

Ambiguity After the Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding the Presidential Election

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Abstract

The study investigates the ambiguity arising from the Constitutional Court's Decision No. 90/PUU-XXI/2023 concerning the presidential election in Indonesia. This decision, which pertains to Article 169 (q) of Law No. 7 of 2017 on General Elections, mandates a minimum age of 40 years for presidential and vice-presidential candidates. The research employs a qualitative design, analyzing legal texts and court decisions, and includes data from political parties and legal experts. The primary analytic strategy involves examining the implications of the Constitutional Court's decision on the political landscape and the legal framework governing elections. The findings indicate that the decision has led to significant confusion among political parties regarding the nomination of candidates who do not meet the minimum age requirement but have held public office. This ambiguity has highlighted the need for clearer legal provisions and interpretations to ensure fair and just elections. The study underscores the importance of the Constitutional Court's role in upholding substantive justice over formal legal requirements, emphasizing the principles of independence and impartiality. The main implications of this research suggest the necessity for consistent efforts to align legal products with fundamental political principles, ensuring a balance of power and prioritizing substantive justice. This is essential for establishing a good and democratic governance structure. The study also identifies the critical role of legal politics in shaping and implementing laws that reflect justice, common interests, and morality, advocating for systematic efforts to maintain the morality of politicians, state officials, and society as a whole.

Keywords: Ambiguity; constitutional court; presidential election.

Article History

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Introduction

Indonesia is known as a rule of law (Usman, 2014), the rule of law in Indonesia should appreciate and respect the principles of the rule of law itself. One of the principles that must be respected and upheld is the existence of a free and fair judiciary. Success in implementing this principle can be measured by the extent to which judicial institutions carry out their duties and authority independently to uphold law and justice based on statutory provisions that guarantee juridically the independence of judicial power (Suzeta & Lewoleba, 2023). According to Miriam Budiardjo (in Danggur Konradus) states that the constitution as the highest legal rule binds all citizens and state institutions without exception. Apart from that, Miriam Budiardjo also explained the characteristics of the constitution including the structure of national organizations, human rights, and the constitutional amendment process (Konradus, 2016).

In Constitutional Court Decision Number 90/PUU-XXI/2023, Article 169 (q) Law Number 7 of 2017 concerning General Elections. After being tested by the Constitutional Court, it was discovered that the article stipulates that candidates for President and Vice President must be at least 40 years old

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(Gusman, 2024). In its considerations, the Constitutional Court stated that the establishment of status quo norms must require candidates to be 40 years old or have previously held positions elected through general elections, including regional head elections (Atika Wahyuni Dekananda, 2024). Therefore, it is important to further review the legal implications of this decision to ensure that the principles of the rule of law are maintained.

After the Constitutional Court decision, political parties often face political pressure from various parties with an interest in the General Election process. This political pressure often forces them to take steps that are inconsistent with the law to fulfill certain political interests. Political parties may feel forced to enter into previously undesirable coalitions, or even engage in negotiations that are not always in line with the principles they hold dear. Apart from that, political pressure following the Constitutional Court decision can also have a negative impact on the legitimacy of political parties and candidate pairs in the eyes of the public. When political parties or candidate pairs are forced to make decisions that are inconsistent with the law just to fulfill certain political interests, this can raise doubts among the public about their integrity and honesty. The public is becoming increasingly critical of political parties and candidate pairs who engage in opportunistic political practices, and this can have an impact on decreasing public support and trust in them.

In this reform era, conflicts emerged within political parties. Factors contributing to internal conflict include the choice of alliance and opposition. There is a tendency for conflicts to emerge within political parties, some of which lead to splits, the birth of new parties, and some of which lead to dual governments. Conflicts between parties also show how limited institutionalization within parties is in resolving conflicts to reach consensus. The tendency for internal conflict is not caused by differences in party vision and mission, platforms and ideologies, but is often caused by the pragmatism of party alliance choices in supporting presidential and vice presidential candidates and/or the interests of government and power (Romli, 2018). As a political strategy that can be implemented in an atmosphere of tight political competition, inconsistency in legal efforts is used as an option. This can provide its own advantages in strengthening the position of the Presidential and Vice Presidential candidate pairs supported by political parties in the 2024 presidential election. Its connection to the Constitutional Court decision Number 90/PUU-XXI/2023 can be an important point in evaluating the legal efforts taken by the pair. the candidate. Candidate pairs who use this strategy will try to take advantage of legal loopholes and take inconsistent steps, depending on their political interests and the benefits they hope to gain from the situation. Thus, the legal action taken by candidate pairs in facing the Constitutional Court decision Number 90/PUU-XXI/2023 could be part of a complex political strategy in an effort to win the 2024 presidential election.

The ambiguity of political parties that emerged after the Constitutional Court decision Number 90/PUU-XXI/2023 related to the age requirements for President and Vice President candidates. This decision allows candidates for President and Vice President who are under 40 years of age if they have experience as state officials who are elected through elections. However, problems arise when political parties do not have the authority to nominate candidates who do not meet the minimum age requirement of 40 years. Therefore, political party ambiguity occurs when political parties have to decide whether they will nominate candidates who do not meet the minimum age requirement of 40 years or not.

This research is important to find out whether there is ambiguity in political parties after the decision of the Indonesian Constitutional Court Number 90/PUU-XXI/2023 regarding the age requirements for President and Vice President candidates? The aim of this research is to identify the political and legal factors that underlie the decision of the Indonesian Constitutional Court Number 90/PUU-XXI/2023 regarding the age requirements for Presidential and Vice Presidential candidates. Thus, it is hoped that this research will provide in-depth insight into the legal political dynamics occurring in Indonesia ahead of the 2024 Presidential Election, which prompted one pair of candidates to be inconsistent in carrying out legal efforts in the 2024 presidential election after the decision of the Indonesian Constitutional Court Number 90/PUU -XXI/2023 related to the age requirements for President and Vice President candidates. Thus, it is hoped that this research will provide in-depth insight into the legal political dynamics occurring in Indonesia ahead of the 2024 Presidential Election.

Method

Normative legal research is concerned with the application of pure legal theory in a legal system, where law is considered as a norm that can only be found in statutory regulations according to Kelsen's view. The constitution is also considered the basic norm (Grand Norm) in the legal system. In this case, normative legal research aims to analyze and interpret legal norms contained in legislation in order to understand and provide a deeper understanding of the applicable legal system. Normative legal research is a type of research that does not involve field research or direct data collection, because the focus is on existing legal materials. This research is more oriented towards reading and analyzing existing primary and secondary legal materials. In normative legal research, the data sources used only consist of primary legal data sources, secondary legal data sources and tertiary legal data sources (Karsono, 2021).

In this research, the technique for collecting legal materials is carried out by examining binding legal documents, such as statutory regulations. This process includes recording, reviewing, and reading legal doctrines that are relevant to the legal issue being studied (Kumara et al., 2021). Primary legal materials are legal materials that have binding properties and consist of several main components. In addition, primary legal materials also include uncodified customary law and jurisprudence. Secondary legal materials are materials that provide explanations of primary legal materials, such as draft laws, research results, works from legal circles, opinions of legal experts, and so on. Meanwhile, tertiary legal materials are supporting materials that contain various sources that provide instructions and explanations for primary and secondary legal materials (Armia, 2017).

Constitutional Court Decision Number 90/PUU-XXI/2023 is a concrete example of the application of legal data management techniques. In this case, research is carried out by examining the contents of the decision, understanding the interpretation of legal norms explained by the Constitutional Court, and identifying the legal implications of the decision. Data from these decisions are analyzed to understand how legal norms are applied and how these decisions influence the applicable legal system. This analysis also involves a review of secondary legal materials that explain the context and background of the decision, as well as tertiary legal materials that provide further support and understanding.

Discussion

Implementation of Constitutional Court Decisions

After undergoing four amendments to the 1945 Constitution from 1999 to 2002, there were fundamental changes to the Indonesian constitution. One of the main changes is in judicial power, which was previously exercised only by the Supreme Court. Currently, some of these powers are held by the Constitutional Court, a new institution tasked with protecting the constitution. Decisions issued by the Constitutional Court are final and apply to all parties (*erga omnes*), and have the same status as laws (negative legislator) (Suhariyanto, 2016). As the deadline for registration of candidates for President and Vice President approached, the public was shocked by the decision of the Constitutional Court which was considered controversial. Case number 90/PUU-XXI/2023 regarding the minimum age for presidential candidates and vice presidential candidates in Law Number 7 of 2017 concerning General Elections was granted by the Constitutional Court. The decision states that presidential and vice presidential candidates who have been elected through General Elections, either as DPR/DPD, Governor, or Mayor can nominate themselves even though they are not yet 40 years old (Satria, 2023).

According to Article 2 PKPU Number 19 of 2023 concerning the Nomination of Participants in the General Election for President and Vice President, it is explained that there are three stages in nominating the President and Vice President pair in the 2024 General Election. The three stages include registration of prospective candidate pairs, verification of documents of prospective candidate pairs, and determination and drawing of serial numbers for candidate pairs. The registration stage for prospective pairs includes preparation and implementation of registration, including medical examinations for prospective pairs. Verification of documents for prospective pairs consists of verification of required documents, document corrections, and verification of revised documents. The stage of determining and drawing serial numbers for candidate pairs includes determining candidate pairs and determining the serial numbers of candidate pairs (Polpum, 2023).

The KPU of the Republic of Indonesia has officially closed the registration of candidates for President and Vice President for the 2024 Presidential Election. Until the closing, three pairs of candidates have officially registered themselves as participants. The couple Anies Baswedan and Muhaimin Iskandar (Cak Imin) were the first to register, followed by the couple from the coalition supporting Ganjar Pranowo and Mahfud MD as the second registrants. Meanwhile, the couple Prabowo Subianto and Gibran Rakabuming Raka completed the list as the third applicant (CNN, 2023). The closing of registration marks the start of the campaign and preparation phase leading up to election day, where these three pairs of candidates will compete to win the support of the Indonesian people.

The determination of the serial numbers of the Presidential and Vice Presidential candidates for the 2024 Presidential Election is stated in the official report regarding the determination of the serial numbers of candidate pairs participating in the 2024 Presidential and Vice Presidential Elections, and is further determined by the KPU's decision which issues PKPU number 23/2023. That the drawing of serial numbers is carried out based on the queue numbers taken by the Vice Presidential Candidates for each pair according to their attendance when registering with the KPU. After the queue number is determined, the Presidential candidate for each pair of candidates then takes a serial number. Based on the results of the drawing, the KPU appointed the pair H. Anies Rasyid Baswedan, Ph.D. and Dr. (H.C.) H. A. Muhaimin Iskandar as serial number 1, pair H. Prabowo Subianto and Gibran Rakabuming Raka as serial number 2 and pair Ganjar Pranowo, S.H., M.I.P. and Prof. Dr. Moh. Mahfud MD, S.H., S.U., M.I.P. as serial number 3 (KPU, 2023). This determination is contained in minutes number 1635/PL.01-BA/03/2023.

INDONESIA MEMILIH, PILPRES 2024

PILPRES 2024 diikuti tiga pasangan calon. Undian nomor urut telah dilakukan. Kini, mereka siap bersaing untuk memper rebutkan kursi Presiden dan Wakil Presiden 2024-2029.

ANIES-MUHAIMIN
 Koalisi : Partai NasDem, PKB, PKS
 Jargon : "AMIN AJA DULU"
 Visi : "Indonesia Adil Makmur untuk Semua"

ANIES BASWEDAN
 TTL: Kuningan, 7 Mei 1969
 Usia: 54 tahun
 Pendidikan
 S1: UGM, Fakultas Ekonomi
 S2: University of Maryland (AS), Manajemen Publik
 S3: Northern Illinois University (AS), Ilmu Politik

MUHAIMIN ISKANDAR
 TTL: Jombang, 24 September 1966
 Usia: 57 tahun
 Pendidikan
 S1: UGM, Fakultas Ilmu Sosial dan Ilmu Politik
 S2: UI, Manajemen Komunikasi

PRABOWO-GIBRAN
 Koalisi : Gerindra, Partai Golkar, PAN, Partai Demokrat, PBB, Partai Gelora, PSI, Partai Gerindra, Prima
 Jargon : "BERSAMA INDONESIA MAJU"
 Visi : "Berama Indonesia Maju Menuju Indonesia Emas 2045"

PRABOWO SUBIANTO
 TTL: Jakarta, 17 Oktober 1951
 Usia: 72 tahun
 Pendidikan
 Akademi Militer

GIBRAN RAKABUMING RAKA
 TTL: Surakarta, 1 Oktober 1987
 Usia: 36 tahun
 Pendidikan
 S1: Management Development Institute of Singapore
 S2: University of Technology Sydney

GANJAR-MAHFUD
 Koalisi : PDIP, PPP, Perindo, Hanura
 Jargon : "MENUJU INDONESIA UNGGUL"
 Visi : "Gerak Cepat Mewujudkan Negara Mandiri yang Adil dan Lestari"

GANJAR PRANOWO
 TTL: Karanganyar, 28 Oktober 1968
 Usia: 54 tahun
 Pendidikan
 S1: UGM, Fakultas Hukum
 S2: UI, Ilmu Politik

MAHFUD MD
 TTL: Sampang, 13 Mei 1957
 Usia: 66 tahun
 Pendidikan
 S1: UI, Fakultas Hukum
 S2: UGM, Ilmu Politik dan Hukum
 S3: UGM, Ilmu Hukum

Misi

- Ketersediaan kebutuhan pokok dan biaya hidup murah.
- Mengentaskan kemiskinan.
- Mewujudkan keadilan ekologis.
- Membangun kota dan desa.
- Mewujudkan manusia Indonesia yang sehat, cerdas, produktif, berakhlak, dan berbudaya.
- Mewujudkan keluarga Indonesia yang sejahtera dan bahagia.
- Memperkuat sistem pertahanan dan keamanan negara.
- Memulihkan kualitas demokrasi, menegakkan hukum, HAM, memberantas korupsi tanpa tebang pilih, dan menyelenggarakan pemerintahan yang berpihak kepada rakyat.

Misi

- Memperkuat ideologi Pancasila demokrasi dan HAM.
- Mernstapkan sistem pertahanan keamanan negara.
- Meningkatkan lapangan kerja yang berkualitas.
- Memperkuat pembangunan SDM.
- Melanjutkan hilirisasi dan industrialisasi.
- Membangun dari desa dan dari bawah.
- Memperkuat reformasi politik, hukum, birokrasi, pencegahan/pemberantasan korupsi dan narkoba.
- Memperkuat penyelaras kehidupan yang harmonis.

Misi

- Mempercepat pembangunan manusia Indonesia unggul yang berkualitas, produktif, dan berkهربadan.
- Mempercepat penguasaan sains dan teknologi.
- Mempercepat pembangunan ekonomi berkeadilan.
- Mempercepat pemerataan pembangunan ekonomi.
- Ketersediaan anggaran.
- Pemberantasan korupsi.
- Digitalisasi birokrasi.
- Mempercepat peningkatan peran Indonesia dalam mewujudkan tata dunia baru.
- Mempercepat pelaksanaan demokrasi substantif, penghormatan HAM, supremasi hukum yang berkeadilan dan keamanan yang profesional.
- Mempercepat perwujudan lingkungan hidup yang berkelanjutan.
- Mempercepat pembangunan sistem digital nasional.

Figure 1. Indonesia Votes, 2024 Presidential Election

Based on the information in the image above, the candidate pair for President and Vice President for the 2024 General Election has been determined with serial number 1 for Anies Rasyid Baswedan, who is 54 years old, and Muhaimin Iskandar, who is 57 years old. Serial number 2 is assigned to Prabowo Subianto, who is 72 years old, and Gibran Rakabuming Raka, who is 36 years old. Meanwhile, serial number 3 was given to the couple Ganjar Pranowo, who is 54 years old, and Moh. Mahfud is 66 years old. In the legal context, the Constitutional Court (MK) through Decision Number 90/PUU-XXI/2023 has approved changes regarding the minimum age limit for Presidential and Vice Presidential candidates as stated in Law Number 7 of 2017 concerning General Elections. This decision allows candidates who have been elected through elections, whether as members of the DPR/DPD, Governor or Mayor, to nominate themselves as candidates for President or Vice President even though they are not yet 40 years old. The implementation of this decision was clearly visible in pair number 02, namely Prabowo Subianto and Gibran Rakabuming Raka, who immediately implemented this decision compared to other pairs.

Politics of law

The basic concept of legal politics is based on the assumption that law is the result of a political process, where law is seen as a formal form of the political will of the rulers. In its scope, legal politics not only reflects the ruler's desire to create legal products, but also functions as a tool to criticize existing legal products (Adjie Hari Setiawan, 2023). Legal politics itself is based on several main bases, namely ideological, normative, constitutional and moral bases. The ideological basis is related to the values adhered to by a nation, such as Pancasila in Indonesia, which serves as a guideline in the formation and enforcement of laws. The normative basis refers to the norms or rules that apply in society. Constitutional basis refers to political steps that are in accordance with the legal rules contained in the constitution or Basic Law. The moral basis concerns the values of justice and ethics that must be upheld in every legal policy (Tanya, 2011):

1. Ideological Base

Legal politics is the concept of how law is formed and applied in society, nation and state, with the aim of achieving common prosperity. In this concept, legal politics plays a role like ethics which emphasizes that the goals chosen must be rational and verifiable, and the methods determined to achieve them must meet moral standards. Legal politics demands that every goal and method used in the law-making process can be accounted for logically and ethically, so that the resulting law reflects the principles of justice and common interests (Darajati & Syafei, 2020).

In the Constitutional Court Decision Number: 90/PUU-XXI/2023, there is a violation of the principle of judge independence which is regulated in the code of ethics and behavior of judges of the Constitutional Court. This decision, which regulates the age limits for Presidential and Vice Presidential candidates, faces legal flaws due to violations of the judges' code of ethics regarding the principles of independence and impartiality (Nur & Mansyur, 2016). Even though there is a violation of the code of ethics in this decision, this does not affect the validity of the decision. This means that the decision must still be implemented in accordance with the provisions in the law because it is final and binding.

In the context of the Constitutional Court decision Number: 90/PUU-XXI/2023, the author underlines the violation of the principle of judge independence which is reflected in the violation of the code of ethics. Even though the decision remains binding and must be implemented, this violation shows that there is an inconsistency between the law formation process and the basic principles of legal politics, especially those related to ethics and morality.

Linking it to ideology-based legal politics, state ideology plays an important role in forming a legal framework that is in accordance with the values upheld by society. In this case, ideology becomes the basis for determining legal objectives which must be rational and moral. The violation of the principle of judge independence in the Constitutional Court's decision reflects that even though the law has been formed according to procedures, if it is not based on strong ideological principles, such as justice and impartiality, the legitimacy and acceptance of the law in society can be disrupted.

2. Normative Base

This normative basis is necessary for legal politics, because legal politics is about what should be. The task of legal politics is to evaluate reality and change it in the right, good and just direction, so it requires a normative framework about what is right, what is good and what is fair that must be fought for. to and achieved. The main basis for what is right, good and fair is of course the ideology one adheres to. The form and content of all this must be available in the ideology concerned, either implicitly or explicitly. Other references are usually only possible if they are consistent with the spirit of the ideology adopted.

This PKPU revision was carried out after the Constitutional Court's decision granted a judicial review of Law Number 7 of 2017 concerning General Elections. In this decision, the Constitutional Court decided that the requirements for a presidential candidate were to be at least 40 years old or be a regional head who was currently serving or had been elected through a general election. This revision was carried out to align the implementing regulations with the decisions of the Constitutional Court, so that the provisions regarding the requirements for Presidential candidates can be implemented in

accordance with legal decisions that have been determined by the judiciary

3. Constitutional Basis

The constitutional basis is a crucial element in legal politics because the constitution functions as basic law. Although the constitution can be used as a target for legal politics to adapt its direction and content to the spirit of ideology, the main focus in this context is not on this aspect. The main focus is on the role of the constitution as a basic law that not only regulates and limits government power, but also simultaneously guarantees the rights and interests of citizens. Theoretically, the constitution also reflects the shared goals desired in the life of the nation, state and society. Thus, the constitution functions as the main foundation that ensures a balance between power and the rights of citizens and establishes collective goals in national life.

The author believes that the president as the executive and the DPR as the legislature do not carry out their duties in accordance with the checks and balances function. Checks and balances is a concept that refers to a control and balance mechanism between state institutions, where each state institution must supervise and control each other's powers to ensure that no single institution exceeds the limits of its authority or uses excessive power (Isyanto, 2016). The purpose of checks and balances is to prevent abuse of power and maintain the stability and integrity of the government system. When the executive and legislature fail to carry out this function, the risk of an imbalance of power and the potential for abuse of power increases, which in turn can threaten the principles of democracy and good governance.

In the amendment to Law Number 24 of 2003, it is explicitly stated that the Constitutional Court is not allowed to add phrases. However, this provision was later canceled by the Constitutional Court itself. Constitutional Court judges are of the opinion that in carrying out their duties to protect the constitution, their authority should not be limited by existing laws. They argue that the main task of judges is to uphold justice, not just apply the law rigidly (Yasin, 2018).

So the Constitutional Court decision Number: 90/PUU-XXI/2023. In this decision, the Constitutional Court approved changes to the minimum age limits for Presidential and Vice Presidential candidates, which were previously regulated in Law Number 7 of 2017 concerning General Elections. This decision shows that the Constitutional Court feels the need to interpret the law in a more flexible way in order to achieve substantive justice, in accordance with the spirit of the constitution.

Thus, both in the context of the annulment of the provisions of Law Number 24 of 2003 and Decision Number: 90/PUU-XXI/2023, the Constitutional Court emphasized their role in upholding justice above the formal rules of law. These two cases reflect the Constitutional Court's approach which places substantive justice and constitutionality as the main priority in the interpretation and application of the law..

4. Moral Basis

Law, politics and morals are integral elements in the life of a country that are interrelated and cannot be separated. Each element has an important role in ensuring the quality of state administration, especially in terms of legal substance (legislation) and law enforcement. Considering that law is the result of a political process, the role of morals in influencing politics, especially in the context of making and enforcing laws, becomes very vital. Therefore, systematic efforts are needed to build and maintain a system that is able to ensure and maintain the morality of politicians and state administrators, as well as the morality of society as a whole (Fauzi, 2012).

Legal politics is an important basis in the formation and application of law in a country. The ideological, normative, constitutional and moral bases act as the main pillars that ensure that the laws created do not just fulfill formal procedures, but also reflect the values of justice, common interests and morality. Cases such as the Constitutional Court decision Number: 90/PUU-XXI/2023 highlight the importance of the principles of independence and impartiality in the legal system. Despite violations of the code of ethics, this ruling remains binding and highlights the challenges in maintaining the integrity of the legal process. Therefore, consistent efforts are needed to ensure that every legal product is in line with the basic principles of legal politics, maintaining a balance of power, and placing substantive justice above formal rules, in order to create good and democratic governance.

Conclusion

The conclusion in this research is the importance of the principles of independence and impartiality in the Indonesian legal system, especially in the context of the Constitutional Court decision Number 90/PUU-XXI/2023 regarding the age requirements for Presidential and Vice Presidential candidates. Research findings show that this decision resulted in ambiguity among political parties regarding nominating candidates who did not meet the minimum age requirement of 40 years, but had experience as state officials elected through General Elections. This decision emphasizes the role of the Constitutional Court in upholding substantive justice above the formal rules of law, while still emphasizing the principles of independence and impartiality. The implications of this research indicate the need for consistent efforts to ensure that every legal product is in line with the basic principles of legal politics, maintaining a balance of power, and placing substantive justice above formal rules in order to create good and democratic governance. This research also identifies that legal politics is an important foundation in the formation and implementation of law in Indonesia. The ideological, normative, constitutional and moral bases act as the main pillars that ensure that the laws created do not just fulfill formal procedures but also reflect the values of justice, common interests and morality. Thus, systematic efforts are needed to build and maintain a system that is able to ensure and maintain the morality of politicians and state administrators, as well as the morality of society as a whole.

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