

LEGAL DISCOVERY REGARDING AGE LIMIT REQUIREMENTS FOR PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES IN GENERAL ELECTIONS (A Study of Decision Number 90/PUU-XXI/2023)

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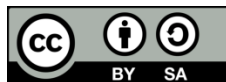
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ABSTRACT

*This study examines the legal aspects of the Constitutional Court (MK) Decision No. 90/PUU-XXI/2023, focusing on legal discovery, the age limit for presidential and vice-presidential candidates, and the legal consequences of the ruling. The research employs a normative juridical approach with a descriptive-analytical method, using statutory and case approaches and secondary data sources, including primary, secondary, and tertiary legal materials. The findings indicate that the MK ruling introduces new norms, positioning the Court as a positive legislature, with a *ne ultra petita* decision consistent with judicial authority principles. The minimum age limit of 40 years for candidates remains reasonable compared to global leadership trends (20–50 years). The principles of intergenerational and equality justice, as mandated by Pancasila's fifth principle, have been implemented since the 2024 election by allowing experienced young public officials to participate. The MK decision is final and binding, and must be accommodated by Parliament in forming or amending legislation, reaffirming the MK's role as the guardian and ultimate interpreter of the constitution.*

Keywords: Legal Discovery, Judicial Review, Judicial Authority

1. INTRODUCTION

The Constitution, according to Bagir Manan, can be understood as legislation binding upon the state and its citizens in various aspects, including matters of citizenship, the structure of state institutions, institutional functions, inter-institutional relations, as well as relations between institutions, citizens, and foreign states. The Constitution contains fundamental provisions such as the form of the state and government, state apparatus, mechanisms for filling public offices, inter-institutional relations, powers and their limitations, citizenship and rights, constitutional amendments, and transitional provisions. The essential function of the Constitution is to serve as an instrument of political, social, and economic control in the present, while also functioning as a mechanism of political, social, and economic engineering toward the future.

The authors argue that it is impossible for two constitutions to exist within one country, as legislation is established based on differing needs and may change over time. In the event of a legal vacuum or legal incongruity with societal developments, citizens may file a judicial review application to the Constitutional Court (MK), which was established under Articles 24 paragraph (2), 24C, and 7B of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and further regulated by Law Number 24 of 2003, as last amended by Law Number 7 of 2020.

Judicial review, in principle, is a constitutional interpretation that accommodates historical, contemporary, and futuristic values, which may be carried out through constitutional hermeneutics. Constitutional hermeneutics interprets the Constitution into new historical and practical texts, embeds the “legal ideals” into written provisions, and delivers rulings relevant to present conditions. Constitutional justices are required to provide proper reflection, interpret the Constitution broadly, and issue decisions that are logical and free from uncertainty in legal practice.

Article 10 of the Constitutional Court Law stipulates that the Court’s decisions are final and binding. The exercise of the Constitutional Court’s authority in testing the constitutionality of laws is a central focus, as it constitutes the Court’s core business, in line with the practices of constitutional courts in other countries, such as *Marbury v. Madison* (1803) in the United States and the establishment of the Austrian Constitutional Court (*Bundesverfassungsgerichtshof*).

Constitutional interpretation is essentially an effort to understand and elaborate upon the meaning of the Constitution, the results of which are recognized as part of constitutional law. Anthony Mason emphasizes that constitutional interpretation seeks to identify the objectives and principles intended to be realized. Methodologically, Scholler notes that statutory interpretation may serve as a starting point, but three additional aspects must be considered: the unity of the Constitution, practical coherence, and the proper application of constitutional provisions.

This study focuses on Constitutional Court Decision Number 90/PUU-XXI/2023, which has emerged as a legal and political phenomenon in Indonesia. The petition regarding the minimum age requirement for presidential and vice-presidential candidates, as regulated in Article 169 letter q of the Election Law (Law Number 7 of 2017), sparked controversy. Several petitioners requested that the age limit be lowered from 40 years to 35, 25, or 21 years, or that exceptions be granted for candidates with public office experience or regional head positions.

The Court partially rejected the petition, granted one specific request, and consequently generated debates concerning the consistency of the Court as the guardian of the Constitution. This ruling illustrates the Constitutional Court’s transformation from a negative legislature into a positive legislature, giving rise to divergent judicial opinions: three justices concurring with the decision, two issuing concurring opinions, and four delivering dissenting opinions.

This phenomenon underscores the importance of juridical analysis regarding the role, authority, and implications of Constitutional Court Decision Number 90/PUU-XXI/2023 for Indonesia’s constitutional system. The ruling carries significant consequences for the political process and presidential elections, while simultaneously fueling debates on the limits of the Court’s authority in creating new legal norms. It also reaffirms the Constitutional Court’s position as the guardian and final interpreter of the Constitution.

2. RESEARCH METHOD

This study employs a normative juridical approach with the objective of analyzing relevant legal principles, rules, and doctrines, utilizing secondary data supported by primary data. The object of the research is legal norms, both in the form of dogma and legislation (law in books), which serve as benchmarks for human behavior in accordance with prevailing legal principles. The research approach combines the statute approach with a case study method in order to gain an in-depth understanding of individuals, groups, or institutions within a specific context.

This study is descriptive-analytical in nature, namely by describing, elaborating, and explaining legal phenomena to ascertain the actual conditions of the research object in a systematic and accurate manner, with the aim of providing a comprehensive understanding of the examined events or situations and their legal implications.

3. RESULT AND ANALYSIS

Comparison of Presidential Leadership Age in Indonesia and the World

The minimum age requirement for presidential and vice-presidential candidates constitutes an important issue in the discourse of constitutional law and modern democracy. Through Constitutional Court Decision Number 90/PUU-XXI/2023, Indonesia established the minimum age of 40 years or possession of experience as a public official elected through general elections, including regional elections. This provision has sparked debate, as on the one hand it is seen as providing a fairer opportunity for the younger but experienced generation, while on the other hand it maintains the standard of maturity and political competence.

From an international comparative perspective, the age range of leadership around the world is highly diverse, spanning from 20 to 50 years. Some countries even allow their citizens to become president at a relatively young age, such as France with Emmanuel Macron elected at the age of 39, or Finland with Sanna Marin becoming Prime Minister at the age of 34. Conversely, other countries set higher age standards to ensure political maturity and experience, for instance the United States, which stipulates a minimum presidential age of 35 years.

Philosophically, age serves as an indicator of intellectual maturity and emotional stability in leading a nation. In the context of Indonesia, the minimum age requirement of 40 years is considered reasonable, as individuals at this stage generally possess sufficient life experience, political careers, and managerial capacity. Nevertheless, the exception for public officials elected by the people reflects legal flexibility to accommodate leadership potential from the younger generation.

From a sociological perspective, this provision also carries implications for the regeneration of national leadership. The millennial and post-millennial generations, who are increasingly entering politics, require a fair pathway to participate in the highest level of political contestation. By providing opportunities for regional heads or elected public officials under the age of 40, the law grants equal access without disregarding the principles of experience and democratic legitimacy.

Another implication lies in the dynamics of youth political participation. This regulation encourages younger generations to engage more actively in practical politics

through electoral processes. Consequently, leadership experience at the regional level may serve as a stepping stone for candidacy at the national level, thereby fostering continuity of leadership that is more dynamic, adaptive, and attuned to the aspirations of modern society.

Thus, the novelty value of this age policy lies in its positioning of Indonesia within global practice: neither too lenient in neglecting political maturity, nor too restrictive in closing off opportunities for leadership regeneration. This flexible age regulation may be regarded as a legal compromise that accommodates the challenges of contemporary democracy—ensuring the quality of leadership while opening political participation pathways for the millennial and post-millennial generations.

Constitutional Hermeneutics and the Role of the Constitutional Court as a Positive Legislature

Constitutional Court Decision Number 90/PUU-XII/2023 represents a significant milestone in the development of constitutional law in Indonesia. This decision not only reviewed the statutory norms but also reaffirmed the role of the Constitutional Court in legal discovery. One of the approaches employed was constitutional hermeneutics, namely an interpretive method that emphasizes the dynamic meaning of constitutional texts in accordance with societal developments, without losing the substance of fundamental constitutional values.

The concept of constitutional hermeneutics enables constitutional justices to interpret constitutional provisions progressively, so that the text is not understood rigidly but rather as a *living constitution*. In the context of Decision 90/PUU-XII/2023, this method became particularly relevant in interpreting the age limit for presidential and vice-presidential candidates by taking into account values of justice, equality, and the necessity of leadership regeneration. Thus, hermeneutics serves as a bridge between the constitutional text and contemporary socio-political realities.

Furthermore, in this ruling, the Constitutional Court demonstrated its role as a positive legislature. This means that the Court not only annulled norms but also established new ones of a constructive and solution-oriented nature. This was evident in the Court's willingness to issue an *ultra petita* decision, namely ruling beyond the scope of the petition to address broader justice needs. Such a role underscores that the Court is not merely a "guardian of the text" of the Constitution but also an actor ensuring that the Constitution remains relevant to the demands of the times.

However, the role of a positive legislature must remain bounded by the principles of judicial independence and impartiality. The Constitutional Court must not become a political instrument but rather maintain neutrality in every decision. This balance is essential so that the Court's rulings possess both legal and moral legitimacy while securing public trust. In the context of the fifth principle of Pancasila, "*Social Justice for All the People of Indonesia*," Constitutional Court decisions are required to deliver fairness and reasonableness for all parties, not merely serve the interests of certain groups.

Decision 90/PUU-XII/2023 also illustrates the dynamics of legal discovery oriented toward substantive justice. Through constitutional hermeneutics, judges are not trapped by the text but instead are willing to actualize the values of justice embedded in the Constitution. This aligns with the principle that law must not be confined to the literal

wording of provisions but should function as an instrument of social engineering and as a guardian of justice for the people.

Accordingly, the novelty of this decision lies in the Constitutional Court's courage to position itself as a progressive institution promoting the *living constitution*. The Court does not merely safeguard the purity of the 1945 Constitution but also ensures that it remains adaptive to the evolving social, political, and generational dynamics. This development further strengthens Indonesia's position as a democratic state governed by law, which places substantive justice above mere formalistic interests.

Legal Consequences of the Constitutional Court's Decision on the Principle of Equality in Elections

Constitutional Court Decision Number 90/PUU-XII/2023 marks a significant shift in Indonesia's electoral law, particularly concerning the requirements for presidential and vice-presidential candidacy. By opening the opportunity for public officials elected through general elections, including regional heads, to run for office even if they have not yet reached the age of 40, this ruling carries legal implications for the principle of equality and fairness in national political contestation. It demonstrates that law functions not only as a formal instrument but also as a means of ensuring substantive justice within democracy.

The principles of fairness and reasonableness formed the foundation of this ruling. Previously, the minimum age requirement of 40 years risked closing opportunities for younger figures who already possessed significant leadership experience at the regional level. With the Constitutional Court's decision, legal norms have become more inclusive, allowing popularly elected officials to maintain equal opportunity, thereby preventing political contestation from being dominated solely by a particular age group.

The greatest impact of this ruling is the enhanced political opportunities for younger generations who have proven their capacity through public office. Regional heads or elected political officials who have successfully led at a relatively young age now possess greater opportunities to compete at the national level. This may encourage the emergence of candidates with energy, innovation, and stronger connections to the aspirations of millennial and post-millennial generations, who constitute the majority of voters.

In addition to creating opportunities for younger leaders, this decision also has the potential to reshape the design of the party system in the presidential and vice-presidential nomination process. Political parties are required to become more adaptive in recruiting and endorsing candidates who are not only senior but also younger figures with a proven leadership record at the regional level. Consequently, political competition may become healthier, more dynamic, and more representative of the electorate's demographic diversity.

Nevertheless, this legal implication also brings specific challenges. One is the need to ensure that these broader opportunities are not exploited by political dynasties or particular interest groups. For this reason, political parties, as the primary gateway for presidential and vice-presidential nominations, must prioritize the principle of meritocracy rather than relying solely on popularity or political proximity. Only then can democracy achieve genuine quality and substance.

In the long term, this decision may strengthen inclusive democracy in Indonesia. The principle of equality upheld through the Constitutional Court's ruling not only broadens the scope of participation but also affirms that Indonesian constitutional law is progressive in nature. The ruling conveys the message that democracy must not remain stagnant but must continually adapt to social developments and public demands.

Accordingly, the novelty of Constitutional Court Decision Number 90/PUU-XII/2023 lies in the opening of a fairer and more inclusive space for political participation. The decision not only broadens access for experienced younger generations but also reinforces the principle of justice within Indonesia's democratic system. Law thus emerges not merely as a normative text but as an instrument capable of accommodating socio-political dynamics, safeguarding leadership regeneration, and ensuring a political contestation that is healthy, equal, and democratic.

4. CONCLUSION

Based on the foregoing discussion, the following conclusions may be drawn: Constitutional Court Decision Number 90/PUU-XII/2023 carries significant implications for Indonesia's democratic system, particularly with regard to the age requirement for presidential and vice-presidential candidacy. By stipulating a minimum age of 40 years or prior experience as an elected public official, the decision aligns with global practice while simultaneously opening equal opportunities for younger generations who have already gained political legitimacy. Through the constitutional hermeneutics approach, the Court assumes the role of a positive legislature, demonstrating the courage to issue an *ultra petita* ruling grounded in the principle of social justice as enshrined in the fifth principle of Pancasila, while still maintaining independence and impartiality. The legal consequence of this ruling is the provision of fair and reasonable political opportunities for experienced younger generations to participate in national leadership contests.

Based on the findings, it is recommended that young leaders elected as public officials in the 2024 General Election or Regional Elections prepare themselves to compete in future presidential and vice-presidential candidacies as a manifestation of intergenerational justice. Constitutional justices should also remain consistent in applying constitutional hermeneutics while upholding the principles of independence and impartiality, so that decisions rendered remain adaptive to societal needs. In addition, lawmakers should accommodate Constitutional Court rulings in the legislative process, whether in the enactment or amendment of laws, in order to ensure consistency, legal certainty, and sustainable justice.

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