Constitutionally of The Age Limit Regulations for Presidential and Vice Presidential Candidates: Perspective of Industrial System

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Abstract:

The regulation of the minimum age requirement for presidential and vice-presidential candidates has become one of the most debated constitutional issues in Indonesia following the Constitutional Court Decision Number 90/PUU-XXI/2023. The decision introduced a new interpretation of Article 169 letter q of Law Number 7 of 2017 by allowing individuals under the age of 40 to run for office if they have previously held or currently hold an elected public position. This development has generated debates concerning constitutional legitimacy, the doctrine of *open legal policy* , judicial authority, and democratic governance. This study aims to analyze the constitutionality of the regulation on the minimum age requirement for presidential and vice-presidential candidates from the perspective of constitutional law and *Siyasah Dusturiyah* . This research employs normative juridical legal research with statutory, conceptual, case, and comparative approaches. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 on General Elections, and Constitutional Court Decision Number 90/PUU-XXI/2023, while secondary materials include scholarly books, accredited journal articles, and relevant legal doctrines. The findings reveal that the minimum age requirement constitutes an *open legal policy* of the legislature because the Constitution does not explicitly regulate such a requirement. However, the Constitutional Court's decision has shifted the interpretation from judicial review toward norm creation, raising concerns regarding the separation of powers. From the perspective of *Siyasah Dusturiyah* , eligibility for national leadership should not rely solely on biological age but must prioritize justice (*al-'is)* , integrity (*al- amanah*), competence (*al-Ahliyyah*), leadership capacity (*al- quwwah*), and public welfare (*al- maslahah*). The study proposes an integrated constitutional approach that harmonizes constitutional principles with the values of *Siyasah Dusturiyah* in regulating eligibility for national leadership.

Keywords: presidential candidate; constitutional law; *Siyasah Dusturiyah* .

Introduction

Debate regarding the minimum age limit for candidates the head of state is issue constitutional that continues develop in various democratic countries . Provisions about age No only viewed as condition administrative , but also as instrument law For ensure maturity leadership , integrity , and capacity somebody in operate state power . [1]In various countries such as the United States , France , Brazil , and South Korea, the regulation about age candidate president formed through consideration different historical , political , and constitutional differences . the show that No there is universal standards regarding age limits the leader of the country, but rather depending on philosophy the constitution of each country. Therefore that , change to provision age candidate president always become sensitive issue Because related direct with principle democracy constitutional , certainty law , as well as legitimacy organization state power . In constitutionalism perspective , every changes in norms regarding condition nomination must still oriented towards the principles of the rule of law , protection constitution , and interests public in a way wide .

In Indonesian context , polemic regarding age limits candidate President and Vice Presidential candidates reach the peak after Court Constitution emit Decision Number 90/PUU-XXI/2023 [2]which changes the meaning of Article 169 letter q of the Law Number 7 of 2017 concerning General Election . Before decision said , the conditions minimum age of candidate President and Vice Presidential candidates set at a minimum of 40 years . However Court Constitution Then give exception for someone who has not 40 years old throughout Once or currently occupy elected position through election general , including election head area . Decision the is final and binding so that direct valid as law positive in Indonesia. The Court Constitution return confirm the validity of the norm through decision continuation that refuses application testing return against Article 169 letter q of the Election Law.

Changes to the norms bring up very widespread reaction among academics , practitioners law , organization public civil , up to institution supervisor ethics justice . Various discussion academic evaluate that Decision Number 90/PUU-XXI/2023 does not only change condition nomination President and Vice President, but also opened debate regarding the limits of authority Court Constitution as a negative legislator. A number of study mention that Court Constitution has forming legal norms new previous one No arranged in a way explicit in Constitution . On the other hand , there are the view that states that Court only operate function constitutional For ensure right constitutional citizens through interpretation progressive to constitution . Differences view the show that age limit issue candidate President No Again just problem administrative , but has develop become problem theory law , politics law and legitimacy constitutional .

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[1] Rusdi Sanmas, "Head of Constitutional Law Review of the Latest Constitutional Court Decisions" : Age of Presidential Candidates and Regional Head Candidates " 2, no. 4 (2024).
[2] Constitutional Court, "Decision Number 154/PUU-XXI/2023," Pub. L. No. 154, 1 (2023).

Phenomenon the the more important reviewed Because impact direct to quality Indonesian democracy . Report various institution monitor democracy show that post Decision Number 90/PUU-XXI/2023 occurred improvement debate public about independence institution justice , conflict the interests of constitutional judges , as well as relation between law and power politics .[3] Polemic the No only influence level trust public to Constitutional Court , but also gave rise to question about to what extent have constitutional norms changed ? can done through judicial review mechanism . With Thus , the issue of age limits candidate President and Vice Presidential candidates own dimensions very complex social , political and legal so that need more analysis comprehensive compared to just evaluate Correct or the mistake something decision court .

On the other hand , the perspective Siyasah Dusturiyah offers framework different analysis in understand the formation of constitutional norms . In draft jurisprudence siyasa , provisions about condition leader No solely based on age biological , but more emphasize the principles of al- Ahliyyah (competence), al-quwwah (capability), al- amanah (integrity), as well as welfare general (maslahah al-' ammah) [4]. Therefore that , change condition age candidate President No Enough analyzed through approach law positive only , but also necessary reviewed based on principles Islamic constitution which places justice , benefit and protection to interest public as objective main organization government . Approach This become important For enrich discourse Indonesian constitutional law which has been This more Lots dominated by the approach modern constitutional compared approach Islamic constitutional law (Siyasah)

Court Constitution has do interpretation progressive For expand right constitutional citizens in get chance the same one in government .[5]On the other hand , on the other hand , decision the has beyond function Court as a negative legislator because forming new norms that previously existed No arranged in law . Differences view the show that Decision Number 90/PUU-XXI/2023 is still become room discourse open academic and not yet reach agreement scientific about legitimacy constitutional . Although thus , some big study Still is at in corridor law positive so that Not yet integrate approach Islamic law in general comprehensive .

Study No only study constitutionality age limit setting candidate President and Vice Presidential candidates based on regulation legislation as well as Decision Constitutional Court , but also analyze it through perspective Siyasah Dusturiyah as

[3] Muhammad Fathur Rizky, Edi Yuhermasyah, and Azmil Umur, "Conflict of Interest in Constitutional Court Decision Number 90 / PUU-XXI / 2023 Concerning the Age Limit for Presidential and Vice Presidential Candidates According to the Judicial Power Law" 4, no. 1 (2024): 142–51, https://doi.org/10.47498/maqasidi.v4i1.3452.
[4] Prayudi Rahmatullah, *Contextualization of Constitutional Law from an Islamic Perspective* (Malang: Maknawi, 2024).
[5] Abdul Roup and Lita Tyesta, "LOCUS JOURNAL : Research & Community Service on Legal Dynamics and Political Communication in the Debate on the Age Limit for Presidential Candidates in Indonesia " 4, no. 12 (2025): 11320 – 28.

paradigm Islamic constitutional law . Focus study directed For evaluate suitability changes in age norms with principle justice , welfare , trust , competence leadership , and limitations power in state administration . With Thus , research This expected can enrich development theory Indonesian constitutional law (siyasah) through integration between principles of the rule of law democratic and values constitutional Islam.

Development study regarding age limits candidate President and Vice Presidential candidates show that debate academic Still dominated by two currents big . Current First put Decision Court Constitution Number 90/PUU-XXI/2023 as a form of judicial activism that aims expand right constitutional citizens through interpretation progressive to The 1945 Constitution of the Republic of Indonesia .[6] Current second precisely look at decision the as form shift function Court Constitution from negative legislator to positive legislator because create new norms that previously existed No formulated by the founder Constitution .[7] Difference perspective the show that age limit controversy No only related with legality decision , but also concerns theory separation power , independence power judiciary , as well as the limits of authority institution judicial in system Indonesian state administration . [8]Conditions This confirm that age limit issue candidate President and Vice Presidential candidates Still need more analysis comprehensive with connect aspect constitutional , political laws and values Islamic law to be obtained construction more laws intact .

Study This identify three main research gaps . First , research previously more Lots analyze legality Decision Court Constitution from perspective law positive without build synthesis with draft Islamic statehood . Second , study jurisprudence the system that has been There is tend stop the discussion condition leader according to Islamic law and not yet connect it with principle constitutionalism , checks and balances, and function Court Constitution in formation law national . Third , not yet Lots research that is special use perspective Siyasah Dusturiyah as framework analysis For evaluate suitability age limit changes candidate President and Vice Presidential candidates with mark justice (al-'adl) , benefit (maslahah), equality (al-musawah), trust (al- amanah), and sovereignty law (siyadah al-qanun). The gap the show existence need to study normative capable integrate Indonesian constitutional law with principles Islamic state administration in general systematic .

Leave from gap said , research This offering novelty in the form of analysis juridical normative which combines theory constitutional law with perspective Siyasah Dusturiyah as framework evaluation to age limit setting candidate President

[6] Basuki Kurniawan et al., "Controversies Surrounding the Constitutional Court's Role as a Positive Legislator" 24, no. 1 (2025): 1–14.
[7] Ramlani Lina Sinaulan and Rahmat Saputra, "The Constitutional Court as a Positive Legislative through the Living Constitution Approach," 2023.
[8] Muhammad Khoirul Umam et al., "Law, Development & Justice Review Legal Analysis of Constitutional Court Decision Number 90 / PUU / XXI / 2023 Concerning the Age Limit for Vice Presidential Candidates in Indonesia Law, Development & Justice Review," no. 90 (2025): 236–53.

and Vice Presidential candidates in Indonesia. Research This put Siyasah Dusturiyah as paradigm analytical For test conformity to the results norm Decision Court Constitution with principles Islamic constitution . Approach This allows analysis No only stop at the problem legitimate or No legitimacy change of norms, but also assess what is the norm ? has reflect objective organization fair government , guarding welfare general , guarantee equality right citizens , and prevent abuse power . With Thus , research This expected capable expand treasury development Islamic constitutional law at the same time enrich discourse about connection between modern constitutionalism and values sharia in system Indonesian state administration .

Based on overall description said , research This aim For analyze age limit setting candidate President and Vice Presidential candidates in law positive Indonesia as well as study its suitability with principles Siyasah Dusturiyah. Focus study directed at analysis against the norms of Article 169 letter q of the Law Number 7 of 2017 concerning General Election as interpreted in Decision Court Constitution Number 90/PUU-XXI/2023, simultaneously evaluate implications juridical to principles of the rule of law , democracy constitutional and governance good governance .

Research Method

Study This use type study law normative (normative legal research) which places law as something the analyzed normative system based on principles , rules , doctrines and regulations legislation .[9] Study law normative aim find argumentation law , principle laws and concepts relevant laws For answer issue law about constitutionality age limit setting candidate President and Vice Presidential candidates in system Indonesian state administration . Focus study No directed at behavior society , but rather on the consistency of legal norms , decisions court , as well as its suitability with principles constitution and Islamic constitutional law . Approach This chosen Because issues studied is problem related normative with formation of legal norms through Decision Court Constitution Number 90/PUU-XXI/2023, so that analysis done to das sollen (what should be) according to law), not das sein (fact) empirical).

Study This use four approach . *First* , the approach statute approach to study The 1945 Constitution of the Republic of Indonesia , Law Number 7 of 2017 concerning General Election and changes and regulations related others . *Second* , the approach case approach that focuses on analysis Decision Court Constitution Number 90/PUU-XXI/2023 and decisions related to having relevance to arrangement condition age candidate President and Vice Presidential candidates . *Third* , the approach conceptual approach[10] For study theory of the rule of law ,

[9] Peter Mahmud. Marzuki, "Legal Research," 2005.
[10] Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020).

democracy constitutional , political law , principle equality in front of law (equality before the law), as well as theory authority Court Constitution as bodyguard constitution. Analysis material law done in a way qualitative with use technique interpretation laws that cover interpretation grammatical , systematic , historical , teleological , and conceptual . Furthermore , the analysis strengthened through method reasoning legal reasoning for test conformity to the results norm Decision Court Constitution with principles of the rule of law democratic and values Siyasah Dusturiyah.

Political Dynamics of the Law on Age Limits for Presidential and Vice Presidential Candidates

Legal politics is direction policy the basis of the state in forming , maintaining and developing system law to realize objective state . In Mahfud MD's perspective , politics law reflect choice state policy regarding the law that will enforced or changed in accordance need society and ideals law national . [11]Therefore that , every formation and changes in legal norms No can separated from configuration politics that developed in a period certain . Settings regarding age limits candidate President and Vice Presidential candidates is one of the form political law Because related with design institutional democracy , mechanism recruitment leadership national , as well as protection right constitutional citizens . [12]Norms regarding age No just condition administrative , but rather instrument law For ensure that candidate leader own maturity psychological , capacity leadership and legitimacy adequate social in operate function government .

In history Indonesian constitutional law , the 1945 Constitution of the Republic of Indonesia does not determine the minimum age limit for President and Vice President. Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia only requires that candidate President and Vice President must is Indonesian citizen since his birth , no Once accept other citizenships his will alone , no Once betraying the country, as well as capable in a way spiritual and physical carry out task as President and Vice President.[13] After amendments to the 1945 Constitution, regulations about condition technical nomination handed over to former Constitution as form of open legal policy. Consequently , the DPR together with President own room constitutional For determine age limits minimum length No contradictory with principles constitution and rights basic man .

Policy the Then realized through various Constitution election President . Law Number 23 of 2003, Law Number 42 of 2008, up to Constitution Number 7 of 2017 in particular consistent set a minimum age limit for candidates President and Vice

[11] Moh Mahfud MD, *Legal Politics in Indonesia* , 9th ed. (Depok: Rajagrafindo Persada, 2019), https://www.rajagrafindo.co.id/produk/politik-hukum-di-indonesia-mahfud-md/.
[12] Erry Fitrya Primadhany, *Legal Politics in Indonesia* , ed. by Muhamad Rizal Kurnia (Banten: Sada Kurnia Pustaka, 2024).
[13] General Election Commission et al., "The Construction of Indonesian Elections," nd

Presidential candidates as much as 40 years .[14] Consistency arrangement the show that former Constitution look at 40 years old as minimum indicators of maturity politics and experience in organization government . From the perspective political law , choice the is form policy legislative policy based on considerations philosophical , sociological , and juridical . During almost two decades , the norm No experience change substantial so that form certainty law for organization election President of Indonesia.[15]

Change fundamental happen when Court Constitution grant part application review of Article 169 letter q of the Law Number 7 of 2017 through Decision Number 90/PUU-XXI/2023. Court state that provision minimum age 40 years still constitutional , but must interpreted to also apply for someone who has not 40 years old throughout Once or currently occupy elected position through election general , including head area . With construction said , the Court No remove the minimum age norm , but instead add previous exceptions No there is in Constitution .[16] Decision This Then be one of decision Court The most constitution debated in history Indonesian constitutional law because assessed change substance of norms through judicial review mechanism .

Changes to the norms give birth to discourse regarding the limits of authority Court Constitution as bodyguard constitution . In Hans Kelsen's theory , Court The constitution in principle functioning as a negative legislator, namely cancel conflicting norms with constitution without creating new norms . However , developments practice state administration in various countries shows emergence tendency towards judicial activism, namely when court constitution give interpretation that produces new norms For fill in emptiness law or protect right constitutional citizens . In context Decision Number 90/PUU-XXI/2023, in part academics have an opinion that Court has shift from negative function of legislator towards positive legislator because add phrase previous exceptions No formulated by the founder Constitution .[17] In contrast , other views judge that Court only do interpretation constitutional against the norms that have been There is so that still is at in corridor his authority .

Debate the show that political law Decision Number 90/PUU-XXI/2023 does not can understood only as change condition administrative nomination President and Vice President. Decision it also reflects dynamics connection between power legislative and judiciary in formation law national . From the perspective political

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[14] Abdul Hadi, "Reinterpreting Presidential Age Requirements : Constitutional Court Reasoning, Legal Certainty, and Democratic Implications after Decision No. 90 / PUU- XXI / 2023 " 24, no. 2 (2025): 8585 – 99.
[15] Said Mahyiddin, "PHILOSOPHY OF STATE LAW FROM AN ISLAMIC PERSPECTIVE," *Mentari: Scientific Magazine of Muhammadiyah University of Aceh* 12, no. 1 (2009).
[16] Sanmas, "Head of Constitutional Law Review of the Latest Constitutional Court Decisions : Age of Presidential Candidates and Regional Head Candidates .
[17] Denis Kurniawan, "Judicial Activism of the Constitutional Court in Testing the Constitutionality of Government Regulations in Lieu of Laws," 2024, 347–62.

law , the birth of new norms through decision court show the more size role institution justice in determine direction development law . Phenomenon This expand meaning political the original law dominated by the legislative process in parliament be also influenced by interpretation constitution by the Court Constitution . As a result , the decision court No Again viewed solely as implementation law , but also as instrument formation policy law national .[18]

In addition to bringing up debate about authority Constitutional Court , changes in age limits also have an impact on quality democracy constitutional .[19]Supporters decision have an opinion that exception to condition age expand right political citizens and open room regeneration leadership national . On the other hand , the party that criticizes decision the evaluate that changes in norms ahead stages election general potential reduce certainty law and give rise to perception existence conflict interest in the process of taking decision . Because of that that , the controversy that arose No only related with aspect legality , but also concerns legitimacy institutional Court Constitution and levels trust public to system justice constitution . Conditions the show that changes in election norms always own more implications wide to stability system democracy .

From the perspective political law , dynamics age limit setting candidate President and Vice Presidential candidates show existence shift paradigm formation law in Indonesia. If previously change of norms only done through the legislative process , then development law state administration show that decision Court The constitution can also become instrument transformation law . Shift This cause consequence important to connection between state institutions , especially regarding the limits of authority court in forming norms that have an impact direct towards the political process . Therefore that , analysis to Decision Number 90/PUU-XXI/2023 does not Enough done only based on text decision , but also must consider objective political law national , the principle of the rule of law democratic , and the mechanism of checks and balances in system Indonesian state administration .

In perspective political law , decision Court Constitution Number 90/PUU-XXI/2023 marks change important in practice formation law in Indonesia.[20] Decision the show that Court Constitution No Again only functioning as tester constitutionality legislation , but also plays a role in forming new norms through interpretation constitution . Development This strengthen the character of constitutional adjudication, but at the same time cause question regarding the boundaries between function judicial and function legislation . Therefore that ,

[18] Rasji Agatha et al., "Analysis of Constitutional Court Decision Number 90/PUU/XXI/2023 Concerning Age Limit Requirements for Presidential and Vice Presidential Nominations" 2, no. 2 (2024): 1002–8.
[19] Wara et al., "Changes in the Constitutional Court Decision : Age Limits for Presidential and Vice Presidential Candidates and Their Implications for Democracy " 04, no. 02 (2025): 336 – 41.
[20] Zainal Arifin Mochtar, *Legal Politics of Law Formation* , ed. Ahmad Jamaludin, vol. 5 (Yogyakarta: Buku Mojok Group, 2025), https://www.pustakakita.com/politik-hukum-pembentukan-undang-undang.html.

politics law age limit setting candidate President and Vice Presidential candidates must understood as results interaction between former laws , the Constitutional Court , and principles developing constitutional in a state of law democratic .

Analysis Normative Jurisprudence on Constitutionality Age Limit Regulations for Presidential and Vice Presidential Candidates

Constitutionality a legal norm in essence determined by its suitability with The Constitution as a legal norm supreme (supremacy of constitution). In system Indonesian constitutional system , the 1945 Constitution of the Republic of Indonesia is the main parameter For test validity every formation of legal norms , both through the legislative process and through judicial review mechanism by the Court Constitution . Therefore that , analysis against the age limit candidate President and Vice Presidential candidates must started with examine whether constitution give settings that are of a nature limited or precisely give room policy to former law (open legal policy).

Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia ,[21] No determine the minimum age limit for candidate President and Vice Presidential candidates . Constitutional norms only requires that candidate President and Vice Presidential candidates must is Indonesian citizen since his birth , no Once accept other citizenships his will alone , no Once betraying the country, as well as capable in a way spiritual and physical For carry out task as President and Vice President. Absence arrangement regarding age limits show that constitution give room for former Constitution For determine condition technical nomination in accordance with need society and development democracy . In theory constitutional law , space the known as policy law open (open legal policy), namely authority former Constitution For choose formulation of norms throughout No contradictory with constitution .

The concept of open legal policy has be one of consistent doctrine used Court Constitution in various the verdict .[22] Through doctrine said , the Court in principle honor authority legislative in determine choice policy law , especially if constitution No arrange in a way explicit something material certain . Therefore that , determining the age limit candidate President and Vice Presidential candidates since Constitution Number 23 of 2003, Law Number 42 of 2008, up to Constitution Number 7 of 2017 is seen as policy law former existing laws within the discretionary area constitutional . Consequently , the Court Constitution should only test what is the norm ? contradictory with constitution , not replace choice policies that become authority legislative .

Problem constitutional Then appear when Court Constitution through Decision Number 90/PUU-XXI/2023 does not only stating the norm constitutional

[21] "The 1945 Constitution of the Republic of Indonesia," 1945 § (1945).
[22] AE; Nirwono; Daniel S. Lev; Priyono, *Law and Politics in Indonesia : Continuity and Change* (Jakarta: LP3ES, 2014).

or unconstitutional , but also added exception new for candidates who have or currently occupy position results election general although Not yet 40 years old . From the perspective constitutional law , changes the bring up question fundamental regarding the limits of authority Court Constitution in do interpretation constitution .[23] A number of study evaluate that decision the has expand meaning of norms through construction law new so that cause debate about its suitability with open legal policy doctrine .

Ratio Decidendi Decision Court Constitution Number 90/PUU-XXI/2023

In theory decision court , ratio decidendi is base consideration the law that becomes reason main judge in drop decision . Power something decision No only determined by the law decision , but also by the quality argumentation the law . Therefore that , analysis to Decision Court Constitution Number 90/PUU-XXI/2023 must directed at the arguments used Court in give exception regarding the minimum age limit for candidates President and Vice Presidential candidates .[24]

Court have an opinion that experience somebody in occupy position public obtained through mechanism election general can made into indicator capacity equal leadership with consideration age . Based on argumentation said , the Court add phrase that someone who has not 40 years old still can nominate self throughout Once or currently occupy elected position through election general . Considerations the based on the principle equality chance in government as well as protection to right constitutional citizens to chosen in position public .[25]

However thus , in the same decision there is a dissenting opinion stated that age limit issue is an open legal policy forming area Constitution so that Court should No adding new norms .[26] Opinion different the confirm that change condition age is choice policy legislature that only can changed through the formation process law , not through decision court . Academic studies after the verdict also shows that debate main No Again about age 40 years , but about legitimacy Court in forming legal norms new through decision testing Constitution . In development In Indonesian constitutional law , the theory of open legal policy [27]is an important parameter . in determine intervention limits Court Constitution to policy legislative . Doctrine This

[23] Umam et al., "Law, Development & Justice Review Legal Analysis of Constitutional Court Decision Number 90 / PUU / XXI / 2023 Concerning the Age Limit for Vice Presidential Candidates in Indonesia Law, Development & Justice Review."
[24] Lusia Indrastuti and FX Hastowo Broto Laksito, "Open Legal Policy in Constitutional Court Decisions : Constitutional Limits and Its Issues in the Indonesian State Administration System " 3 (2026).
[25] Ellydar Chaidir, "LEGAL ANALYSIS OF CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023 AS A FORM OF EXPANSION OF POSITIVE LEGISLATOR AUTHORITY FROM THE PERSPECTIVE OF LEGAL JUSTICE," *Journal of Legal Studies* 4, no. 2 (2025): 362–76.
[26] Rizki Rahayu Fitri, "Analysis of Post-Legal Positivism Through the Guba and Lincoln Paradigm in the Constitutional Court Decision No. 90 / PUU-XXI / 2023 Regarding the Age Requirements for Presidential Candidates-" 1945, no. 90 (2024): 39–52.
[27] Mahfud MD, *Legal Politics in Indonesia* .

contain meaning that if constitution No arrange something material in a way firm , then former Constitution own freedom For determine choice policy law throughout No violate principles constitution .

If theory the implemented to Decision Number 90/PUU-XXI/2023, there are two views that have developed . The view First state that Court still is at in corridor his authority Because only do interpretation constitutional For protect right citizens . Views second have an opinion that Court has beyond function testing Constitution Because No only delete or maintain norms, but also create new norms that previously existed No there is in laws . Research latest tend evaluate that addition exception against the age limit is form expansion of norms that shift function Court from negative legislator to positive legislator.

Analysis Based on the Theory of Negative Legislator and Positive Legislator

Negative concept of legislator introduced by Hans Kelsen[28] put Court Constitution as an institution that only authorized cancel conflicting norms with Constitution . Court No given authority For forming new norms Because function the is authority former law . Division function the is part from the principle of checks and balances which aims guard balance between state institutions .[29]

In practice modern state administration , a number of court constitution of course develop practice of judicial activism, namely interpretation progressive that produces new norms when there is emptiness law . However , the practice the still become debate Because potential blurring the lines between function judicial and function legislative . A number of study about Decision Number 90/PUU-XXI/2023 concludes that Court has operate a function that resembles a positive legislator, because decision the No only test constitutionality of norms, but also introduces condition new binding in a way general .[30] Condition This viewed cause problem certainty law at a time open discourse new regarding the limits of authority Court Constitution in system Indonesian state administration .

According to writer , problem main in Decision Court Constitution Number 90/PUU-XXI/2023 is not lies in the numbers age 40 years , but rather on legitimacy formation of norms through judicial review mechanism . From the perspective constitutional law , age limit is policy law open which is constitutional is at in authority former Constitution during No violate right constitutional citizens . Therefore that , when Court add exception new that is not formulated by the founder law , appears question about consistency to principle separation separation of powers

[28] Luís Duarte d'Almeida, John Gardner, and Leslie C Green, "Kelsen Revisited : New Essays on the Pure Theory of Law, " 2013, https://api.semanticscholar.org/CorpusID:159258378.
[29] Anggiat P Simamora, "The Independence of Constitutional Court Judges from the Perspective of Hans Kelsen's Pure Legal Theory" : Study of Constitutional Court Decision No. , " no. 90 (2025): 1036 – 46.
[30] Kaharuddin Atiek Pratiwi Putri Naue, Cassis Merinthia Ariapramuda, Wicipto Setiadi, "Conditional Unconstitutionality and the Problem of Legal Certainty in Judicial Review of Legislation," *Journal of Islamic Law and Humanities* 5 (2026): 734–57.

and checks and balances. On the other hand , the argument The court that seeks expand chance citizens to selected also reflects protection to right politics . With Thus , the Decision Number 90/PUU-XXI/2023 is at the point meeting between protection right constitutional and limits of authority judicial , so that need testing more carry on use perspective Siyasah Dusturiyah for evaluate whether the formation of these norms in harmony with principle justice , trust , benefit , and restrictions power in Islamic constitutional law .

Analysis Age Limit Regulations for Presidential and Vice Presidential Candidates in Perspective Dusturiyah System

Siyasah Dusturiyah is branch jurisprudence the system that studies principles state administration , relations between ruler and people, formation constitution , division power , as well as organization government based on values Islamic law .[31] In perspective this , the country is seen as instrument For realize benefit (jalb al-mashalih) and prevent harm (dar ' al- mafasid). Therefore that , every policy public , including arrangement condition candidate head of state, must directed towards the realization justice , benefit , protection right society and stability government .[32] Principle the put law as means For reach objective sharia (maqashid al- syari'ah), not just as formal rules . With Thus , the analysis against the age limit candidate President and Vice Presidential candidates No Enough stop at the aspect legality , but also must evaluate what is the norm ? truly support realization welfare general . Research latest about Siyasah Dusturiyah also shows that principles Islamic constitution remains relevant as framework evaluation to system modern state administration .

In thinking Islamic classic , Al- Mawardi through Al-Ahkam al- Sulthaniyyah explain that a the head of state must fulfil a number of condition the main thing , namely fair (al-' is), has ability intellectual For perform ijtihad, healthy physical and spiritual , have ability manage government , brave take decisions , and capable guard interest people . Interestingly , Al- Mawardi No set number age certain as condition become leader . Who becomes size main No age biological , but rather level maturity , competence , moral integrity , and ability operate trust government . Thought the show that Islam is more emphasize substance leadership than condition administrative . Contemporary studies about Al- Mawardi's thoughts also emphasize that principle justice , welfare society , and supremacy law is foundation main in determine eligibility a leader .[33]

Draft the in line with the principle of al- Ahliyyah (competence) is developing in jurisprudence siyasah . Al- ahliyyah No only understood as skills law , but also includes capacity intellectual , experience governance , ability take decisions , and

[31] Ibn. Taimiyah, "Siyasah Sharia : Islamic Political Ethics, " 1999, 190.
[32] HA Djazuli, *Fiqh Siyasah : Implementation of the Public Welfare in Sharia Guidelines* (Jakarta) : Prenada media, 2018).
[33] Abu Hassan al-Mawardi, *Al-Ahkam as-Sultaniyyah* (Kalamullah, nd).

moral maturity . With Thus , someone who has own experience lead something government can considered fulfil element competence throughout fulfil condition integrity and fairness . However , competence No can measured only based on experience position . Competence must also be proven through capacity managerial, effective leadership , and commitment to interest society . Because of this that , experience political without integrity No Enough become base legitimacy For occupy position head of state.

Age Limit Analysis in Perspective Principles Dusturiyah System

The Principle of al-'Adalah (Justice)

Principle the first thing to do become size in Siyasah Dusturiyah is justice (al-' is). Justice No only interpreted as equal treatment to every citizen , but also as placement something in its place in accordance with objective law .[34] In context age limit setting candidate President and Vice Presidential candidates , principles justice requires that every citizens obtain equal opportunity For participate in government without discrimination that is not rational . However , Eq chance the must still consider greater interests big , namely creation effective and capable government protect welfare public .[35]

From the perspective this , addition exception to condition age through Decision Court Constitution No automatic contradictory with principle justice . However , the size his justice No solely Because give chance to individual certain , but rather because of the norm truly valid in a way general , objective , and not formulated For profitable group certain . In Siyasah Dusturiyah, justice always associated with principle impartiality rulers and equality treatment law . [36]Therefore that , if a norm gives rise to perception partisanship or conflict interests , then the moral legitimacy of the norm can questioned although formally have strength law .

The principle of al-Amanah (Integrity and Responsibility)

Principle second is al- amanah , namely integrity and responsibility answer in operate power . The Qur'an emphasizes that trust must given to the person who is entitled and has ability For run it . In theory Siyasah Dusturiyah, trustworthy is base legitimacy power . Power No viewed as right special , but as not quite enough answer constitutional must accountable to society and to Allah SWT.[37]

Based on principle said , size main eligibility candidate President is not age only , but moral quality , record traces , integrity , and commitment to the interests of the people. Therefore that , age limit only functioning as indicator administrative For measure level maturity someone , not as objective end from the selection process

[34] Rahmatullah, *Contextualization of Constitutional Law from an Islamic Perspective* .
[35] Khalifurrahman Fath and Fathurrahman, "Translation of Ahkam Sulthaniyah : The Islamic Caliphate Government System - Imam Al Mawardi. " (Jakarta: Qisthi PRess, 2014).
[36] Djazuli, *Fiqh Siyasah : Implementation of the Public Welfare in Sharia Guidelines* .
[37] Taimiyah, "Siyasah Syariah : Islamic Political Ethics. "

leadership . A candidates who meet the age limit but No own trust No more worthy compared to more candidates young but own high integrity . With Thus , the perspective Siyasah Dusturiyah teaches that legal norms must capable selecting quality leadership in a way substantial , not just formal.

The principle of al- Maslahah (Public Benefit)

The principle of al- maslahah is the core of all over organization government in Islam. Every state policy must produce more benefits big compared to the harm it causes . Therefore that , the age limit changes candidate President must tested based on the impact to interest public.[38] If change the capable expand participation politics , improving quality regeneration leadership , and strengthening democracy , then change the can assessed in line with principle benefit . On the other hand , if change the precisely cause uncertainty law , reducing trust public to state institutions , or bring up conflict interests , then the benefit that becomes objective main sharia No achieved . In context Decision Court Constitution Number 90/PUU-XXI/2023, evaluation to aspect welfare must done in a way objective with consider impact term long to system Indonesian state administration , not only interest political term short.

Based on analysis above , research This have an opinion that age No is condition main in perspective Siyasa Dusturiyah. Which become size main is competence (al- ahliyyah), justice (al-'adalah) , integrity (al- amanah), capacity leadership (al- quwwah), and orientation towards benefit (al- maslahah).[39] However so , not means age limit No required . In a modern state of law , the age limit still own function important as instrument objective For ensure maturity psychological and certainty law in the nomination process.

On the basis of that , the ideal reconstruction of age limit settings candidate President and Vice Presidential candidates need built on three principles . First , change condition age must done through mechanism democratic legislation as form respect to the principle of open legal policy and distribution power . Second , every change must based on studies comprehensive academic about need regeneration leadership , development democracy and interests national . Third , besides maintain condition administrative, forming Constitution need strengthen indicator substantive about record footsteps leadership , integrity , capacity managerial , and commitment to constitution as part from the selection process candidate President and Vice Presidential candidates .

With construction mentioned , age limit settings No Again understood as numbers that are absolute, but rather as part from system selection integrated leadership principles of the rule of law democratic with values Siyasah Dusturiyah.[40]

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[38] Abu Hassan al-Mawardi, *Al-Ahkam as-Sultaniyyah* .
[39] Ahmad Burhan Hakim and Satryo Pringgo Sejati, "Democracy and Islamic Politics in the Perspective of Siyasah Dusturiyah," *HOKI: Journal of Islamic Family Law* 2, no. 1 (2024): 73–81.
[40] Fathurrahman, "Translation of Ahkam Sultaniyah : The Islamic Caliphate Government System - Imam Al Mawardi .

Approach This give balance between certainty law , justice , benefit and welfare , so that more in accordance with objective formation law national at a time objective Islamic law in realize government that is fair , trustworthy and side-by-side with interests public wide .[41]

Research result show that constitutionality age limit setting candidate President and Vice Presidential candidates No can assessed only based on formal conformity with The 1945 Constitution of the Republic of Indonesia . Analysis to Decision Court Constitution Number 90/PUU-XXI/2023 shows that changes in norms regarding age limits at a crossroads between protection right constitutional citizens and principles restrictions authority state institutions . From the perspective constitutional law , decisions the is form interpretation constitution that expands meaning of norms through judicial review mechanism . However , from perspective political law , expansion the cause consequence to relation between power legislative and power judicial Because produce legal norms that previously existed No formed through the legislative process .

Temporary that , perspective Siyasah Dusturiyah provides dimensions different analysis . In Islamic constitutional law , legitimacy a leader No determined by age biological , but rather by ability realize benefit , justice , trust , as well as capacity in manage government . [42]Therefore that , age limit only is instrument administrative nature means , whereas objective the main thing (maqashid) is produce fair and capable leadership guard interest public .

Conclusion

Age limit settings candidate President and Vice Presidential candidates is policy law open (open legal policy) because The 1945 Constitution of the Republic of Indonesia does not determine the minimum age limit explicit . Constitution only set condition general regarding citizenship status , loyalty to the country, as well as ability physical and spiritual For operate position President and Vice President. With Thus , determining the age limit is basically is authority former Constitution as implementation mandate constitution . However , the decision Court Constitution Number 90/PUU-XXI/2023 has been change construction of the norm with add exception for citizens who have not 40 years old but Once or currently occupy elected position through election general . From the perspective constitutional law , decisions the show shift practice testing Constitution Because Court No only evaluate constitutionality of norms, but also forms new norms through interpretation constitution . Shift the bring up debate regarding the limits of authority Constitutional Court , relations between function judicial and legislative , as well as consistency implementation open legal policy doctrine .

In perspective Siyasah Dusturiyah that age biological No is the main parameter in determine eligibility a head of state. Literature classic and development

[41] Djazuli, *Fiqh Siyasah : Implementation of the Public Welfare in Sharia Guidelines* .
[42] Abu Hassan al-Mawardi, *Al-Ahkam as-Sultaniyyah* .

contemporary Siyasah Dusturiyah more emphasize the principles of al-' are (justice), al- amanah (integrity), al- ahliyyah (competence), al- quwwah (capacity) leadership), al- musawah (equality), and al- maslahah (benefits general). Therefore that , the condition age viewed as instrument administrative nature means , whereas objective mainly is ensure that leader own capacity For realize welfare society . Based on perspective said , changes to the age limit No can assessed solely from formal constitutional aspects , but must also be tested based on mark justice , certainty law , integrity state institutions , as well as the impact to welfare public . With thus , a change of norms only get legitimacy intact if fulfill two dimensions at the same time, namely legitimate in a way procedural according to constitutional and fair in a way substantive according to principles Siyasah Dusturiyah.

Bibliography

Abu Hassan al-Mawardi. *Al-Ahkam as-Sultaniyyah* . Kalamullah, nd

Agatha, Rasji, Augustin Frangky, Faculty of Law, Tarumanagara University, West Jakarta City, and DKI Jakarta Province. "Analysis of Constitutional Court Decision Number 90 / PUU / XXI / 2023 Concerning Age Limit Requirements for Presidential and Vice Presidential Nominations" 2, no. 2 (2024): 1002–8.

Atiek Pratiwi Putri Naue, Cassis Merinthia Ariapramuda, Wicipto Setiadi, Kaharuddin. "Conditional Unconstitutionality and the Problem of Legal Certainty in Judicial Review of Legislation." *Journal of Islamic Law and Humanities* 5 (2026): 734–57.

Chaidir, Ellydar. "LEGAL ANALYSIS OF CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023 AS A FORM OF EXPANSION OF POSITIVE LEGISLATOR AUTHORITY FROM THE PERSPECTIVE OF LEGAL JUSTICE." *Journal of Legal Studies* 4, no. 2 (2025): 362–76.

d'Almeida, Luís Duarte, John Gardner, and Leslie C Green. "Kelsen Revisited : New Essays on the Pure Theory of Law," 2013. https://api.semanticscholar.org/CorpusID:159258378.

Daniel S. Lev; Priyono, AE; Nirwono; *Law and Politics in Indonesia : Continuity and Change* . Jakarta: LP3ES, 2014.

Djazuli, HA *Fiqh Siyasah : Implementing the Public Welfare Within Sharia Guidelines* . Jakarta : Prenada media, 2018.

Fathurrahman, Khalifurrahman Fath and. "Translation of Ahkam Sulthaniyah : The Islamic Caliphate Government System - Imam Al Mawardi." Jakarta: Qisthi PRess, 2014.

Fitri, Rizki Rahayu. "Analysis of Post-Legal Positivism Through the Guba and Lincoln Paradigm in the Constitutional Court Decision No. 90 / PUU-XXI / 2023 Regarding the Age Requirements for Presidential Candidates-" 1945, no. 90 (2024): 39–52.

Hadi, Abdul. "Reinterpreting Presidential Age Requirements : Constitutional Court Reasoning, Legal Certainty, and Democratic Implications after Decision No. 90 / PUU- XXI / 2023" 24, no. 2 (2025): 8585–99.

Hakim, Ahmad Burhan, and Satryo Pringgo Sejati. "Democracy and Islamic Politics from the Perspective of Siyasah Dusturiyah." *HOKI: Journal of Islamic Family*

Law 2, no. 1 (2024): 73–81.
Indrastuti, Lusia, and FX Hastowo Broto Laksito. "Open Legal Policy in Constitutional Court Decisions : Constitutional Limits and Its Issues in the Indonesian State Administration System" 3 (2026).
Constitutional Court. Decision Number 154/PUU-XXI/2023, Pub. L. No. 154, 1 (2023).
Kurniawan, Basuki, Sareef Tehtae, Jati Nugroho, and Anis Ibrahim. "Controversies Surrounding the Constitutional Court's Role as a Positive Legislator" 24, no. 1 (2025): 1–14.
Kurniawan, Denis. "Judicial Activism of the Constitutional Court in Testing the Constitutionality of Government Regulations in Lieu of Law," 2024, 347–62.
Mahfud MD, Moh. *Legal Politics in Indonesia* . 9th ed. Depok: Rajagrafindo Persada, 2019. https://www.rajagrafindo.co.id/produk/politik-hukum-di-indonesia-mahfud-md/.
Mahyiddin, Said. "PHILOSOPHY OF STATE LAW FROM AN ISLAMIC PERSPECTIVE." *Mentari: Scientific Magazine of Muhammadiyah University of Aceh* 12, no. 1 (2009).
Marzuki, Peter Mahmud. "Legal Research," 2005.
Mochtar, Zainal Arifin. *Legal Politics of Law Formation* . Edited by Ahmad Jamaludin. Vol. 5. Yogyakarta: Buku Mojok Group, 2025. https://www.pustakakita.com/politik-hukum-pembentukan-undang-undang.html.
Muhaimin. *Legal Research Methods* . Mataram: Mataram University Press, 2020.
Primadhany, Erry Fitrya. *Legal Politics in Indonesia.* Edited by Muhamad Rizal Kurnia. Banten: Sada Kurnia Pustaka, 2024.
Rahmatullah, Prayudi. *Contextualization of Constitutional Law from an Islamic Perspective* . Malang: Maknawi, 2024.
Rizky, Muhammad Fathur, Edi Yuhermasyah, and Azmil Umur. "Conflict of Interest in Constitutional Court Decision Number 90 / PUU-XXI / 2023 Concerning the Age Limit for Presidential and Vice Presidential Candidates According to the Judicial Power Law" 4, no. 1 (2024): 142–51. https://doi.org/10.47498/maqasidi.v4i1.3452.
Roup, Abdul, and Lita Tyesta. "LOCUS JOURNAL : Research & Community Service on Legal Dynamics and Political Communication in the Debate on the Age Limit for Presidential Candidates in Indonesia" 4, no. 12 (2025): 11320–28.
Sanmas, Rusdi. "Head of Constitutional Law Review of the Latest Constitutional Court Decisions" : Age of Presidential Candidates and Regional Head Candidates" 2, no. 4 (2024).
Simamora, Anggiat P. "The Independence of Constitutional Court Judges from the Perspective of Hans Kelsen's Pure Legal Theory" : Study of the Constitutional Court Decision No. ," no. 90 (2025): 1036–46.
Sinaulan, Ramlani Lina, and Rahmat Saputra. "The Constitutional Court as a Positive Legislative through the Living Constitution Approach," 2023.
Taimiyah, Ibn. "Sharia law : Islamic Political Ethics," 1999, 190.
Umam, Muhammad Khoirul, Muhammad Purnomo, Dian Rosita, Faculty of Economics, Legal Education, and Muhammadiyah University of Kudus. "Law, Development & Justice Review: Legal Analysis of Constitutional Court Decision Number 90 / PUU / XXI / 2023 Concerning the Age Limit for Vice

Presidential Candidates in Indonesia Law, Development & Justice Review," no. 90 (2025): 236–53.

General, Election Commission, Batu City, KPU Members, and Batu City. "Construction of Indonesian Elections," and

The 1945 Constitution of the Republic of Indonesia, 1945 § (1945).

Wara, Arya Pajar Sanjaya, Mrr Ratna, Endang Widuatie, Cin Cin, Widya Putri, Enis Ermayanti, et al. "Changes in the Constitutional Court Decision : Age Limits for Presidential and Vice Presidential Candidates and Their Implications for Democracy" 04, no. 02 (2025): 336–41.