

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: The following are some of the problems that emerged after the Constitutional Court Decision: Controversy over the minimum age limit of 40 years for presidential and vice presidential candidates. Although some were granted by the Constitutional Court from That request testing Article 169 letter Q from That Election Law, that is That country officials with experience as DPR members, DPD members, DPRD members, governors, regent And mayor WHO is under 40 many years from age is still qualify to follow in National leadership contest.

Research Methodology: as presidential candidate and badness presidential candidate in the general election, but this still causes controversy among the public and legal experts. Inconsistency from That Constitutional Court decision with previously decision. There is several legal experts who considers it Constitutional this court decision the timing does not match the previous decision of the Constitutional Court regarding the same object. Political interest in the decision of the Constitutional Court.

Results: There is such a view with the decision of the Constitutional Court this time following That hope from That DPR And That government, So That That Constitutional Court seems to be a political tool so that the DPR and the President immediately make changes to the law and without involving public participation. Impact on the good name of the Constitutional Court and Indonesian law. There is a Constitutional Court decision This time own A had a big impact on the good name of the Constitutional Court and Indonesian law, because the Constitutional Court was deemed to have deviated from its essence which should carry out checks and balances on other powers (executive and legislative).

Keywords: *Constitutional Court Decision Number 90/ Puu-XII/2023, Article 169 Letter Q Number 7 from 2017, General Election*

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1. Introduction

Indonesia is a country of law where the law is the commander in chief for 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. There are two basic principles of justice where justice does not only talk about needs but also justice. equality, equality means demanding that there be an even and proportional distribution. Soerjono (1986) said that justice is essentially based on two things: first, the principle of equality, where everyone gets the same share; the second is based on needs, resulting in comparative pages that are commonly applied in the legal field. Based on the description of state,

politics and law above, it is clear that all three have an important role. In state mechanisms, one of them is the general election mechanism. Where political will play a role in the formation of law, in this case it is regulatory law. So 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 where the state prioritizes people, and the goal of a state is only 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 as a form of upholding democracy. Henry and Temtime (2010) 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". WHO representatives 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."

1.1 Problem Formulation

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

2. Literature Review

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 bring out various different roles at all stages of the election. The Constitution is the supreme source of law that serves as a guideline and legal norms that are used as a source of law.

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. 5 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 as 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 not a single 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 stated: "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 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 an understanding 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. 8 The existence of human rights is the basis for the existence or formation of law. As we know, 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 study. 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 will follow modern (Khan, 2021; Mwesigwa, 2021).

Law as well as the government plays an important role in upholding human rights and one way is by providing education both in the form of implementing human rights enforcement itself and through counseling about rights. human rights. One form of government clarity in upholding human rights is to spread understanding of human rights into the world of education, as a guide for officials, professionals, and also known to members of the broader society (grass roots).10 The 1945 Constitution and Rights

human rights. Human rights are contained in the 1945 Constitution which regulates human rights in articles 28A-28J of the 1945 Constitution. In the provisions of equality before the law, for example, we can find in Article 28D paragraph (1) of the 1945 Constitution that states "Everyone has the right to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law", then regarding opportunities for citizens in government are regulated in Article 28D paragraph (3) of the 1945 Constitution (Khan & Sultana, 2021).

The Constitution which 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"

3. Research Methodology

For this reason, this paper was prepared using normative juridical methods, with a statutory and conceptual approach, several primary legal materials used, namely statutory regulations relevant to the object of study, especially the ²previous Constitutional Court decision number 90/PUU-XII/2023. Supported by secondary legal materials, it forms literature and other sources which contain explanations that are conceptually and theoretically related to the object of study, and to find answers to the legal problems raised, descriptive techniques are used as an analysis technique for legal materials (Kotler, 2000; Sugiyono, 2015).

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 from 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 regulates 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 said 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 candidate's president in the election general. 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 q a 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 letter q a quo is clear violate 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 Candidates 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, 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. 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 of age.

5. Law Number 1 of 1974 concerning Marriage, Article 47, the age of majority is over 18 (eighteen) years.
6. 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, 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.
9. 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, the permitted age is over 18 (eighteen) years.
11. Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking, the age of majority is over 18 (eighteen) years.
12. Decree of the Minister of Home Affairs c/q 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 in:
 1. political maturity, for example the age limit of 17 years before being able to participate in elections;
 2. sexual maturity, for example, is the age limit of 18 years to be able to marry according to the new Marriage Law; And
 3. 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
 4. above, the minimum age requirement for Presidential and Vice Presidential candidates is 40 (forty) years old, who 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 is 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 The 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 carried out directly by people. According to to Zulfiani (2021), democracy basically own two main principle.

1. Freedom/equality.
2. belongs to the people sovereignty.

According to Suyahmo, fundamental values which reflect democracy, include: Love of openness and openness in communication.

1. Uphold man values And pride.
2. Become self-confident and with hold yourself.
3. Togetherness.
4. Balance.
5. Finish dispute with peace And voluntarily. Ensure calm change happen.
6. Regular change from ruler.
7. Use as small force as 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 which has the following 4 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 itself.
4. Fourth, it cannot be described, that is, sovereignty remains in the hands of the people, it does not reduce or decrease, 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 ⁹Pancasila 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. WHO was ratified in 1945 by the Constitution of the Republic of Indonesia and was also elected directly by the people through general elections. Then 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 Article 69 and Article 70 which confirms the following things. Article 69: (1) The DPR has the function: 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 is as intended in the Article 69 paragraph (1) of letter A is brought out as an embodiment of the DPR as the holder of the power to form laws. Democracy can be interpreted with several meanings as follows:

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 actually the main capital for the successful implementation of state power (by the people).

4.4 Closing

Representation of the people is a way of control for the government in carrying 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 always adhering to the applicable journalistic code of ethics.

5. Conclusion

The problem that arises is related to the decision of the Constitutional Court (MK) Number 90/PUU-XII/2023 concerning the age limit for presidential and vice presidential candidates. However, from several existing sources, there are several conclusions that 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 find out the implications and impact on the democratic and legal system 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 of 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 object.

From This conclusion 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 applicable, and experienced country official is still qualify to follow in the That national leadership contestation as presidential and vice presidential candidates.

5.1 Advice

Suggestions that can be taken 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 presidential candidate badness 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 needs to 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, with consider 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 so that the principle of popular sovereignty can be represented in the concept of the rule of law and democracy in Indonesia.

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