



## Analysis and Legal Implications of the Constitutional Court's Decision on the Determination of the Age Limit for Presidential and Vice Presidential Candidates

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**Abstract.** *This research discusses the Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the minimum age requirement for presidential and vice-presidential candidates as stipulated in Article 169 letter q of Law Number 7 of 2017 concerning General Elections. In that decision, the Constitutional Court ruled that the age limit of 40 years remains in effect, but with an exception for candidates who are not yet 40 years old but have previously or are currently serving as regional heads. This research employs a normative juridical method with legislative and conceptual approaches, analyzing primary legal materials such as the 1945 Constitution, Election Law, and Constitutional Court decisions, supported by secondary legal materials from academic literature and journals. The research findings indicate that the Constitutional Court's considerations are based on the principles of citizens' constitutional rights, open legal policy, and the idea of leadership experience as an alternative age requirement. This decision has positive implications, including opportunities for leadership regeneration and increased political participation by young people, but it also draws criticism for its potential to discriminate against non-regional leaders and create political suspicion. Therefore, a revision of the Election Law is needed to clarify the legal norms resulting from the Constitutional Court's decision so that it does not lead to multiple interpretations and maintains the principle of equality. This research concludes that the Constitutional Court's decision is an opportunity to strengthen democracy, but also a challenge in ensuring constitutional justice in Indonesia.*

**Keywords:** Age Limit; Constitutional Court; Democracy; President; Vice President.

### 1. Introduction

The Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia, stipulates that the requirements to become president and vice president are determined by law. One of the controversial requirements is the minimum age limit for presidential and vice-presidential candidates. This provision is outlined in Article 169 letter q of Law Number 7 of 2017 concerning General Elections. The regulation sets a minimum age of 40 for someone who wishes to run for president or vice president. This rule was then tested thru a judicial review mechanism at the Constitutional Court (MK).

A material test against the age limit for presidential and vice-presidential candidates was filed by a number of petitioners who felt their constitutional rights had been violated. They argue that the 40-year age requirement is discriminatory against citizens who possess leadership capacity but have not yet reached that age. The applicant believes that citizens' political right to be elected is guarantyd in Article 28D paragraph (3) of the 1945 Constitution. Thus, age restrictions are considered inconsistent with the principle of equality before the law. This is the issue that later became one of the important points in legal and political contestation. (Kenski & Jamieson, 2010)

The Constitutional Court, in Decision Number 90/PUU-XXI/2023, provided a new interpretation of this norm. The Constitutional Court decided that the minimum age requirement of 40 years will remain in effect, but with exceptions. An exception is made for candidates who are not yet 40 years old but have previously held or are currently holding the position of regional head. (Fahmi, 2022) This decision directly changes the legal interpretation of the age requirement, which was originally absolute, to an alternative requirement. This has far-reaching legal and political consequences.

The Constitutional Court's decision has sparked both support and opposition within society. Some parties view this decision as progressive because it provides an opportunity for national leadership regeneration by introducing young candidates. However, others consider this decision to be case-specific and potentially beneficial to certain parties ahead of the general election. (Brewer-Carias, 2012) Criticism is also directed at the aspect of fairness because the exemption only applies to regional heads, not to other young figures who possess leadership capacity. This debate underscores the importance of academic study of the Constitutional Court's decision.

From a constitutional law perspective, the Constitutional Court's decision on the age limit for presidential and vice presidential candidates demonstrates the dynamics of the relationship between the legislature and the constitutional judiciary. Essentially, the Constitutional Court acknowledges that determining age is part of the House of Representatives' (DPR) open legal policy. (Stojanovic, 2016) However, the Constitutional Court still made corrections by adding exceptions thru constitutional interpretation. This raises the question of whether the Constitutional Court overstepped its authority by changing a previously clear norm. In-depth study is needed to understand its legal implications.

Politically, this decision opens up great opportunities for young regional head candidates to advance to the national level. For example, a governor, district head, or mayor under the age of 40 can run for president or vice president. This marks a shift in the pattern of national political recruitment. However, this decision also raises the potential for discrimination against young non-regional leaders. As a result, political opportunities are not fully equal for all citizens.

From a democratic perspective, this Constitutional Court decision can be interpreted as an effort to expand political participation. With exceptions, young people are not completely barred by age requirements. Wider political participation is expected to bring forth leaders with a fresh vision for the nation. (Robertson, 2009) Nevertheless, without clear technical

regulations from the DPR, the norms resulting from this MK decision could cause confusion. This reinforces the need to revise the Election Law to make it more precise.

Thus, Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and vice-presidential candidates is an important constitutional law issue that warrants further study. This decision concerns constitutional, democratic, and political aspects simultaneously. This study is not only important from a theoretical perspective but also has a direct impact on the practice of Indonesian constitutional law. Therefore, this article will examine the background, legal considerations, implications, and academic criticisms of the Constitutional Court's decision. The findings of this study are expected to contribute to the development of Indonesian constitutional law.

## **2. Research Methodology**

The research method used in this study is the normative juridical method, which is legal research that focuses on the applicable positive legal norms and relevant court decisions. (Malan, 2016) The research was conducted using a legislative approach to analyze Article 169 letter q of Law Number 7 of 2017 concerning Elections and Constitutional Court decision Number 90/PUU-XXI/2023. Additionally, a conceptual approach is also used to understand the principles of constitutional law, particularly regarding political rights and open legal policy. Primary legal materials consist of the 1945 Constitution, laws, and decisions of the Constitutional Court, while secondary legal materials include legal literature, scientific journals, and relevant academic articles. The analysis was conducted qualitatively by outlining the relationship between legal norms, the considerations of the constitutional judges, and their political implications. With this method, it is hoped that a comprehensive understanding of the impact of the Constitutional Court's decisions on Indonesia's democratic and constitutional system will be obtained.

## **3. Result and Discussion**

### **Legal Considerations of the Constitutional Court in Decision Number 90/PUU-XXI/2023**

The Constitutional Court (MK) in Decision Number 90/PUU-XXI/2023 considers the minimum age requirement of 40 years to become a presidential and vice-presidential candidate to be a form of open legal policy by the legislature. This means that the House of Representatives (DPR) has the authority to set age limits as part of legal and political policy. However, the Constitutional Court also emphasized that the policy must not violate constitutional principles, particularly citizens' right to equal opportunity in government. (Hrp

& Liany, 2019) Therefore, the Constitutional Court believes additional constitutional interpretation is necessary to prevent the rule from causing injustice. This decision demonstrates the Constitutional Court's active role as the guardian of the constitution in maintaining the balance between legal policy and the constitutional rights of citizens.

In its consideration, the Constitutional Court saw that leadership experience could be another measure beside age. According to the Constitutional Court, the age of 40 does not always guaranty maturity, while experience as a regional head proves the existence of managerial and political capacity. Therefore, the Constitutional Court added an exception for candidates who have served or are currently serving as regional heads, even if they are not yet 40 years old. (Akmal et al, 2020) This consideration is considered fairer because it makes room for young generations who are already proven in leadership. Thus, the Constitutional Court's decision broadens the interpretation of Article 169 letter q of the Election Law.

The court also emphasized that political rights are part of citizens' constitutional rights that must be protected. Article 28D paragraph (3) of the 1945 Constitution serves as the basis that every citizen has the right to equal opportunity in government. If the age requirement is applied absolutely, there is a potential for violation of the principle of equality. (Rojas & Ekman, 2011) By granting exceptions, the Constitutional Court is attempting to strike a balance between regulatory interests and the protection of political rights. This also shows that the Constitutional Court prioritizes the principle of inclusiveness in democracy.

The Constitutional Court's legal considerations are also influenced by constitutional practices in various other countries. Some countries set lower age limits, with some even allowing presidential candidates as young as 30 or 35 years old. The Constitutional Court believes this comparison shows that age is not the only indicator of leadership. (Sharma & Glennon, 2013) Therefore, the age requirement in Indonesia needs to be viewed flexibly so that it does not become an obstacle to political participation. This interpretation strengthens the Constitutional Court's argument that job experience can be an alternative benchmark.

Nevertheless, the Constitutional Court is aware that its decision will generate debate. One criticism is that this decision is case-specific and seems directed at benefiting a particular candidate. However, the Constitutional Court emphasized that its decision is general and applies to all citizens who meet the criteria. The principle held is to uphold substantive justice, not merely formal justice. (Palguna, 2017) In this way, the Constitutional Court is trying to maintain public trust that its decisions are based on constitutional principles, not political interests.

From a legal methodology perspective, the Constitutional Court uses a progressive constitutional approach. This means that the Constitutional Court does not only focus on the text of the law, but also interprets its broader meaning in accordance with the spirit of the 1945 Constitution. (Jakab, 2012) This progressive interpretation aims to address the needs of the times and the aspirations of society. The Constitutional Court believes that democracy must make room for young leadership, as long as it has legitimacy through experience in public office. Thus, the Constitutional Court's decision serves as an example of the application of a living constitution in the Indonesian legal system.

Overall, the Constitutional Court's legal considerations in Decision Number 90/PUU-XXI/2023 indicate a shift from objective requirements (age) toward combined requirements (age or job experience). This decision sets an important precedent in the development of Indonesian constitutional law. Despite causing both pros and cons, the Constitutional Court emphasized the need for a balance between legal political policies and the protection of citizens' political rights. By providing a new interpretation, the Constitutional Court is attempting to align legal norms with socio-political dynamics. This proves that the Constitutional Court plays an active role in safeguarding constitutional democracy in Indonesia.

### **Implications of the Decision on the Political System and Democracy in Indonesia**

The Constitutional Court Decision Number 90/PUU-XXI/2023 has direct implications for the political system in Indonesia. With the age requirement exception for presidential and vice-presidential candidates, a new opportunity has emerged for young regional heads to compete at the national level. This changed the pattern of political recruitment, which was previously limited to senior figures. (Ghoffar, 2018) Leadership regeneration is becoming more open to young people. As a result, the dynamics of political contestation are becoming increasingly diverse and competitive.

From a democratic perspective, this decision can be considered a form of strengthening political participation. Young people with a track record of leadership now have wider access to run for the highest positions. (Oross, 2016) This condition is expected to bring fresh ideas and a new vision to nation-building. Democracy is no longer dominated solely by senior politicians, but also makes room for young leaders. Thus, political representation becomes more inclusive and balanced.

However, this decision also raises questions about justice and equality. Exceptions are only granted to regional heads, while other young figures working in the legislative, academic, or civil society organizations do not receive the same rights. This creates a discriminatory impression because it closes opportunities for some citizens. The principle of equal opportunity

is disrupted because only certain groups benefit. Thus, equality in democracy is still being questioned.

Another political implication is the increased potential for conflicts of interest. This Constitutional Court decision was issued just before the 2024 elections, raising suspicions that it was intended to accommodate a specific candidate. (Mahlmann, 2010) This lowers public trust in the Constitutional Court's neutrality as a constitutional judicial body. When society doubts the independence of the Constitutional Court, the legitimacy of democracy can also be threatened. Therefore, this decision needs to be closely monitored with strict oversight mechanisms.

Additionally, the Constitutional Court's decision has the potential to trigger changes in the national political coalition landscape. The presence of young candidates from among regional heads could influence political parties' calculations in determining their presidential and vice-presidential running mates. Political parties might be more open to nominating young candidates because their legal legitimacy is already strong. (Stockemer & Sundstrom, 2018) This change can enrich competition, but it also has the potential to create new political fragmentation. Thus, parties are required to be more adaptable in formulating their political strategies.

From a legal perspective, this decision creates an urgent need for a revision of the Election Law. The House of Representatives must align the law's norms with the Constitutional Court's interpretation to avoid a vacuum or multiple interpretations. If not regulated more clearly, it is feared that technical issues will arise in the nomination process. (Ropii et al, 2014) For example, how long does someone need to serve as a regional head to be able to run as a presidential candidate? Without this clarity, the potential for election disputes will only increase.

From a long-term democratic perspective, this decision could set a precedent for expanding citizens' political rights. If age was previously a barrier, now opportunities are more open to those with political legitimacy from their experience in office. This could encourage greater participation by young people in politics. Widespread political participation will strengthen the quality of Indonesian democracy. However, if not managed well, it can actually lead to instability. (Astuti, 2016)

Overall, the Constitutional Court's decision on the age limit for presidential and vice-presidential candidates is an important milestone in Indonesia's democratic journey. This decision brings hope for leadership regeneration while also presenting challenges in

maintaining the principle of equality. The political system must be able to adapt so that this decision does not lead to injustice. Public oversight and regulatory clarity are key to ensuring that the Constitutional Court's decision truly strengthens democracy. Thus, the implications of this decision will heavily depend on the implementation and consistency of political institutions in following up on it.

#### 4. Conclusion

The Constitutional Court's Decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and vice-presidential candidates is a significant milestone in the dynamics of Indonesian constitutional law. This decision maintains the minimum age requirement of 40 years, but adds an exception for candidates who have previously served or are currently serving as regional heads. The implications of this decision open up wider participation for young generations with leadership legitimacy, thus accelerating national political regeneration. However, the exception granted only to regional heads raises issues of equality because young figures in other fields do not receive similar rights. This raises debates about the principle of equality before the law and potential discrimination. Therefore, revising the law is important so that the norms resulting from this Constitutional Court decision are clear and do not lead to multiple interpretations. Thus, this Constitutional Court decision can be seen as an opportunity to strengthen democracy, as well as a challenge in maintaining justice and consistency in Indonesia's legal system.

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