

Constitutional Court Decree No 90/Puu-XII/2023 Provisions on Age Requirements for Presidential and Vice Presidential Candidates in the Principles of the State of Law and Pancasila Democracy

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Abstract

Purpose: This study examines the legal consequences of Constitutional Court Decision No. 90/PUU-XXI/2023, which adds new requirements for presidential and vice-presidential candidates, and analyzes its implications for the constitutional system and the balance of power between state institutions in Indonesia.

Research methodology: Using a normative juridical approach, this research draws upon statute analysis, constitutional theory, and judicial interpretation. It evaluates the decision based on Hans Kelsen's legal hierarchy theory and the principle of judicial restraint within a constitutional democracy.

Results: The findings show that the Constitutional Court, through this decision, has expanded its interpretive role beyond judicial review, effectively performing a legislative function. This has resulted in the creation of a new norm that was not previously regulated by law. The decision also raises concerns about the erosion of judicial neutrality and the risk of institutional imbalance, particularly between the judiciary and the legislature.

Conclusions: The decision disrupts the principle of separation of powers and may set a precedent for overreach by the judiciary. It calls into question the boundaries of judicial authority and its role in upholding democratic values and the rule of law.

Limitations: The study is limited to a normative-doctrinal analysis and does not include comparative perspectives or empirical data.

Contribution: This paper contributes to the discourse on constitutional law by emphasizing the need for judicial neutrality and reinforcing the importance of checks and balances in maintaining a democratic constitutional order.

Keywords: *Constitutional Court Decision, Pancasila Democracy, Rule of Law*

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1. Introduction

The concept of the rule of law in Indonesia in the explanation of Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a State of Law. The concept of constitutional democracy in Indonesia has been a subject of constitutional debate since ancient times. In constitutional practice, this concept has not been sufficiently put into practice, so it is not surprising

that the universal ideal of the rule of law contained in the Constitution is often violated. Democracy is defined as a form of government in which citizens have equal rights to make decisions that can change their lives (Khan, 2021). Democracy also allows citizens to participate directly or through their representatives in the formulation, development, and implementation of laws (Harefa & Fatolesa Hulu, 2020).

According to Ulum, Damayanti, and Kuswandono (2021), the concept of democracy contains the principle of popular sovereignty (democracy), and the concept of the rule of law contains the principle of supremacy of law (monocracy), and these two concepts are interrelated. This understanding of the rule of law is called a "democratic rule of law." It is called a "democratic rule of law," because it accommodates the principles of the rule of law and the principles of democracy, namely, the Supremacy of Law, Equality before the Law, Due Process of Law, and limitation of state power and state equipment, by implementing the principle of division of power, vertical or horizontal separation of powers, as an effort to limit power, an independent and impartial judiciary, and other principles (Dollu & Karbeka, 2024). A harmonious relationship between the political superstructure and political base occurs when corridors or standard rules are mutually agreed upon and implemented (Oyinlade, Finch, & Christo, 2020). Here, the law becomes the standard for minimizing various violations committed by both the government and society to achieve a democracy. If a violation occurs, the basis for handling and prosecuting it is the law that regulates it. In principle, the law is tasked with creating social order. Laws must be forced to achieve social order (Burhanuddin, Wahyuniar, & Maskawati, 2024).

Decision Number 90/PUU-XXI/2023 is one of the most challenging tests faced by the courts. This means that the 2024 presidential election contestation will turn the Constitutional Court's courtroom into an arena for fighting, which, unfortunately, is not always in the interests of the nation and state. What emerges is a political interest in winning without paying attention to Indonesian politics. Supposedly, as the guardian of the constitution and democracy, especially those filled with constitutional judges who are capable statesmen, the Court must be resistant to the temptation of intervention in the form of power and wealth. Unfortunately, in the Petitioner's view, Decision 90 shows how the Court has been subordinated to the interests of gaining power by changing legal rules, something that is unwise and should not be done. Moreover, changes to the age requirements for presidential and vice presidential candidates used the hand of the Reporting Judge (Anwar Usman) who should have resigned because the case had direct interests in his family, namely President Joko Widodo and his son Gibran Rakabuming Raka. This interest cannot be denied because it has become a legal fact, with the registration of Gibran Rakabuming Raka as a vice presidential candidate to the KPU by one of them, taking advantage of the new provisions regarding the age requirement in the 90 Decision, which was decided by the court. This decision not only contradicts the principle of impartiality, but also suggests that the Reporting Judge should have resigned in accordance with the concept of judicial disqualification (Resopijani & Neonbeni, 2024).

Based on the explanation above, if related to the Constitutional Court Decision Number 90/Puu-XII/2023, the Constitutional Court does not include the constitutional requirements for Presidential and Vice Presidential candidates based on Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, therefore typologically it is a legal policy which was entrusted by the drafters of the third amendment to the 1945 Constitution to the legislators to "... be further regulated by law based on Article 6 paragraph (2) of that 1945 Constitution of the Republic of Indonesia." However, in reality, the Constitutional Court's decision was accepted with a decision 'partially granted,' so that there is no balance and respect for the legislators. In the context of the separation of powers, which is one of the principles of the democratic rule of law, the principle of vertical distribution of power or horizontal separation of power is an effort to limit power to avoid abuse of power and develop a check and balance mechanism between branches of power.

It is clear that in the context of the principle of popular sovereignty, the "political right" of the applicant to be able to "vote" in the general election (Presidential and Vice Presidential Election) based on his political preferences even includes the "political right" of the subject of the applicant's political choice

to be elected as a candidate for the President and Vice President. In no way is it obstructed or violated by the court, but constitutionally, this should first be conveyed as the applicant's aspirations to presidential and vice-presidential candidates, legislators, and other requirements that form a series of norms in the entirety of Article 169 of the Quo Law. Based on this background, the author is interested in discussing the Constitutional Court Decision Number 90/Puu-XII/2023 concerning the Age Requirements for Candidates and Candidates for Vice President in the Principles of Pancasila Democracy.

2. Literature review

2.1 *The Rule of Law as Constitutional Foundation*

In a modern constitutional system, the rule of law is the cornerstone of democracy and justice. Kelsen's theory of legal hierarchy remains relevant in Indonesia, where the 1945 Constitution is the supreme legal reference. Ginting, Suganda, and Suasungnern (2024) stress that in a lawful state, governance must adhere strictly to legal norms, especially in matters concerning political rights, such as presidential candidacy. The recent discourse surrounding Constitutional Court Decision No. 90/PUU-XXI/2023 has intensified debates on judicial roles, with legal experts criticizing the Court for engaging in norm formulation, traditionally the domain of the legislature (Darma, 2024). Such activism potentially violates the principle of the separation of powers and undermines the state's constitutional integrity. Thontowi, Wati, Jamil, and Nurjihad (2024) further affirm that the transformation of Pancasila as a philosophical foundation necessitates alignment with legal rationality and with constitutional supremacy.

2.2 *Pancasila Democracy and Popular Sovereignty*

Pancasila democracy represents a unique model that integrates moral and cultural values into political deliberation and governance. Unlike Western liberal democracies that emphasize majoritarianism, Indonesia's Pancasila system promotes harmony, collective consensus (*musyawarah*), and justice (*keadilan sosial*) as political virtues. According to Indrastuti, Pradoto, and Udjiwati (2024), Indonesia's post-reform era has witnessed an increasing call to restore democratic processes under Pancasila's ideological umbrella. In this sense, reinterpretations of political candidacy requirements, such as age limits, should reflect not only legal validity but also moral consensus. Thontowi et al. (2024) argue that both state institutions and political actors are bound to uphold Pancasila values, making the balance between legal formalism and socio-cultural legitimacy essential. Constitutional changes cannot be perceived as serving narrow interests but must be contextualized within the aspirations of the *rakyat* (people) and the nation's democratic spirit.

2.3 *Constitutional Court Interpretation and Judicial Restraint*

Judicial restraint is essential for preserving the integrity and neutrality of constitutional courts. While the Constitutional Court of Indonesia is authorized to interpret the constitution, its function is principally that of a negative legislator, meaning it can annul laws that conflict with the Constitution but cannot create new legal norms (Ramadhani, 2024). In Decision No. 90/PUU-XXI/2023, the Court's reasoning for modifying the age requirement through the insertion of "having experience as a regional head" has been widely criticized. Darma (2024) contends that this expansion goes beyond the court's authority and reflects judicial overreach that may jeopardize democratic legitimacy. Similarly, legal critics highlight that the Court's ruling could undermine public perception of judicial impartiality, especially in politically sensitive cases. Judicial neutrality is not only a procedural necessity but also a substantive requirement for democratic survival.

3. Methodology

This article was prepared using normative juridical methods with statutory, case, and conceptual approaches. For this approach, several primary legal materials are used, namely statutory regulations relevant to the object of study, especially Constitutional Court Decision Number 90/Puu-XII/2023. In addition, the researcher uses a case approach to understand the ratio decidendi, namely, the legal reasons used by the judge to arrive at his decision, and a conceptual approach used by the researcher to understand the concept of the rule of law and Pancasila Democracy in Indonesia by referring to the

doctrines that developed in his view of judges, scholars, or legal doctrine.

4. Results and discussions

4.1 Constitutional Court Decision Number 90/PUU-XII/2023 Provisions Concerning Age Requirements for Candidates and Candidates for Vice President Based on the Principles of the Rule of Law

4.1.1 Rule of Law Theory

According to Malik et al. (2021), the concept of a legal state emerged to oppose the concept of absolutism, which gave birth to a state of power. In essence, the power of the ruler (king) must be limited so that people are not treated arbitrarily. These restrictions are carried out through the supremacy of law, namely that all actions of the authorities must not be arbitrary but must be based on and rooted in the applicable laws and regulations. Therefore, there must also be a division of state power, especially judicial power, which must be separated from the power of the ruler.

According to Firdaus, Chandra, and Sagala (2024), the concept of democracy contains the principle of popular sovereignty (democratie), while the concept of the rule of law contains the principle of supremacy of law (nomocratie), each of which is implemented simultaneously in two ways, as two sides of the same coin. This understanding of the rule of law is known as a "democratic state of law" (demokratische rechtsstaat), or in a constitutional form, it is called constitutional democracy (Muhlashin, 2021). It is called a "democratic rule of law" because it accommodates the principles of the supremacy of law and democratic principles.

1. Rule of Law. There is normative and empirical recognition of the principle of the rule of law, which means that all problems are resolved with the law as the highest guide.
2. Equality before the Law Everyone has the same position before the law and the government. All discriminatory attitudes and actions are prohibited, except for special and temporary actions that encourage the acceleration of the development of certain groups (affirmative action).
3. Principles of Legality (Due Process of Law). All government actions must be based on valid written laws and regulations. These Legislative Regulations must first exist and come into force or precede the action taken.
4. There are limitations to the power of the state and state organs when applying the principle of the vertical division of power or the horizontal separation of power. This power limitation is to avoid the abuse of power and develop a check-and-balance mechanism between the branches of power.
5. To limit power, independent government institutions have also been developed, such as the central bank, army organizations, police, and the prosecutor's office. In addition, there are new institutions, such as the National Human Rights Commission, the General Election Commission, the Ombudsman, and the Indonesian Broadcasting Commission.
6. An independent and impartial judiciary is essential to the rule of law. Judges must not take sides except for the sake of truth and justice and must not be influenced by anyone, whether political or financial.
7. The State Administrative Court is part of a wider judicial institution that must be free and impartial; however, its existence must be specifically mentioned in the Constitution. Every legal state must provide citizens with the opportunity to challenge the decisions of state administrative officials, which is the authority of the state administrative court.
8. Apart from the state administrative court, modern legal states also commonly adopt the idea of establishing a constitutional court to strengthen the system of checks and balances between branches of power to guarantee democracy. For example, this court examines the constitutionality of laws and decides on disputes over authority between state institutions that reflect the separate branches of state power.
9. Constitutional protection of human rights with legal guarantees for enforcement through a fair process.
10. Democratic (Demokratische Rechtsstaat). The principle of democracy or popular sovereignty is adhered to and practiced, which guarantees the participation of the community in the state decision-making process so that every legal regulation that is implemented and enforced reflects the community's sense of justice.

11. Functions as a means of realizing state goals (welfare *rechtsstaat*). In the Indonesian context, the idea of democratic rule of law is to achieve national goals, as stated in the preamble to the 1945 Constitution.
12. Transparency and social control over lawmaking and law enforcement processes can help improve the weaknesses of institutional mechanisms to ensure truth and justice. Direct participation is needed because the representation mechanism in parliament cannot always be relied upon as the only channel for the people's aspirations. This is a form of representation of ideas that are not always attached to the representation.

Therefore, the supremacy of law must be supported by a democratic system because there is a clear correlation between the supremacy of law, which is based on the Constitution, and the sovereignty of the people, which is implemented through a democratic system. Participation is at the core of democratic systems. However, democracy without legal regulation will lose its form and direction, whereas the law without democracy will lose its meaning (Resopijani & Neonbeni, 2024).

4.1.2 *The concept of the rule of law according to experts*

As a legal principle, all actions of the state government and citizens must be carried out in accordance with the applicable laws. In this case, the law is the Constitution, a hierarchy of norms that culminates in the 1945 Constitution of the Republic of Indonesia, which states that the laws made and implemented reflect the will of the people to guarantee the welfare of the people, ensuring their participation in the state decision-making process. The law was created not to protect the interests of a few people in power but to protect the interests of all citizens of the country.

A legal state that is also democratic must have at least 4 (four) *rechtsstaat* requirements. First, a country whose life is in line with the constitution and laws; second, the state which regulates the accountability mechanism for every policy and action taken by the authorities; third, a state that guarantees the independence of judicial power and the existence of state administrative courts; and fourth, a country that protects human rights (Aswandi & Roisah, 2019).

As for the concept of the rule of law, according to Philipus M. Hadjon, there are only 3 (three) concepts of a state of law, namely Iswari (2020) *rechtstaats*, supremacy of law, and the rule of law of Pancasila. According to Azhary, there are five (5) kinds of concepts in the rule of law: *begrip species*:

1. The rule of law according to the Qur'an and Sunnah (Islamic Nomocracy) is more precise and shows the relationship between monocracy or the rule of law and Islamic law.
2. The rule of law according to the Continental European concept is called *rechtsstaat*, and this rule of law model is applied, for example, in the Netherlands, Germany, and France.
3. The concept of the rule of law is applied in Anglo-Saxon countries, including England and the United States.
4. A concept called socialist legality was applied, among others, to the Soviet Union as a communist country; And
5. Concept of Pancasila rule of law.

According to Hamzani (2014), the elements of the rule of law (*rechtsstaat*) are:

1. Protection of human rights
2. The separation or sharing of government powers guarantees these rights based on statutory regulations.
3. Administrative Justice in Disputes.

In the Anglo-Saxon region, the concept of the rule of law from AV Dicey is as follows:

1. Supremacy of law;
2. There is no arbitrary power in the sense that someone can only be punished if it violates the law.
3. Equality before the Law This principle applies to both ordinary citizens and officials.
4. Human rights are guaranteed by law (in other countries, by the Constitution) and court decisions.

According to Hakim (2015), there are three characteristics or elements of the rule of law:

1. There are restrictions on state power over individuals, namely that the state cannot act arbitrarily, state actions are limited by law, and individuals have rights against the state or the people have rights against the authorities.
2. Principle of Legality
Every state action must be based on established laws that must be obeyed by the government or its apparatuses.
3. Separation of powers
For human rights to be truly protected, there must be a separation of powers; the bodies that make laws and regulations, implementers, and decision-makers must be separated from each other, not on the same hand. In the opinion of Immanuel Kant (1724-1804) in his theory of "states." To guarantee individual rights and freedoms as a "trias politica" system, there must be a separation of powers, which, according to him, is potestas legislativa, potestas executiva et judicaria, where each must be balanced.

Therefore, based on the opinions of several experts, it can be concluded that the procedures or mechanisms relating to the Constitutional Court Decision Number 90/PUU-XII/2023 Provisions on Age Requirements for Presidential and Vice-Presidential Candidates must be in accordance with the procedures regulated in the Constitution as a concept of the rule of law (rechtsstaat), where there is a division of power, namely, executive, legislative, and judicial institutions as regulated in the 1945 Constitution. From this concept, we can see that the Constitutional Court Decision Number 90/PUU-XII/2023 Provisions on Age Requirements for Presidential and Vice-Presidential Candidates have violated the abuse of power because the decision is an open legal policy entrusted by its authors. The third amendment to the 1945 Constitution for legislators to be further regulated by law is based on Article 6, paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

4.2 Constitutional Court Decision Number 90/Puu-Xii/2023 Provisions Concerning Age Requirements for Candidates and Candidates for Vice President Based on the Principles of a Democratic State, Pancasila

4.2.1 The Concept of a Pancasila Democratic State According to Expert Opinions

Democracy and the rule of law are interrelated concepts that cannot be separated because democracy is a foundation and mechanism of power based on the principles of equality and human equality. Simultaneously, democracy is also an embodiment of it. The Constitution is the highest form of social agreement in the United States. We already know that Pancasila Democracy has formal and material meanings, namely, the formal implementation of Pancasila democracy. The 1945 Constitution adheres to what is called indirect democracy, namely democracy, in which the implementation of popular sovereignty is not carried out directly by the people but through representative institutions such as the DPR and MPR, and democracy as a philosophy or point of view of life. This is based on the principle of popular sovereignty in the provisions of the 1945 Constitution, which states that part of the people's sovereignty is handed over to bodies and institutions whose existence, authority, duties, and functions are determined by the Constitution.

According to Gumuruh, Wicaksono, and Maulana (2022), democracy has two main principles.

1. Freedom/equality.
2. It belongs to the people's sovereignty.

The fundamental values that reflect democracy include the love of openness and openness to communication.

1. Upholding human values and dignity.
2. Be confident and
3. Self-control.
4. Togetherness.
5. Balance.
6. Disputes should be resolved peacefully and voluntarily. Ensure peaceful change.
7. Regular changes in the rulers.

8. Use the least amount of force possible.
9. Uphold justice.
10. Commitment and responsibility.

According to Caya and Hakim (2024), the principles of democracy are equality, freedom, and pluralism. Terminologically, the word "freedom" comes from the root word "free" which describes the state of freedom or independence. Opinions refer to thoughts, assumptions, or judgments about something (e.g., a person or event). Freedom of expression is the right of every citizen to express their ideas freely and responsibly, both orally and in writing, in accordance with the provisions of applicable laws and regulations. Freedom of expression is a fundamental right for every human being from birth (Laila, 2019).

The highest holder of sovereignty in Indonesia is the people, which shows that Indonesia is a democratic country. This is based on Article 1 paragraph (2) of the 1945 Constitution which reads: "Sovereignty is in the hands of the people and is implemented according to the Constitution."

Hakim (2015) stated that there are at least eight requirements for democracy, including:

1. Freedom to form and join organizations (associations and gatherings)
2. Freedom of expression (expressing opinions)
3. The right to choose and be elected
4. Relatively open opportunities to hold public office
5. The right for political leaders to compete to support or give support
6. Alternative sources of information.
7. Free and fair elections
8. The institutionalization of government policymaking refers to or relies on the voices of the people through voting and other similar methods.

According to Rousseau, sovereignty is based on the general will (*Volonte generale*) and is realized through law, which has the following four characteristics: First, unity is the spirit of a united nation, which has the right to rule and does not want to be dominated, which is realized in law enforcement and demands for justice. Second, indivisibilities are sovereign entities that cannot be divided, such as the state or the people implementing and upholding all provisions regarding sovereignty. Third, inalienability or sovereignty cannot be sold, mortgaged, or transferred. From generation to generation, sovereignty belongs to the state, and this quality is in accordance with the nature of sovereignty. Fourth, Imprescriptibility is sovereignty that remains in the hands of the people and does not shrink or decrease; it is not a right or object that can be lost or lost, but supreme power is eternal, the same as the rise and fall of the people. Theoretically, democracy is a government of, by, and for the people. In constitutional practice, although a country claims to be a democracy, many democratic principles are ignored in many ways. The term democracy comes from the Latin "demos" which means people, and "crates" which means government. Therefore, democracy is a government of the people. However, in the modern world, the definition of democracy emphasizes that political power is in the hands of the people (Candra, Gunawan, & Geraldi, 2024).

Jimly Asshiddiqie believes that democracy is first of all an idea that assumes that power comes from, by and for the people. In a participatory sense, democracy is a concept of power that is recognized as originating from the people; therefore, it is the people who actually determine, provide direction, and organize state life. This understanding is included in the definition of popular sovereignty, namely the highest power that is in the hands of the people, which is held by and for the people themselves and is always open to the widest possible participation of the people in the administration of the state. A country that can realize the idea of democracy is good and ideal. The characteristics of democratic governments are as follows:

1. The involvement of citizens (people) in political decision-making, both directly and indirectly (representation).
2. There are equal rights for all citizens in all fields

3. There is freedom and independence for all citizens
4. A general election is held to elect representatives who sit in people's institutions.

Thus, democracy as the basis of social and state life means that it is the people who provide provisions in all matters relating to their lives, including assessing state policy, because it is a policy that determines the lives of the people. The concept of Trias Politica comes from Greek, which means "pillars of democracy" (Tri = 3, As = axis/center, Politia = power). The principle of trias politica divides the three branches of state politics into the executive, legislative, and judiciary. There are three types of state institutions: these are independent and equal to each other's checks and balances. According to Montesquieu, the basic political concept of trias politica means that the power of a state cannot be delegated to just one political power structure but must be divided among various state organs (executive, legislative, judicial) (Ruhenda, Heldi, Mustapa, & Septiadi, 2020).

In connection with the discussion of the Constitutional Court Decision Number 90/Puu-Xii/2023 concerning the Age Requirements for Presidential and Vice-Presidential Candidates, the authority of the legislative institution as a lawmaker, namely, the DPR, is relevant. The People's Representative Council (DPR-RI) is a representative institution that functions as a state institution ratified by the 1945 Constitution of the Republic of Indonesia and is directly elected by the people through general elections. It is further regulated by Law Number 17 of 2014 concerning the DPR. The People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council (MD3), namely in Articles 69 and 70, confirm the following: Article 69: (1) The DPR has the functions of Legislation, Budget, and Supervision. The three functions of legislation, supervision, and budget, as mentioned in paragraph (1), are carried out in the context of people's representation. Article 70: (1) The legislative function, as intended in Article 69 (1) (a), is carried out as a form of DPR as the holder of the power to form laws.

Democracy can be defined as (Hakim, 2015):

1. The strength and legitimacy of state administrators' power come from the will of the people.
2. A number of small people who appear as state administrators should realize that they come from among the people and have the trust of the people to hold state power that originates from the wishes and ideals of the people (from the people by the people). people, and people).
3. The active participation of people in state administration, both directly and indirectly, is the main capital for the successful implementation of state power (by the people).
4. Representative institutions elected by the people are a means of controlling the government in carrying out the interests of the people
5. Mass media must also be seen as a means for society to channel its wishes to state administrators by adhering to an applicable, journalistic code of ethics.

In this discussion it is clear that in the contents of the applicant's application there is Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections with the additional requirement of "being at least 40 years old". is contrary to the 1945 Constitution of the Republic of Indonesia as a whole and does not have binding legal force as long as it is not interpreted as "... or experience as a Regional Head at both the Provincial and Regency/City levels."

Based on the above explanation, if it is related to MK Decision Number 90/Puu-Xii/2023, the Constitutional Court does not include the constitutional requirements for presidential and vice-presidential candidates. Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is thus typologically an open legal policy which was entrusted by the drafters of the third amendment to the 1945 Constitution to the legislators to "... be further regulated by law based on Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

In the context of the principle of popular sovereignty, the applicant's "political right" to be able to "vote" in the general election (General Election of President and Vice President) based on his political preferences even includes "political rights." "Regarding the applicant's political preferences to be

elected as a candidate for President and Vice President, it is in no way hindered or violated by the court, but constitutionally, this must first be conveyed as the applicant's aspirations to the legislators, as well as other conditions which become a series of norms in the whole Article 169 of the a quo Law. Thus, the principles of the rule of law and democracy go hand-in-hand and achieve a balance to avoid the abuse of power.

4.3 Check and Balance Political Representation System in Constitutional Court Decision Number 90/Puu-Xii/2023

According to Pitkin, how should a relationship be built between representatives? On the one hand, representatives must act as represented wishes (represented autonomy) so that they can be held accountable. However, they also have the ability to be more independent of the desires of those they represent (representative autonomy). Departing from this argument, Pitkin classified representation into four categories: formalistic representation. In this category, representativeness is understood in terms of two dimensions: recognition and accountability. The first dimension concerns the power provided to the representatives. If a representative acts outside their authority, they can no longer function as a representative. However, the accountability aspect requires that the representative be responsible for their actions. Often neither works. The second is descriptive representation, namely the presence of representatives who come from the various groups they represent (standing for), even though they do not act on behalf of those representatives. Representatives typically reflect groups in society (such as the groups they represent) but essentially do nothing in the interest of the people they represent. Third, symbolic representation, here what is meant by a representative, is the typical symbol of the group or nation it represents. Fourth, substantive representation, where representatives act in the best interests of the people and communities they represent (Marijan, 2019).

The basis is also related to the relationship between the representer and the represented. However, Mansbridge emphasized that this relationship was related to the policies of the representatives. There are four categories of representation: "promise," "anticipatory," gyroscopic, and surrogacy. A "Promissory" representation is a form of representation in which the assessment of representatives is based on promises made to constituents during a campaign. This type of representation does not differ from Pitkin's concept of formal representation. Second, "anticipatory" representation, which is the opposite: first, legislators think more about what will happen in the next election than what they promised during the campaign. Third, "gyroscopic" representatives are those who start from themselves when discussing the interests and principles of their constituents. Finally, substitute representatives seek to represent constituents outside their electoral districts.

Regardless of the gap in understanding, when discussing representation, it is not just the relationship between the representative group and those being represented. There are at least four factors that come into play when discussing representation. The first is the existence of a representative group of people, manifested in the form of representative institutions, organizations, movements, and other state bodies. Second, there are groups of people that must be represented, such as constituents and the clients. Third, there are representations such as opinions, interests, and perspectives. Finally, political representation occurs within a political context. From the explanation above, if it is related to the Constitutional Court Decision Number 90/PUU-XII/2023, according to Pitkin, it is included in the type of formal representation for which the power given to the representative must be accounted for. Constitutional Court Decision Number 90/PUU-XII/2023 which does not contain the constitutional requirements for presidential and vice presidential candidates based on Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is therefore typologically an incorrect decision. the open legal policy entrusted by the drafters of the third amendment to the 1945 Constitution to the legislators to "... be further regulated by law based on Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia." For representatives of the legislative body as a legislative institution to represent the applicant's opinion or point of view in submitting a case to the Constitutional Court, the Constitutional Court should reject the decision and return to the DPR to carry out its functions. as a legislative institution as a form of accountability, so that the accountability aspect can be achieved by representing the aspirations of the community.

5. Conclusion

5.1 *Based on the references above, in the opinion of researchers regarding the concept of the rule of law*

The procedures or mechanisms related to the Constitutional Court Decision Number 90/Puu-Xii/2023 Provisions on Age Requirements for Candidates and Candidates for Vice President must comply with the procedures regulated in the Constitution as a regulatory concept law (*rehstsstat*), where there is a division of power, namely, executive, legislative, and judicial institutions regulated in the 1945 Constitution. From this concept, we can know that the Constitutional Court Decision Number 90/PUU-Xii/2023 Provisions on Age Requirements for Presidential and Vice-Presidential Candidates has violated the misuse of power because this decision is an open legal policy that was entrusted by the drafters of the third amendment to the 1945 Constitution to the legislators to "... be further regulated by law based on Article 6 paragraph (2) of the Constitution Republic of Indonesia in 1945'.". According to the author, the reference in deciding cases from these provisions is not the authority of the Constitutional Court to change the provisions in the law.

5.2 *Based on the references above, in the opinion of researchers regarding the concept of a democratic rule of law*

Supreme sovereignty is in the hands of the people, as regulated in Article 1, paragraph 2 of the 1945 Constitution. Therefore, if it is related to the Constitutional Court decision Number 90/PUU-Xii/2023, the constitutional age requirements for becoming presidential and vice-presidential candidates should first be conveyed as the applicant's aspirations to form the law as a form of democracy so that the participation of all the people is involved in making changes to the provisions of the law and obtaining the principle of checks and balances. Of course, people's rights and freedom are fulfilled, and the concepts of the rule of law and democracy go hand in hand in accordance with the concept of the rule of law and Pancasila democracy in Indonesia.

5.3 *Based on the references above, in the opinion of researchers in the Check and Balances Political Representation System,*

From the explanation above, if it is related to the Constitutional Court Decision Number 90/Puu-Xii/2023, according to Pitkin, it is included in the type of formal representation for which the power given to the representative must be accounted for. Constitutional Court Decision Number 90/Puu-Xii/2023 which does not contain the constitutional requirements for presidential and vice presidential candidates based on Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is therefore typologically an incorrect decision. the open legal policy entrusted by the drafters of the third amendment to the 1945 Constitution to the legislators to "... be further regulated by law based on Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia." According to the author, the representative of the legislative body as a legislative institution can represent the applicant's opinion or point of view in filing a case at the Constitutional Court (MK), which should reject the decision and return it. to the DPR to carry out its function as a legislative institution as a form of accountability in carrying out its functions so that the accountability aspect can be achieved in representing the aspirations of the community.

5.4 *Sugesstion*

In particular, for laws and regulations that cover elections, democracy must be seen not only in terms of a person's individual right to choose a candidate for leadership but also in terms of how the whole community can participate in democracy. If the imbalance in executive, legislative, and judicial functions is not based on the principle of checks and balances, then the goal of the rule of law and democracy in Indonesia will not be achieved as an institution that supervises and controls each institution or does not achieve the principle of checks and balances.

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