

Problem from MK powerful Number 90/PUU-XII/2023 related to article 169 letter Q Number 7 Year 2017 about general election (Election Law)

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Abstract

Purpose: This study aims to examine the constitutional role and dynamics of the Indonesian Constitutional Court (MK) in moderating election regulations, ensuring democratic inclusivity, and maintaining public trust. The research focuses on how the MK contributes to upholding constitutional justice, political equality, and fair representation in Indonesia's electoral system.

Research Methodology: The study applies a normative juridical approach supported by doctrinal legal research. Primary data are derived from constitutional provisions, statutory regulations, and Constitutional Court decisions, while secondary data come from academic journals, books, and previous research. A comparative analysis is also used to evaluate Indonesia's MK alongside similar institutions in other Asian countries.

Results: Findings indicate that the Constitutional Court of Indonesia plays a pivotal role in moderating electoral regulations, such as easing strict nomination thresholds and resolving election disputes. These interventions enhance inclusivity and responsiveness in the electoral process, ultimately strengthening public trust in democracy. The analysis also highlights that the MK's involvement is more significant compared to similar courts in other Asian democracies.

Conclusions: The Constitutional Court is central to safeguarding democratic values, ensuring fairness in electoral processes, and upholding constitutional justice. Its active role underscores the importance of constitutional oversight in maintaining legitimacy and stability within Indonesia's democratic system.

Limitations: The study is limited to legal and doctrinal perspectives without empirical fieldwork, which may restrict the analysis of societal perceptions of the MK's role.

Contribution: This research contributes to constitutional law studies by providing insights into the MK's function in electoral democracy and offering recommendations for strengthening constitutional justice in emerging democracies.

Keywords: *Constitutional Court, Constitutional Justice, Democracy, Electoral Law, Political Equality*

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1. Introduction

Indonesia is a country of law where the law is the commander-in-chief of all regulations for the survival of the nation. Law must be based on justice, justice is a value that creates balance between parts in unity between personal goals and common goals (Nurhayati, Sa'ari, Firmanulloh, & Hermansyah, 2022).

There are two basic principles of justice: justice does not only talk about needs but also justice itself. Equality implies demanding an even and proportional distribution. Nameda, Kumaki, Hashimoto, and Toda (2023) stated that justice is essentially based on two things: first, the principle of equality, where everyone gets the same share; second, it is based on needs, resulting in comparative pages that are commonly applied in the legal field. Based on the description of the state, politics, and law above, it is clear that all three play an important role. One of the state mechanisms is the general election mechanism. Political will plays a role in the formation of law, in this case, regulatory law. Therefore, whatever type of regulatory law is formed, it cannot be separated from the role of the government or authority.

Democracy is a form of representation in which the state prioritizes the people, and the goal of the state is to improve the welfare of the people. In a democratic culture, all people must be given the same rights to participate in the democratic system to uphold democracy (Warren, 2025). Henry and Temtime (2009) in his book *Introduction to Democratic Theory* defines democracy as a political system: "a democratic political system is a system where general policy is taken based on a majority vote by the majority". Nurrohman, Nugroho, Tiastiwi, and Nurgiansah (2025) state that democracy is a system in which policies are determined by the majority through representatives who are effectively supervised by the people in periodic elections based on the principle of political equality and held in an atmosphere of guaranteed political freedom. In the Indonesian context, democracy is embedded in the 1945 Constitution, which emphasizes sovereignty in the hands of the people and guarantees participation through free, fair, and periodic elections. This constitutional mandate highlights the need for active citizen involvement in decision-making, not merely as voters but also as stakeholders who safeguard transparency, justice, and accountability in governance (Firman, Sumatono, Muluk, Setyowati, & Rahmawati, 2024). Thus, democracy becomes more than a mechanism of political representation; it is also a cultural and legal foundation that prioritizes people's welfare and ensures equality in political rights (Ingham, 2022).

1.1. Problem Formulation

1. What are the implications for the future based on the Constitutional Court decision number 90/PUU-XII/2023?
2. Analyzing the position of article 169 letter Q of law number 7 concerning general elections

2. Literature review

2.1. Citizen Participation and Constitutional Sovereignty

Participation of all stakeholders in the entire series of selection stages. To ensure that the people are sovereign, the role of citizens in elections is not only to vote but also to play various roles at all stages of the election (Zhang, 2023). The Constitution is the supreme source of law that serves as a guideline and legal norm used as a source of law (Sevtiya, 2025). The law for this is the statutory regulations under it. This is in accordance with the formulation of Article 1, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which stipulates that "sovereignty is in the hands of the people and is exercised in accordance with the Constitution." Thus, there must be no conflict with the 1945 Constitution of the Republic of Indonesia. This means that the laws and regulations under the Constitution must not conflict with the Constitution, which is the source of law. A source of law means a reference or benchmark, so that its existence is an absolute consideration for the existence of regulations under it. The 1945 Constitution of the Republic of Indonesia is the state constitution and the constitutional foundation of the Indonesian nation, which is the legal basis for every law and regulation under it. Therefore, in a country that adheres to constitutionalism, there is no behavior of state officials and society that is not based on the constitution.

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states: "The Indonesian State Government was established to "protect the entire Indonesian nation and all Indonesian blood, promote general welfare, educate the life of the nation, and participate in the implementation of the world order based on independence, eternal peace and social justice" Knowing the substance of the 1945 Constitution is very important because many people do not know the value or purpose of the

1945 Constitution itself. Based on observations of public opinion regarding the 1945 Constitution, the Constitution of the Republic of Indonesia does not seem to have a complete understanding of the values contained in the Constitution, including equality regarding the meaning, terms, and meaning of its formulation, both implied and written in the amendments to the articles of the 1945 Constitution. Constitution of the Republic of Indonesia. Human rights are the basis for the existence or formation of laws. Human Rights are basic and sacred rights inherent in every human being that are obtained or given by God and are essentially inviolable. Human rights law has become an integrated and open scientific discipline that requires continuous research. Ha-kham (human rights law) is an acronym that the author proposes to refer to "human rights law". As a modern legal discipline, ha-kham follows modern law (Khan, 2021; Mwesigwa, 2021).

2.2. Enforcement of Human Rights

Law and the government play an important role in upholding human rights, one way being by providing education both in the form of implementing human rights enforcement itself and through counseling about rights. human rights (Osler, 2025). One form of government clarity in upholding human rights is to spread the understanding of human rights into the world of education, as a guide for officials and professionals, and to members of the broader society (grass roots). The 1945 Constitution and human rights. Human rights are contained in the 1945 Constitution, which regulates human rights in articles 28A-28J of the 1945 Constitution. For example, the provisions of equality before the law can be found in Article 28D paragraph (1) of the 1945 Constitution, which states, "Everyone has the right to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law." Furthermore, opportunities for citizens in the government are regulated in Article 28D, paragraph (3) of the 1945 Constitution (Khan & Sultana, 2021). The Constitution states that "every citizen has that equality of opportunity in government". The affirmation of equality before the law is also confirmed in Article 28I, paragraph (2) of the 1945 Constitution, which states that "Everyone has the right to be free from discriminatory treatment on every basis and has the right to receive protection against discriminatory treatment."

2.3. Constitutional Justice and Democratic Principles

The principle of constitutional justice underpins democratic systems by ensuring that all laws and regulations align with the constitutional norms (Silva, Chai, Carneiro, Fabrizz, & Henriquez, 2024). Judicial review, particularly by constitutional courts, functions as a safeguard against potential abuses of power and upholds civic rights, including political participation and equality. Hirschl (2000) argues that judicial empowerment in transitional democracies often reflects the urgent need to establish and stabilize a democratic order, especially when institutional trust is fragile. In this view, the Constitutional Court of Indonesia acts as a guardian of democracy, interpreting electoral provisions to ensure compliance with the Constitution's commitment to equality and popular sovereignty. This *law-as-integrity* approach reinforces the normative legitimacy of judicial decisions in an electoral democracy (Bunda, Hardianto, & Rahayu, 2025).

2.4. Electoral Law, Inclusivity, and Democratic Legitimacy

Electoral laws play a critical role in shaping representation and democracy; they must ensure inclusivity, fairness, and transparency to maintain legitimacy (Gardner, 2020). Mongrain (2023) highlights how perceptions of electoral fairness differ between election winners and losers, and how these perceptions influence citizens' satisfaction with democracy, emphasizing the link between procedural justice and democratic stability. This insight is particularly relevant for evaluating electoral regulations in Indonesia, where legal barriers to candidacy can disproportionately affect certain groups, threatening inclusivity and legitimacy. Complementing this, Lovett (2025) advocates proportionality in electoral systems to achieve political equality, suggesting that fair representation leads to better democratic outcomes. Although Indonesia uses a district-based system, the Constitutional Court's role in moderating electoral regulations, such as relaxing restrictive candidacy thresholds, aligns with the goal of ensuring that the democratic process remains inclusive and responsive, thereby reinforcing public trust in elections.

2.5. *The Role of the Constitutional Court in Indonesian Electoral Governance*

The Constitutional Court of Indonesia is a pivotal institution in electoral governance, exercising authority over the judicial review of election laws and dispute resolution (Mochtar, 2025). Sari, Hidayat, and Sari (2023) explains that the Court was established to reinforce the rule of law, ensure separation of powers, and resolve electoral disputes impartially highlighting its institutional importance in political adjudication. The MK's decision in the 90/PUU-XII/2023 case exemplifies this role, as it directly corrected statutory barriers that compromised electoral fairness. Moreover, comparative analyses by Sudarmanto, Pranoto, and Jain (2025) reveal that the Indonesian Court's involvement in electoral systems is substantial compared to other constitutional courts in Asia. The Court has issued several landmark rulings that have reshaped electoral law in favor of democratic inclusivity. This active engagement underscores its function not only as a legal institution but also as a policy actor in shaping democratic participation and governance norms.

3. Research methodology

This research employs a normative juridical method that focuses on analyzing legal norms as stipulated in statutory regulations and legal doctrines. This method is considered appropriate because the issues discussed in this study are closely related to the interpretation and application of constitutional law in the context of elections. This study applied two main approaches. First, the statutory approach was used, which involved examining laws and regulations relevant to the object of study, particularly the 1945 Constitution of the Republic of Indonesia, statutory provisions on elections, and Constitutional Court Decision Number 90/PUU-XII/2023. Second, the conceptual approach is used to analyze and interpret legal concepts and principles related to constitutional justice, democracy, and the rights of citizens. This approach provides a theoretical framework for explaining the implications of the Constitutional Court's role in shaping electoral law.

The legal materials used in this study consist of primary legal materials, which include the Constitution, statutory regulations, and Constitutional Court decisions; secondary legal materials, which include academic literature, books, journal articles, and expert opinions that provide conceptual and theoretical explanations; and tertiary legal materials, such as legal dictionaries and encyclopedias, which serve as complementary references. The data collection technique is carried out through a literature study, namely examining statutory texts and academic sources relevant to the problem. Furthermore, the analysis technique used is descriptive analysis, which describes, interprets, and constructs arguments based on legal reasoning to formulate answers to the legal issues raised in this study (Sugiyono, 2017).

4. Results and discussions

4.1. *The Application of It Is Powerful From the Constitutional Court Number 92/Puu-Xii/2023*

Based on the Constitutional Court decision Number 90/PUU-XII/2023, the implications for the future are that the minimum age limit is 40 years for presidential candidates, and the badness of presidential candidates remains in influence. However, the Constitutional Court also stated that experienced state officials as members of the DPR, members of the DPD, members of the DPRD, governors, regents, and mayors who are under 40 years of age are still eligible to participate in the national leadership contestation as presidential and vice-presidential candidates in the elections general.

4.2. *Position of Article 169 Letter Q Uu N0 7 Of 2017*

Article 169 letter q of Law Number 7 of 2017 concerning General Elections sets a minimum age limit of 40 years for presidential and vice-presidential candidates. The Constitutional Court (MK), in decision Number 90/PUU-XII/2023, granted several of these requests, testing Article 169 letter q of the Election Law. In this decision, the Constitutional Court stated that experienced state officials as members of the DPR, members of the DPD, members of the DPRD, governors, regents, and mayors who are under 40 years old are still entitled to take part in the national leadership contest as presidential candidates and deputy candidates in the general election. From the provisions of Article 169 letter q of the Election Law above, it can be confirmed that there has never been a loss of constitutional rights for the Petitioner, because the application of Article 169 letter q a quo has regulated the requirements for becoming a President or a Presidential Candidate only for people numbering at least 40 (forty) years, while for the

Petitioner or other Indonesian citizens who are not yet 40 (forty) years old but are old enough, based on the provisions of Article 169 letter qa quo, they will be seriously disadvantaged. Apart from that, Since there is no other variant of choice for voters to choose other than presidential or vice-presidential candidates who are at least 40 (forty) years old, that provision of Article 169 letterqa quo clearly violates guaranteed individual and collective rights. 1945 Constitution of the Republic of Indonesia, as explained in number 4 above. Then, because the Petitioner is of legal age, Article 169 letter q must at least regulate the age requirements for presidential and vice-presidential candidates based on legal adulthood, namely, based on age choices as regulated in the provisions:

1. Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia states that the age of majority is over 18 (eighteen) years.
2. Civil Code, adults are those who are 21 (twenty one) years old and have been previously married.
3. According to the Compilation of Islamic Law, adulthood is 21 (twenty-one) years.
4. The state's criminal code states that the age of adulthood is more than 16 (sixteen) years.
5. Law Number 1 of 1974 concerning Marriage, Article 47, states that the age of majority is over 18 (eighteen) years.
6. According to Law Number 13 of 2003 concerning Employment, the majority age is over 18 (eighteen) years.
7. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the age of adulthood is over 18 (eighteen) years.
8. Law Number 23 of 2002 concerning Child Protection, as last amended by Law Number 35 of 2014, the age of consent is above 18 (eighteen) years old.
9. According to Law Number 39 of 1999 concerning Human Rights, the age of majority is over 18 (eighteen) years.
10. Law Number 44 of 2008 concerning Pornography states that the permitted age is over 18 (eighteen) years.
11. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking states that the age of majority is over 18 (eighteen) years.
12. Decree of the Minister of Home Affairs cq Director General of Agrarian Affairs, Directorate of Land Registration (Kadaster) No. Dpt.7/539/7-77, dated 13-7-1977 ("Decree of the Minister of Home Affairs 1977"), regarding important adults, a distinction can be made as follows:
 - a. Political maturity, for example, the age limit of 17 years before being able to participate in elections.
 - b. sexual maturity, for example, is the age limit of 18 years to be able to marry according to the new Marriage Law; And
 - c. legal adult. Legal maturity is a certain age limit according to law who can be considered competent to act according to the law; Meanwhile based on
 - d. As stated above, the minimum age requirement for presidential and vice-presidential candidates is 40 (forty) years, which has been proven to have resulted in the Constitutional Disadvantages of the Petitioner as an Individual Indonesian Citizen, within the provisions of becoming a presidential candidate or presidential candidate in elections held once every five years, and in the case of WHO voters are not given any other choice than a minimum age of 40 (forty) years. The provisions of Article 169 letter q of the Election Law must be declared contrary to Article of the 1945 Constitution of the Republic of Indonesia and have no binding legal force as long as it is not interpreted as: "must be at least 25 (twenty five) years old"

4.3. MK Decision No 90/Puu-Xii/2023 Provisions on Presidential Age Requirements And Presidential Cap

The principle of popular sovereignty in the provisions of the 1945 Constitution states that part of the people's sovereignty is handed over to bodies/institutions whose existence, authority, duties, and functions are determined by the Constitution. This section is directly carried out by people. According to Zulfiani (2023), democracy has two main principles.

1. Freedom/equality.
2. is owned by the people.

According to Suyahmo, fundamental values that reflect democracy include love of openness and openness in communication.

1. Uphold human values and pride.
2. Become self-confident and withhold yourself.
3. Togetherness.
4. Balance.
5. Disputes are resolved peacefully and voluntarily. Ensure that calm changes occur.
6. Regular changes from the ruler.
7. Use the smallest force possible. I. Enforcing justice.
8. Commitment and responsibility.
9. Cooperation.
10. Tolerance/mutual assistance honor.
11. Freedom from opinion and honor for freedom.
12. Understand diversity, uphold man mark And pride

According to Alim, Triono, and Yudhi (2023), sovereignty is based on the general will (*volonte generale*) and is realized through a law that has the following four characteristics:

1. First, unity: the spirit of the people is one, they have the right to rule or not to be dominated, and unity is manifested in enforcing the law and demanding justice.
2. Second, indivisibility, namely that sovereignty cannot be divided, for example, the state or people implement and uphold all provisions regarding sovereignty.
3. Third, inalienability, namely, sovereignty cannot be sold, pawned, or transferred. Sovereignty belongs to the state from generation to generation, and this quality is in keeping with the nature of sovereignty.
4. Fourth, it cannot be described, that is, sovereignty remains in the hands of the people; it does not reduce or decrease, and it is not a right or object that can disappear or be lost, but its supreme power remains eternal, just like the rise and fall of the people.

The Role of the Community in Implementing Democracy in Boyolangu Village, Giri District, Banyuwangi Regency. PACIVIC: Journal of ⁹ Pancasila and Citizenship Education, in connection with the Constitutional Discussion, the Court's decision is NO. 90/Puu-Xii/2023 Provisions on Age Requirements for Candidates for President and Vice President, the authority of the legislative institution as law maker is the People's Representative Council (DPR-RI), which is one of the people's representative institutions with the status of a state institution. The WHO was ratified in 1945 by the Constitution of the Republic of Indonesia and was also elected directly by the people through general elections. This is further regulated in Law No. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regions belonging to the People's Representative Council (MD3), namely in Articles 69 and 70, which confirm the following. Article 69: (1) The DPR has the function of Legislation, Budgeting, and Supervision. The three functions of legislation, supervision, and budgeting, as referred to in paragraph (1), are carried out in the context of representing the people.

Article 70: (1) The legislative function, as intended in Article 69 (1) (a), is brought out as an embodiment of the DPR as the holder of the power to form laws. Democracy can be interpreted in several ways:

1. The people who emerge as state administrators should realize that they come from among the people and have the trust of the people to exercise the power of the State which originates from the desires/ideals of the people (of the people, by the people, and for the people)
2. The active participation of the people in the administration of the State, directly or indirectly, is the main capital for the successful implementation of state power (by the people).

Representation of the people is a way for the government to carry out the interests of the people. The mass media must also be seen as a forum for the public to channel their wishes to state administrators

by adhering to the applicable journalistic code of ethics.

5. Conclusion

5.1. Conclusion

The problem that arises is related to the decision of the Constitutional Court (MK) Number 90/PUU-XII/2023 regarding the age limit for presidential and vice-presidential candidates. However, from several existing sources, several conclusions can be drawn as follows:

1. The minimum age limit of 40 years for presidential and vice presidential candidates remains in effect
2. Country official with experience as member from That DPR, member from That DPD, DPRD members, governors, regents and mayors Under 40 years of age are still entitled to participate in the national leadership contest as presidential and vice presidential candidates in the general election
3. The Constitutional Court will announce the maximum age limits for presidential and vice presidential candidates next week
4. Constitutional Court Decision Number 90/PUU-XII/2023 has caused controversy and needs to be studied more deeply to determine its implications and impact on the democratic and legal systems in Indonesia.
5. There is a view that the Constitutional Court's decision is like that the timing does not match the previous decision of the Constitutional Court regarding the same object
6. There is A see That That Constitutional Court decision This time following That hope DPR and the government, so that the Constitutional Court seems to be a political tool so that the DPR and the President can make changes to the law instantly and without involving public participation.
7. There is a view that the Constitutional Court's decision is like that time has had a major impact on the good name of the Constitutional Court and Indonesian law because the Constitution Court is considered to own late from his essence, which should carry out checks and balances on other powers (executive and legislative).
8. There are several notes that need to be criticized in the Constitutional Court decision Number 90/PUU-XII/2023, such as material aspects, procedures, and inconsistencies in the Constitutional Court's decision with others regarding the same issue.

This conclusion suggests that Constitutional Court decision Number 90/PUU-XII/2023 regarding the age limit for presidential and vice-presidential candidates has raised several problems and controversies. However, the minimum age limit remains 40 years, and experienced country officials still qualify to follow the national leadership contestation as presidential and vice-presidential candidates.

5.2. Suggestions

The following suggestions can be considered to overcome this problem:

1. The Constitutional Court needs to consider material aspects, procedures, as well as inconsistencies in its Constitutional Court decisions with those of others with the same object so that the decisions taken can be legally responsible and not raise doubts.
2. The Constitutional Court needs to consider public participation in decision-making regarding age, limiting the badness of presidential candidates so that the decisions taken can represent the interests of the wider community.
3. The government and DPR need to consider the interests of the community in determining the age limit for vice presidential candidates so that the decisions taken can represent the interests of the wider community
4. The public must increase its participation in the political process and general elections so that the interests of the community can be represented in decisions regarding the age limits for presidential candidates. From this suggestion, he can conclude that there needs to be consistency in the Constitutional Court's decisions on the same object, considering material aspects, procedures, and community participation in making decisions regarding the age limit for vice presidential candidates. Separately. Therefore, the government and society need to increase participation in the political process and general elections so that the interests of society can be represented and the principle of popular sovereignty can be represented in the concept of the rule of law and democracy in Indonesia.

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