidential candidates in Indonesia has changed significantly, especially after the reform, from not strictly regulated to explicit, which is 35 years old and then raised to 40 years. This change reflects the dynamics of democratic principles, political participation, and efforts to improve the quality of national leadership in accordance with the times.

History of Age Regulation in Legislation

In the era of the Old Order and New Order, the President and Vice President were elected by the People's Consultative Assembly, not directly by the people. As a result, the age requirement was not a crucial issue and was not regulated in detail in the election law of that time, such as Law No. 15 of 1969.

The reform era brought fundamental changes with the implementation of direct elections. Law No. 23 of 2003 for the first time stipulates a minimum age requirement of 35 years. Then, through Law No. 42 of 2008 and Law No. 7 of 2017, the age limit was raised to 40 years old with consideration of the need for more experience and political maturity, although it was criticized for limiting the participation of the younger generation.

The Constitutional Court Decision No. 90/PUU-XXI/2023 provides an exception to the 40-year-old age requirement. The Constitutional Court ruled that a person who is not yet 40 years old can run for office as long as he has served or is serving as the head of the regional as a result of the general election. This decision has attracted controversy because it is considered to open up opportunities for the younger generation, but at the same time it has been criticized because the Constitutional Court is considered to have acted beyond its authority as a negative legislator ^[33].

The Constitutional Court's decision is considered to create new norms beyond the limits of its constitutional authority, thus triggering a debate about the shift in the function of the Constitutional Court from a negative legislator who should only cancel the norm, to a positive legislator who helps shape the rule of law.

Comparison of Age Limits of Presidents and Vice Presidents in Different Countries

The comparative study of constitutional law, as emphasized by Esmein, is important to understand the variations and philosophical-political foundations of the age requirements of presidential candidates in different countries. In the context of this study, a comparison was made to position Indonesia in the global spectrum, namely whether the regulations are more inclusive for the younger generation or emphasize more stability and maturity of leadership ^[23].

In established democracies, the variation in age arrangements is wide, reflecting differences in political and cultural systems. The United States sets a minimum age of

35 years in its constitution, France is only 18, while Germany sets 40 years for the more symbolic role of head of state. While Britain and Japan do not set a specific age for heads of government, the tradition of seniority in political parties results in leaders who are generally mature.

In developing countries, the age requirements tend to be medium to high. India and Brazil set 35 years, while the Philippines chose 40 years in anticipation of mature leadership experience ^[21].

Nigeria even lowered its age from 40 to 35 through the reform movement. In countries with special systems, Singapore and Turkey set high limits (45 and 40 years) due to the strategic functions of the president, while China relies on internal party traditions.

Based on comparative analysis, countries can be classified into three groups: low age (18–25 years, such as France), middle age (35 years, such as the US and Brazil), and high age (40–45 years, such as Germany and the Philippines). With the age requirement of 40 years, Indonesia is included in the last group that emphasizes political stability and maturity. However, the Constitutional Court Decision No. 90/PUU-XXI/2023 which provides an exception for regional heads under the age of 40 shows the dynamics and efforts to balance this principle with the demands of the younger generation's participation.

The Relevance of the Age Limit Provisions in the Context of Indonesian Democracy

The provision of the 40-year age limit for presidential and Vice-Presidential candidates in Law No. 7 of 2017 is a crucial issue that touches on the quality of democracy, people's sovereignty, and constitutional justice. Democracy, as affirmed by Robert A. Dahl, requires effective participation, but it also requires mechanisms of selection. The age limit is considered a normative filter to ensure the maturity and capacity of prospective leaders.

From the perspective of people's sovereignty and political rights, the high age restriction can be considered disproportionate, as the young generation who has turned 21 years old has been considered legally mature and has full political rights at the regional level. According to John Rawls's principle of justice, differentiation of treatment such as age requirements must have a compelling rational reason, otherwise it has the potential to violate constitutional justice. The Constitutional Court Decision No. 90/PUU-XXI/2023 adds a new dimension by paving the way for candidates under 40 years old who have experience as regional heads. This ruling recognizes that political maturity is not only measured by age, but also by leadership track record. However, this ruling has drawn criticism because it is considered to create a new norm that is potentially discriminatory and cannot be separated from the issue of political dynasties, thus threatening constitutional ethics and democratic legitimacy ^[25].

In international comparisons, the age limit varies greatly, ranging from 18 years old (France), 35 years old (USA, Brazil), to 40-45 years old (Indonesia, Philippines, Singapore). Indonesia's position is in the group that emphasizes stability and maturity, although examples from other countries show that youth is not synonymous with inability. On the other hand, the debate also concerns the risk assessment of leaders who are too young or too old.

Therefore, a more proportionate reformulation of the age requirement is needed, such as lowering the limit to 35 years

as a compromise solution. The relevance of this provision lies in the effort to balance the guarantee of leadership quality with the right of participation of the younger generation. Clear, consistent, and non-discriminatory age regulation is an important instrument for building a healthy and just democracy, which must be placed within a long-term framework, not a momentary political interest.

History of Age Limit Determination in Indonesia

In the history of Indonesian constitutionalism, the 1945 Constitution does not explicitly mention the age limit, but leaves it to the law. The provisions of the age limit were first regulated in Law Number 23 of 2003 concerning Presidential and Vice-Presidential Elections which required a minimum age of 35 years. This provision was then increased to 40 years through Law Number 42 of 2008 and maintained in Law Number 7 of 2017. This change was influenced by the legal political considerations of the time that wanted to ensure that national leaders were truly mature in experience and capacity.

Analysis Results

Legal Implications of the Constitutional Court Decision Number 90/PUU Xxi/2023 concerning Presidential and Vice-Presidential Candidates

Implications for the Legal System

This Constitutional Court decision has exceeded its constitutional authority. The Constitutional Court, which is supposed to function as a negative legislator (only canceling unconstitutional norms), acts as a positive legislator by creating a new norm of age exemption for former/current regional heads. This is judicial overreach that obscures the separation of powers, because it enters the realm of legislation that is the domain of the House of Representatives and the President^[10].

This ruling raises serious legal uncertainty. New multi-interpreted norms such as the definition of "regional head" do not go through a clear legislative process. Sudden changes in rules ahead of the 2024 election disrupt the stability and predictability of the legal system, contrary to Article 28D paragraph (1) of the 1945 Constitution and the principle of the rule of law.

This decision is contrary to the principle of equality before the law (Article 27 paragraph (1) of the 1945 Constitution). It creates new discrimination by giving privileges only to the former/middle group of regional heads, while denying the rights of other young candidates (such as academics or ministers) who have equal capacity. This is also contrary to the principle of non-discrimination in the International Covenant on Civil and Political Rights (ICCPR).

This decision is inconsistent with the previous Constitutional Court decision (No. 29/PUU-XI/2013) which affirmed the age requirement as an open legal policy for lawmakers. This drastic change in stance without strong legal arguments weakens the consistency and legitimacy of the Constitutional Court as the guardian of the constitution, as well as reduces public trust^[14].

Changes in norms that are caustic and close to the election have the potential to damage the legitimacy and fairness of the 2024 election competition, because it is considered to benefit certain candidates and pave the way for political dynasties. This shifts the focus from the substance of leadership to a partisan interpretation of the law, as well as burdening the General Election Commissions in adjusting technical regulations.

Comparative analysis shows the uniqueness (and controversy) of this verdict. In the United States and Germany, changes to executive terms are made through constitutional amendments or legislative processes, not court rulings. In the Philippines, the age requirement is considered a closed legal policy. Judicial activism in India focuses more on human rights, rather than changing electoral norms. The Indonesian Constitutional Court's decision is considered a deviation from best practice.

Systemically, this ruling has the potential to shift Indonesia from a state of law (*rechtsstaat*) to a state of power (*machtsstaat*), where the law is subject to political interests. To prevent recurrence, urgent reforms are needed: (1) Affirmation of the limits of the Constitutional Court's authority as a negative legislator through the revision of the law, (2) Strengthening ethical and transparency mechanisms to prevent conflicts of interest, and (3) Increasing public participation in the judicial review process for greater accountability^[26].

Implications for the Rule of Law Principle

The Constitutional Court Decision No. 90/PUU-XXI/2023 is considered to have deviated from the fundamental principles of the state of law. First, this ruling violates the principles of legality and the rule of law, as it creates a new norm (exceptions for regional heads under 40 years old) outside the formal legislative process. Second, this ruling is contrary to the principle of equality before the law because it only gives privileges to one specific group (former/current regional heads), thus creating new discrimination.

Institutionally, this decision exceeds the constitutional authority of the Constitutional Court. The Constitutional Court is supposed to play the role of a negative legislator (examiner of constitutionality), but in this decision it acts as a positive legislator (norm former). This results in disruption to the system of separation and division of power (checks and balances). The Constitutional Court enters the realm of legislation, which is the domain of the House of Representatives and the President, thus triggering tensions between institutions and potentially creating judicial supremacy.

The decision issued closer to the election creates legal uncertainty and lowers the legitimacy of the Constitutional Court in the eyes of the public. Suddenly changing norms undermine the principle of legal certainty which is the pillar of the state of law. The alleged conflict of interest involving the Chairman of the Constitutional Court at that time further damaged the perception of the independence and integrity of the constitutional judiciary, which was the foundation of public trust in the rule of law^[19].

Comparative analysis shows a deviation from the practice of established democratic countries. In Germany and the United States, constitutional courts do not create new norms regarding the requirements for public office, as they are considered the domain of lawmakers or constitutional amendments. Critics of academics such as Jimly Asshiddiqie and Saldi Isra assert that this ruling is dangerous because it creates a precedent where the Constitutional Court can shape laws, not just test them, thus threatening constitutional democracy.

The implications of this ruling are systemic. It interferes with the legislative function of the House of Representatives, affects the dynamics and fairness of election competitions because it is considered to benefit

certain candidates, and has the potential to weaken the quality of national leadership (meritocracy) by paving the way for political dynasties. Changes in the rules of the game approaching the election also risk reducing the legitimacy of the election results themselves^[7].

The long-term consequence is the weakening of Indonesian constitutionalism, where the limitation of power through law is displaced by practical political interests. To prevent repetition, a reform agenda is needed, such as: (1) affirming the limits of the Constitutional Court's authority through the revision of the law, (2) strengthening the ethical and transparent mechanism in the Constitutional Court, and (3) improving the legislative function and capacity of the House of Representatives so that it is not easily bypassed by court decisions.

Comparative Analysis with Other Countries

The age limit of presidential and Vice-Presidential candidates varies greatly between countries, reflecting different historical and political contexts. The United States sets a minimum limit of 35 years to ensure political maturity. France is more inclusive with a formal age limit of 18, in keeping with its *liberté* tradition. In contrast, Germany and the Philippines set a 40-year limit, taking into account the need for mature experience for symbolic (German) or powerful executive positions (Philippines). Nigeria showed momentum by lowering the age limit from 40 to 35 years old in 2018 through the civil movement "Not Too Young to Run"^[30].

Philosophically, these regulations are divided between two approaches: experience-based political maturity (as in the US and Germany) and democratic inclusion (as in France and Nigeria). Contextually, countries with established democracies tend to be more inclusive, while countries in transitional or post-authoritarian phases often set higher limits to guarantee stability, which can then be revised by civil society pressures^[9].

For Indonesia, the consideration is to balance the guarantee of leadership quality with the right of citizens' political participation. Constitutional Court Decision No. 90/PUU-XXI/2023 puts Indonesia in a middle or compromise position: maintaining the age limit of 40 years, but creating an affirmative exception for candidates under 40 years old who have been or are serving as elected regional heads. This model is different from Nigeria (which lowers the general boundaries) and France (which is very inclusive), but it is more flexible than the German and Philippine models.

This ruling represents a shift from rigid restrictions to a model that considers experience-based competencies. However, this raises criticisms and challenges: (1) Legal uncertainty regarding the interpretation of "regional head"; (2) The potential for new discrimination against young candidates without regional leadership experience; and (3) Questions about the inclusiveness of substantive democracy. The challenge ahead is to ensure consistency of interpretation, legal certainty, and maintain a balance between competence, leadership regeneration, and the principle of equality in Indonesian democracy.

Age Limit for President and Vice President from the Perspective of the Constitution

Age Limit for President and Vice President

The position of the President and Vice President as holders of executive power makes the determination of the

conditions for their candidacy a fundamental issue in the constitutional system. One of the most controversial requirements is the minimum age limit. The 1945 Constitution does not explicitly regulate this, but rather leaves it to the law (Article 6 paragraph (2)). The provisions of the Election Law that set a 40-year limit triggered legal debates and became the object of testing constitutionality at the Constitutional Court, because it was considered to reduce the constitutional right of citizens to vote (Article 28D paragraph (3) of the 1945 Constitution).

The history of setting the age limit in Indonesia shows a dynamic; from the previous 35 years to 40 years. The core debate lies in whether age can be a legitimate delimitation of political rights. On the one hand, age is considered a marker of maturity and readiness to lead. On the other hand, age restrictions can be discriminatory and close opportunities for younger qualified individuals. Comparisons with other countries (such as the US 35 years and the Philippines 40 years) show policy variations, strengthening the analysis of the feasibility and proportionality of the age requirement in Indonesia^[15].

The case of testing the Election Law at the Constitutional Court (for example, Decision No. 90/PUU-XXI/2023) is a crucial case study. The applicant submitted an argument that the age limit of 40 years is discriminatory. The significance of this case is very big for Indonesian politics because it touches the younger generation's access to the top of leadership and tests the principle of equality before the law. This research urges to make an academic contribution to the study of constitutional law and its practical relevance for the improvement of the implementation of fairer elections.

This research uses a multidisciplinary approach to comprehensively analyze problems: (1) Legislation, by examining the 1945 Constitution and related laws; (2) Conceptual, by applying the theory of the state of law and democracy; (3) Historical, to trace the evolution of the setting; (4) Comparison, by comparing practices in other countries; and (5) Cases, by reviewing relevant Constitutional Court decisions. This combination of approaches is designed to produce in-depth analysis and evidence-based recommendations^[32].

Amar Constitutional Court Decision

The decision of the Constitutional Court is the core or final result of a decision, which contains an order or determination of the judge after considering all the evidence, evidence, and information in the trial. In the Indonesian constitutional system, the Constitutional Court's decisions have a very important position because they are final and binding, in accordance with the authority of the Constitutional Court as the court of first and last instance. Its existence not only determines the validity of a legal norm, but also serves as a guideline for the development of law and democracy in Indonesia^[16].

The Constitutional Court's decision has several main characteristics: final (no appeal/cassation legal remedy can be filed), binding on all citizens and state institutions, and *erga omnes* (applicable to everyone, not just the parties to the case). This nature makes the Constitutional Court's decision have a wide impact, especially in cases involving citizens' political rights, such as testing election laws. It can be self-executing, although in practice it sometimes requires legislative follow-up.

In general, the Constitutional Court's decision in testing the law can take the form of: granting the application in whole or in part, rejecting the application, or declaring the application inadmissible or dropped. An example is the Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and Vice-Presidential candidates. In this case, the Constitutional Court formally granted part of the application.

Amar's decision in the case stated that the minimum age limit of 40 years is constitutional. However, the Constitutional Court also created a new exception by stating that candidates who are not yet 40 years old can run for office if they have been or are serving as regional heads elected through elections. Amar emphasized that the determination of the age limit is the domain of lawmakers, while emphasizing the principles of legal certainty, justice, and equality ^[27].

This decision is considered a breakthrough because it opens up space for political participation for the younger generation who have leadership experience. However, it has also caused widespread controversy and debate. This is because the Constitutional Court is considered to have exceeded its role as a negative legislator (which only cancels the norm) and turned into a positive legislator (which forms a new norm) by creating exceptions that are not regulated in the law, thus triggering the issue of discrimination against candidates from other channels and raising questions about the limits of the Constitutional Court's authority.

Legal Considerations of Constitutional Judges

The judge's consideration in the decision on the age limit for presidential candidates/Vice-Presidential candidates is based on the 1945 Constitution, especially Article 1(2) on people's sovereignty, Article 6(2) on the authority of lawmakers, and Article 28D (1) on legal equality. Judges use textual, systematic, and teleological interpretation methods to build an argument that although the lawmaker has the authority to set conditions, the Court has the right to correct norms that are considered discriminatory. The emphasis on the purpose of elections to produce quality leadership is the basis for consideration that experience as a regional head can replace the age requirement ^[17].

This decision was colored by deep differences of opinion among constitutional judges. The parties who agree argue that the Court needs to make normative corrections for the sake of substantive justice, arguing that leadership experience shows political maturity. On the contrary, the dissenting judge considered the addition of the exception clause as an excess of authority (*ultra petita*), because the Court should only function as a negative legislator. This difference reveals the tension between the desire to uphold justice and obedience to the limits of institutional authority ^[20].

Constitutional law experts criticized three main aspects of this ruling. First, there is a shift in the function of the Court from a negative legislator to a positive legislator that violates the principle of separation of powers. Second, the exception only for regional heads creates new discrimination against candidates from other channels such as the House of Representatives or ministers. Third, this decision has the potential to undermine the legitimacy and independence of the Court in the eyes of the public, because it is considered to be full of certain political interests.

This ruling raises a constitutional dilemma between pursuing substantive justice and respecting the limits of institutional authority. On the one hand, the verdict expands the political rights of the experienced young generation. On the other hand, it creates legal uncertainty and has the potential to trigger a crisis of public trust in the Constitutional Court. This case has become an important precedent in the development of Indonesian constitutional law, showing the need for prudence for the Court in balancing its constitutional functions with the limits of authority that have been set.

Controversy and Criticism of the Constitutional Court Decision

The analysis of the Constitutional Court decision is an important step to understand the legal, political, and social implications of a decision. This analysis not only aims to find out what was decided, but also how the decision affects the Indonesian constitutional system ^[18].

In the context of the material test regarding the age limit for presidential and Vice-Presidential candidates, the analysis of the Constitutional Court's decision Number 90/PUU-XXI/2023 is very crucial because it concerns the constitutional rights of citizens and the quality of democracy in Indonesia. This decision not only maintains the minimum age limit of 40 years as stipulated in the Election Law, but also adds new norms that open up opportunities for candidates under 40 years old if they have experience as democratically elected regional heads. Such a decision raises a debate: whether the Court still functions as a negative legislator or has shifted to a positive legislator.

1. This ruling raises legal ambiguity. On the one hand, the Constitutional Court affirmed the minimum age limit of 40 years as constitutional. However, on the other hand, the Constitutional Court created a new multi-interpretation exception (possibly for candidates under 40 years old with special qualifications) that was not in the law. This can lead to uncertainty and debate in its implementation. This decision recognizes the principle of equality for the younger generation. However, substantive justice has not been fully achieved because the exception only applies to regional head candidates and is not extended to other public positions such as members of the House of Representatives, ministers, or high-ranking state officials. This creates inequality of treatment.
2. Legal Political Analysis This decision cannot be separated from the dynamics of national politics. Some people consider that this decision has the potential to be full of interests because it paves the way for certain figures to advance in the election. As a constitutional judicial institution, the Court is supposed to maintain its independence and distance itself from practical political tug-of-war. However, on the other hand, this decision can also be read as a form of the Constitutional Court's courage in expanding political access for the younger generation. From the perspective of political participation theory, this ruling expands citizen participation in the political process, although the method is still controversial.
3. Sociological Analysis Sociologically, this decision reflects the need of the community to provide space for young leaders. The young generation who are considered energetic, innovative, and close to the

development of the times deserve to be given greater opportunities in national leadership. However, the community also demands clear legal certainty. Inconsistent norms can actually cause social conflicts, especially when decisions are considered to benefit certain groups.

Comparison with Previous Constitutional Court Decisions

When compared to the previous Constitutional Court decision, this decision is unique^[21]. Such as:

1. Constitutional Court Decision No. 7/PUU-XI/2013 regarding the requirements for legislative candidates. In the ruling, the Constitutional Court emphasized the need for substantive justice by opening up opportunities for former inmates.
2. Constitutional Court Decision No. 30/PUU-XVI/2018 related to the presidential threshold. The Constitutional Court rejected the application because it considered it to be the domain of lawmakers^[12]. When compared, there are inconsistencies. In the presidential threshold case, the Constitutional Court refrained from entering the realm of legislation. However, in the case of the age limit, the Constitutional Court actually added a new norm

Theoretical Analysis

In the theory of constitutionalism, the Constitutional Court should function as the guardian of the constitution. However, this decision shows a shift in the function of the Constitutional Court towards positive legislators. This shift can be explained by the theory of "judicial activism", in which judges take a greater role in directing the development of law and democracy. Some academics support judicial activism because it is considered to be able to fill legal gaps and provide substantive justice. However, some others reject it because it has the potential to reduce the role of legislators as representatives of the people^[22].

Implications of the Verdict

The implications of the decision are as follows:

1. Implications for the Election System This decision has a direct impact on the 2024 presidential candidacy process, because new norms must be immediately implemented by the General Election Commissions.
2. Implications for the Authority of the Constitutional Court This decision will be a precedent that the Constitutional Court can add new norms. In the future, the applicant may ask the Constitutional Court to "make" the law more often.
3. Implications for Democracy This ruling expands political participation, but at the same time raises public uncertainty and suspicion. If not maintained, democracy can lose its legitimacy.

Academic Criticism

Many academics have strongly criticized the ruling. Jimly Asshiddiqie assessed that the Constitutional Court had exceeded its authority. Bivitri Susanti called this decision discriminatory and has the potential to damage the principle of equality. Zainal Arifin Mochtar emphasized that this verdict is loaded with practical political interests.

An analysis of the Constitutional Court's decision on the age limit for presidential and Vice-Presidential candidates

shows that the Court is in a big dilemma between maintaining the principle of substantive justice and limiting itself to its authority. This ruling does open up space for political participation of the younger generation, but in a controversial way and risks creating legal uncertainty. In the future, it is very important for lawmakers to follow up on this decision with clear revisions, so that legal norms no longer give rise to multiple interpretations. In addition, the Constitutional Court needs to be more careful so as not to lose its legitimacy as the guardian of the constitution^[34].

Conclusion

Based on the discussion that has been described, it can be concluded as follows:

1. The Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and Vice-Presidential candidates has caused significant changes in the Indonesian constitutional system. This ruling not only interprets norms, but also creates new norms that impact legal certainty, constitutional justice, and the principle of the rule of law.
2. The change in the minimum age requirements for presidential and Vice-Presidential candidates opens up wider opportunities for the younger generation to participate in national politics. However, on the other hand, this raises juridical problems related to the authority of the Constitutional Court as a negative legislator and has the potential to cause discrimination against other candidates who do not meet the experience requirements as regional heads.
3. The controversy that arose from the decision showed the existence of problems of judicial ethics, dynastic politics, and the potential for political interference in the independence of the constitutional judiciary. This has implications for the decline of public trust in the judiciary and democracy in Indonesia.
4. When compared to other countries, the age limit for presidential candidates in Indonesia is relatively high (40 years) and tends to limit the political participation of the younger generation. The reformulation of the age requirement that is more proportionate and consistent with the principles of democracy and human rights is an urgent need to maintain constitutional justice.

Based on the above conclusion, the author gives some suggestions as follows:

1. **For Lawmakers (House of Representatives) and Government):** it is necessary to revise the Election Law so that the age requirements for presidential and Vice-Presidential candidates are more proportional, for example, lowered to 35 years, while still paying attention to aspects of political maturity and leadership quality.
2. **For the Constitutional Court:** in issuing a verdict on the matter test, the Constitutional Court needs to be more consistent with the principle of the rule of law and maintain independence from political intervention. Transparency and strong legal arguments are needed so that the verdict does not give rise to multiple interpretations or allegations of partisanship.
3. **For Academics and Civil Society:** it is necessary to continue to monitor the dynamics of the constitution,

especially in terms of the requirements for the candidacy of the President and Vice President, as well as encourage the involvement of the younger generation in the democratic process in a healthy and fair manner.

For the Young Generation: the momentum of openness to age requirements should be used as an opportunity to prepare themselves with strong national capacity, integrity, and vision so that they can become credible alternative leaders in the future.

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