



## Analysis Determination of Constitutional Court Decision: President and Vice President Candidate Age

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Article	Abstract
<p><b>Keywords:</b> <i>Constitution court; Age; President Elections; TheLaws</i></p> <p><b>Article History</b> Received: July 15, 2020; Reviewed: July 17, 2020; Accepted: July 21, 2020; Published: August 10, 2020</p>	<p>The decision of the Constitutional Court on Law Number 7 of 2017 concerning General Elections: Age Limit for Presidential and Vice Presidential Candidates has become a polemic for Indonesian politics. Constitutional Court decision approving the age limit for the President and Vice President at 35, previously the minimum age was 40 (UU No.7 Article 169 letter q of 2017). In the 1945 Constitution article 24C paragraph 1, the Constitutional Court has no authority to replace and amend laws that the Legislative institution has enacted. This has become a polemic in the election of Indonesian Presidential and Vice Presidential candidates on 14<sup>th</sup> February 2024. The public considers that the Constitutional Court's decision does not reflect the 5th principle of Pancasila and violates the code of ethics as a judge. This decision of the Constitutional Court changed the Indonesian people's view of the law for the worse because the government easily changed the law.</p>

### 1. INTRODUCTION

According to Indonesia's Ministry of Economy, Indonesia is the third largest democracy in the world. Democracy is a language that comes from ancient Greece, "Demos" means people while "Kratos" means absolute power, so democracy is absolute power by the people.

"Democracy is an institutional plan for reaching political decisions in which individuals gain the power of competitive struggle over the voice of the people." -Joseph A. Schamer-<sup>1</sup>

Every five years, Indonesia holds a massive democratic party. General elections or what we often know by the name of elections regulated in law number 7 of 2017 is the name for the means of people's sovereignty to elect members of the House of Representatives, members of the House of Regional Representatives, the President, and Vice President, and to elect members of the Regional People's Representative Council which are carried out directly, publicly, freely,

<sup>1</sup> E.John Elliott. Review Of Social Economy. Taylor & Francis, Ltd, 1994, Page 280

secretly, honestly, and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

General elections are carried out by an institution, namely the General Election Commission (KPU) under the direct supervision of the Election Supervisory Agency (Bawaslu). This election is usually held for 1 period or 5 years, if someone wants to run for President or Vice President and members of the House of Representatives, they can submit themselves to the General Election Commission but must meet the requirements under the general election law.

Three types of provisions regulate the process of holding election stages. The first stage is the Election Administration Provisions (KAP). Election Administration There are three types of provisions that regulate the process of holding election stages. The first stage is the Election Administration Provisions (KAP). Election Administration Provisions regulate the requirements, obligations, orders, and prohibitions that must be obeyed by voters, participants, candidates, campaign implementers, or implementers and organizers in the process of holding the election stages. Second, the Election Criminal Provisions (KPP) are provisions that regulate the actions of every person who does or does not carry out an action as an act that is prohibited and punishable by criminal law. Third, the Election Organizer Code of Ethics (KEPP) has several behavioral rules that election organizers must comply with. This rule does not include positive laws such as KAP and KPP even though the Election Law orders the preparation and enforcement of the Code of Ethics for Election Organizers.<sup>2</sup>

The General Election Institution in organizing elections has several objectives under the Law of the Republic of Indonesia Number 7 of 2017, namely, strengthening a democratic constitutional system, realizing elections that are fair and with integrity, ensuring consistency in election system arrangements, providing legal certainty and preventing duplication in election arrangements. and most importantly realizing effective and efficient elections.

Apart from having goals, the General Election Commission itself also has many tasks. Goals and tasks are two different things but have a huge correlation under what is regulated in the General Election Law. The duties of the General Election Commission include:<sup>3</sup>

- 1) Plan programs and budgets and set schedules;
- 2) Prepare KPU regulations for each election stage;

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<sup>2</sup> Tim Redaksi. Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 : Tentang Pemilihan Umum. Yogyakarta : Laksana, 2017, page 19-20

<sup>3</sup> Ibid. page 21

- 3) Coordinate, organize, control, and monitor all stages of elections;
- 4) Prepare official reports and certificates of recapitulation of vote counting results and submit them to witnesses participating in the election and Bawaslu;
- 5) Announcing DPR member candidates, DPD member candidates, and elected candidate pairs and making minutes of the event;
- 6) Immediately following up on Bawaslu decisions regarding findings and reports of alleged election violations or disputes;
- 7) Socialize the implementation of elections and/or related to the duties and authority of the KPU to the public;

General elections have existed since the Old Order, the New Order, and the Reformation period. The existence of general elections cannot be separated from the history of the Indonesian nation, precisely during the Old Order era. The desire to hold free general elections in Indonesia had been prepared since the early weeks, after the Indonesian Proclamation of 17 August 1945. General elections during the New Order period began in 2009, which was the time when President Suharto stepped down from his royal throne. However, the people's insistence which continued to be voiced led to the General Election being held on June 7, 1999. One thing that stood out in the 1999 Election was the very large number of participants, namely 48 political parties.<sup>4</sup>

In the general election every five years, many people only focus on the presidential election or what we often know as the Presidential and Vice-Presidential Election or Presidential Election. The presidential election is a method of election in general elections, this presidential election itself is to elect the president and vice president as heads of state who truly have the capacity and capability to be able to lead on behalf of the people in carrying out the mandate that the people will later give to the presidential and deputy candidates. the president will lead the government.

Following the article regulated in Law Number 42 of 2008, in nominating yourself to become a candidate for President and Vice President there are various conditions, including the following<sup>5</sup>:

- 1) Be devoted to God Almighty;

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<sup>4</sup> Perpustakaan Nasional Republik Indonesia. 2006. Pemilihan Umum Republik Indonesia. [https://kepuustakaan.presiden.perpusnas.go.id/election/directory/election/?box=detail&id=27&from\\_box=list&hlm=1&search\\_ruas=&search\\_keyword=&activation\\_status=](https://kepuustakaan.presiden.perpusnas.go.id/election/directory/election/?box=detail&id=27&from_box=list&hlm=1&search_ruas=&search_keyword=&activation_status=) (Access on December 18th 2023)

- 2) Indonesian citizen since birth and has never accepted another citizenship of his own free will;
- 3) Never betrayed the country, and never committed a crime of corruption or other serious crimes;
- 4) Able spiritually and physically to carry out duties and obligations as President and Vice President;
- 5) Residing in the territory of the Unitary State of the Republic of Indonesia;
- 6) Has reported his assets to the agency authorized to examine state administrators' wealth reports;
- 7) Not currently having individual and/or legal entity debt obligations for which they are responsible which are detrimental to state finances;
- 8) Not being declared bankrupt based on a court decision;
- 9) Never commit a disgraceful act;
- 10) Registered as a Voter;
- 11) Have a Taxpayer Identification Number (NPWP) and have carried out the obligation to pay taxes for the last 5 years as proven by the Annual Individual Taxpayer Income Tax Return;
- 12) Have not served as President or Vice President for 2 (two) terms in the same position;
- 13) Loyal to Pancasila as the basis of the state, the 1945 Constitution of the Republic of Indonesia, and the ideals of the Proclamation of 17 August 1945;
- 14) Never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for <sup>5</sup> years or more;
- 15) At least 40 years of age;
- 16) Minimum education completed High School (SMA), Madrasah Aliyah (MA), Vocational High School (SMK), Vocational Madrasah Aliyah (MAK), or other equivalent forms;
  - a. Not a former member of the banned Indonesian Communist Party organization, including its mass organizations, or not someone directly involved in G.30.S/PKI;
  - b. Having a vision, mission, and program for implementing the government of the Republic of Indonesia.

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<sup>5</sup> Law Number 42 of 2008 about General Election President and Vice President

According to the Third Amendment to the 1945 Constitution, Article 6A, the President and Vice President are elected as a pair directly by the people through the General Election of the President and Vice President. Previously, the President and Vice President were directly elected by the People's Consultative Assembly. With the amendment to the 1945 Constitution, the President is no longer responsible to the MPR, and the positions of the President and the MPR are equal. The first presidential election was held in 2004.

The biggest democratic party in Indonesia "Election of President and Vice President of Indonesia 2024" is a big party for the Indonesian nation. The presidential and vice-presidential candidates have prepared and submitted the basic requirements to the Indonesian General Election Commission. One of Indonesia's presidential and vice-presidential candidates was revealed to not meet the age stipulated by Law Number 7 Article 169 letter q of 2017 "to be at least 40 years old." Age has become a major polemic in the 2024 Indonesian Presidential and Vice-Presidential elections. The pair of candidates for President and Vice president of Indonesia promised to continue to run for leadership. The Indonesian political polemic occurred because one of the vice-presidential candidates was 36 years old. In Law Number 7 Article 169 letter q of 2017, the minimum age is 40 years.<sup>6</sup>

The presidential candidate pair has become a topic of conversation among Indonesian politicians. The initial polemic started with the decision of Law number 7/2017 regarding the minimum age limit for presidential and vice-presidential candidates which was created by a Sebelas Maret University student named Almas Tsaqibbirru.<sup>7</sup> This was supported and became material for analysis by constitutional law experts, who responded that this decision was sensitive and quite strongly political concerning the momentum of the 2024 presidential election. This analysis was strengthened because President Joko Widodo's son, Gibran Rakabuming, is 36 years old. This age is said to be still young to be directly involved as vice president of Indonesia in the world of politics. There has been a lot of opposition from various parties in Indonesia with the appointment of Gibran Rakabuming as vice presidential candidate paired with presidential candidate, Prabowo Subianto.

The DPR (House of Representatives) submitted this polemic to the Constitutional Court to examine and assess Republic of Indonesia Law number 7 of 2017 concerning General Elections. Habiburokhman, House of Representatives, Deputy Chair of Commission III, compared the age regulations for leaders of countries in the world, 45 countries require the age of 35 years to

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<sup>6</sup> Op.cit. Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 : Tentang Pemilihan Umum. page 119

<sup>7</sup> Copy of the applicant's letter for Indonesia Constitutional Court Number 90/PUU-XXI/2023

become a leader, such as the United States, Russia, India, and Portugal. Meanwhile, 38 countries provide an age requirement of 40 years.<sup>8</sup> The government has completely handed over the provisions regarding the minimum age limit for presidential and vice-presidential candidates to the Constitutional Court. The government will follow whatever decision the Constitutional Court makes, which has the authority to resolve constitutional interpretation cases.

As a country based on Pancasila and the Constitution as the legal basis, the government is obliged and emphasized to be able to carry out its oath of duty and authority as regulated in the 1945 Constitution. In Montesquieu's theory "The Spirit of Laws (1748)", Montesquieu separates 3 (three) types of power:

- 1) Legislative;
- 2) Executive;
- 3) Judicial.

The authority of the legislative institution is to make and change laws and the judiciary is to test and check the laws that have been made. The legislative institution should be responsible and not hand over this task to the Constitutional Court. The Constitutional Court is an institution overseen by the Judiciary. State regulations based on the 1945 Constitution are rules that must be implemented and serve as guidance for the leaders of the Indonesian state. The House of Representatives is indeed a legislative institution that has the right to change and enact laws together with the president, but not by submitting a decision to the judiciary, or the Constitutional Court.<sup>9</sup>

In the 1945 constitution, article 24C paragraph 1, it is clearly stated that "The Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political party, and to judge on disputes regarding the result of a general election." The constitutional court does not have the authority to change or make laws.<sup>10</sup>

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<sup>8</sup> Mahkamah Konstitusi Website. 2023. DPR Serahkan Kepada MK Soal Syarat Usia Capres-Cawapres. Sri Pujianti. <https://www.mkri.id/index.php?page=web.Berita&id=19398&menu=2> (Access on December 13th 2023)

<sup>9</sup> Efi Yulistiyowati, Endah Pujiastuti, Tri Mulyani. 2016. Penerapan Konsep Trias Politica Dalam Sistem Pemerintahan Republik Indonesia : Studi Komparatif Atas Undang–Undang Dasar Tahun 1945 Sebelum Dan Sesudah Amandemen. Semarang. page 334- 335

<sup>10</sup> Marzuki, Masnur. 2016. Introduction To Indonesian Constitutional Law. Yogyakarta : FH UIJ Press. page 98-102

## 2. RESEARCH METHODS

The type of method used in this article is a normative juridical legal research method. Normative Juridical legal research is focused on finding a legal rule, legal principles, or legal doctrines to answer the legal problems faced<sup>11</sup>. This article was studied using primary legal materials consisting of legislation and secondary legal materials consisting of books, opinions of scholars (doctrine), legal cases, jurisprudence, articles, legal journals, and related research problems.<sup>12</sup>

## 3. ANALYSIS AND DISCUSSION

### 3.1 LEGAL DECISION

#### 3.1.1 Legal Decision According To Law Regarding The Age Limit For Presidential And Vice Presidential Candidates

The Constitution or Grondwet, Grundgesetz, Basic Law occupies the highest level of legal regulations in the country. This constitution is all the rules that contain the rules for administering a country, government, or region.

According to Herman Heller, the constitution can be divided into 3 parts, namely<sup>13</sup>:

- 1) Diepolitikche verfassung als gesellschaftlich wirklichkeit, in this sentence, it can be interpreted that the constitution is a reflection of political life in society as a reality. Contains political and sociological.
- 2) Die verselbstandigte rechtsverfassung, in this sentence, it can be interpreted that the Constitution is a unity. The rules that live in society. Contains Juridical

#### 1)Diepolitikche verfassung

Die geshereiben verfassung, in this sentence, it can be interpreted that the Constitution is a written text that states that the Constitution is the highest law that applies in a country.

Meanwhile, according to James Bryce, the constitution is a frame of political society, organized through and by law, which is to say on which law established permanent institutions with recognized functions and definite rights. After that Strong returned to complete Bryce's statement, namely that the Constitution is a collection of principles

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<sup>11</sup> Peter Mahmud Marzuki. Penelitian Hukum. Jakarta: Kencana Prenada Group, 2007, page 35.

<sup>12</sup> Jhony Ibrahim. Teori dan Penelitian Hukum Normatif. Malang: Bayumedia Publishing, 2006, page 295.

<sup>13</sup> Pusat Pendidik. Konstitusi Dan Konstitusionalisme Di Indonesihttps://pusdik.mkri.id/materi/materi\_186\_Materi%204%20- %20Ghoffar%20-%20Konstitusi%20&%20Konstitusionalisme.pdf (Access on December 18th 2023)

according to which the power of the government, the rights of the governed, and the relationship between the two are adjusted, not only Strong strengthened Bryce's argument, Peasle also believes that all countries must have written laws which will be called a constitution. Almost all countries have written laws, but not Canada and England, these twocountries do not have constitutions.

Indonesia is one of several countries that are said to have a constitution in the countries mentioned, in this case, Indonesia has a constitution and an institution that overseesthe constitution, namely the Constitutional Court.

Currently, Indonesia is being shocked by a decision from the Constitutional Court regarding the age requirements for candidates for President and Vice President in the 2024 Election. This decision letter contains changes to the ages of the president and vice presidentin Article 169 letter q of Law No. 7 of 2017 which originally stated that the minimum age requirement for the president and vice president is 40 years, changed to 35 years. This has become a topic of discussion for many political experts and among the public, many peoplehave begun to express their own opinions regarding the existing polemic.

Many sections of society have opposed the Constitutional Court's decision because itis considered to damage the image of the law, which gives the impression that it is very easyto change, in contrast to political experts who speak based on data and laws.

This Constitutional Court decision is a formally flawed decision or an invalid decision, but this decision cannot be contested. In this case, why does the author say that theConstitutional Court's decision is a decision that is formally flawed, this is because in Article24 c paragraphs 1 and 2 regarding the duties and authority of the Constitutional Court, whichin this article has been explained and stipulated that the Constitutional Court cannot participate. contributed to ratifying the law on the age requirements for the president and vicepresident.

Article 10 Paragraph 1 of the Constitutional Court Law states, "The Constitutional Court has the authority to adjudicate at the first and last instance whose decision is final for:

- a. Examine laws against the 1945 Constitution of the Republic of Indonesia;
- b. Decide disputes over the authority of state institutions whose authority is granted by the1945 Constitution of the Republic of Indonesia;
- c. Decide on the dissolution of political parties; and



d. Resolve disputes regarding the results of the general election.

Article 28 Paragraph 1 of the Constitutional Court Law states, "The Constitutional Court examines, adjudicates and decides in a plenary session of the Constitutional Court with 9 (nine) constitutional justices, except in extraordinary circumstances with 7 (seven) constitutional justices led by the Chief Justice of the Constitutional Court.

According to the applicants regarding this matter, these two provisions are ambiguous, have multiple interpretations, and have been proven to make the Constitutional Court not impartial, neutral, and partial, as decided in Decision Number 90/PUU-XXI/2023. This is related to the participation of Constitutional Justice Anwar Usman, who at that time served as Chief Justice of the Constitutional Court in examining, adjudicating, and deciding cases regarding the minimum age requirements for being a presidential and vice-presidential candidate.

The Petitioners said that Anwar Usman has a conflict of interest because he is the uncle of President Joko Widodo's (Jokowi) eldest son, Gibran Rakabuming Raka, and this can be proven by the number of reports on changes to the age law that were rejected by the constitutional court, the case numbers are<sup>14</sup>:

- a. 102//PUU-XXI/2023
- b. 104/PUU-XXI/2023
- c. 107/PUU-XXI/2023

After Decision Number 90/PUU-XXI/2023, Gibran ran for vice presidential candidate alongside presidential candidate Prabowo Subianto. The Petitioners said, that if the Constitutional Court Decision Number 90/PUU-XXI/2023 is proven to have been tainted with ethical violations, then there is a formal flaw in the decision-making process. If it is allowed to have permanent legal force, apply generally (*erga omnes*), and be executed, then the Constitutional Court will perpetuate a practice that violates the Constitution. However, even though the Constitutional Court's decision is formally flawed, it will still be a valid decision because this is regulated in Article 10 paragraph 1 of the Constitutional Court Law.

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<sup>14</sup> Antara News. 2023. Gugatan Batas Usia Capres  
<https://img.antarane.ws.com/cache/infografis/1140x2100/2023/10/24/20231024-gugatan-batas-usia-capres.jpg?quality=85> (Access on December 17th 2023)

## 3.2 Legal Ethical

### 3.2.1 Ethical Considerations Regarding Independence By Making And Deciding On Constitutional Court Decision Number 90/PUU-XXI/2023

The judge's reason for firmly rejecting the request for decision no. 29/PUU-XXI/2023, 51/PUU-XXI/2023, and 55/PUU-XXI/2023 are Open Legal Policies and are not constitutional issues. According to the Constitutional Court, Open Legal Policy is a policy related to provisions in certain laws that fall under the authority of the legislature. Substantially Decision No. 90/PUU-XXI/2023 asks the same thing, the Constitutional Court indeed granted the applicant's request to add new criteria to the requirements for presidential and vice presidential candidates. Based on the introduction which explains the chronology of the case, there were irregularities in the process of making the Constitutional Court's decision on case 90/PUU-XXI/2023. In this decision, it was decided that there were additional criteria that would make this decision considered odd due to the inconsistency of the Constitutional Court's statements regarding similar cases.<sup>15</sup>

Previously, the Constitutional Court stated that this issue was the authority of the legislative body. However, when the same case was submitted again and addressed to one of the applicants, namely Gibran Rakabumi, the son of the 7th President of the Republic of Indonesia, the MK partially granted the request. On this basis, allegations emerged of violations of the Code of Ethics and judges' behavior in decisions that were considered too political and prioritized the interests of certain parties, especially former Chief Justice of the Constitutional Court Anwar Usman. It is not appropriate for a judge who has been sworn in to provide opportunities for young leaders to lead this country. Apart from that, judges should prioritize justice and truth as per the course of the law.

After going through various legal procedures and seeking information from interested parties, MKMK Decree No. 02/MKMK/L/11 under MK Regulation no. 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Behavior of Constitutional Judges, called Sapta Karsa Hutama, Anwar Usman violates 5 principles, namely:<sup>16</sup>

- 1) Principle of Impartiality;
- 2) Integrity Principles;

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<sup>15</sup> Zulqarnain, Cantika Dhea Marshanda, Nararya Salsabila Zamri, and Raesa Mahardika. 2023. Analisis Pelanggaran Kode Etik Dalam Kasus Pemberhentian Ketua Mk Anwar Usman Terkait Putusan Batas Usia Capres Dan Cawapres Pada Pemilu 2024. *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1.2. page 86

<sup>16</sup> Ibid. page 89-90

- 3) Principles of Proficiency and Accuracy;
- 4) Principle of Independence;
- 5) Principles of Appropriateness and Politeness.

Based on this, decision-making in the public sector, especially in the field of judicial power, must be based on ethical behavior. Ethics here refers to actions that do not violate established norms or codes of ethics. The code of ethics essentially functions as an administrative guideline, because all decisions taken are based only on feelings and not on the interests of certain individuals or groups and can be accounted for by society to uphold justice. The official website of the Indonesian Legal Aid Foundation (YLBHI) (8/11023) expressed its disappointment with the decision of the MKMK (Honorary Council of the Constitutional Court) which was considered to compromise the disgraceful actions committed previously.<sup>17</sup>

### **3.3 LEGAL ETHICAL NEW LEGAL POWERS OF THE CONSTITUTIONAL LAW**

#### **3.3.1 The Powers Of The Constitutional Court Regarding The New Law For Presidential Election 2024**

Article 24C of the 1945 Constitution explains that the authority of the Constitutional Court is to decide disputes over general election results. Article 10 paragraph (1) of Law Number 24 of 2003 concerning Powers Of The Constitutional Court contains:<sup>18</sup>

- 1) The Constitutional Court has the authority to adjudicate at the first and final level whose decision is final for:
  - a. Examine laws against the 1945 Constitution of the Republic of Indonesia;
  - b. Decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia;
  - c. Decide on the dissolution of political parties; And
  - d. Resolve disputes about the results of general elections.
- 2) The Constitutional Court is obliged to give a decision based on the opinion of the DPR that the President and/or Vice President are suspected of having committed legal violations in the form of treason against the state, corruption, bribery, other serious criminal acts, or disgraceful acts, and/or no longer fulfill the requirements to be President and/or Vice President as intended in the 1945 Constitution of the Republic of Indonesia.

In this case, the Constitutional Court will resolve disputes over the results of the 2024 simultaneous elections (Legislative and Presidential/Vice-Presidential Elections). Apart

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<sup>17</sup> Ibid. page 90

<sup>18</sup> Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi. President. President Decision Letter. page 5

from deciding PHPU disputes (General Election Results Disputes), the Constitutional Court also has the authority to determine disputes over Pilkada (Regional Head Election) results, which are stated in the Constitutional Court's decision. In considering Decision Number 85/PUU-XX/2022, the Constitutional Court emphasized that the authority to verify and decide election result disputes is no longer limited to "until a special judicial body is formed", but will become permanent because such a special court will not be formed.<sup>19</sup>

Based on the Constitutional Court decision letter no. 90/PUU-XXI/2023 concerning Additional Provisions for Experience in Office for Election Electability in the Minimum Age Requirements for Presidential/Vice Presidential Candidates, it can be said that the Constitutional Court violated the 1945 Constitution, article 24C. The Court has no right or authority to change or add to the Law. Article 24C paragraphs 1 and 2 of the 1945 Constitution contains:<sup>20</sup>

- (1) The Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political party, and to judge on disputes regarding the result of a general election.
- (2) The Constitutional Court shall render a judgment on the petition of the People's Representative Council regarding an alleged violation by the President and/or the Vice President according to the Constitution.

Article 24C paragraph 1 clearly states that the Constitutional Court does not have the right and authority to change or add to the Law. Constitutional justices should be able to carry out their duties and comply with the rules established by law. Article 24C paragraph 2 explains clearly that judges are only allowed to try and decide on violations against the President and Vice President of Indonesia according to the Constitution proposed by the House of Representatives. The Constitutional Court openly violates the rules in the 1945 Constitution. The Constitutional Court should carry out its written authority, not arbitrarily take and change decisions on a law. The People's Representative Council indeed handed over the polemic to the Constitutional Court

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<sup>19</sup> Raihan, Muhammad dan Nasution, Ali Imran. 2022. Beban Mahkamah Konstitusi Dalam Memutus Perselisihan Tentang Hasil Pemilihan Umum Serentak 2024. Depok: Diversi Jurnal Hukum Volume 8.

<sup>20</sup> The Constitutional Court Of The Republic Of Indonesia. The 1945 constitution of The Republic of Indonesia, Law Of the Republic of Indonesia Concerning the constitutional court. 2015. Jakarta: The Office of the Registrar and the Secretariat General Of the Constitutional Court of the Republic of Indonesia. page 24

which correlates with general and presidential elections. However, the Constitutional Court does not agree that changing and deciding on laws is not the task of the Constitutional Court. The Constitutional Court only has the right to review laws that have been made by the People's Representative Council and can propose changes to the lawmakers if the laws are not suitable for use.

Based on the principles of law "Lex specialis derogat legi generali" means that the new law trumps the old law<sup>21</sup>. However, the Constitution cannot be defeated by a new law because, in the Indonesian legal hierarchy system, it is the Constitution that holds the highest legal authority, followed by the Law. So that judges and other state officials must be able to implement the 1945 Constitution to the fullest extent possible.

#### **4. CONCLUSION**

The constitutional court is a judicial institution that has the authority to review laws. This authority is the point and answer for constitutional judges to act under the 1945 Constitution. The 2024 Indonesian President and Vice President election is a test of credibility for Constitutional Court judges. The Constitutional Court adopted decision letter NUMBER 90/PUU-XXI/2023 regarding the minimum age for presidential and vice-presidential candidates. In Law No. 7 of 2017 concerning General Elections, it is explained that the minimum age for presidential and vice-presidential candidates is at least 40 years. One of the vice-presidential candidates is known to be 36 years old and the couple remains adamant in their decision to advance in the presidential election.

The People's Representative Council handed over everything to the Constitutional Court, which in reality changed the results of the legal decision. In the 1945 Constitution, it is clearly stated that the Constitutional Court does not have the right to change and enact laws. The Legislative Institution has the right to change the Law. In the end, the Constitutional Court decided unanimously to change the age of candidates for President and Vice President to a minimum of 40 years old. Many politicians, constitutional law experts, and the public oppose the Constitutional Court's decision.

The Constitutional Court judges forgot the highest law in Indonesia, namely the 1945 Constitution which is based on Pancasila. Decree NUMBER 90/PUU-XXI/2023 was not made with the utmost wisdom and justice. If there is a family relationship with the Vice-Presidential

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<sup>21</sup> Agustina, Shinta. 2015. Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana. Padang : Masalah-Masalah Hukum, Universitas Diponegoro. page 504

candidate or nepotism, Constitutional judges should and should be able to carry out their duties neutrally and based on the judge's ethics. Indonesia, which is based on law, should not easily change laws just for one-sided interests. Law is law, made for prosperity and justice for society, not for families. Officials and especially judges must study and understand the 1945 Constitution. The public must also be more concerned about every decision and law in Indonesia. Speak according to existing facts and data and based on norms and morals.

## REFERENCES

### Journal Article:

Agustina, Shinta. 2015. *Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana*. Padang : Masalah-Masalah Hukum, Universitas Diponegoro. page 504.

Efi Yulistyowati, Endah Pujiastuti, Tri Mulyani. 2016. *Penerapan Konsep Trias Politica Dalam Sistem Pemerintahan Republik Indonesia : Studi Komparatif Atas Undang–Undang Dasar Tahun 1945 Sebelum Dan Sesudah Amandemen*. Semarang. page 334-335.

Raihan, Muhammad dan Nasution, Ali Imran. 2022. *Beban Mahkamah Konstitusi Dalam Memutus Perselisihan Tentang Hasil Pemilihan Umum Serentak 2024*. Depok: Diversi Jurnal Hukum Volume 8.

Satriawan, Iwan dan Lailam, Tanto. 2019. *Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang*. Yogyakarta. page 564.

Zulqarnain, Cantika Dhea Marshanda, Nararya Salsabila Zamri, and Raesa Mahardika. 2023. "Analisis Pelanggaran Kode Etik Dalam Kasus Pemberhentian Ketua Mk Anwar Usman Terkait Putusan Batas Usia Capres Dan Cawapres Pada Pemilu 2024." *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1.2. page 85-90.

### Books:

E. John, Elliott. 1994. *Review of Social Economy*. Taylor & Francis, Ltd. page 280

Jhony, Ibrahim. 2006. *Teori dan Penelitian Hukum Normatif*. Malang: Bayumedia Publishing. page 295.

Marzuki, Masnur. 2016. *Introduction To Indonesian Constitutional Law*. Yogyakarta : FH UIJ Press. page 98-102.

Mujani Saiful, Liddle, R. William, dan Ambardi Kuskridho. 2019. *Kaum Demokratis Kritis, Analisis*

*Perilaku Pemilih Indonesia Sejak Demokratisasi*. Jakarta : KPG (Keputusan Populer Gramedia). page 9-10.

Peter, Mahmud Marzuki. 2007. *Penelitian Hukum*. Jakarta: Kencana Prenada Group. page 35.

Ramlan, Subakti. 2011. *Ketentuan Administrasi Pemilu: Mekanisme Pengaduandan Penegakkannya*. Perludem. page 1.

Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi. 2012. *Profil Mahkamah Konstitusi Republik Indonesia*. Jakarta Pusat. page 39-46.

The Constitutional Court Of The Republic Of Indonesia. 2015. *The 1945 constitution of The Republic of Indonesia, Law Of the Republic of Indonesia Concerning the constitutional court*. TheOffice of the Registrar and the Secretariat General Of the Constitutional Court of the Republic of Indonesia: Jakarta. page 24

Tim Redaksi. 2017. *Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 : Tentang Pemilihan Umum*. Yogyakarta : Laksana. page 1-23.

Zulpikar. 2021. *Bawaslu & Pemilu Demokratis*. Tangerang Selatan : Green Komunika. page 59-60.

### **Official Legal Website:**

Antara News. 2023. *Gugatan Batas Usia Capres*  
<https://img.antarane.ws.com/cache/infografis/1140x2100/2023/10/24/20231024-gugatan-batas-usia-capres.jpg?quality=85> (Access on December 17<sup>th</sup> 2023)

Hukum Online. 2023. *Apakah Hakim Boleh Mengadili Kasus Keluarganya?* Auli, Renata Christha. <https://www.hukumonline.com/klinik/a/apakah-hakim-boleh-mengadili-kasus-keluarganya-1t50655d0a80c60> (Access on December 18<sup>th</sup> 2023)

Mahkamah Konstitusi Website. 2023. *DPR Serahkan Kepada MK Soal Syarat Usia Capres-Cawapres*. Sri Pujianti.  
<https://www.mkri.id/index.php?page=web.Berita&id=19398&menu=2> (Access on December 13<sup>th</sup> 2023)

Mahkamah Konstitusi Website. *Kedudukan dan Kewenangan*.  
<https://www.mkri.id/index.php?page=web.ProfilMK&id=3&menu=2> (Access on 18<sup>th</sup> 2023)

Mahkamah Konstitusi Website. 2023. *UU MK Digugat Usai Putusan Ketentuan Syarat Usia Capres-Cawapres*. <https://www.mkri.id/index.php?page=web.Berita&id=19840&menu=2> (Access on 18<sup>th</sup> 2023)

Perpustakaan Nasional Republik Indonesia. 2006. *Pemilihan Umum Republik Indonesia*.  
[https://kepuustakaanpresiden.perpusnas.go.id/election/directory/election/?box=detail&id=27&from\\_box=list&hlm=1&search\\_ruas=&search\\_keyword=&activation\\_status=](https://kepuustakaanpresiden.perpusnas.go.id/election/directory/election/?box=detail&id=27&from_box=list&hlm=1&search_ruas=&search_keyword=&activation_status=) (Access on December 18<sup>th</sup> 2023)

Pusat Pendidik. *Konstitusi Dan Konstitusionalisme Di Indonesia*  
[https://pusdik.mkri.id/materi/materi\\_186\\_Materi%204%20-%20Ghoffar%20-%20Konstitusi%20&%20Konstitusionalisme.pdf](https://pusdik.mkri.id/materi/materi_186_Materi%204%20-%20Ghoffar%20-%20Konstitusi%20&%20Konstitusionalisme.pdf) (Access on December 18<sup>th</sup> 2023)

## **Regulation/Constitution/Law:**

1945 Constitution (Undang-Undang Dasar)

Article 10 paragraph (1) of Law Number 24 of 2003 concerning Powers Of The Constitutional Court Decision Letter Number 90/PUU-XXI/2023

In the 1945 constitution, article 24C paragraphs 1-2

- (1) The Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political party, and to judge on disputes regarding the result of a general election.
- (2) The Constitutional Court shall render a judgment on the petition of the People's Representative Council regarding an alleged violation by the President and/or the Vice President according to the Constitution.

Law Number 42 of 2008

Laws (Undang-Undang), Number 7, Article 169, Alphabet q, 2017 about General

Election Laws (Undang-Undang) Number 42, 2008

Third Amendment, 1945 Constitution, Article 6A

Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi.  
President. President Decision Letter. page 5