

# AGE LIMITATIONS FOR PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATES POST CONSTITUTIONAL COURT RULING NUMBER 90/PUU-XXI/2023 A DEMOCRATIC PERSPECTIVE

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## Abstract

The constitutional right to vote or be elected is a realization of a democratic government system. Freedom exists for every citizen or government to be able to participate in the advancement of a nation. Nominating the head of state in Indonesia is a big part of political participation for every citizen nominated by their political party to be able to run for president. However, in Indonesia, certain conditions must be met for citizens running for President, one of which is a minimum age limit. This age restriction became an academic debate until the Petitioner was tested at the Constitutional Court, where he had potential disadvantages, namely not being able to run for president even though he had experience or expertise in the world of government. This research is legal research with towards statutory case analysis. The results of this research explain that the age restrictions for presidential nomination requirements in Indonesia are not only bound by formal provisions, but the Court provides an alternative consideration regardless of the age of a presidential candidate who can nominate if they have experience or are currently serving as regional heads. The implications of the Constitutional Court's Decision Number 90/PUU-XXI/2023 regarding the alternative in the form of age quality for Presidential candidacy wishes of the Community in performing their political rights

**Keywords:** Presidential Nomination; Public; Political Rights; Democracy

## Introduction

Indonesia, as a country based on law realizing a democratic government, recognizes that elections are an important pillar of democracy that must be held in a democratic atmosphere.<sup>1</sup> Elections are an important pillar of a democratic country and are based on the Indonesian constitution. As referring to Article 22E paragraph (1) of the 1945 Constitution, "*General elections are carried out directly, generally, freely, secretly, honestly and fairly every five years.*" The mechanism for nominating the President and Vice President in Indonesia must be proposed by a Political Party or Association of Political Parties participating in the Election that meets the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty-five percent) of the valid votes national election for members of the DPR, prior to the implementation of the Presidential and Vice Presidential Elections<sup>2</sup>. It was even added that President and Vice President candidates must go through a political party merger.

Since nominations for the head of state position in Indonesia are required to be carried out by political parties, A mechanism for nominating a President and Vice President must be based on the will. The Vice president can represent the interests of the people in a country, especially the sovereignty of the people. C.S.T Kansil interprets "people's sovereignty" as stated in the Preamble to the 1945 Constitution (UUD NRI) with the term "democracy".<sup>3</sup> As democracy develops in society, the requirements for Presidential and Vice Presidential Candidates have changed. One change is the regulation of the minimum age limit, which is lowered through material review at the Constitutional Court. The existence of material testing on the age limit for presidential candidacy is based on the political rights of the people who are moved to realize their wishes as citizens.

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<sup>1</sup> Anang Dony Irawan, "Penentuan Ambang Batas Pencalonan Presiden Dan Wakil Presiden Di Indonesia Dalam Pemilihan Umum Serentak 2019," *Ajudikasi: Jurnal Ilmu Hukum* 3, no. 2 (December 31, 2019): 121.

<sup>2</sup> Provisions in Article 9 of Law Number 42 of 2008 concerning General Elections for President and Vice President

<sup>3</sup> Yuniar Riza Hakiki, "Relevansi Gagasan Pencalonan Presiden Dan Wakil Presiden Jalur Perseorangan Terhadap Prinsip Negara Hukum Dan Demokrasi," *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 139–171.

The idea of democracy demands that every form of law and various decisions obtain approval from the people and pay attention to their interests as much as possible, while the idea of the rule of law demands that state administration guarantee the basic rights of the people.<sup>4</sup> A democratic system guarantees that every person can manage the country directly. Still, if the people are forced not to participate directly (indirectly), then maximum access to participation must be guaranteed. Recently, Decision Number 90/PUU-XXI/2023 concerning the regulation of norms in Article 169 letter q of Law Number 7 of 2017 regarding the minimum age limit of 40 (forty) years. The applicant's reason for testing the norms in Article 169 letter q is because it is necessary to give opportunities to candidates who are not yet 40 years old and have experience as Regional Heads.

The reason the applicant submitted the petition to the Constitutional Court was because there was a potential loss of constitutional rights. This is because he is discriminated against by Article 169 letter q of Law Number 7 of 2017 concerning General Elections, which has clearly harmed and violated the Petitioner's constitutional rights. These rights are protected by the Constitution in Article 28I paragraph (2) of the 1945 Constitution, which states:

*“Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment.”*

The applicant's aim in submitting a request for material review to the Constitutional Court regarding Article 169 letter q of Law Number 7 of 2017 is to protect his human rights in the eyes of the law. As a fundamental principle, human rights occupy an important position in state administration. Recognition, protection, respect, and fulfillment of human rights (HAM) are important elements of a democratic rule of law.<sup>5</sup> The Petitioner believes that Article 169 letter q of Law No. 7 of 2017 has resulted in a moral violation, namely that there is a difference in age groups which has discriminated against one age group that should be provided with equal opportunities. Considering (Court Decision of Number 5/MKMK/L/1/2023 that before considering the authority of the Honorary Council, the Legal Position of the Reporting Party, and

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<sup>4</sup> Ridwan HR, *Hukum Administrasi Negara*, 13th ed., vol. 1 (Jakarta: Rajawali Pers, 2020).

<sup>5</sup> Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta: PT Bhuna Ilmu Populer, 2007).

the Main Points of the Report, the Honorary Council will first explain the following matters;

- **[7.11.2]** Whereas according to the Honorary Council, the provisions of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009 must, in principle, be interpreted as applying to Constitutional Judges in examining, adjudicating and deciding constitutional cases which are the authority of the Constitutional Court. It is true that in constitutional cases and judicial review cases, the object of the review is statutory norms, not concrete cases. However, Constitutional Judges as statesmen should have a sense of ethics, an ethical feeling that arises from within the conscience and conscience of each Constitutional Judge, to take the initiative to resign from examining and making decisions on a case when he or she as a Constitutional Judge will not be objective and fair because the case is related to or at least has a direct personal interest to him and/or his family members, including to prevent the general perception of the judge's partiality which should have been foreseen. This attitude should be taken without always being preceded by requests from parties other than themselves, including the parties involved in the case or the public in general. Nor should Constitutional Justices use or put forward reasons that essentially argue that the Constitutional Court adjudicates abstract norms and/or on the pretext that the parties involved in the case are not family members as intended in Article 17 of Law 48/2009. In other words, as long as the case clearly implies the potential self-interest of the Constitutional Judge and/or the interests of his family members, the Constitutional Judge should resign from the process of examining and making a decision on a constitutional case;
- **[7.11.3]** In practice, however, there have been several Constitutional Court decisions that can be considered to violate the principle of *nemo iudex in causa sua*. Regarding this matter, the Honorary Council considers that without intending to evaluate the decisions in question, the possibility of a conflict of personal interest in these decisions cannot be used

as a justification for the practice of conflict of interest in case Number 90/PUU-XXI/ 2023;

- [7.11.4] This matter has been explicitly regulated and confirmed in the Regulation of the Constitutional Court of the Republic of Indonesia Number 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Behavior of Constitutional Judges (Sapta Karsa Utama), which should be known and understood by Constitutional Judges, namely the Principle of Impartiality, Application of number 5, which states:

**Constitutional Judges - unless this results in the quorum not being met to conduct a hearing - must resign from examining a case if the judge is unable or deemed unable to be impartial for the reasons below.**

**The constitutional judge or his family members have a direct interest in the decision.**

- [7.11.5] Whereas with regard to the request to the Honorary Council to assess the validity or invalidity of the Constitutional Court's decision when the Constitutional Judge or a member of his family has a direct interest in the decision, it turns out that he has not withdrawn from the examination and decision-making process, if it is related to Article 17 paragraph (6) and paragraph ( 7) Law 48/2009, in examining and deciding on reports of alleged violations of the code of ethics and behavior of constitutional judges a quo, the Honorary Council is of the opinion that it is in line with the establishment of the Honorary Council which has stated that it has no authority to assess decisions of the Constitutional Court, Article 17 paragraph (6) and paragraph (7) of Law 48/2009 should be set aside because it cannot be applied in the context of cases and decisions of the Constitutional Court;

Therefore, the author will analyze the impact of the Constitutional Court's decision Number 90/PUU-XXI/2023 in relation to a human rights perspective.

## Research methods

This research uses legal research methods (*doctrinal research*) namely research focused on examining the application or norms in positive law. According to Peter Mahmud, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.<sup>6</sup> This research uses a statutory approach and conceptual approaches.

## Discussion

### Age Restrictions for Presidential and Vice Presidential Candidates Based on Constitutional Court Decision Number 90/PUU-XXI/2023

Individual candidacy as president is part of political rights in relation to the administration of state life. Article 169 letter q of Law Number 7 of 2017 states that the requirements for becoming a candidate for president and vice president are as follows: q). aged at least 40 (forty) years. Age restrictions as a condition for presidential candidacy are regulated through legal products based on objective needs. The existence of age regulations in presidential nominations creates an obstacle to the implementation of individual political rights in the form of the right to participate either directly or indirectly in the administration of the government. Presidential elections are carried out using a democratic system and are guaranteed in the 1945 Constitution, especially in Article 6A paragraph (1): "The President and Vice President are elected as a pair directly by the people."

Democracy is defined as a characteristic that must exist in democratic countries. *First*, restrictions on Government actions to provide protection for individuals and groups<sup>7</sup>. *Second*, a tolerant attitude

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<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 1st ed. (Jakarta: Kencana Prenada Media Group, 2005).

<sup>7</sup> Yosua Manurung, "Politik Hukum Pembatasan Usia Calon Kepala Daerah Berdasarkan Pasal 7 Ayat 2 E Undang-Undang Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang- Undang No 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang," JOM Faculty of Law, University of Riau VIII, no. 1 (2021): 2–16.

toward opposing opinions<sup>8</sup>. *Third*, equality before the law is implemented with an attitude of submission to the rule of law without distinguishing between social, economic, and political positions. However, the existence of an age limit for presidential nominations prevents the younger generation from being able to run for office and appears to be discriminatory. The discriminatory act on political rights related to Article 169 letter q of Law No. 7 of 2017, which is contrary to Article 28D paragraph (3) of the Constitution, reads, "*Every citizen has the right to equal opportunities in government.*". The author sees a contradiction between the nature and application of political rights, especially when participating in running for President.

In 2023, a request for material review in Article 169 letter q of Law Number 7 of 2017 has been submitted. Starting with the petition for case Number 29/PUU-XXI/2023 submitted by the Petitioner as follows;

- **Application for Material Review in Case Number 29/PUU-XXI/2023**

Whereas the Petitioner in Petition Number 28/PUU-V/2007 requested: "Declare that the material in Article 169 letter (q) of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution of the Republic of Indonesia;

Declare that Article 169 letter q of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections does not have binding legal force as long as it is not interpreted as "at least 35 (thirty-five) years old."

The Petitioner's reasons in Petition Case Number 29/PUU-XXI/2023 state that Article 169 letter q of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections is in conflict with Article 28D of the 1945 Constitution which essentially states: "Article 169 letter q of Law 7 "In 2017 a quo has violated and conflicted with the Petitioner's constitutional rights and interests, namely the right to receive treatment and guaranteed protection of legal certainty."

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<sup>8</sup> *Ibid.*

- **The difference between the above application and the quo application is that the difference between Application Number 29/PUU-XXI/2023 and the quo application is:**

This application focuses more on those who are at least 40 years old or have experience as a Regional Head. If this is not changed, it will be in conflict with the 1945 Constitution of the Republic of Indonesia and will not have binding legal force as long as it is not interpreted as "at least 40 years of age or experience as a Regional Head.

The difference in the quo petition is that the petition above only prioritizes an age of at least 35 years, and there is nothing in the petition that says that if the candidate is not yet 40 and has experience as a Regional Head, he cannot nominate as President and Vice President.

In Indonesia itself, age regulations in the conditions for nominating the Head of State are regulated rigidly. When compared with the State of Angola in its Constitution in Article 110, paragraphs one and (2) *Constitution of Angola* as it reads;

1. Citizens of Angolan origin who are at least thirty-five years of age, who have habitually resided in the country for at least ten years, and who have full civil and political rights and physical and mental capacity are entitled to be elected as President of the Republic.
2. The following are not eligible to be selected as President of the Republic
  - a. Citizens of any acquired nationality;
  - b. Serving judges and public prosecutors
  - c. Served as judge of the Constitutional Court
  - d. Serves judges of the Court of Auditors
  - e. Ombudsman and Deputy Ombudsman;
  - f. Member of the election management body
  - g. Soldiers and members of the armed forces on active duty;
  - h. Former Presidents of the Republic who have served two terms in office are removed from office or resign or leave office



The focus in Angola is that the minimum age to be able to nominate as President is 35 (thirty-five) years, and at least within the last 10 (ten) years you have been an Angolan citizen. Between Indonesia and Angola, age regulation as a condition for presidential candidacy is regulated formally. The difference with the country of Angola is that it strictly regulates the requirements for presidential candidacy if the provisions in paragraph 2 are not met. Especially in Indonesia, the existence of age regulations in presidential nominations results in potential losses for the applicant. In the object of the petition in Case No.90/PUU-XXI/2023, the enactment of the provisions of Article 169 letter q of Law Number 7 of 2017 concerning General Elections has also caused real discrimination against the Petitioner, which is clear. has harmed and violated the Petitioner's constitutional rights under Article 28I paragraph (2) of the 1945 Constitution, which states:

*"Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment."*

However, the involvement of young people in the history of this nation's movement is a starting point. If we look at the timeline of this nation's journey, it was started and driven by young people. The applicant's reasons for testing the age limit for presidential candidacy are as follows;

1. Age discrimination or "*ageism*" is a form of "*stereotype*" and discrimination against individuals or groups because of their age. Age discrimination is a set of beliefs, attitudes, norms, and values that are used to justify prejudice and acts of discrimination. Ageism in the government system is rooted in persistent myths, misperceptions, and assumptions that should be outdated about older/senior people always being considered capable/able to be included as regional heads. Young candidates are often considered unfit/not yet capable of this. This is what the Petitioner considers to be age discrimination.

2. The 1945 Constitution of the Republic of Indonesia (UUD 1945) is the constitution that is the basis for the life of the Indonesian nation and state; therefore, the 1945 Constitution must be understood comprehensively, not only from a formal perspective. As a country that is based on law and upholds justice, it cannot only be bound by the law itself but is also bound by a sense of justice and morals. The law must be viewed and positioned as a means to guarantee the protection of citizens' rights.

Based on the court's considerations, the age limit for presidential candidacy remains at 40 (forty) years. However, the court provides an alternative for applicants and presidential candidates if they have not yet reached the age of 40 (forty) years; as long as they have experience and ability in the world of politics and government, they can do so. After Constitutional Court decision No.90/PUU-XXI/2023, the legal politics of regulating the age for presidential candidates underwent changes. This change is based on the aspirations and pressures of society, where political needs have become basic needs. According to Padmo Wahjono, legal politics is the policy of state administrators regarding what is used as the criteria for punishing something.<sup>9</sup>. The author believes that the Constitutional Court's decision will provide a regulation of the criteria for Presidential nominations, not based on formal ones but rather based on the people's choice based on justice. From a psychological perspective, according to Hamdi, humans between the ages of 35 and 40 are in the adult phase (*adulthood*)<sup>10</sup>. This means that, psychologically, there is no difference between someone who is 35 years old and 40 years old.

The Petitioner quoted the Considerations of Constitutional Court Judges in decision No.112/PUU-XX/2022, which was pronounced in a plenary session open to the public on May 25, 2023, which read, "*The Court emphasized that the requirements for education, skills*

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<sup>9</sup> *Ibid*.

<sup>10</sup>Susana Rita Kumalasanti, "Questioning the Age Limit for Presidential and Vice Presidential Candidates" .kompas.id.

<https://www.kompas.id/baca/polhuk/2023/08/10/mk-bukan-power-rangers-sedikit-sedikit-berubah> accessed on October 21, 2023

*and, moreover, experience are requirements that are substantially essential rather than purely formal age limit requirements."* In a legal state, including Indonesia, the development of democracy is inseparable because both are conceptual mechanisms for running a government.<sup>11</sup> Democracy itself is a pattern of government that invites all aspects of society to actively make decisions regarding the state. Likewise, from the Court's considerations regarding material review No.90/PUU-XXI/2023, *"If the requirements for President and Vice President are not attached to age requirements but are placed on experience requirements that have/are currently holding positions elected through elections(elected officials).* Thus, these characters/figures can be said to have met the minimum degree of maturity and experience requirements (*minimum degree of maturity and experience*) because it is proven that they have received the trust of society, the public, or the trust of the state.<sup>12</sup>

### **Implications of Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding Age Limits for Presidential Candidates**

Today, the world no longer views human rights simply as an embodiment of individualism and liberalism as before<sup>13</sup>. Human Rights are better understood in human terms as rights that are inherent in our human dignity and essence, regardless of our racial, ethnic, religious, skin color, gender, age, or occupational background.<sup>14</sup> In the petition submitted by the applicant, there is the potential for his human rights to be violated due to the determination of the general minimum limit of 40 (forty) years. The Petitioner argued as in Decision Number 90/PUU-XXI/2023, namely;

- *Whereas according to the Petitioner, the enactment of the provisions of Article 169 letter q of Law 7/2017 has resulted in discrimination against the Petitioner and has actually harmed and violated the Petitioner's*

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<sup>11</sup> Destina Balqis Anggiyanti et al., "Hukum Demokrasi Dalam Pelaksanaan Pilpres Dan Pilkada Pada Negara Sistem Presidensial," *Jurnal Hukum dan Sosial Politik* 1, no. 2 (May 2, 2023): 180–193.

<sup>12</sup> Constitutional Court Decision Number 90/PUU-XXI/2023

<sup>13</sup> Jefri Porkonanta Tarigan, "Akomodasi Politik Hukum Di Indonesia Terhadap Hak Asasi Manusia Berdasarkan Generasi Pemikirannya," *Jurnal Konstitusi* 14, no. 1 (July 24, 2017): 168.

<sup>14</sup> Saafroedin Bahar, *Hak Asasi Manusia: Analisis Komnas Ham Dan Jaringan Hankam / ABRI*, 1st ed. (Jakarta: Pustaka Sinar Harapan, 1996).

*constitutional rights as contained in the provisions of Article 28I paragraph (2) of the 1945 Constitution, because it violates the Petitioner's constitutional right to selected and elected Presidential candidates and Vice Presidential candidates of the Republic of Indonesia who are under 40 (forty) years of age in the 2024 elections;*

- *Whereas, according to the Petitioner, the enactment of the norm provisions of Article 169 letter q of Law 7/2017 is detrimental to the Petitioner's constitutional rights in order to obtain equal opportunities in government as contained in the provisions of Article 28D paragraph (3) of the 1945 Constitution*
- *Whereas according to the Petitioner, the provisions in Article 169 letter q of Law 7/2017 result in intolerable injustice because they force the Indonesian people to elect the President and Vice President based on candidates who meet the age criteria determined by the legislators.*
- *The Petitioner has a view of the ideal figure as the leader of the Indonesian nation, namely idolizing the Mayor of Surakarta for the period 2020 - 2025 because, during his reign, he was able to increase economic growth in Surakarta by 6.25%, even though when he first served as Mayor of Surakarta, Surakarta's economic growth was actually minus 1.74%. Moreover, the Mayor of Surakarta already has experience in building and advancing the City of Surakarta with honesty, moral integrity, and obediently serving the interests of the people and the state.*
- *Whereas according to the Petitioner, by referring to data on the number of elected regional heads under 40 (forty) years old in the previous election (2019 election), accompanied by the performance of regional heads under 40 years old and the performance of young ministers, it should be constitutional does not limit the constitutional rights of our youth to be able to nominate themselves as Presidential and Vice Presidential candidates.*
- *According to the Applicant, having already been elected and held the position of head of the regional government both in the Province and Regency/City, then the chosen one has been tested and has experience leading a region both in the Province and Regency/City.*

The applicant's reason for testing Article 169 letter q of Law 7 of 2017 is that his human rights are limited to candidacy for President before reaching the age of 40 (forty) years. Then, the applicant believes that the provisions being tested at the Constitutional Court state that there are discriminatory actions and that only those who are at least 40

(forty) years old can run for head of state even though they have no experience or expertise in the world of government. Conceptually, the development of human rights in the third generation has led to nation-building. Where there is equal opportunity between the government and citizens to advance the nation. According to Juan Jose Linz (1926-2013), he provided an understanding of the characteristics of a democratic government system. One of the characteristics of a democratic government, according to him, is the existence of a climate of freedom, a government that can guarantee that elections are held honestly and fairly<sup>15</sup>. The author analyzes that the "climate of freedom" can be used as a basis for anyone to run for Head of State without having to meet the specified age requirements as long as they are capable or have the ability in the world of government.

In legal logic, Bivitri believes that the age limit as a condition for nominating the president and vice president is not a constitutional issue<sup>16</sup>. Minimum and maximum age restrictions are not an issue that is usually strictly regulated because a politician's capacity is measured by their track record<sup>17</sup>. Several countries in the world determine the age for nominations for President/Head of State. The age is determined rigidly, such as in the United States, which is often used as a reference in implementing a democratic system of government; in fact, it strictly regulates the requirements for Presidential candidates in the United States constitution to be at least 35 (thirty-five) years as confirmed in *article II section 1* United States Constitution 1789. Indonesia itself implicitly states that nominations to become regional or state heads do not look at age as stated in Article 43 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, that;

Every citizen has the right to participate in government directly or indirectly or through representatives he freely chooses in the manner specified in the laws and regulations.

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<sup>15</sup> Rahman Yasin, "Hak Konstitusional Warga Negara Dalam Pemilu," Jurnal Bawaslu Provinsi Kepulauan Riau 4, no. 2 (2022): 186–199.

<sup>16</sup> MKRI Public Relations, "Bivitri: Age Limits for Presidential and Vice Presidential Candidates Are Not a Constitutional Issue." [mkri.id.https://www.mkri.id/index.php?page=web.Berita&id=19469&menu=2](https://www.mkri.id/index.php?page=web.Berita&id=19469&menu=2) accessed on October 19, 2023

<sup>17</sup> *Op.Cit.* "Bivitri: Age Limit for Presidential Candidates..."

With the Constitutional Court Decision No.90/PUU-XXI/2023 in the Court's consideration, Article 169 letter q of Law No.7 of 2017 concerning General Elections states;

"at least 40 (forty) years of age" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as "at least 40 (forty) years of age or has/is currently occupying an elected position through general elections including regional elections."

In the legal consideration read by Constitutional Judge M. Guntur Hamzah, the Court held that filling public positions *in case* The President and Vice President need to involve the participation of qualified and experienced candidates<sup>18</sup>. In order to realize participation and qualified and experienced candidates, the Court considers that experienced state officials such as DPR members, DPD members, DPRD members, Governors, Regents, and Mayors are actually worthy to participate in the national leadership contestation. *in case* a Presidential candidate and Vice Presidential candidate in the general election even though he is under 40 years old. Implications for Constitutional Court decision no. 90/PUU-XXI/2023 will provide a gateway for the younger generation to be able to run for head of state. However, there is also a negative side to this decision, which has the potential to become a political tool to perpetuate power. In addition, the allowed president and vice president are interpreted as "at least 40 (forty) years of age because Indonesia has a trend of Bonus Demografis in 2030, especially when Young generations are bigger than old people. In petition of Constitutional Court Decision No.90/PUU-XXI/2023 so;

Considering Indonesia's demographic bonus, where the number of young people is very large, it is necessary to provide space for the younger generation to actively participate in government. Moreover, there are symptoms of lawmakers raising the age for holding certain public positions, such as the age requirements for

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<sup>18</sup> Public Relations of the MKRI, "Age Limit for Presidential and Vice Presidential Candidates 40 Years or Occupying Positions Elected from Elections/Pilkada".

mkri.id.https://www.mkri.id/index.php?page=web.Berita&id=19660&menu=2  
accessed on October 20, 2023

Constitutional Judges and leaders of the Corruption Eradication Commission (KPK). Likewise, the age requirement for the president and vice president has been increased from 30 years old to 35 years old, and now 40 years old as in the a quo law. The increase in age requirements not only limits the space for the younger generation to take part in government but also indirectly places the younger generation as objects. This phenomenon is known as gerontocracy, where the government is controlled by old people by limiting access for young people to lead. The main characteristics of leadership in a gerontocracy are conservative, slow, and rigid, which is not in accordance with the more dynamic spirit of young people.

Providing alternatives to age based on the quality of the Presidential candidate as a democratic choice for society so that it is not only based on formal provisions but also substantive justice. Substantive justice is an idea of justice that seeks to present it comprehensively and completely in society<sup>19</sup>. The substantive meaning of justice regarding alternative ages for presidential candidacy is a step for the community to find a candidate for leadership that is not based on formal provisions but on their wishes. Based on the Court's considerations in providing alternative space through the age allowance as intended,

The Court considers this risky if the Presidential and Vice Presidential candidates are only placed in possession of the right to vote simply because, although there is nothing wrong, these figures have not proven that they have ever been involved in an election contestation. This means that it is unfair if the proposed candidate has never received the people's trust to occupy the position chosen through the election. Therefore, the Court considers that in terms of age, being nominated as a candidate for President and Vice President is not only based on age restrictions in the sense of numerical/quantitative units (*per se*) but must also be given alternative space for qualitative age in the form of experience of having held/currently held positions elected by the

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<sup>19</sup> Abdul Wahid, "Keadilan Restoratif: Upaya Menemukan Keadilan Substantif?," *Jurnal Ius Constituendum* 7, no. 2 (2022): 307–321.

general public. The fulfillment of such alternative conditions shows that the figure has been chosen by the people based on the will of the people (*the will of the people*), is considered to have fulfilled the principle *minimum degree of maturity and experience*, and is in line with the principle of providing opportunities and eliminating restrictions (*to give opportunity and abolish restriction*) fairly, rationally and accountably.

Juan Linz also stated the conditions that must be met by a democratic political system, namely open competition in the election of public officials and the presence of an open government that guarantees the freedom of its citizens.<sup>20</sup> From the perspective of Constitutional Court Decision No.90/PUU-XXI/2023, according to the Court, in encouraging the widest possible participation of the people in government, it must not be hindered by conditions that are discriminatory, irrational, and/or unfair, because there are more and more people. Those who participate, whether to vote or be elected, will further improve the quality of the democratic process. The author believes that easing the age requirements for presidential candidacy in Indonesia is a fulfillment of democratic politics that is not hampered by conditions that are discriminatory, unfair, or even irrational in the eyes of the people. Modern-era democratic practice requires new institutional designs that are able to accommodate and process societal complexity and remain capable of producing political decisions that side with the will of the people. Connected with the human rights perspective for citizens to be elected based on equal rights in a free and fair manner in accordance with the provisions of laws and regulations. The author considers that with the development of the times, people's needs are getting higher, not only for clothing, shelter, and food, but political needs are very much needed in order to show their existence or convey their ideas, which might be able to change the situation of their country.

Previously, Indonesia regulated the age requirements for Presidential candidates as determined in Article 69 paragraph (3) of the Constitution of the Republic of the United States of Indonesia, which states that Indonesians must be 30 (thirty) years old. These changes have

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<sup>20</sup> Valina Singka Subekti, "Demokrasi Dalam Penyelenggaraan Pemilu Di Indonesia" (n.d.): 37–60.



an impact on the requirements for Presidential and Vice Presidential candidates being more flexible, namely that the regulations are regulated through Article 6 letter q of Law 23/2003 concerning the General Election of President and Vice President determining the requirements for at least 35 (thirty-five) years. Thus, according to the Court, Constitutionally, although legislators have the authority to determine the requirements for candidates for President and Vice President, legislators are still bound by constitutional guidelines in forming laws, especially regarding rational requirements that do not violate morality, not discriminatory, and does not involve injustice. In fact, it must not conflict with Pancasila, the constitution, principles of justice, and human rights.

Historically, the issue of age limit requirements for President-Vice President candidates in Indonesia varies, between a minimum age of 30 years, 35 years, and 40 years as regulated in the written basic law, the Decree of the People's Consultative Assembly (Tap MPR), and the Law;

- In the 1949 Constitution of the United Republic of Indonesia (1949 RIS Constitution), the minimum age requirement for a presidential candidate is 30 years. This is stated in Article 69, paragraph (3) of the 1949 RIS Constitution, which states, "The President must be an Indonesian who is 30 years old; he cannot be a person who is not permitted to participate in or exercise the right to vote or a person who has been denied the right to be elected.
- The age setting for Presidential and Vice Presidential candidates at 30 years is regulated in the 1950 Provisional Constitution of the Republic of Indonesia (UUDS 1950). According to Article 45, paragraph (5) of the 1950 Constitution states, "The President and Vice President must be Indonesian citizens who are 30 years old and cannot be people who are not permitted to participate in or exercise the right to vote or people who have been deprived of their right to be elected. "
- Meanwhile, Article 1 paragraph (1) letter b TAP MPR Number II/MPR/1973 concerning Procedures for Election of the President and Vice President of the Republic of Indonesia states, "Candidates for President and Candidates for Vice

President are native Indonesians and must meet the following requirements. : b. is 40 years old;"

- The age limit of 40 years is still maintained in Article 1 paragraph (1) letter b TAP MPR Number VI/MPR/1999 concerning Procedures for Nominating and Electing the President and Vice President of the Republic of Indonesia, which states, "Candidates for President and Candidates for Vice President are Indonesians original and must meet the following requirements: b. has been 40 years old.
- After reform, the requirements for becoming candidates for President and Vice President are regulated in Law Number 23 of 2003 concerning the General Election of President and Vice President (State Gazette of the Republic of Indonesia of 2003 Number 93, Supplement to State Gazette of the Republic of Indonesia Number 4311, hereinafter referred to as Law 23/2003 ) which was used as the legal basis for the 2004 Presidential Election. The provisions of Article 6 letter q of Law 23/2003 state, "Presidential Candidates and Vice Presidential Candidates must fulfill the requirements: q. at least 35 (thirty-five) years of age."
- Then, the law was revoked and replaced with Law Number 42 of 2008 concerning the General Election of the President and Vice President (State Gazette of the Republic of Indonesia of 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924, hereinafter referred to as Law 42/2008) which was used as the legal basis for the 2009 Presidential Election and the 2014 Presidential Election. Article 5 letter o of Law 42/2008 states, "The requirements for becoming a Presidential candidate and Vice Presidential candidate are: o. aged at least 35 (thirty-five) years".
- The current age requirements for the President and Vice President are Law 7/2017 which is used as the legal basis for the 2019 Presidential Election and the upcoming 2024 Presidential Election. In Article 169 letter q of Law 7/2017 it is stipulated that the requirements for candidates for President and Vice President are to be at least 40 years old.

Different reasons (*concurring opinion*) from Constitutional Justice Daniel Yusmic P. Foekh that the material review of Article 169 letter q of Law no. 7 of 2017 concerning general elections states that the requirements for becoming a Presidential candidate and Vice Presidential candidate in each country are different. Determining different ages is an objective requirement for the position of head of state. So, it is possible that the minimum age limit for citizen participation in government positions or activities may be changed at any time by the legislators in accordance with the demands of existing development needs. Therefore, the Court has considered that there is flexibility as long as the candidate has experience in the world of government and can apply for President even though he has not reached the age of 40 (forty) years.

## Conclusion

The age restrictions for presidential candidacy requirements in Indonesia are bound by formal provisions: Article 169 letter q of Law Number 7 of 2017. Rather, the Court provides consideration as an alternative for presidential candidates who will nominate themselves without having to be hindered by age. Constitutional Court Decision Number 90/PUU-XXI/2023 provides an alternative if the candidate has not yet reached the age of 40 (forty) years, he can nominate as long as he has experience or is currently serving as regional head;

Implications of Constitutional Court Decision No.90/PUU-XXI/2023: Determination of different ages is an objective necessity. There is flexibility in the requirements for presidential candidacy if you have experience in the world of government or politics, even though you have not reached the age of 40 (forty) years. From the perspective of this decision, the Court, in providing the widest possible participation of the people in government, should not be hindered by conditions that are discriminatory, irrational, and/or unfair because more and more people are participating, both to vote and be elected. , it will further improve the quality of the democratic process. Therefore, the alternative age for presidential candidacy is a step for the community to find a candidate for leadership that is not based on formal provisions but seeks to present the wishes of the community in a fair manner.

## Bibliography

- Anggiyanti, Destina Balqis, Ruth Shelomita, Dhamara Kusuma Swastika P, and Laga Sugianto. "Hukum Demokrasi Dalam Pelaksanaan Pilpres Dan Pilkada Pada Negara Sistem Presidensial." *Jurnal Hukum dan Sosial Politik* 1, no. 2 (May 2, 2023): 180–193.
- Asshiddiqie, Jimly. *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*. Jakarta: PT Bhuana Ilmu Populer, 2007.
- Bahar, Saafroedin. *Hak Asasi Manusia: Analisis Komnas Ham Dan Jajaran Hankam / ABRI*. 1st ed. Jakarta: Pustaka Sinar Harapan, 1996.
- Hakiki, Yuniar Riza. "Relevansi Gagasan Pencalonan Presiden Dan Wakil Presiden Jalur Perseorangan Terhadap Prinsip Negara Hukum Dan Demokrasi." *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 139–171.
- HR, Ridwan. *Hukum Administrasi Negara*. 13th ed. Vol. 1. Jakarta: Rajawali Pers, 2020.
- Irawan, Anang Dony. "Penentuan Ambang Batas Pencalonan Presiden Dan Wakil Presiden Di Indonesia Dalam Pemilihan Umum Serentak 2019." *Ajudikasi: Jurnal Ilmu Hukum* 3, no. 2 (December 31, 2019): 121.
- Manurung, Yosua. "Politik Hukum Pembatasan Usia Calon Kepala Daerah Berdasarkan Pasal 7 Ayat 2 E Undang-Undang Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang- Undang No 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang." *JOM Faculty of Law, University of Riau* VIII, no. 1 (2021): 2–16.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. 1st ed. Jakarta: Kencana Prenada Media Group, 2005.
- Subekti, Valina Singka. "Demokrasi Dalam Penyelenggaraan Pemilu Di Indonesia" (n.d.): 37–60.

Tarigan, Jefri Porkonanta. "Akomodasi Politik Hukum Di Indonesia Terhadap Hak Asasi Manusia Berdasarkan Generasi Pemikirannya." *Jurnal Konstitusi* 14, no. 1 (July 24, 2017): 168.

Wahid, Abdul. "Keadilan Restoratif: Upaya Menemukan Keadilan Substantif?" *Jurnal Ius Constituendum* 7, no. 2 (2022): 307–321.

Yasin, Rahman. "Hak Konstitusional Warga Negara Dalam Pemilu." *Jurnal Bawaslu Provinsi Kepulauan Riau* 4, no. 2 (2022): 186–199.

### **Article/Web**

MKRI Public Relations, "Bivitri: Age Limits for Presidential and Vice Presidential Candidates Are Not a Constitutional Issue." [mkri.id.https://www.mkri.id/index.php?page=web.Berita&id=19469&menu=2](https://www.mkri.id/index.php?page=web.Berita&id=19469&menu=2)

Public Relations of the MKRI, "Age Limit for Presidential and Vice Presidential Candidates 40 Years or Occupying Positions Elected from Elections/Pilkada". [mkri.id.https://www.mkri.id/index.php?page=web.Berita&id=19660&menu=2](https://www.mkri.id/index.php?page=web.Berita&id=19660&menu=2)

Susana Rita Kumalasanti, "Questioning the Age Limit for Presidential and Vice Presidential Candidates". [kompas.id.https://www.kompas.id/baca/polhuk/2023/08/10/mk-bukan-power-rangers-sedikit-sedikit-berubah](https://www.kompas.id/baca/polhuk/2023/08/10/mk-bukan-power-rangers-sedikit-sedikit-berubah)

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