

INFLUENCE OF DECISION CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA NO. 90/PUU-XXI/2023 ON THE DEVELOPMENT OF LAW, POLITICS AND DEMOCRACY IN INDONESIA

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ABSTRACT

At the age of 20 years, the Constitutional Court (MK), which was founded in 2003, is the biological child of reform, and is the main institution (*primary organ*) that was born in the reform era, is the result of the third amendment to the 1945 Constitution. The Constitutional Court, as regulated in Article 24C, has the task of being an institution that guards the constitution (*the guardian of the constitution*). This means that the Constitutional Court guarantees that there are no provisions in a law that are contrary to the 1945 Constitution. Thus, the Constitutional Court must be able to properly guard the constitution and be able to realize justice and truth and uphold the values of the nation's dignity and honor. On October 16, 2023, through Decision No. 90/PUU-XXI/2023, the Constitutional Court again took a controversial action that should not have been done, for a country that upholds the values of law and democracy. The Constitutional Court through its controversial decision granted the lawsuit filed by the applicant, a student of the Faculty of Law, Surakarta University named Almas Tsaqibbirru, against Article 169 letter q of Law Number 7 of 2017, concerning the minimum age requirements for Presidential and Vice Presidential Candidates, through a dissenting opinion decision, the Constitutional Court finally "Granted the applicant's request in part." Through the Constitutional Court Decision No. 90/PUU-XXI/2023, it can certainly influence the development of legal, political and democratic development in Indonesia.

Keywords: Constitutional Court Decision, Political Influence on Judiciary, Democratic Legitimacy, Indonesian Legal Reform

INTRODUCTION

Monday, October 16, 2023 is a historic gray day for the journey of the Constitutional Court of the Republic of Indonesia (MKRI) since its establishment in 2003, where the public eye is focused on the Constitutional Court, through the Decision read directly by the Chief Justice of the Constitutional Court Anwar Usman, the Constitutional Court in its decision granted the Petitioner's request for part of what was requested by the applicant, namely a student of the Faculty of Law, Surakarta State University named Almas Tsaqibbirru, against Article 169 letter q of Law Number 7 of 2017, concerning General Elections (Atmasasmita Romli, n.d.). Regarding the Constitutional Court's decision, whether they like it or not, all Indonesian people must accept it, because all decisions made by the Constitutional Court as regulated in Article 24C of the 1945 Constitution are final and binding (*final and banding*).

Initially the trial went smoothly, all decisions made by the Constitutional Court were still running normally, starting from case number 29/PUU-XXI/2023 filed by the Indonesian Workers Union Party, case number 51/PUU-XXI/2023 filed by the Garuda Party, and case number 55/PUU-XXI/2023 filed by the Mayor of Bukit Tinggi, Erman Safar, Deputy Regent of South Lampung, Pandu Kusuma Dewangsa, Deputy Governor of East Java, Emil Dardak, Regent of Sidoarjo, Ahmad Muhdlor and Deputy Regent of Sidoarjo, Muhammad Albarra were not a

problem, because the cases decided by the Panel of Judges were considered to still be running normally and procedurally(Daniri, 2005).

On another occasion, the public was shocked by the actions of the Panel of Judges of the Constitutional Court, the trial led by Anwar Usman as the Chief Justice of the Constitutional Court made a decision that was very much the opposite of case No. 29/PUU-XXI/2023 and Case No. 55/PUU-XXI/2023. Where case Number 90/PUU-XXI/2023, filed by the applicant Almas Tsakibbiru, through the Decision read directly by the Chief Justice of the Constitutional Court Anwar Usman, the Panel of Judges of the Constitutional Court decided to grant the Applicant's request to partially declare, "at least 40 (forty) years old" is contrary to the 1945 Constitution of the Republic of Indonesia, and does not have binding legal force as long as it is not interpreted as "at least 40 (forty) years old or has/is currently holding a position elected through general elections including regional head elections", said the Chief Justice of the Constitutional Court Anwar Usman reading the Constitutional Court's decision on Monday (October 16, 2023) in the Plenary Courtroom of the Constitutional Court(Bentham, 2016).

The controversial decision raises various big questions, how the Chief Justice of the Constitutional Court as the leader of the trial can make a different decision with the same case, namely Article 169 letter q of Law No. 7 of 2017, where some Constitutional Court judges have a different opinion (*dissenting opinion*), for example, judges Wahiduddin Adams, Saldi Isra, Arief Hidayat and Suhartoyo, questioned the decision taken. Did the decision made by the chairman of the trial not contain a certain political motive, which was merely to save someone from being nominated as a presidential and vice presidential candidate(Freadman Lawrence M, 2010).

Regarding what has been decided by the Panel of Judges of the Constitutional Court regarding Case Number 90/PUU-XXI/2023, which "Grants the Applicant's request to partially declare Article 169 letter q of Law Number 7 of 2017 concerning General Elections which states, being at least 40 (forty) years old is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "being at least 40 (forty) years old or having/currently holding a position elected through general elections including regional head elections", said Chief Justice of the Constitutional Court (MK) Anwar Usman reading the verdict on Monday (16/10/2023 in the Plenary Courtroom of the Constitutional Court(Budiardjo, 2003).

In the legal consideration read by the constitutional judge M. Guntur Hamzah, the Court held that filling public positions *in the* President and Vice President need to involve the participation of qualified and experienced candidates. To the implementation and supervision of national policies, there are public positions whose age requirement for candidacy is 40 years (President and Vice President) and under 40 (forty) years which are both elected through elections such as the positions of Governor (30 years), Regent and Mayor (25 years), as well as members of the DPR, members of the DPD and members of the DPRD (21 years). However, related to the positions of President and Vice President, although they are also elected through elections, but because the age of the President and Vice President candidates is part of what is requested for constitutional testing, the positions of President and Vice President according to reasonable reasoning limits are less relevant to be linked to only the age requirements of the President and Vice President candidates(*MahkamahKonstitusi*, 2023).

Meaning according to Guntur. The President and Vice President who are elected through elections should automatically have met the age requirements for the positions of President and

Vice President. In order to realize participation and qualified and experienced candidates, the Court considers that state officials who are experienced as members of the DPR and DPD, members of the DPRD, Governors, Regents and Mayors are truly worthy to participate in the national leadership contest in casu as presidential and vice presidential candidates in the general election even though they are under 40 years old". Guntur explained(Suseno, 1991).

Regarding the decision made by the Constitutional Court as regulated in Article 24C of the 1945 Constitution, whether they like it or not, all Indonesian people must accept it, because all decisions of the Constitutional Court are final and binding (*final and binding*), even though the decision made is full of controversy and political interests, even though the judge has a different opinion(Ganjar Laksana, 2012).

THEORETICAL BASIS

As we know that in the development of law today, there are two opinions related to the cause and effect between law and politics. The first opinion comes from the idealists, which refers to their opinion *Roscoe Pound* which states that "*Law is a tool of social engineering.*" (Soekanto, 1985). This view states that law must be able to control and engineer the development of society, including political life. Therefore, in the ideological view, law is placed as a regulator or determinant of the direction of society's journey, because in this view, the law is placed in order to guarantee order and protect the interests of society.

The second view is the basis of what is conveyed by *Savigny*, Where *by Savigny* said that law always develops according to the development and needs of its society, meaning that law will grow and die with its society (Soekanto, 1985). This view believes that in principle law is a manifestation of public awareness. This means that law should be a fixed variable "dependent variable" of its external conditions, or influencing factors, for example, political factors and power factors and other factors that influence law as a result of political products.

Political configuration when associated with the concept of democracy and the concept of *authoritarianism* then according to Satjipto Rahardjo, politics has a very large concentration of energy, so that the law is always in a weak position (Rahardjo, 1985a). From what was conveyed by Satjipto Raharjo, it is clear that the working of the law is greatly influenced by political factors. Legal energy will be drained when faced with politics.

In the practice of governance in countries around the world, democratic and authoritarian states are something paradoxical and ambiguous (Miriam Budiardjo, n.d.). Countries that claim to be democratic countries, but in reality have taken democracy in different ways, making it difficult to determine which one is considered ideal (M. Amin Rais, 1986).

England, France and America brought democracy through bourgeois revolutions marked by capitalism and parliamentary democracy, while Germany and Japan before World War II had brought democracy through a revolutionary path that culminated in pacifism. Eastern European countries, especially the Soviet Union (now Russia) and China brought democracy through the path of communism-socialism with proletarian revolutions such as the Bolshevik revolution in 1926 which brought Lenin to power. This means that if we look at the history of what happened in countries, it turns out that democracy has different formulations and different paths.

Countries that are considered totalitarian or authoritarian in practice also often claim to be democratic countries. For some people, democracy lies more in the substance of building the welfare of its people and not in the merely symbolic liberal-pluralistic mechanism. If the state has placed the interests of the people as the main thing, even though it is ruled authoritarily,

then according to some people it is democracy. For them, democracy is all activities oriented towards efforts to build the welfare of the people, not on the involvement of the people in determining the direction of the state. In the context of the Indonesian state, democracy is used by the rulers to justify their government as a government that is considered democratic. Since liberal democracy, guided democracy, to Pancasila democracy with different democratic paths and characters. According to Amin Rais, one of the figures of Indonesian reform, he suggested that to implement democracy there should be no frills throughout the government(Mas, 2012).

Regarding what happened in the history of nations in the world, then if we see Indonesia as a country of law that places Pancasila democracy as its choice, it is the choice of Indonesian democracy and from this choice it turns out that politics greatly influences the working of law in Indonesia, both law as a product produced by legislative institutions and in the context of law enforcement(Rahardjo, 2010). This can be seen in the facts of Indonesian history, both of which do not always go hand in hand with what is the essence of the purpose of law(Ali, 2002). This is clearly seen if the measure of legal development in Indonesia is the unification and codification of law, seen from the product side and the number of laws produced, then the development of the legal structure has gone well. However, when viewed from the quality of the law produced and the function of law, it is clear that there has been a decline in quality (ArtidjoAlkostar& M. Soleh Amin, 1986).

According to the theory of constitutional law in accordance with the principle of impartiality, constitutional judges must be neutral and free from conflicts of interest, in this case;

1. The Chief Justice of the Constitutional Court at that time, Anwar Usman, who was also President Jokowi's brother-in-law and the uncle of Gibran RakabumingRakabuming Raka, was the party that benefited from the decision.
2. The Constitutional Court's honorary council then stated that Judge Anwar Usman had committed a serious ethical violation and removed him from his position as Chief Justice of the Constitutional Court.

The oddity: Although the ethical violation was proven, the decision was still not overturned, because the wording of the order of Article 24C of the 1945 Constitution states that the Constitutional Court's decision is final and binding. This raises questions about the legal consequences of ethical violations in judicial decision-making.

The principle of legal certainty as conveyed by Hans Kelsen in his theory and Mahfud MD, that legal certainty is the main pillar of a state of law, but with the existence of the Constitutional Court's decision it means changing the norm with subjective and uncommon criteria, for example with the requirement of having served as a regional head without clear limitations. This is what causes legal uncertainty, because it can be exploited selectively(Ali, 2005).

The decision made by the Constitutional Court is considered to provide legal privileges to individuals or individuals who violate the principles of equality before the law as regulated in Article 28D of the 1945 Constitution. The change in the age limit only has a positive impact on a handful of people, not on norms that apply generally and objectively(Philippe & Selznick, 1978).

According to the theory of constitutional democracy, or the theory of democratic legitimacy, legal decisions should represent public interests, not personal interests. In this case, many legal experts and civil society believe that the Constitutional Court's decision benefits certain political powers, which also weakens the legitimacy of the decision.

METHOD

1. Types of research

The type of research used is Normative-Empirical (Sociology of Law), namely;

- a. Normative: analyzing the legal substance and decisions of the Constitutional Court from the perspective of constitutional and state law theory.
- b. Empirical: studying the reactions and socio-political impacts of the decision (public response, political elites, retired organizations, etc.)

2. Research Approach

- a. Legislative approach: reviewing the 1945 Constitution, Election Law No. 7 of 2017, and Constitutional Court Decision No. 90/PUU-XXI/2023.
- b. Conceptual approach: Using constitutional law theory (rule of law, checks and balances, constitutional democracy).
- c. Case Study Approach: Focuses on the case of Gibran as vice president and various proposals for his impeachment.
- d. Sociological Approach: Analyzing public opinion and socio-political dynamics that develop in society.

3. Data Collection Techniques

- a. Document study: Analysis of Constitutional Court decisions, laws and regulations and related public documents.
- b. Interview: With constitutional law experts, academics, political figures and members of the Indonesian Military Retired Forum
- c. Indirect Observation: through mass media and public opinion, and scientific studies.
- d. Questionnaire (Optional): To measure public/community perceptions of the validity and legitimacy of the Constitutional Court's decisions>

4. Data Analysis Techniques

- a. Descriptive Qualitative: Developing an analytical narrative based on data findings
- b. Content Analysis: Regarding verdict texts, news and public statements.
- c. Legal and Political Interpretation: analyzing the meaning of law and its impact on the development of the legal, political, and democratic systems in Indonesia.

5. Location and Time of Research

- a. Location: Jakarta (center of policy making), and areas that have a strong public response to the issue.
- b. The time is in accordance with the schedule of field research and secondary data collection

RESULT AND DISCUSSION

The Influence of Political Configuration on the Decisions of Constitutional Court Judges (Review of the Constitutional Court's decision in case No. 90/PUU-XXI/2023).

The facts on the ground can prove that political configuration can influence the Constitutional Court judges in making a decision, this is what happened to the decision made by the Constitutional Court (MK) on case No. 90 / PUU-XXI / 2023 filed by Almas Tsaqibbiru, a Surakarta student who conducted a judicial review of Article 169 letter q of Law. No. 7 of 2017 concerning the age limit for presidential and vice presidential candidates. The decision of the Constitutional Court judge is the last political scenario carried out by the Joko Widodo regime through his henchmen, to extend the presidential term of office or add to the presidential term of office which failed to be fought for, because it was hampered by constitutional rules and did not

get support from the Indonesian Democratic Party of Struggle (PDIP) which raised him. The controversial Constitutional Court decision finally ended in a hearing of the MKMK ethics council led by Prof. Dr. Jimly Ashidique (Asshiddiqie & Safa'at, 2006).

The struggle efforts made by the Jokowi regime to be able to perpetuate its power did not subside and did not give up there. Various efforts and political maneuvers in maintaining and building dynasty politics continued to be carried out by the palace, starting from the two-legged politics played by President Joko Widodo, on the one hand, as if what was done was to support Ganjar Pranowo, but on the other hand, it was said several times that Jokowi also supports Prabowo Subianto (Raharjo, 2006). Efforts to criminalize several political party leaders who did not support and were not in line with his policies, and were at odds with his way of thinking. Or when the regime made a forced takeover of the Democratic Party, carried out by Muldoko and his henchmen, but this time it failed again. The dirty politics played by the regime were thwarted through a court decision. The court decided that AHY was the legitimate General Chairperson of the Democratic Party. Various political maneuvers carried out by the palace in preparing the dynasty of power in various ways, for example, by making the crown prince Kaesang Pangarep the General Chairperson of the Indonesian Solidarity Party (PSI).

Regarding the politics carried out by the regime, it reminds us of what Undip legal expert Satjipto Rahardjo said. He said that if we look at the relationship between political substance and legal substance, it will be clear that the concentration of energy will be greater, so that the law is always in a weak position (Rahardjo, 1985a).

By paying attention to what Satjipto Rahardjo said, it is clear that in empirical reality, the working of the law is greatly influenced by politics, both law as a product and law as enforcement.

Political configuration, which is a variable, will determine the character of the legal product produced (Sidharta, 2007a). This means that law as a political product will depend on political will which is a free variable. Currently, politics that represent power wants the legal product produced to be able to present what is the will of its power. This can be seen in the historical facts of Indonesia and what is currently happening in Indonesia (Rahardjo, 1985b). Law is in a weak position, law is only a tool of power. The implementation of law as a product and the function of law enforcement is not in line with the development of its structure. If law is only seen from the amount produced in terms of quantity, it looks like a lot, but if we look at law from the side of the function and quality of national legal development, there has been a decline (Artidjo Alkostar & M. Soleh Amin, 1986).

The two-legged politics carried out by Joko Widodo apparently did not go far down to his son Gibran Rakabuming Raka who played two-legged politics, as if he was still loyal to the party that raised him to become the Mayor of Solo, even though he actually hoped to be proposed to by Prabowo, the General Chairman of the Gerindra Party, and the peak was when the judicial review setting was carried out by a group of people supported by the Palace to the Constitutional Court. All of that was done in a forced effort in order to prepare Gibran to become Vice President to continue his dynasty of power (Sidharta, 2007b).

The political acrobatics carried out by both Jokowi and Gibran show the degradation and even collapse of democratic morals. The law is no longer made a hero, on the contrary, the law is used as a tool of power. So that whatever policies are carried out are always in the name of the law, including the decisions of the Constitutional Court (Mahfud, 1999).

Regarding the controversial decision made by the Constitutional Court, on the Application for a case addressed to the Constitutional Court of the Republic of Indonesia for the judicial review of Article 169 letter q of Law Number 7 of 2017 concerning the General Election Law (Election Law), initially proceeded normally. The number of lawsuits submitted to the secretariat general of the Constitutional Court were Case Number 29/PUU-XXI/2023 filed by the Indonesian Workers Union Party, Case Number 51/PUU-XXI/2023 filed by the Garuda Party, and Case Number 55/PUU-XXI/2023 filed by the Mayor of Bukit Tinggi, Erman Safar, Deputy Regent of South Lampung, Pandu Kusuma Dewangsa, Deputy Governor of East Java, Emil Dardak, Regent of Sidoarjo, Ahmad Muhdlor and Deputy Regent of Sidoarjo, Muhammad Albarra. Case Number 90/PUU-XXI/2023, applicant Almas Tsakibbiru, a student of the Faculty of Law, Surakarta State University, and Case Number 91/PUU-XXI/2023 was filed by the applicant Arkan Wahyu Re A and Saudara Hite BandengganLumbantoruan, but in its development the applicant, namely Hite BandengganLumbantoruan, finally withdrew the case that had been registered with the Secretariat General of the Constitutional Court of the Republic of Indonesia.

Based on the application for withdrawal of the case, which was received by the registrar of the Constitutional Court on August 7, 2023 based on the Applicant's Application Submission Deed Number 91/PUU/PAN.MK/AP3/08/2023, dated August 21, 2023 and has been recorded in the Electronic Constitutional Case Registration Book (e-BRPK) on August 21, 2023, with Number 100/PUU-XXI/2023, regarding the judicial review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution of the Republic of Indonesia. Based on the application, the Constitutional Court held a preliminary examination hearing on September 13, 2023. Based on Article 39 of the Constitutional Court Law, the court has provided advice and an opportunity for the applicants to revise their application.

On Tuesday, September 26, 2023, the Constitutional Court again held a preliminary examination hearing with the agenda of hearing the applicant's improvements. However, before the hearing took place, the applicants submitted a letter of request to withdraw the case letter, dated September 25, 2023, then the Panel of Judges clarified the matter of the withdrawal in question and the applicants confirmed the matter of withdrawing their application, said Chief Justice Anwar Usman(Hartono, 1994).

According to Anwar Usman, regarding the withdrawal of the applicant's application as regulated in Article 35 paragraph (1) of the Constitutional Court Law, the applicant can withdraw his application before or during the Constitutional Court examination, and Article 35 paragraph (2) of the Constitutional Court Law states that withdrawal results in the a quo application not being able to be resubmitted.

Based on these provisions, the Judges' Deliberation Meeting (RPH) on September 26, 2023, at 14.00 WIB, concluded that the revocation or withdrawal of the application for case Number 100/PUU-XXI/2023 was legally justified and the applicants could not resubmit the application. *A quo*, so that based on legal considerations, the RPH ordered the MK Clerk to record the withdrawal of the Applicants' applications in the registration book (e-BRPK) and return copies of the application files to the Applicants.

As is known, the lawsuit filed by the applicants is related to the minimum age limit for presidential and vice presidential candidates as regulated in Article 169 letter q of Law Number 7 of 2017 concerning General Elections. The applicants, who are Indonesian citizens aged 30 and 38 years, have the right to vote and be elected as presidential and vice presidential candidates.

"In fact, the applicant in exercising his legal rights, namely to nominate himself as vice president, cannot be implemented, because in a discriminatory manner Law 7/2012 has limited the applicant's rights because the vice presidential candidate must be at least 40 years old, said Marson. The next fact is that the minimum age requirement for regional head candidates is 30 years old, several regional heads are under 40 years old, for example the Governor of Lampung M. Ridho Ficardo (34 years old), the Mayor of Medan Bobby Nasution (32 years old), the Mayor of Solo Gibran Rakabuming (35 years old).

For this reason, the Petitioners consider that Article 169 letter q of the Election Law is considered inconsistent when referring to the provisions of the regulations regarding the nomination of regional heads which allow regional head candidates to be under 40 years old. For this reason, in the petition, the Petitioners asked the Constitutional Court to declare the phrase "at least 40 (forty) years old" as stated in Article 169 letter q of the Election Law to be contrary to the 1945 Constitution, and has no binding legal force as long as it is not interpreted as "at least 30 (thirty) years old. Based on the lawsuit, the Constitutional Court finally made a surprising decision as stated in the verdict(Sutrisno &Poerana, 2020).

The Constitutional Court Decision Number 90/PUU-XXI/2023 has had a very significant impact on the development of law, politics and democracy in Indonesia. The decision changed the minimum age limit for presidential and vice presidential candidates, and it was this decision that caused Gibran Rakabuming Raka to become President with Prabowo Subianto in the 2024 Presidential Election. This step has drawn prolonged controversy and triggered various reactions including the proposal to impeach Gibran by the TNI Retired Forum.

Legal Impact of Constitutional Court Decision No. 90/PUU-XXI/2023 which revises Article 169 letter q of Law Number 7 of 2017 concerning General Elections, which previously required presidential and vice presidential candidates to be at least 40 years old. With this Decision, someone who has served or is currently serving as a regional head can run for office even though they have not reached that age.

This change has caused debate until now from various circles, ranging from politicians, academics and political brokers who are looking for opportunities, especially because the Chief Justice of the Constitutional Court at that time. Anwar Usman who is Gibran's uncle who made the controversial Constitutional Court decision was finally dismissed from his position as Chief Justice of the Constitutional Court for serious ethical violations committed, however, he could not change the results of the decision made by the Constitutional Court judge(Tanya et al., 2013).

The Constitutional Court's decision has had political implications, one of which is the TNI Retired Forum, which consists of hundreds of generals, admirals and marshals, which issued eight political demands in April 2025. One of their main demands is to ask the People's Consultative Assembly (MPR) to consider the impeachment of Vice President GibranRakabuming Raka. They argue that the Constitutional Court's decision to allow Gibran's candidacy violates legal and ethical principles(Munir Fuady& MH, 2003).

The response to this proposal received a variety of opinions. Starting from President Joko Widodo who stated that the proposal was part of the aspirations in a democratic country. Meanwhile, the Democratic Party stated that it was somewhat shy in its opinion, that the Democratic Party stated that it had never discussed the impeachment proposal.

The Impact of Democracy on the Constitutional Court's decision, raises concerns about the practice of nepotism and the strengthening of dynastic politics in Indonesia. Criticism of the Constitutional Court's Decision reflects concerns from various elements of the nation regarding

the democratic process in Indonesia, which is very likely to be manipulated towards certain interests, both individuals, groups and groups, which have the potential to damage public trust in democratic institutions and the supremacy of law in Indonesia (Rahardjo, 1997).

CONCLUSION

The Constitutional Court's ruling and Gibran's nomination as vice president have raised concerns about the practice of nepotism and the strengthening of dynastic politics in Indonesia. Criticism of this decision reflects deep concerns from various parties that the democratic process can be manipulated for the benefit of certain groups, which has the potential to damage public trust in democratic institutions and the rule of law.

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