

Juridical Analysis of Additional Experience Requirements and Age Conditions in the Nomination of President and Vice President (Analysis of Constitutional Court Decision Number 90/PUU - XXI/2023)

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ABSTRACT: The Constitutional Court is one of the actors of judicial power that has different regulations from other judicial actors. In Case Number 90/PUU-XXI/2023, it not only deviates from the considerations and the ruling but also reverses the ruling 180 degrees from rejecting to granting, albeit with the addition of the term "partially," thus becoming "partially granting." The problem formulation obtained is how the map of legal opinions (Dissenting Opinion) in the Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the composition of age requirements and experience serving as regional heads and whether the Constitutional Court Decision Number 90/PUU-XXI/2023 can be retried after it is proven that there has been a serious ethical violation committed by the Chief Justice of the Constitutional Court who also decided the case. This legal research uses an empirical normative method that primarily focuses on how society uses positive legal rules to respond to various legal events that occur. In the Constitutional Court Decision Number 90/PUU-XXI/2023, the decision-making composition not only represents the independence of the Constitutional Judges but also represents other matters that can be concluded both explicitly and implicitly in the considerations of the Dissenting Opinion of the Constitutional Judges. From the provisions regulating the decisions of the Constitutional Court, it is stated that any ethical violations or criminal acts committed by the judges of the Constitutional Court only affect the judges themselves.

KEYWORDS: constitutional court; dissenting opinion; code of ethics.

I. INTRODUCTION

The amendments to the 1945 Constitution of the Republic of Indonesia (UUD 1945) have laid the institutional foundations of the state in Indonesia's system of government. In this regard, the 1945 Constitution stipulates that the President holds power as the head of government, and the Constitution specifies his duties, rights, and obligations. Article 4 paragraphs (1) and (2) of the 1945 Constitution read:

"The President of the Republic of Indonesia holds governmental power in accordance with the Constitution."

"In carrying out his duties, the President is assisted by one Vice President."

General elections for the President and Vice President are held every five years during the term of government in Indonesia. In the 1945 Constitution, the general election for the President and Vice President is regulated by Law based on Article 22E paragraphs (1), (2), (5), and (6), which read:

"General elections shall be held directly, publicly, freely, confidentially, honestly, and fairly every five years."

"General elections shall be held to elect members of the People's Representative Council, the Regional Representative Council, the President and Vice President, and the Regional Representative Council."

"General elections shall be organized by a national, permanent, and independent general election commission."

"Further provisions regarding general elections shall be regulated by law."

The election of the President and Vice President is regulated in Law Number 7 of 2017 concerning General Elections. The requirements for presidential and vice presidential candidates to participate in the elections are regulated in Chapter II, Part I of this Law. Recently, the Constitutional Court ruled on an additional provision regarding the requirements for presidential and vice presidential candidates. Prior to the additional provision, Article 169 letter (q) read: "at least 40 (forty) years of age".

In General Election Commission Regulation Number 19 of 2023 concerning the Nomination of Candidates for the Presidential and Vice Presidential Elections, Article 13 paragraph (3) reads: "The requirement for presidential and vice presidential candidates to be at least 40 (forty) years of age as referred to in paragraph (1) letter q shall be calculated from the date of the determination of the candidate pairs by the General Election Commission."

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Article 24 paragraph (1) of the Constitution on the Authority of the Constitutional Court states, "Judicial power shall be exercised by a Supreme Court and courts under its authority... and by a Constitutional Court"¹ and Article 24 C paragraph (1) of the 1945 Constitution states that "the Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final, one of which is to settle disputes over the results of general elections".

The purpose of establishing this institution is to realize a democratic state based on the rule of law in accordance with the 1945 Constitution, while from a political perspective, the Constitutional Court is understood as an effort to realize a mechanism of checks and balances between state institutions. Theoretically, the Constitutional Court functions to examine whether a legal product is in conflict with the 1945 Constitution.²

One of the powers of the Constitutional Court is to conduct judicial review. The birth of the Constitutional Court began with the Marbury case, and one of the powers of the Constitutional Court is to conduct judicial review. The birth of the Constitutional Court began with the Marbury and Madison case in 1803, when the United States Constitution did not regulate the Supreme Court's authority to conduct judicial review. US President John Marshall considered that the Supreme Court only had the authority to declare that a law was unconstitutional. Therefore, because constitutional implementation of legislation could be guaranteed if there was an organ other than the legislative body that had the task of reviewing a legal product and could not enforce it if, according to this organ, the legal product was unconstitutional, a special organ called the Constitutional Court was established. The existence of the Constitutional Court is seen as part of the effort to realize a system of checks and balances between the branches of government based on democratic principles. This is related to two powers that are usually possessed by constitutional courts in various countries, namely reviewing the constitutionality of legislation and resolving disputes over the constitutional authority of state institutions. The term checks and balances comes from the development of law in the United States, where Charles Beard (an American historian, political scientist, and educator) stated that judicial review is part of the system of checks and balances. The system of checks and balances is an essential element in constitutions built on the doctrine that the government cannot have absolute power, especially regarding the implementation of laws concerning property rights.³

In Constitutional Court Decision Number 90/PUU - XXI/2023, Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 6109) which states, "at least 40 (forty) years old" 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 old or has held/is holding a position elected through general elections, including regional head elections". Therefore, Article 169 letter q of Law Number 7 of 2017 concerning General Elections reads in full as "at least 40 (forty) years of age or has held/is holding a position elected through general elections, including regional head elections."⁴

In the 1945 Constitution of the Republic of Indonesia, the Constitutional Court is one of the judicial authorities that has different regulations from other judicial authorities. In terms of organization, the Constitutional Court does not have a court under it, such as the Supreme Court, which is the administrative court. In terms of decisions, the Constitutional Court's decisions are final and binding. Final here means that no further legal action can be taken after the decision is delivered. This is clearly different from the judicial institutions under the Supreme Court, whose decisions can be appealed, cassated, and reviewed. Furthermore, in terms of the composition of judges, the Constitutional Court has 9 (nine) judges.

When a judge makes a decision to produce a ruling, the judges do not unanimously and unanimously agree on the ruling. There are certain occasions when a judge does not agree with the ruling made by the other judges, which is referred to as a dissenting opinion. Regarding the decision of the Court a quo, there were dissenting opinions from four Constitutional Court judges, namely Constitutional Court Judge Wahiduddin Adams, Constitutional Court Judge Saldi Isra, Constitutional Court Judge Arief Hidayat, and Constitutional Court Judge Suhartoyo.

The dissenting opinion of Constitutional Judge Wahiduddin Adams was that setting age limits for presidential and vice-presidential candidates is very common practice among legislators. This is because the positions of president and vice-president are essentially very different from those of king/queen/sultan/emperor and so on, who are generally appointed regardless of their age. If the Constitutional Court grants this petition, either in whole or in part, then the Court will be engaging in a practice commonly known as legislating or governing from the bench without sufficient constitutional grounds.

The dissenting opinion of Constitutional Judge Saldi Isra stated that he rejected the petition in question regarding case 90/PUU-XXI/2023. According to him, his stance is the same as in Constitutional Court decisions No. 29/PUU-XXI/2023,

¹ Mahkamah Konstitusi, 'Putusan Nomor 90/PUU - XXI/2023', 5 (2023), 1–122, hal 2.

² Budi Aspani Novitalia, Khairani Hasibuan, 'Kredibilitas Mahkamah Konstitusi Pasca Putusan No.90/PUU - XXI/2023', hal. 22 (2024).

³ Leonard W. Levy, *Judicial Review: Sejarah Kelahiran, Wewenang, dan Fungsinya dalam Negara Demokrasi*, Judul Asli: *Judicial Review and the Supreme Court*, Penerjemah: Eni Purwaningsih, Jakarta: Penerbit Nuansa, 2005, hal. 3.

⁴ Putusan Mahkamah Konstitusi Nomor 90/PUU - XXI/2023

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51/PUU-XXI/2023, and 55/PUU-XXI/2023, which were examined through a plenary session to hear testimony from the president, the House of Representatives, related parties, and experts. In this case, the factual change in the composition of the judges deciding from eight people in Numbers 29-51-55/ PUU-XXI/2023 to nine in Case No. 90-91/PUU-XXI/2023 not only distorted the considerations and verdict, but also reversed the verdict by 180 degrees from rejection to approval, albeit with the addition of the word “partial,” making it “partial approval.”

Furthermore, the dissenting opinion of Constitutional Judge Arief Hidayat highlights the five cases in question. The facts of the case and the core constitutional issues discussed originate from the cases in question, including the three cases in question, namely Case Number 29/PUU-XXI/2023, Case Number 51/PUU - XXI/2023, and Case Number 55/PUU-XXI/2023, were examined and adjudicated in a plenary session simultaneously. Meanwhile, Case Number 90/PUU- XXI/2023 and Case Number 91/PUU-XXI/2023 were relatively new cases, but were decided immediately. Constitutional Judge Arief Hidayat proposed that the Constitutional Court set a reasonable time period between the request for review hearing and the trial hearing to hear testimony from the House of Representatives and the Government. Another anomaly was the participation of Anwar Usman in one of the cases that was ultimately granted by the Constitutional Court. However, in the Judges' Deliberation Meeting (RPH) on September 19, 2023, Anwar Usman was absent from the three cases that were ultimately rejected by the Constitutional Court, Case Number 29PUU-XXI/2023, Case Number 51PUU-XXI/2023, and Case Number 55/PUU-XXI/2023.

Constitutional Judge Suhartoyo, in his dissenting opinion, stated that he did not grant legal standing to the petitioners in cases No. 29/PPU-XXI/2023 and 51/PUU-XXI/2023. The reason was that the petitioners were not legal subjects with a direct interest in running for president and vice president. Therefore, it was irrelevant for the petitioners to request an interpretation of Article 169(q) of Law 7/2017 for the benefit of other parties, as stated in their petition.

A concurring opinion is an opinion/decision written by one or more judges who agree with the majority opinion of the panel of judges in a case, but have different reasons for doing so.⁵ Regarding the decision of the Court a quo, there are dissenting opinions from two Constitutional Court Justices, namely Constitutional Court Justice Enny Nurbaningsih and Constitutional Court Justice Daniel Yusmic P. Foekh, as well as a dissenting opinion from four Constitutional Court Justices, namely Constitutional Court Justice Wahiduddin Adams, Constitutional Court Justice Saldi Isra, Constitutional Court Justice Arief Hidayat, and Constitutional Court Justice Suhartoyo.⁶

The dissenting opinion of Constitutional Judge Enny Nurbaningsih was that candidates must be “at least 40 (forty) years of age or have experience as a governor, the requirements for which are determined by the legislators.” Meanwhile, Constitutional Judge Daniel Yusmic P. Foekh stated that the requirements are “at least 40 (forty) years of age or experience as a provincial head of region.”

This ruling has sparked controversy among the public and community leaders. As a result, those who oppose this ruling have filed a report of ethical violations committed by the Chief Justice of the Constitutional Court, Anwar Usman, to the Constitutional Court Honorary Council (MKMK), which is led by MKMK Chairman Jimly Asshiddique, accompanied by two other MKMK members, Wahiduddin Adams and Bintan Siragih. However, the decision that has been made by the Constitutional Court cannot be overturned by the MKMK because the decision is final and has permanent legal force. Furthermore, in accordance with Constitutional Court Regulation Number 1 of 2023, the MKMK's authority is to uphold the honor, dignity, and code of conduct of judges. Therefore, the issue of the age limit for presidential and vice-presidential candidates that has been determined cannot be overturned.

This has become a problematic issue in the political sphere and for the judges who made the decision. Since the beginning of the review of the age limit for presidential and vice presidential candidates in Article 169 letter q of Law Number 7 of 2017, suspicions of a violation of the principle of impartiality have arisen. This decision seems to have been rushed, and there is a conflict of interest involving Prof. Dr. H. Anwar Usman, S.H., M.H., who is also the Chief Justice of the Constitutional Court. This reinforces the term “insider” and suggests that there will be a power dynasty in the Indonesian government system.

When examining the code of ethics and code of conduct for Constitutional Court judges, Anwar Usman should have recused himself from reviewing Law Number 7 of 2017. Anwar Usman's recusal from the review did not affect the quorum because the eight other judges were sufficient to review the judicial review. In Law Number 24 of 2003 concerning the Constitutional Court, which was last amended by Law Number 7 of 2020 (Law 24/2003), it is stated in Article 28 paragraphs (1) and (2) which read,

- (1) “The Constitutional Court examines, adjudicates, and decides in plenary sessions with nine Constitutional Court judges, except in extraordinary circumstances with seven Constitutional Court judges led by the Chief Justice.”
- (2) “In the event that the Chief Justice of the Constitutional Court is unable to preside over the plenary session as referred to in paragraph (1), the session shall be presided over by the Deputy Chief Justice of the Constitutional Court.”

⁵ Siti Aminah dan Uli Parulian Sihombing, *Memahami Pendapat Berbeda (Dissenting Opinion) Putusan Uji Materiil UU Penodaan Agama*, (Jakarta: The Indonesian Legal Resource Center, 2011), hal. 30.

⁶ Putusan Mahkamah Konstitusi Nomor 90/PUU - XXI/2023.

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Based on these provisions, if Anwar Usman, as Chief Justice of the Constitutional Court, is unable to attend the hearing, he may be replaced by his deputy, Saldi Isra. This will allow the examination of the case challenging Law No. 7 of 2017 of the Republic of Indonesia, which has a direct bearing on the family of the Chief Justice, to proceed. Anwar Usman's resignation from examining Law Number 7 of 2017 must be carried out because Anwar Usman, as a judge of the Constitutional Court, has a family member who has a direct interest in the Constitutional Court's decision. In this case, the interest in question is the interest in running for vice president.

Based on this background, the author is interested in analyzing Constitutional Court Decision Number 90/PUU-XXI/2023 relating to the addition of provisions to Article 169 letter (q) in Law Number 7 of 2017 concerning General Elections. Therefore, the author formulates the research question, namely, what is the legal opinion (Dissenting Opinion) in Constitutional Court Decision Number 90/PUU - XXI/2023 regarding the composition of age and experience requirements for regional heads? The purpose of this research is to examine the dissenting opinion in Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the composition of age and experience requirements for serving as a regional head.

II. LITERATURE REVIEW

Research must be accompanied by theoretical thinking, because there is a reciprocal relationship between theory and data collection, construction, processing, and analysis. Meanwhile, data is based on a set of facts found in the field. Theory will outline a line of thinking according to a logical framework, which means placing the research problem that has been formulated within a relevant theoretical framework that is capable of explaining the problem.⁷

A. Judicial Review Theory

Indonesia is a constitutional state, as explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to Stahl, the elements of a constitutional state (*rechtsstaat*) are:

- a) Protection of human rights;
- b) Separation of powers to guarantee these rights;
- c) Government based on laws and regulations; and
- d) Administrative adjudication in disputes.

Therefore, in realizing the rule of law, the Indonesian state established a state administrative court.

The existence of Administrative Courts in a country governed by the rule of law is necessary as a means for citizens who feel that their interests have been harmed by authorities who have violated legal provisions (citizen control over government actions). Administrative courts can be viewed as special courts, in the sense that they are only given the authority to resolve disputes that arise between administrative officials and individuals or civil law entities as a result of a decision being issued or not issued.⁸

The administrative court in Indonesia is the State Administrative Court (PTUN) as regulated in Law Number 5 of 1986 concerning State Administrative Courts. The State Administrative Court (PTUN) is an absolute necessity, not only as a means of control over the actions of state administrative officials but also as a form of legal protection for the community.

The subjects of the dispute are private individuals or legal entities on one side and State Administrative Agencies or Officials on the other.⁹ Private legal entities and individuals are plaintiffs, while state administrative bodies or officials are defendants.

The subject of PTUN disputes is decisions issued by TUN bodies or officials. Article 1 point 3 of Law Number 5 of 1986 concerning State Administrative Courts states that

“An administrative decision is a written determination issued by an administrative body or official containing administrative legal actions based on applicable laws and regulations, which are concrete, individual, and final in nature and have legal consequences for a person or private legal entity.”

On the other hand, there is also another definition contained in Article 1 point

(7) of the Government Administration Law, which reads, “A Government Administration Decision, also referred to as an Administrative Decision or State Administration Decision, hereinafter referred to as a Decision, is a written determination issued by a Government Agency and/or Official in the administration of government.”

Article 109 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts stipulates that one of the elements that must be present in a judge's decision is the legal basis for the decision. Before handing down a verdict in response to the plaintiff's claim, a judge must first establish the legal basis for the decision, which contains the *ratio decidendi* or reasoning, i.e., the arguments or legal grounds for the decision. The essence of a legal case, namely the part that can be considered decisive, is called the *ratio decidendi*.

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : Universitas Indonesia Press, 1984), hlm. 122

⁸ Ridwan, *Tiga dimensi Hukum Administrasi dan Peradilan Administrasi*, FH UII Press, Yogyakarta, 2009., Hlm. 146.

⁹ W. Riawan Tjandra, *Teori dan Praktik Peradilan Tata Usaha Negara*, Atma Jaya Press, Yogyakarta, 2015, Hlm. 17.

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A judge's decision is a statement made by a judge, as a state official authorized to do so, in court with the aim of ending or resolving a case or dispute between the parties.¹⁰ The part of the decision that mentions legal considerations or considerations contains a description of the legal considerations regarding the case. In the decision regarding these legal considerations, there is an assessment of the evidence regarding the facts presented or disputed by the plaintiff and/or defendant in the trial.

Judges have the freedom to determine and pass judgments, but all such matters must be based on existing legal rules and on arguments that can be monitored and followed. In this case, the aim is that every decision handed down by the judge will provide justice and legal certainty for the parties to the dispute. This is because the quality of the judge's decision can be seen from the ratio decidendi or legal arguments provided by the judge.

The concept of judicial review of the constitutionality of a law is actually an idea to prevent a repeat of the state administration practices during the New Order, which saw a conspiracy between the executive and legislative branches that resulted in laws that were contrary to the 1945 Constitution, including the Election Law, the Political Party and Golkar Law, the Mass Organization Law, the Village Administration Law, and others. The conspiracy between the executive and legislative branches was aimed at strengthening the position of the government by

Electoral Law, Political Party and Golkar Law, Mass Organization Law, Village Administration Law, and others. The conspiracy between the executive and legislative branches was carried out with the aim of strengthening the position of the government by sacrificing the basic rights and freedoms of the people as clearly stated and guaranteed by the 1945 Constitution.

Various laws that deviate from the 1945 Constitution have been revised. However, these changes did not go through a judicial review process, but were due to pressure from reformists who forced the DPR and the government to change these laws. Of course, it is still possible to examine whether these laws are in accordance with the values and norms contained in the 1945 Constitution and the MPR Decree related to this matter.

The possibility of a repeat of the conspiracy between the executive and legislative branches to violate the constitution should be prevented by conducting a judicial review or material review of the law. Therefore, judicial review of the constitutionality of laws is actually a legal control over the political process, namely the drafting of laws by the government and the House of Representatives. The urgency of judicial review is as a control over the consistency of legislation and basic regulations, for which judicial activism is necessary.

According to Moh. Mahfud, there are at least three basic reasons for the importance of judicial activism: First, law as a political product always represents a character that is highly determined by the political constellation that gave birth to it. This makes it possible that each legal product will reflect the vision and political power of the dominant authority (the government), thereby becoming inconsistent with the basic laws or conflicting with regulations that are hierarchically higher. Second, what often happens is that there is a discrepancy between a piece of legislation and higher legal regulations, giving rise to various alternatives to anticipate and overcome this through the establishment or institutionalization of a constitutional court, a legislative court, judicial review, judicial review by the People's Consultative Assembly, and so on. Third, of the various alternatives that have been offered, the institutionalization of judicial review is more concrete and has even been crystallized in various laws and regulations, although its scope is limited, so it is often referred to as limited judicial review. However, not a few people think that limited acceptance of judicial review can actually be implemented and has received sufficient regulatory accommodation.¹¹

The delegation of legislative authority to the government can open up significant opportunities to create further implementing regulations for each law. This also opens up the possibility of creating laws and regulations that are actually incompatible with or even contradict the laws that are further regulated or higher in rank. Therefore, to ensure legal order, it is necessary to institutionalize or effectively implement judicial review or the right to judicial review by the competent authority.

In the implementation of judicial review, there is a problem regarding the relationship between the Supreme Court and the Constitutional Court in terms of their authority to conduct judicial review. The 1945 Constitution of the Republic of Indonesia stipulates that there are two institutions that have the authority to exercise the right of review held by judges, namely the Supreme Court and the Constitutional Court. The Supreme Court has the authority to review only regulations under the law against the law, while the authority to review laws against the Constitution lies with the Constitutional Court.

B. Theory of Public Administration

Public administration is a branch of administrative science that continues to be dynamic in nature. Consequently, this dynamic nature has given rise to various formulations or definitions of public administration. According to Nicholas Henry, in a broad sense, public administration is a combination of theory and practice. Its purpose is to promote an understanding of government

¹⁰ Sudikno Mertokusomi, *Hukum Acara Perdata Indonesia*, Libery, Yogyakarta, 2009., hlm. 212.

¹¹ Moh. Mahfud. MD, *Hukum Dan Pilar-Pilar Demokrasi*, Gama Media, Yogyakarta, 1999, hlm. 327-328.

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and its relationship with the people, which in turn will promote public policies that are more responsive to social demands and establish management practices that are efficient, effective, and more humane.¹²

Administrative procedural law in Indonesia is regulated according to formal law, while substantive law is regulated in a single law. This is stipulated in Law No. 5 of 1986 on Administrative Courts.¹³

In relation to the State Administrative Court (PTUN), state administration theory considers the PTUN to be part of the administrative checks and balances system that protects citizens from government actions that exceed authority (*ultra vires*), are arbitrary, or violate procedures. This means that the PTUN serves to ensure that administrative decisions are in accordance with administrative principles such as legality, rationality, proportionality, and do not abuse authority. Meanwhile, the Constitutional Court operates at a higher “normative level.”

From the perspective of public administration theory, the Constitutional Court is an institution that ensures that the legal framework or legal basis for administrative actions remains in line with the constitution. State administration theory views the Constitutional Court as an institution that ensures that the legal framework underlying administrative actions remains in line with the constitution. From the perspective of state administration theory, the Constitutional Court, through its decisions, changes the basic norms that must be followed by all administrative institutions, including the KPU as the election organizer.

In state administration, there is the principle of good governance. Good Governance is a form of government that builds and applies the principles of professionalism, accountability, transparency, excellent service, democracy, efficiency, effectiveness, the rule of law, and is acceptable to all citizens. The strategic plan in Good Governance is the need for a new approach in state administration and development aimed at realizing good governance, namely: "... A democratic, professional government management process that upholds the rule of law and human rights, is decentralized, participatory, transparent, fair, clean, and accountable; as well as being effective, efficient, and oriented towards increasing the nation's competitiveness." The main elements of governance are: accountability, transparency, openness, and the rule of law, coupled with management competence and human rights.¹⁴

This principle, as it relates to the General Elections Commission (KPU) as the election organizer, is an important foundation for ensuring that the entire election process runs properly, in this case fairly, honestly, credibly, and in a manner that is trustworthy to the public. KPU policies and regulations, ranging from the drafting of KPU Regulations (PKPU), decisions, technical election mechanisms, to the implementation of the stages, must be formulated and implemented in accordance with the principles of good governance so as not to give rise to conflicts of interest, fraud, or legal uncertainty.

C. General Election Theory

Democratic governance refers to the concept of democracy that is evolutionary and dynamic, in line with its socio-historical context and dynamics. Democratization is defined as the act or process of making or becoming democratic (describing a series of developmental movements or processes towards achieving democracy).¹⁵ The development of democratization studies has brought about a change in perspective in three aspects. First, the expansion of opportunities for the public to participate in decision-making; second, the expansion of the scope of issues debated in government; and third, more tangible public control over the administration of government by involving autonomous and competent figures.¹⁶

The theory of general elections (Pemilu) not only discusses voting mechanisms or campaigns, but also the legality of policies, clarity of rules, and dispute resolution mechanisms that support the integrity of elections. When procedural violations occur, the determination of participants or candidates is deemed invalid, or the administrative policies of the General Election Commission are considered detrimental to certain parties, the State Administrative Court (PTUN) becomes a means of testing whether these actions are in accordance with state administrative law. Meanwhile, the Constitutional Court plays a role in maintaining electoral justice at the constitutional level. In electoral theory, the Constitutional Court acts as the guardian of electoral justice through two main roles, namely ensuring that the General Election Law is in line with the 1945 Constitution of the Republic of Indonesia and resolving election result disputes. The Constitutional Court influences all stages of the election because its decisions are final and binding, which means that all rules and actions of election organizers must comply with them.

¹² Dedy Mulyadi, *Administrasi Publik dan Pelayanan Publik*, Bandung, Alfabeta, 2016.

¹³ Prof. Wicipto Septiadi, *Hukum Acara Pengadilan Tata Usaha Negara*, Raja Grafindo Persada Jakarta, 1994, hlm. 88.

¹⁴ Sahya Anggara, *Ilmu Administrasi Negara “Kajian Konsep, Teori, dan Fakta dalam Uapaya Menciptakan Good Governance”*, Pustaka Setia Bandung, Cetakan Kedua: Agustus 2016, hlm. 209.

¹⁵ Tommi A. Legowo. 1994. “Demokratisasi : Refleksi Kekuasaan yang Transformatif” Analisis. Tahun XXIII No. 1, hal. 5.

¹⁶ John Dryzek. 2000. *Deliberative Democracy And Beyond : Liberals, Critics, Contestations*. Oxford: Oxford University Press, hal. 29.

III. RESEARCH METHOD

This research is normative in nature, studying legal norms, ideas, concepts, principles, laws, and relevant regulations to solve legal problems, with a focus on Constitutional Court Decision Number 90/PUU-XXI/2023. The approaches used include analysis of the decision, a statute approach to examine legal products and their consistency, and a conceptual approach based on legal doctrine.¹⁷ The types of research include case studies, literature studies (from journals, books, Law No. 7/2017 on Elections, and PKPU No. 19/2023), and analysis of documents related to the decision for in-depth understanding.¹⁸

This research is normative in nature, focusing on the analysis of dissenting opinions in Constitutional Court decisions related to the age and experience requirements for regional heads to become presidential/vice-presidential candidates, as well as the certainty of a retrial due to ethical violations by the chief justice of the Constitutional Court. Data collection was conducted through offline (library visits) and online (internet) library research, studying primary legal materials (1945 Constitution, Election Law, PKPU, Constitutional Court decisions) and secondary materials (books, journals, websites, media). Primary data was analyzed using five tasks of normative legal science, while secondary data was analyzed through a comparison of legal opinions.¹⁹

The use of secondary data is prioritized because it is ready to use, has been processed by previous researchers, and is not limited by time or place. The analysis technique is carried out after collecting secondary data from primary, secondary, and tertiary sources, with interpretation based on normative legal science to answer the problem formulation, depending on the type of data obtained.²⁰

IV. RESULTS AND DISCUSSION

Map of Dissenting Opinions in Constitutional Court Decision Number 90/PUU - XXI/2023

Law enforcement has a broad meaning that encompasses the enforcement of justice, but not merely the enforcement of laws. Therefore, law enforcement includes the process of drafting laws that contain fair substance and the fair implementation of those laws. In Indonesia, one of the law enforcement institutions that exercises judicial power is the Constitutional Court (MK). In this case, the Constitutional Court has an obligation to deliver justice in its decisions. Thus, the public has high expectations for the justice upheld by the Constitutional Court.

Based on the provisions of Article 1 paragraph 1 of Law Number 24 of 2003 concerning the Constitutional Court, which reads, "The Constitutional Court is one of the judicial authorities as referred to in the 1945 Constitution of the Republic of Indonesia."

Then, Article 2 of the same law states,

"The Constitutional Court is one of the state institutions that exercises independent judicial power to administer justice in order to uphold law and justice."

In accordance with these provisions, it can be concluded that the Constitutional Court is one of the judicial institutions established to ensure that there are no more legal products from the constitutional realm, so that the constitutional rights of citizens are protected and the constitution has constitutionality. The General Explanation of the Constitutional Court Law states that the duties and functions of the Constitutional Court are to handle state affairs or constitutional matters in order to uphold the constitution so that it is implemented responsibly in accordance with the will of the people and the ideals of democracy.

According to Article 51 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court, it reads,

"In the petition referred to in paragraph (2), the petitioner must clearly describe that:

- a) *the enactment of the Law does not comply with the provisions of the 1945 Constitution of the Republic of Indonesia; and/or*
- b) *The content of the article, clause, and/or section of the law is considered to be in conflict with the 1945 Constitution of the Republic of Indonesia.*

Point (a) emphasizes formal testing that occurs due to the manufacturing process, and point (b) emphasizes material testing because there is content that the applicant considers to be contrary to the 1945 Constitution.

One of the powers of the Constitutional Court is to conduct judicial review. The birth of the Constitutional Court began with the Marbury and Madison case in 1803, where at that time the United States Constitution did not regulate the authority of the Supreme Court to conduct judicial review. United States President John Marshall considered that the Supreme Court only had the authority to declare that a law was contrary to the constitution. Therefore, because constitutional implementation regarding legislation can be guaranteed if there is an organ other than the legislative body that has the task of reviewing a legal product and

¹⁷ I Made Pasek Diantha, 2017, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenanda Media Group: Jakarta, hlm. 1.

¹⁸ Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, hlm. 92.

¹⁹ Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media, Jakarta, hlm. 93.

²⁰ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, (Jakarta: Pusat Dokumentasi Universitas Indonesia, 2009), hlm. 66.

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can choose not to enforce it if this organ considers the legal product to be unconstitutional, a special organ called the Constitutional Court was established. The existence of the Constitutional Court is seen as part of the effort to realize

a mechanism of checks and balances between the branches of state power based on democratic principles. This relates to two powers that are usually possessed by constitutional courts in various countries, namely reviewing the constitutionality of legislation and deciding on disputes over the constitutional authority of state institutions. The term checks and balances comes from the development of law in the United States, where Charles Beard (an American historian, political scientist, and educator) stated that judicial review is part of the system of checks and balances. The system of checks and balances is an essential element in constitutions built on the doctrine that the government cannot have absolute power, especially regarding the implementation of laws concerning property rights.²¹

Before the panel of judges drafts a final decision, a Judges' Deliberation Meeting (RPH) is held. The RPH is a closed plenary meeting of judges to discuss decisions on cases that have been examined through open court hearings. Only judges and court clerks, as well as substitute court clerks who handle the administration of the case in question, may attend this deliberation meeting. In a ruling, not all judges who decide a case unanimously agree with the ruling that has been handed down. There are times when a judge may disagree with the decision made by the panel of judges. If this happens, the dissenting opinion of the judge is referred to as a dissenting opinion.

In Indonesia, dissenting opinions first emerged without a formal legal basis due to the practices of judges. Dissenting opinions were first given a legal basis in Bankruptcy Law No. 4 of 1998.²² Initially, dissenting opinions were introduced in commercial courts, but they are now permitted in other courts, including in judicial reviews of laws in the Constitutional Court.²³

In Constitutional Court Decision Number 90/PUU - XXI/2023, the first concurring opinion was from Constitutional Judge Enny Nurbaningsih, who had several considerations before granting part of the Petitioner's petition. That in its development, the minimum age requirement underwent a change in the 2019 Presidential and Vice Presidential elections to a minimum age of 40 (forty) years, as stipulated in Article 169 letter q of Law Number 7 of 2017, which is currently the subject of constitutionality by the Petitioner. In this regard, the Court cannot determine that the minimum age limit for presidential and vice-presidential candidates of at least 35 (thirty-five) years is constitutional, while the minimum age of 40 (forty) years is unconstitutional or vice versa, because there is clearly no constitutional basis for testing the constitutionality of the age limit norm in the 1945 Constitution. The petition does not only question the minimum age limit, as the Petitioner also understands that this is an open legal policy, but requests an alternative to the age requirement as if following the "formulation pattern" of the Petitioner's petition in case No. 112/PUU-XX/2022 which was granted by the Court, even though this was not explicitly stated in the petition. Thus, without the Court eliminating the minimum age requirement, which is clearly an open legal policy, the Court deems it necessary to interpret the age requirement with the alternative "or experienced ...". in casu, the experience referred to is a person who has served or is currently serving (in the same position), thereby providing equal treatment in accordance with the principle of justice as guaranteed by the 1945 Constitution.²⁴

Constitutional Judge Enny Nurbaningsih's consideration that the interpretation of Article 169 letter q of Law 7/2017 requested by the Petitioner by adding an alternative to the age requirement of "at least 40 (forty) years old", in the form of "or experienced" as a regional head at the provincial and regency/city levels, in this case closely related to the position of governors, regents, and mayors as regional heads, it is important to first consider the system of regional government administration. To demonstrate whether a regional head is "experienced" or not, as argued by the Petitioner, cannot be based solely on the status of the regional head, in this case the governor, who holds office because he or she has been elected in regional head elections. This is because being experienced as a regional head and being elected to the position of regional head are two different things. Therefore, the essential parameter for measuring whether a regional head is experienced or not in responding to the Petitioner's argument is a track record that shows a person's level of success in carrying out their duties, functions, and authorities, so that they can be trusted to carry out duties, functions, and authorities at an even higher level, namely leading the country. Provinces and regencies/cities are hierarchically different, as stipulated in Article 18 paragraph (1) of the 1945 Constitution, which states,

"The Unitary State of the Republic of Indonesia is divided into provinces, and those provinces are divided into regencies and cities."

²¹ Leonard W. Levy, *Judicial Review: Sejarah Kelahiran, Wewenang, dan Fungsinya dalam Negara Demokrasi*, Judul Asli: *Judicial Review and the Supreme Court*, Penerjemah: Eni Purwaningsih, Jakarta: Penerbit Nuansa, 2005, hal. 3.

²² Sunarmi, "Dissenting Opinion sebagai Wujud Transparansi dalam Putusan Peradilan", *Jurnal Equality*, Vol. 12 No. 2 Agustus 2007, 147.

²³ Siti Aminah dan Uli Parulian Sihombing, *Memahami Pendapat Berbeda (Dissenting Opinion) Putusan Uji Materiil UU Penodaan Agama*, 32.

²⁴ Meringkas Putusan Mahkamah Konstitusi Nomor 90/PUU - XXI/2023 hal. 59 – 63.

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This constitutional provision basically shows that geographically, in terms of area and population, provinces are larger administrative units than regencies/cities. Moreover, considering that Indonesia is an archipelagic country, each province has a varying area. Thus, when viewed from the principle of rationality, governors have experience in administering regional government affairs on a broader and more complex scale, which can at least serve as “preparation” for facing increasingly complex pressures and challenges in administering even larger government affairs.²⁵

Meanwhile, Constitutional Judge Enny Nurbaningsih gave a different reason in the Petitioner's petition because the Petitioner had specifically described his experience as a regional head at both the provincial and regency/city levels. However, in accordance with the levels of government administration, in this context, the governor as the head of an autonomous regional government and also the relevant representative of the central government is closer to the higher level of government administration. Thus, she had different reasons for granting part of the Petitioner's petition, namely “at least 40 (forty) years of age or experience as a governor, the requirements for which are determined by the legislators.”²⁶

Next, Constitutional Judge Daniel Yusmic P. Foekh granted part of the Petitioner's petition with a different reasoning (concurring opinion). In his opinion, Law No. 23 of 2014 on Regional Government, which outlines the duties and authorities of governors and regency/city governments, confirms the hierarchical relationship between the two positions. Therefore, governors are in an “intermediate” position, acting as an extension of the Central Government in carrying out governmental functions in the regions. With regard to the requirements to become a candidate for President and Vice President, in recent developments, the Court has relaxed the age limit for holding public office with the requirement of “having experience or being experienced” as stated in Constitutional Court Decision Number 112/PUU-XX/2022. The requirement of “having experience or being experienced” will give the public the option to elect leaders based on their track record. Doctrinally, the office of president is similar to that of regional head, which is a single office (*eenmansambt*) with full authority to exercise governmental power. This means that all policies and decisions in the context of carrying out the duties, functions, and authorities of the position are carried out by the chief executive at their level. Within reasonable limits, because Law Number 6 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law - Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors into Law (Regional Election Law) is still valid as positive law, the age requirement for presidential and vice-presidential candidates in the *a quo* norm can be deviated from as long as it is higher than the minimum age requirement for gubernatorial candidates in the Regional Election Law and not lower than the age limit of 35 years. Based on all these considerations, he is of the opinion that Article 169 letter q of Law Number 7 of 2017 is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as “at least 40 (forty) years of age or experienced as a provincial-level regional head”.²⁷

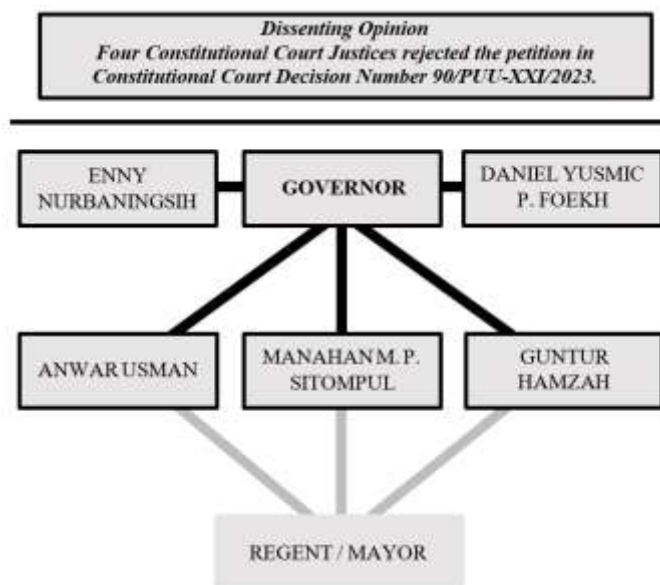
Thus, the composition of Constitutional Court judges who agreed to the requirement of 40 (forty) years of age was 5 (five) judges. Three (3) judges granted the request in part, interpreting the age requirement as 40 years of age as long as it was interpreted as having experience as an elected official, for example, experienced as a Governor/Regent/Mayor, and 2 (two) judges partially agreed with different reasons for their consideration, namely limited to being experienced as a Governor, the criteria for which are left to the discretion of the legislators. From this composition, it should be concluded that the majority of votes were for those who are experienced or currently serving as governors, because the three judges without different reasons (concurring opinion) also mentioned governors, even though regents/mayors were mentioned after them. Therefore, what should be taken is 40 (forty) years or experience as a governor or regional head at the provincial level. Thus, it can be concluded that this decision is legally flawed. This is because there is a lack of synchronization between the composition and the decision that ultimately became the verdict. The following is what I can describe regarding the Constitutional Court judges' votes:

²⁵ *Ibid* hal 64 – 68.

²⁶ Putusan Mahkamah Konstitusi Nomor 90/PUU - XXI/2023 hal. 69 – 70.

²⁷ Meringkas Putusan Mahkamah Konstitusi Nomor 90/PUU - XXI/2023 hal. 70 - 87.

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Regarding the two Constitutional Court judges who provided different reasons (concurring opinions), the author interprets that being experienced as a provincial head or governor is a different reason that needs to be understood in the context of their responsibilities and scope of authority. Administratively, the scope of a province is much broader than that of a regency, because a province is an administrative region that oversees many regencies and cities within it. Meanwhile, regencies or cities have a smaller scope and focus on direct public services to the community. Therefore, if someone has experience as a governor, they are generally considered more relevant to run as a presidential or vice presidential candidate. Experience as a governor involves leading a large bureaucracy, managing a significant budget, making strategic decisions, and handling various issues such as social, infrastructure, and economic issues. In this case, a governor's experience is essentially ideal if they have a sufficient track record and public support.

Someone who serves as a regent or mayor is not yet qualified or mature enough because they are still limited to managing administrative and development affairs at the regency or city level. Thus, the experience of regional leaders tends to be limited to technical issues and the needs of the local community. Meanwhile, the president and vice president must deal with far more complex issues, such as national fiscal and monetary policy, political stability, international relations, defense and security, and global diplomacy. These are issues that are rarely touched upon by regional leaders. Experience in leading a city or district has so far only provided insight into administrative matters and local needs and has not trained leaders to deal with the complexities of national politics, international relations, and strategic crises. Relying on experience in leading at the local level for national positions could be a fatal mistake that could lead the country to adopt narrow, partial policies that are unprepared to face global challenges.

In Constitutional Court Decision Number 90/PUU-XXI/2023, there is also a Dissenting Opinion. The first Dissenting Opinion is from Constitutional Judge Wahiduddin Adams, who has several considerations. He concludes that the Petitioner's desire for his political preference in the General Election (in this case: the Presidential and Vice Presidential Elections) is not obstructed/violated by the application of Article 169 letter q of the a quo Law, which regulates one of the requirements to become a candidate for President and Vice President, namely: "...be at least 40 (forty) years of age". Furthermore, he believes that the Petitioner's main orientation is no longer limited to the "minimum age limit," but rather that there should be an alternative (or even an exception) to Article 169 letter q of the a quo Law in the form of the interpretation: "...or experienced as a Regional Head at the Provincial or Regency/City level." As for the other reasons, he took the position that they should not be considered further because they were too far-fetched and even almost completely irrelevant to the constitutionality of Article 169 letter q of the a quo Law and the three crucial issues in the Petition.²⁸

If the Court grants this Petition, either in whole or in part, then the alternative (and even exceptional) interpretation of Article 169(q) of the a quo Law clearly becomes the only requirement for becoming a candidate for President and Vice President, the existence of which is established by judicial power. However, the other requirements in the entirety of Article 169 of the a quo Law are established by the Lawmaker (the legislative power). In addition, this has the potential to be activated as a deliberately created privilege, which ultimately becomes an unjust legal certainty that contradicts Article 28D paragraph (1) of the 1945

²⁸ *Ibid*, Hal 87 – 92.

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Constitution of the Republic of Indonesia. Based on the arguments presented by Constitutional Court Judge Wahiduddin Adams, he opined that the Court should reject the Petitioner's Request.²⁹

The second dissenting opinion of Constitutional Judge Saldi Isra, as stated in Constitutional Court Decision Number 29/PUU-XXI/2023, Constitutional Court Decision Number 51/PUU-XXI/2023, and Constitutional Court Decision Number 55/PUU-XXI/2023 (hereinafter referred to as Constitutional Court Decision Number 29-51-55/PUU-XXI/2023), he rejected the petition in question, and in his opinion, the Court should also reject the petition in question. Previously, in Constitutional Court Decision Number 29-51-55/PUU XXI/2023, the Court explicitly, clearly, and firmly stated that the age requirement in Article 169 letter q of Law 7/2017 was within the authority of the legislators to change. According to him, this was a "strange" and "extraordinary" event that could be said to be far from the bounds of reasonable reasoning: the Court changed its position and attitude in the blink of an eye. An equally fundamental consideration arose because the five Constitutional Court Justices who were in the "partially grant" camp were divided into two groups, namely three Constitutional Court Justices agreed to equate or create an alternative age of 40 years with "or has held/is holding a position elected through general elections, including regional head elections". Meanwhile, the other two Constitutional Court Justices interpreted the Petitioner's petition as only "has served or is currently serving as governor." Not stopping there, the two Constitutional Court Justices still maintained the principle of "opened legal policy" in determining the criteria for the position of governor that can be equated or alternated. Although the petition model of "at least 40 (forty) years of age or having held/currently holding a position elected through general elections, including regional head elections" was supported by a larger number of Constitutional Court Justices who were part of the "partially granting" group, this petition option is still debatable and has potential fundamental weaknesses. Since the five Constitutional Court Justices agreed on the position of "partially granting," it must first be clearly and explicitly formulated in what aspects each of them partially granted the petition.³⁰

The Court's position regarding numbers, in this case age requirements, since the first generation (2003-2008), has been positioned as a legal policy or opened legal policy. Furthermore, the legislators explicitly conveyed and shared the same desire as the Petitioners, so that any changes or additions to the requirements for presidential and vice-presidential candidates should be made through a legislative review mechanism by revising the law requested by the Petitioners, rather than throwing this "hot potato" to the Court. Unfortunately, this simple matter, whose nature as an opened legal policy is clearly evident, has instead been taken over and made into a "political burden" for the Court to decide.³¹

The next dissenting opinion came from Constitutional Court Judge Arief Hidayat, who was of the view that the case in question, which concerned the determination of the minimum age requirement to become a presidential and vice-presidential candidate, was a simple and relatively easy case because the 1945 Constitution did not strictly regulate it. Therefore, this is categorized as an open legal policy, the regulation of which is left to the legislators. From case number 29-51-55-90-91/PUU-XXI/2023, he perceives a negative cosmology and peculiarity, namely:

- a) Scheduling of hearings that appeared prolonged and delayed;
- b) Discussion in the Judges' Deliberation Meeting, stating that during the Judges' Deliberation Meeting (RPH) for Case Number 29-51-55/PUU-XXI/2023, the Chair was absent. At that time, the Vice Chair stated that the Chair's absence was to avoid potential conflict of interest caused by the legal issue being decided, which was closely related to the minimum age requirements for Presidential and Vice Presidential Candidates, where the Chair's relative was potentially nominated in the 2024 Presidential Election contestation as a Presidential and Vice Presidential Candidate pair by one of the political parties, thus the Chair chose not to participate in discussing and deciding the three aforementioned cases. However, in Case Number 90-91/PUU-XXI/2023 with the same constitutionality issue, namely related to the minimum age requirements for Presidential and Vice Presidential Candidates, the Chair instead participated in discussing and deciding both aforementioned cases, and specifically for Case Number 90/PUU-XXI/2023, it was decided with the ruling "partially granted";
- c) Case Number 90/PUU-XXI/2023 and Case Number 91/PUU-XXI/2023 were withdrawn but still proceeded.

According to him, the Petitioner has undermined the dignity of the judiciary and has not acted seriously in filing the petition. In fact, the actions of the Petitioner's legal counsel reflect unprofessional conduct as legal representatives, as they withdrew or revoked the petition without coordinating with the Principal Petitioner. The Court should have issued a ruling granting the withdrawal of the *a quo* petition on the grounds that the Petitioner was neither earnest nor professional in submitting the petition and could even be suspected of mocking the authority and dignity of the Court. Therefore, as a legal consequence of the

²⁹ *Ibid*, Hal 93 – 94.

³⁰ *Ibid*, Hal. 94 – 100.

³¹ *Ibid*, Hal. 104 - 106.

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withdrawal of the case, the Petitioner may not revoke the withdrawal of the *a quo* case, and a case that has been withdrawn or revoked cannot be refiled.³²

The final dissenting opinion of Constitutional Court Justice Suhartoyo states that the Petitioner, who requests that the norm of Article 169 letter q of Law No. 7/2017 be interpreted as detailed in their petition's petitum, which is not for their own interest, is also irrelevant to be granted legal standing to act as the petitioner in the *a quo* petition. Therefore, the legal considerations in the dissenting opinion in Case No. 29/PUU-XXI/2023 and Case No. 51/PUU-XXI/2023, *mutatis mutandis*, form an inseparable part of the legal considerations in his dissenting opinion in the *a quo* petition ruling. Based on these legal considerations, he opines that for the *a quo* petition, the Constitutional Court should also not grant legal standing to the Petitioner, and thus there is no relevance in considering the merits of the petition, so that the *a quo* ruling should state "the Petitioner's petition is not acceptable."³³

Article 45 paragraph (10) of Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court reads as follows, "In the event that a unanimous consensus is not reached in the decision as referred to in paragraph (7) and paragraph (8), the opinions of the different members of the Panel of Judges shall be included in the decision."

And Article 14 paragraph 3 of the Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power states, "In the event that a unanimous consensus cannot be reached during the deliberation session, the judge's differing opinion must be included in the decision."

The inclusion of a Dissenting Opinion and Concurring Opinion in a decision represents a strengthening of the judge's independence, freedom, and accountability in adjudicating cases. Including a Dissenting Opinion in a decision is an obligation to protect minority rights in decision-making. Furthermore, the judge who dissents demonstrates accountability in handling the case. This allows the public to morally assess the integrity of the judge's work.

Four of the nine Constitutional Justices disagreed with Constitutional Court Decision Number 90/PUU-XXI/2023, which relaxed the minimum age requirement for presidential and vice-presidential candidates and/or offered alternatives of current or previous experience as regional heads. Meanwhile, two other Constitutional Justices submitted Concurring Opinions for the decision. Therefore, the age requirement of 40 years to run for president or vice president is not an absolute requirement, as alternative requirements apply, such as prior experience as an official in an election, whether in a regional head election (*pilkada*) or legislative election (*pileg*).

The Constitutional Court Decision Number 90/PUU-XXI/2023, with a decision-making ratio of 5:4 (five to four), not only represents the independence of the Constitutional Justices but also reflects other aspects that can be inferred, both explicitly and implicitly, from the considerations of the Constitutional Justices' Dissenting Opinions. This means that the expression of anomaly in the Court's change of stance, the presence or absence of the Chief Justice of the Constitutional Court at the Justices' Deliberation Meeting, the expression of negative cosmology, and the entire series of opinions deemed odd are all representations of insinuations of suspicion toward other justices in making decisions on the case.

The expression of suspicion in the Dissenting Opinion is not uncommon or something that can be considered normal. Rather, it is unusual and tends to be unethical, because the narrative of suspicion in the Dissenting Opinion should be responded to as a signal that the nine Constitutional Court Justices are not in good health. Therefore, the nine Constitutional Court Justices should reflect on their stance and position in Court Decision Number 90/PUU-XXI/2023, which has not only caused a stir and will change the national political landscape but has also become a national sign that the Constitutional Court Justices are not in good health, which in this case could certainly undermine public trust in them.

Regarding the minimum age requirement, the author also argues that the norms of the Law, as stipulated in the open legal policy of the Constitutional Court, are not something that can be changed by a judicial institution such as the Constitutional Court through a decision. In its Dissenting Opinion, by amending norms or adding "alternative experience requirements" through constitutional interpretation, the Constitutional Court has exceeded its authority as a "negative legislator" and become a "positive legislator." Testing of matters such as the age requirements for presidential and vice-presidential candidates should not be the domain of the courts, but rather the legislative branch, as these issues concern public policy and national leadership structures, not individual constitutional rights. With Constitutional Court Decision Number 90/PUU-XXI/2023, the Constitutional Court appears to have violated the principles of separation of powers and legal certainty.

The Dissenting Opinion in Decision Number 90/PUU-XXI demonstrates that this decision was made amidst profound differences of opinion, with the substantive majority (including the concurring majority) actually rejecting it. In this regard, the dissenting opinion concerns not only the interpretation of norms but also integrity, transparency, and procedures. The majority's rejection of the decision is based on concerns that the decision could be influenced by external/political factors rather than purely objective legal considerations. Although a dissenting opinion does not overturn a decision, it remains important as a reflective element in the constitutional system.

³² *Ibid*, Hal 107 – 118.

³³ *Ibid*, Hal 120 - 121.

CONCLUSIONS

The Constitutional Court protects the Constitution to ensure its compliance with the constitutional principles of the Republic of Indonesia. In this regard, to protect the Constitution, Indonesian public administration can no longer avoid revising laws, as the 1945 Constitution emphasizes that the system is no longer based on parliamentary supremacy but on the constitution. The Constitutional Court was established to ensure that no legal products deviate from the constitutional framework, that citizens' constitutional rights are maintained, and that the constitution itself is guaranteed. The agreed-upon mechanism for testing the unconstitutionality of a law is judicial review, which falls within the jurisdiction of the Constitutional Court.

In Constitutional Court Decision Number 90/PUU-XXI/2023, the four Constitutional Justices who issued their Dissenting Opinions revealed the oddity of the Court's change of stance, the presence or absence of the Chief Justice at the Justices' Deliberation Meeting, and the expression of negative cosmology. The entire series of opinions deemed odd represent insinuations of suspicion toward other judges in the decision-making process. Meanwhile, of the five Constitutional Justices, three judges partially granted the ruling, interpreting the age requirement of 40 years as long as it was interpreted as having experience as an elected official, for example, as Governor/Regent/Mayor. Two judges partially granted the ruling, citing different reasons, namely limited to experience as Governor, a criterion left to the legislators. The majority of the votes were based on experience or current Governor, as three judges, without any conflicting reasoning (concurring opinion), also mentioned Governor, even though they listed Regent/Mayor. Therefore, the ruling should have been 40 years or experience as Governor or provincial head. Therefore, it can be concluded that this ruling is legally flawed.

The diverse composition of the judges in this ruling leaves ample room for interpretation, including the use of different reasoning. This situation necessitates competent judges who can use all their intellectual faculties to present arguments in their decision (ratio decidendi). Regarding the Constitutional Court's decision on the age limit for presidential and vice-presidential candidates, the public believes that political nuances are more dominant than the Constitutional Court's decision on harmonization of existing laws.

REFERENCES

- 1) Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, hlm. 92.
- 2) Budi Aspani Novitalia, Khairani Hasibuan, 'Kredibilitas Mahkamah Konstitusi Pasca Putusan No.90/PUU - XXI/2023', hal. 22 (2024).
- 3) Dedy Mulyadi, *Administrasi Publik dan Pelayanan Publik*, Bandung, Alfabeta, 2016.
- 4) I Made Pasek Diantha, 2017, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenanda Media Group: Jakarta, hlm. 1.
- 5) John Dryzek. 2000. *Deliberative Democracy And Beyond : Liberals, Critics, Contestations*. Oxford: Oxford University Press, hal. 29.
- 6) Leonard W. Levy, *Judicial Review: Sejarah Kelahiran, Wewenang, dan Fungsinya dalam Negara Demokrasi*, Judul Asli: *Judicial Review and the Supreme Court*, Penerjemah: Eni Purwaningsih, Jakarta: Penerbit Nuansa, 2005, hal. 3.
- 7) Leonard W. Levy, *Judicial Review: Sejarah Kelahiran, Wewenang, dan Fungsinya dalam Negara Demokrasi*, Judul Asli: *Judicial Review and the Supreme Court*, Penerjemah: Eni Purwaningsih, Jakarta: Penerbit Nuansa, 2005, hal. 3.
- 8) Moh. Mahfud. MD, *Hukum Dan Pilar-Pilar Demokrasi*, Gama Media, Yogyakarta, 1999, hlm. 327-328.
- 9) Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media, Jakarta, hlm. 93.
- 10) Wicipto Septiadi, *Hukum Acara Pengadilan Tata Usaha Negara*, Raja Grafindo Persada Jakarta, 1994, hlm. 88.
- 11) Putusan Mahkamah Konstitusi Nomor 90/PUU - XXI/2023 hal. 59 – 63.
- 12) Ridwan, *Tiga dimensi Hukum Administrasi dan Peradilan Administrasi*, FH UII Press, Yogyakarta, 2009., Hlm. 146.
- 13) Sahya Anggara, *Ilmu Administrasi Negara "Kajian Konsep, Teori, dan Fakta dalam Upaya Menciptakan Good Governance"*, Pustaka Setia Bandung, Cetakan Kedua: Agustus 2016, hlm. 209.
- 14) Siti Aminah dan Uli Parulian Sihombing, *Memahami Pendapat Berbeda (Dissenting Opinion) Putusan Uji Materiil UU Penodaan Agama*, (Jakarta: The Indonesian Legal Resource Center, 2011), hal. 30.
- 15) Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, (Jakarta: Pusat Dokumentasi Universitas Indonesia, 2009), hlm. 66.
- 16) Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : Universitas Indonesia Press, 1984), hlm. 122
- 17) Sudikno Mertokusumi, *Hukum Acara Perdata Indonesia*, Libery, Yogyakarta, 2009., hlm. 212.
- 18) Sunarmi, "Dissenting Opinion sebagai Wujud Transparansi dalam Putusan Peradilan", *Jurnal Equality*, Vol. 12 No. 2 Agustus 2007, 147.
- 19) Tommi A. Legowo. 1994. "Demokratisasi : Refleksi Kekuasaan yang Transformatif" *Analisis*. Tahun XXIII No. 1, hal. 5.
- 20) W. Riawan Tjandra, *Teori dan Praktik Peradilan Tata Usaha Negara*, Atma Jaya Press, Yogyakarta, 2015, Hlm. 17.