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# The Constitutional Implications of Constitutional Court Decision No. 90/PUU-XXI/2023 on National Democratic Stability

Jibril Makarim, Ahmad, Muhammad Rizqi Ramadhan, Agis Syadina Purta,  
Endang Mulyadin

Universitas Muhammadiyah Tangerang

Jalan Perintis Kemerdekaan 1/33 Cikokol, Kota Tangerang, Banten 15118

\* Correspondence email: ahmad.law17@gmail.com

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**ABSTRACT.** The decision of the Constitutional Court No. 90/PUU-XXI/2023 on the age requirement for presidential and vice-presidential candidates has generated significant controversy in constitutional law, particularly regarding democratic stability. The ruling modified the statutory minimum age of 40 by allowing individuals who have held or currently hold elected public office to run, even if they are below that threshold. The judicial review was filed by Almas Tsaqibbirru Re A to support Gibran Rakabuming Raka in the 2024 election. This study adopts a normative juridical approach with a descriptive-qualitative method based on literature review. The findings reveal substantial weaknesses in the petitioner's legal standing, as no direct constitutional harm was demonstrated. Nevertheless, the Court partially granted the petition and went beyond its original claims, effectively creating a new norm. In doing so, the Court shifted from its role as a negative legislator to a positive legislator, raising concerns over the separation of powers. The ruling carries broad constitutional and political implications, simultaneously enabling leadership regeneration while inviting suspicions of political interests. Internal divisions among the justices further reflect a lack of strong consensus. Criticism intensified after the Constitutional Court Honorary Council confirmed ethical violations in the decision-making process.

**KEYWORDS:** Constitutional Court Decision; Presidential Age Requirement; Judicial Review Politics; Democratic Stability Indonesia; Constitutional Law Reform.

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## INTRODUCTION

The Unitary State of the Republic of Indonesia is a country that efficiently upholds legal values in the lives of its citizens, because for the sake of such a life that benefits the lives of its citizens, that is the art of dialogue. Article 1 (3) of the 1945 Constitution states that Indonesia is a country of law (Holil, 2022). In simple terms, Indonesia is a country of law that upholds justice for the good of its people.

Indonesia is divided into provincial and district/city governments, all of which serve to meet the needs of citizens within the Indonesian government. Land issues are nearly impossible to resolve, as they relate to aspects of life that, in this case, have personalities that represent values of goodness (Bayu Mitra A. Kusuma & Theresia Octastefani, 2022). Simply put, Indonesia consists of provinces and districts/cities that serve the public, but land issues are difficult to resolve because they involve important life values.

One of the important substances of the amendment to the Constitution of the Republic of Indonesia (here in after abbreviated as the 1945 NRI Constitution) is the existence of the Constitutional Court as a new state institution that is independent

in exercising judicial power (Darmadi, 2020). The Constitutional Court is seen as the embodiment of a state based on law that places the constitution as the highest law. (Ru'ati et al., 2022) Therefore, in the third amendment to the 1945 NRI Constitution, the provisions of Chapter IX concerning Judicial Power, especially Article 24, were amended and three (3) new articles were added, which then also regulated the existence of the Constitutional Court in Indonesia (Natamiharja et al., 2022).

So far, in several of its decisions, the Constitutional Court has often used the argument of open legal policy as a basis for rejecting judicial review of statutory norms. Some of them are: Decisions on Law Number 15 of 2011 concerning General Election Organizers, namely Constitutional Court Decisions Number 102/PUU-XIV/2016 and Number 101/PUU-XIII/2015; Decisions on Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties, namely Constitutional Court Decisions Number 35/PUU-XIV/2016 and No. 78/PUU-XIII/2015; and Decisions on Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (MD3), namely Constitutional Court Decisions Number 76/PUUXII/2014 and No. 79/PUU-XII/2014. In fact, according to Mardian Wibowo, until 2016, there had never been an open legal policy norm or open legal policy that was declared by the Constitutional Court to be contrary to the 1945 Constitution of the Republic of Indonesia or declared unconstitutional.

The age issue of the presidential and vice-presidential candidates (2023) is a factor in the current decline of democracy in Indonesia. The judges' decision was not unanimous. Four judges voted to grant the nomination, three to reject it, and two others held dissenting opinions (Abdullah, 2022). The Constitutional Court's ruling on the 2023 presidential and vice-presidential age limits reflects a lack of context among constitutional justices, demonstrating fundamental differences in understanding the constitution. This is an indicator of the declining quality of democracy in Indonesia, as the decision-making process is deemed to be fraught with vested interests and does not reflect the principles of justice and judicial neutrality.

The presence of the Constitutional Court as a guardian of democracy is to frame democracy in Indonesia to run according to constitutional norms, so that the measure of the truth of judicial review in the Constitutional Court is the truth of constitutional legal norms (Constitutional Court of the Republic of Indonesia, 2015). Based on the above, the first problem formulation of this article is: What is the Constitutional Impact of the Constitutional Court Decision 90/PUU-XXI/2023 on the Stability of National Democracy ? Second, what is the Legal Impact of the Constitutional Court Decision on the Democratic System in Indonesia ? The purpose of this article is to examine the Constitutional Court Decision Number 90/PUU-XXI/2023.

## RESEARCH METHODS

This study employs a normative juridical approach, which focuses on the examination of legal norms as embodied in statutory regulations, legal doctrines, and judicial decisions (Negara, 2023; Ahmad et al., 2024). This approach is considered appropriate for conducting a comprehensive analysis of the Constitutional Court's decision, particularly in relation to justice as a fundamental principle of the rule of law. The research is descriptive and qualitative in nature, aiming to systematically and in-depth describe the object of study based on the data obtained (Johnson & Green, 2022) (Degdo Suprayitno, 2024). In this context, qualitative research emphasizes the interpretation of meaning, legal reasoning, and the construction of legal arguments within constitutional practice. Data were collected through a library research method, relying primarily on secondary data sources (Istiana, 2017). The author gathered various relevant legal materials and references, including electronic scientific articles, academic journals, e-books, and scholarly research reports related to the research topic. The purpose of this data collection is to address the formulated research questions, particularly concerning the implications of the Constitutional Court's decision from the perspective of justice as a core principle of the rule of law. Furthermore, this approach enables a critical analysis of the normative construction and legal reasoning underlying the Court's decision.

## RESULTS AND DISCUSSION

### Legal Analysis of Constitutional Court Decision No. 90/PUU-XXI/2023

Judicial review, or the judicial review of laws and regulations, is a constitutional mechanism for assessing the conformity of legal norms to higher norms. In the context of the Indonesian legal system, the Constitutional Court is responsible for reviewing laws and government regulations in lieu of laws against the 1945 Constitution of the Republic of Indonesia. The Constitutional Court acts as the guardian of the constitution by ensuring that all legislation does not conflict with the basic values of the constitution. Meanwhile, the Supreme Court reviews laws and regulations subordinate to laws, such as government regulations, presidential regulations, and regional regulations, against laws. The Supreme Court is tasked with maintaining the harmonization of laws and regulations so that they remain within the framework of national law. Therefore, judicial review in Indonesia is divided based on the hierarchy of the norms being reviewed and the authorized judicial institution. Judicial review in the Constitutional Court aims to ensure that every law does not conflict with or violate the provisions stipulated in the 1945 Constitution of the Republic of Indonesia (Ahmad, A., Absori, S. H., Azhari, A. F., & Hamdan Zoelva, 2020).

The judicial review filed by Almas Tsaqibbirru Re A regarding the Age of Presidential and Vice Presidential Candidates (2023) is a material review of Article 169 letter (q) of the Election Law, Almas idolizes Gibran Rakabuming Raka as the

Mayor of Surakarta for the 2020-2025 period who succeeded in increasing economic growth in Solo to 6.25 percent so that he tried to be able to choose Gibran in the 2024 General Election contest.<sup>2</sup> Almas Tsaqibbirru Re A filed a judicial review of Article 169 letter (q) of the Election Law with the Constitutional Court in 2023 to allow Gibran Rakabuming Raka, whom he idolized because of his success as Mayor of Surakarta, to run in the 2024 Election.

Applicants (individual Indonesian citizens, indigenous peoples, public or private legal entities, or state institutions) in judicial review cases are required to show and explain the petition for their constitutional rights and/or authorities that are harmed due to the enactment of a law by the DPR and the Government (Azizah, 2018) but Almas's position in the case of the age of the presidential and vice-presidential candidates (2023) as an applicant is considered inappropriate and the reasons for his petition are not scientifically sound (Suhardin & Flora, 2023).

In contrast to the other ten cases that were declared rejected by the Constitutional Court for several reasons, including: the main petition is legally groundless, inadmissible because the Petitioner's Petition has lost its object, and the Petitioner's legal standing and the main petition were not considered. The ten cases regarding the age limit for Presidential and Vice Presidential Candidates include: Case 29 filed by the Indonesian Solidarity Party (PSI) requesting a change to 35 years; Case 51 by the Garuda Party; and Case 55 by five regional heads requesting an additional requirement of having experience as a state administrator; Case 91 filed by a Law Student at Sebelas Maret University in Surakarta wanting to change it to 21 years; and Case 92 by a citizen wanting it to be changed to 30 years. After the decision on the Case of the Age of Presidential and Vice Presidential Candidates (2023), Cases 93, 96, 102, 104, and 106 which were heard on October 23, 2023, the Constitutional Court declared the Petitioners' petitions from the five cases inadmissible (Ramadani, 2022).

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In addition to the inadequate legal standing, there is a difference between the Petitioner's petition and the ruling on the Presidential and Vice Presidential Candidate Age Case (2023). The Constitutional Court's reason for amending the Petitioner's petition is to adjust the appropriate meaning to realize the main legal considerations of the Constitutional Court based on the chosen/replacement petition *ex aequo et bono* (Material Review Decision of Law Number 7 of 2017 concerning General Elections, 2023). This revision of the petition is likened to a student writing a thesis who is in the process of being supervised, then because there is an error in the content of the thesis, the supervisor himself corrects the content of the thesis he is supervised by in order to pass (Susanti, B., nd). In the case of the Age of Presidential and Vice Presidential Candidates (2023), even though the Petitioner's legal standing was deemed inadequate and there was a difference between the petition's petition and the verdict, the Constitutional Court revised the

petition to adjust the main legal considerations, just like a supervisor correcting the contents of a student's thesis so that they can graduate.

The Constitutional Court in the case of the age of the presidential and vice-presidential candidates (2023) played a positive role as a legislator, unlike the other ten cases which played a negative role as a legislator. Initially, the Constitutional Court was only a negative legislator, only declaring the constitutionality or unconstitutionality of a law or its contents. The Constitutional Court's positive legitimacy is seen as a form of judicial discretion in carrying out its duties, but in exercising judicial discretion, the Constitutional Court as a positive legislator must be based on moral reading and be careful in making decisions because the nature of the decision is final and binding, so the public can accept, comply with, or reject and resist the Constitutional Court's decision (Maulidi, 2019). In the 2023 presidential and vice-presidential candidate age case, the Constitutional Court (MK) acted as a "positive legislator," providing moral interpretation in its ruling, in contrast to the "negative legislator" role in other cases. The Constitutional Court's ruling is final and must be carefully considered, as it can be accepted or rejected by the public.

Constitutional Court Decision No. 90/PUU-XXI/2023 has significant implications for the democratic process in Indonesia. By expanding the criteria for presidential and vice-presidential nominations, this decision is expected to increase inclusiveness and political participation, especially for the younger generation previously hampered by age restrictions. This reflects a commitment to broadening participation in the political process, enabling more potential individuals to run for office and make their contributions (Sadzali, 2022). Therefore, this decision not only changes the political landscape but also strengthens democratic principles that encourage greater participation from all levels of society.

### **Legal Impact of the Constitutional Court's Decision on the Democratic System in Indonesia**

The Constitutional Court amended the regulation, raising the minimum age requirement to forty (Alpin Gunawan et al., 2023). In addition to establishing an age limit, the new regulation also introduced an alternative general requirement, allowing individuals who have previously held or are currently holding positions obtained through an election process to still meet the candidacy requirements.

These positions include positions resulting from direct elections, such as regional heads (governors, regents, or mayors). This means that even if an individual has not yet reached forty years of age, if they have experience as an elected public official, they are still allowed to run. This change reflects a relaxation of administrative requirements, aimed at providing broader opportunities for younger generations and those with political track records in regional government. Therefore, this regulation is considered incapable of encouraging leadership regeneration and providing opportunities for individuals with capabilities and

practical experience, even if they have not reached the conventional age limit. However, on the other hand, this also raises concerns about legal objectivity and potential conflicts of interest in decision-making in the political and legal spheres.

The impact of this ruling extends beyond the technical aspects of election administration to broader issues, including the legitimacy and image of the Constitutional Court as the guardian of the constitution. This decision has sparked public interest, particularly regarding the institution's integrity and the potential for conflicts of interest behind its decision-making.

Indirectly, this ruling also reflects the dynamics of Indonesian constitutionalism, where the Constitutional Court functions not only as an adjudicator in upholding the law, but also as a determinant of the direction of development of democracy and constitutional law. The institution's courage in interpreting the constitution also serves as a crucial test of its independence in upholding the principles of justice and constitutional supremacy.

Over time, the Constitutional Court has often been seen as a political instrument used by the House of Representatives and the President to swiftly and effectively amend laws. This process appears to neglect public participation in decision-making, which should be an integral part of democracy. The Constitutional Court's ideal function as a guardian of the constitution and protector of citizens' constitutional rights has been questioned, raising concerns that important decisions may be made without adequate public consultation, leading to more authoritarian and less transparent practices in government (Felicia, 2022).

Therefore, the Constitutional Court, which should function as a guardian of the constitution and protector of citizens' rights, is now seen as having shifted to being a political tool of power, particularly for the House of Representatives and the President, in rapidly amending laws without adequate public participation. This situation raises concerns about the weakening of democracy, the rise of authoritarian practices, and the loss of transparency in the state's decision-making process.

Indonesia, as a constitutional state based on the principle of popular sovereignty guaranteed by the constitution, has two essential elements. First, the concept of the rule of law, which states that the authority of the law overcomes state power and controls politics, and not the other way around; second, the concept of guaranteeing citizens' civil rights by the constitution and protected by the state and government.

Furthermore, the power of state administrators is limited by the constitution (Abustan, 2022a). The idea of constitutionalism aims to protect citizens' rights by limiting government power. These limitations ensure that state administrators do not act arbitrarily, as they are bound by the rules and agreements stipulated in the Constitution.

Democratic life in Indonesia can be carried out healthily and cleanly if state

administrators can respect the position of the people by including participation in the context of democratic procedures and in the practice of state power in general, and the level of democratic practice must implement the values of justice, non-discrimination, transparency, and empowerment (Abustan, 2022b). Therefore, democracy in Indonesia will run well if state administrators involve the people and apply the values of justice, transparency, and empowerment.

## **CONCLUSION**

The decision of the Constitutional Court concerning the age requirement for presidential and vice-presidential candidates in 2023 introduced a new legal construction by opening opportunities for individuals under 40 years of age to contest, through the addition of a clause that is arguably inconsistent with the 1945 Constitution of the Republic of Indonesia. Although normatively framed as an expansion of political participation, the ruling has been criticized for failing to adequately reflect the broader public interest. This is evidenced by various procedural and ethical irregularities that emerged following the decision, culminating in findings by the Constitutional Court Honorary Council regarding violations of judicial ethics, thereby indicating deficiencies in the Court's decision-making process. From a constitutional standpoint, the petition lacked a clear demonstration of direct constitutional harm, as also emphasized by Wahiduddin Adams, who noted that the applicant's claim was primarily driven by political preference rather than a genuine infringement of rights. This suggests that the ruling was influenced more by individual or particularistic interests than by objective considerations of the public good.

In principle, popular sovereignty in Indonesia is exercised through constitutional mechanisms safeguarded by the Constitutional Court as an independent judicial body. However, this decision has raised concerns regarding the erosion of democratic integrity, as it not only enabled Gibran Rakabuming Raka to qualify as a vice-presidential candidate despite being under the age threshold, but also undermined the institutional credibility of the Court. The ruling reflects a decline in judicial performance and poses risks to the quality of democracy by potentially fostering pragmatic political practices and diminishing public trust.

Moreover, divergences among the constitutional justices during deliberation further contributed to the controversial nature of the decision. In this regard, the Constitutional Court is expected to consistently uphold its role as the guardian of the constitution, ensuring that its decisions provide legal certainty and serve the broader public interest. Given the final and binding nature of its rulings, their implications extend beyond the parties involved to all citizens.

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