

The Impact of the Constitutional Court Decision Number 90/PUUXXI/2023 (on Human Rights and the Democratic System in Indonesia)

by Stewart Bishop

Submission date: 19-Jun-2025 04:04PM (UTC+0300)

Submission ID: 2702300825

File name: 2._Plagiasi_Widya.docx (3.57M)

Word count: 5236

Character count: 31495



Editorial Office : Faculty of Law, Universitas Islam Malang.
Jl. Mayjen Haryono No.193, Dinoyo, Kec. Lowokwaru, Malang,
Provinsi Jawa Timur, 65144.
Phone : (0341) 551 932 / 551 822 / (0341) 552 249
E-mail : yurispruden@unisma.ac.id
Website : <http://riset.unisma.ac.id/index.php/yur/index>

**The Impact of the Constitutional Court Decision Number
90/PUUXXI/2023
(on Human Rights and the Democratic System in Indonesia)**

Article

Article History

Received: May 3, 2025;
Reviewed: May 14, 2025;
May 14, 2025;
Accepted: Jun 1, 2025;
Published: Jun 19, 2025:

DOI:

10.33474/yur.v8i2.2349
3

Abstrak

Penetapan batas usia minimal 40 tahun bagi calon Presiden dan Wakil Presiden memicu perdebatan karena membatasi partisipasi generasi muda. Hal ini tentunya membawa dampak Putusan MK No. 90/PUU-XXI/2023 terhadap HAM dan sistem demokrasi masih terbatas. Penelitian ini bertujuan meneliti dampak putusan terhadap hak konstitusional terkait kesetaraan, non-diskriminasi, dan akses politik. Penelitian ini menggunakan metode penelitian yuridis normatif, dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian ini menemukan bahwa Putusan MK No. 90/PUU-XXI/2023 memberikan perubahan signifikan dalam memperluas akses generasi muda berpengalaman untuk mencalonkan diri. Namun, putusan tersebut juga menimbulkan kekhawatiran terkait potensi politisasi lembaga yudisial yang dapat mengancam independensi peradilan. Oleh karena itu, diperlukan pengawasan ketat dan kebijakan yang seimbang untuk menjaga supremasi hukum serta memastikan demokrasi yang sehat dan berkelanjutan.

Kata Kunci: Batas Usia; Generasi Muda; Mahkamah Konstitusi

Abstract

The establishment of a minimum age limit of 40 years for candidates for President and Vice President has sparked debate because it limits the participation of the younger generation. The impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on human rights and the democratic system is still limited. This research aims to examine the impact of the decision on constitutional rights related to equality, non-discrimination, and political access. This research uses normative juridical research methods, with statutory and conceptual approaches. The results of this study found that the Constitutional Court Decision No. 90/PUU-XXI/2023 provided significant changes in expanding the access of experienced young people to run for office. However, the decision also raises concerns regarding the potential politicization of judicial institutions that could threaten the independence of the judiciary. Therefore, strict supervision and

balanced policies are needed to maintain the rule of law and ensure a healthy and sustainable democracy.

Keywords: Age Limit; Youth Participation; Constitutional Court

INTRODUCTION

The election of the President and Vice President is a forum for realizing the sovereignty of the people which is carried out using direct, general, free, secret, honest, and fair methods in Indonesia based on Pancasila and Article 22E Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹ It is a democratic mechanism for leadership change, where people have the opportunity to directly elect their representatives as leaders of the country.² Article 169 letter q of Law Number 7/2017 on General Elections stipulates that candidates for President and Vice President must be at least 40 years old. This provision sparked debate because it was considered to limit the participation of the younger generation in politics, prompting a judicial review of the law. The Constitutional Court Decision No. 90/PUU-XXI/2023 has changed the policy of Article 169 letter q of

Law No. 7c /2017 on General Elections which stipulates a minimum age requirement of 40 years for candidates for President and Vice President, but has drawn criticism for potentially violating democratic principles.³

Previous research that has been done, first by Akbar Raga Nata and Muhammad Rifki Ramadhani Baskoro with the title “Analisis Dampak Putusan Hakim Mahkamah Konstitusi Nomor Terhadap Putusan MK Nomor 90/PUU-XXI/2023”,⁴ stated that the Constitutional Court's decision was final but could be reviewed through certain legal mechanisms, as an effort to maintain the principles of justice and accountability; second, by Yoga Siwananda, et al, with the title “Tinjauan Hukum Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Menjamin Perlindungan Hak Konstitusional Masyarakat”,⁵ stated that the age limit of

¹ Nailina Najati, “Transparansi Pelaporan Dana Kampanye Dalam Mewujudkan Pemilu Yang Berintegritas (Studi Kasus Laporan Dana Kampanye Partai Politik Pemilihan Umum 2019 Di Kabupaten Blora)” (Tesis, Universitas Muhammadiyah Surakarta, 2022), 2, <https://eprints.ums.ac.id/96813/>.

² Mirza Muhammad Fauzi, “Analisis Putusan Mahkamah Konstitusi Nomor 116/PUU XXI/2023 Tentang Parliamentary Threshold Dalam Perspektif Demokrasi” (Tesis, Universitas Muhammadiyah Surakarta, 2024), 2, <https://eprints.ums.ac.id/128657/>.

³ Fauzi Muhamad Azhar dan Fahririn Fahririn, “Dampak Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Terkait Batas Usia Pencalonan Presiden Dan Wakil Presiden Dalam Perspektif Keadilan Negara Hukum,” *Jurnal BATAVIA* 1, no. 5 (29 September 2024): 244.

⁴ Akbar Raga Nata dan Muhammad Rifki Ramadhani Baskoro, “Analisis Dampak Putusan Hakim Mahkamah Konstitusi Terhadap Putusan MK Nomor 90/PUU-XXI/2023,” *Sanskara Hukum dan HAM* 2, no. 02 (30 Desember 2023): 105–17, <https://doi.org/10.58812/shh.v2i02.288>.

⁵ Yoga Siwananda, I Made Adi Widnyana, dan I Made Sugita, “Tinjauan Hukum Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Menjamin Perlindungan Hak Konstitusional Masyarakat,” *VYAVAHARA DUTA* 19, no. 2 (30 Oktober 2024): 122–33, <https://doi.org/10.25078/vyavaharaduta.v19i2.3891>.

presidential candidates is not an absolute provision, but can be adjusted to the socio-political context, as well as to the strengthening of constitutional interpretation. Third, by Arya Apriyansyah, et al, with the title “Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Batas Usia Calon Presiden dan Calon Wakil Presiden Republik Indonesia”, stated that the decision had the potential to violate the Constitutional Court Procedure Law, conflicts of interest, and judicial inconsistency in the Constitutional Court's decision; Fourth, by Adelia Yuliana, et al, with the title “Analisis Tingkat Kepercayaan Publik Terhadap MK Pasca Putusan Nomor 90/PUU-XXI/2023”,⁶ stated a new interpretation of the age limit for presidential candidates as an effort to ensure constitutionally qualified leadership, as well as the importance of the Court's transparency with the public in order to maintain legitimacy and public trust in the judiciary; and Fifth, by Moh. Syafakhorrahman, et al, with the title “Analisis Kode Etik Hakim Mahkamah Konstitusi pada Perkara Nomor 90/PUU-XXI/2023”,⁷ stated that the decision indicated a violation of the code of ethics due to conflicts of interest that undermined the independence of judges and emphasized the

importance of ethical accountability to maintain public trust in the Constitutional Court. Previous research has similarities with this study, namely discussing the Constitutional Court Decision No. 90/PUU-XII/2023, but no one has specifically examined the impact of the decision on human rights and the democratic system in Indonesia, as the age limit for Presidential and Vice Presidential Candidates stipulated in Article 169 letter q of Law No. 7/2017 on General Elections raises legal issues related to the principles of equality, non-discrimination, and openness to political participation of the younger generation. This issue is important to analyze because it relates to the fairness of political regulations that have an impact on the constitutional rights of citizens. Therefore, this research aims to evaluate the fairness aspects of the regulation, strengthen the involvement of the younger generation in politics, and design policy recommendations that are more inclusive, thus this is a novelty with a focus on evaluating the Constitutional Court's decision on human rights and the democratic system in Indonesia.

The urgency of this research lies in the impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on human rights and the democratic system in Indonesia. While the

⁶ Adelia Yuliana dkk., “Analisis Tingkat Kepercayaan Publik Terhadap MK Pasca Putusan Nomor 90/PUU-XXI/2023,” *Jurnal Hukum Statuta* 3, no. 2 (15 April 2024): 74–91, <https://doi.org/10.35586/jhs.v3i2.9095>.

⁷ Moh Syafakhorrahman, Nazil Mahazin, dan Universitas Nurul Jadid, “Analisis Kode Etik Hakim Mahkamah Konstitusi pada Perkara Nomor 90/PUU-XXI/2023,” *Policy and Law Journal* 1, no. 1 (14 September 2024): 1–7.

age requirements for political positions in Indonesia such as members of the House of Representatives and regional heads vary, generally setting a minimum limit between 25 and 30 years old, the minimum age limit of 40 years old for presidential and vice-presidential candidates as stipulated in Article 169 letter q of Law Number 7 Year 2017 on General Elections is a relatively high barrier. When compared to other countries, such as the United States, which sets a minimum age of 35 years for presidential candidates as stipulated in the United States Constitution,⁸ for similar positions the requirements in Indonesia are strict.⁹ This change raises concerns about unequal political access for the younger generation and raises debates about the principles of equality and non-discrimination in the national legal system. Therefore, a critical analysis of the impact of this decision is necessary to safeguard human rights and the quality of democracy.¹⁰

This research focuses on analyzing the impact of Constitutional Court Decision No.

90/PUU-XXI/2023 on human rights and the democratic system in Indonesia, which includes how this decision strengthens or weakens human rights protection in the youth cluster, affects the structure of democracy and provides greater opportunities for politically experienced young people to advance. On the other hand, concerns have been raised about the potential for political interference in the judiciary. This research seeks to describe in depth the impact of the Constitutional Court's decision on the system of government and the direction of democracy in Indonesia.

This research uses normative juridical method,¹¹ legal research that focuses on analyzing laws and court decisions, especially Constitutional Court Decision No. 90/PUU-XXI/2023.¹² The legal materials used include primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning Elections, and Constitutional Court Decision No. 90/PUU-XXI/2023, secondary legal materials in the form of legal literature, scientific

⁸ Neri Arisuma dkk., "Implikasi Putusan Mahkamah Konstitusi Nomor 90/Puu- Xxi/2023 Terhadap Demokrasi Dan Regenerasi Kepemimpinan Nasional," *LLJ (Lex Lectio Law Journal)* 3, no. 2 (2024): 71, <https://doi.org/10.61715/jll.v3i2.92>.

⁹ Khairul Amin, "Syarat Usia Pencalonan Presiden Dan Wakil Presiden : Perbandingan Hukum Indonesia Dan Amerika Serikat," *Proceedings of Airlangga Faculty of Law Colloquium* 1, no. 24 November 2024 (24 November 2024): 328.

¹⁰ Retno Maria Palupi, "Akibat Hukum Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023 Terhadap Sistem Demokrasi Di Indonesia," *DISPUTANDUM: Jurnal Hukum Dan Kemanusiaan* 1, no. 1 (20 Juni 2024): 49.

¹¹ Demas Brian Wicaksono, "Potensi, Implikasi dan Penyelesaian Sengketa Kewenangan Komisi Nasional Hak Asasi Manusia dengan Kepolisian Republik Indonesia," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 8, no. 1 (31 Agustus 2024): 20, <https://doi.org/10.33474/yur.v8i1.21873>.

¹² Kuswan Hadji dkk., "Analisis Yuridis Terhadap Sengketa Putusan MK Nomor 90/PUU-XXI/2023 Tentang Uji Materi Terhadap Pasal 169 Huruf q Undang – Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 3, no. 1 (2025): 90, <https://doi.org/10.59581/doktrin.v3i1.4368>.

journals, and experts' opinions. The approaches used in this research include a statutory approach and a conceptual approach.¹³ All legal materials were collected through library research and analyzed descriptively qualitatively to describe and understand the legal issues that are the focus of this research.¹⁴

This research was prepared to analyze the impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on human rights and the democratic system in Indonesia, with the aim of evaluating the effect of the decision on the protection of human rights, especially in the context of political participation. In addition, it aims to analyze the effect of this decision on the structure and principles of democracy in Indonesia, as well as its impact on the application of the principles of equality and non-discrimination in the electoral system, especially for the younger generation.

RESULTS AND DISCUSSION

Analysis of Constitutional Court Decision

No. 90/PUU-XXI/2023

Constitutional Court Decision No. 90/PUU-XXI/2023 is a major concern in Indonesia's legal dynamics. This decision regulates the minimum age limit for

candidates for President and Vice President, not just procedural changes in election regulations. This decision has an impact on the democratic system, the rule of law, and public trust in the judiciary.¹⁵ Changes to the age limit that sparked controversy raise questions about the basics of democratic principles in Indonesia.

The judicial review application submitted by Almas Tsaqibbiru Re A to the Constitutional Court on Article 169 letter q of Law Number 7 Year 2017 on Elections argues that the provision on the minimum age limit of 40 years limits the role of the younger generation who actually have the ability and political track record. In the perspective of John Rawls' theory of justice, this rule reflects inequality of opportunity because it denies access to some groups of people.

The Constitutional Court's decision to relax the requirement by considering experience in public office can be understood as a step towards realizing equal opportunities for all citizens and can be seen as a form of correction to discrimination and an effort towards the principle of fair equality of opportunity. However, the additional requirement of public office experience has

¹³ Achmad Zuhdi dan Ari Ade Kamula, "Legitimasi Hukum Asing Sebagai Pertimbangan Putusan oleh Mahkamah Konstitusi: Perbandingan Antara Indonesia dan Afrika Selatan," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 2 (20 Juni 2024): 274, <https://doi.org/10.33474/yur.v7i2.21634>.

¹⁴ Moh Indra Bangsawan dan Kuku Ari Febrianto, "The Politics of Election Law in Indonesia," *Proceeding International Conference Restructuring and Transforming Law* 2, no. 1 (18 September 2023): 200.

¹⁵ Fika Nurul Ulya, Vitorio Mantalean, dan Achmad Nasrudin Yahya, "Hakim Saldi Isra Sebut MK Masuk Jebakan Politik Usai Putuskan Usia Capres-Cawapres," *Kompas.com*, 16 Oktober 2023, <https://nasional.kompas.com/read/2023/10/16/19445651/hakim-saldi-isra-sebut-mk-masuk-jebakan-politik-usai-putuskan-usia-capres>.

the potential to create new discrimination because not everyone has the same opportunity to occupy it. In John Rawls' theory of justice, justice demands social and economic structures that allow individuals to have equal political opportunities.¹⁶

On the other hand, the assessment of legal standing put forward by Almas also drew criticism because it was considered to represent the interests of other parties widely associated with the candidacy of Gibran Rakabuming Raka rather than showing personal constitutional losses. As a result, the Constitutional Court was considered less careful in assessing the eligibility of the applicant, raising doubts about the objectivity of its legal considerations in this case.

In addition, the decision added a new norm through the phrase "at least 40 (forty) years old or has been/is currently holding an office elected through general elections including regional head elections". The Constitutional Court is considered to have exceeded its authority by acting as a positive legislator. Meanwhile, in the Indonesian constitutional system, the authority to formulate laws is formally the authority of the DPR and the President as stipulated in Article 20 of the 1945 Constitution. This move by the Constitutional Court has also raised debates regarding the limits of the authority of the judiciary in creating new legal norms.

Article 169 letter q of Law Number 7/2017 on Elections stipulates that one of the provisions for presidential and vice presidential candidates is to have a minimum age of 40 years. This provision has been tested by the Constitutional Court because it is considered against the constitutional rights of citizens guaranteed by Article 28D paragraphs (1) and (3) of the 1945 Constitution of the Republic of Indonesia.

The petitioners considered that the age limit was discriminatory and did not reflect the principles of justice and equality in the right to be elected. In *Constitutional Court Decision No. 90/PUU-XXI/2023*, the Constitutional Court interpreted that Article 169 letter q contradicts Article 28D of the 1945 Constitution if it is not interpreted as "at least 40 years old or has experience as an official elected through general elections, including regional heads". In this context, the Constitutional Court provides a broader interpretation of the norm in order to open access to more inclusive political participation. the establishment of new norms.

Seen from the perspective of Montesquieu's trias politica theory, the aim is to avoid excessive abuse of power and ensure the creation of a balance between state institutions in the administration of government. The Constitutional Court's move in this decision can be criticized because it is

¹⁶ John Rawls, *A Theory of Justice Revised Edition* (Harvard: Harvard University Press Cambridge, 1999), 75.

considered to have exceeded the limits of judicial authority and entered the realm of legislation.

In a democratic rule of law system, each institution of power should perform its functions in a limited manner and not overlap with each other. The Constitutional Court should only test whether a norm is in accordance with the constitution, not establish new legal provisions. Therefore, although the content of this decision aims to expand political participation, from a procedural point of view, there is a risk of violating the principle of good governance.¹⁷

The Impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on Human Rights

Constitutional Court Decision No. 90/PUU-XXI/2023 has an important impact on the fulfillment of the right to political participation, which is part of human rights, as stipulated in Law Number 39 of 1999 concerning Human Rights,¹⁸ specifically in Article 43 which states that every citizen has the right to vote and be elected in elections. The state plays an important role in protecting, guaranteeing, and fulfilling the human rights of every citizen.¹⁹ By opening up the

opportunity for individuals under the age of 40 who have experience as regional heads to run for President or Vice President, this decision provides expanded access for young people to occupy the highest public office in Indonesia.

As a result, more and more citizens have equal opportunities to exercise their constitutional rights without being restricted by overly rigid age rules. This condition strengthens the values of equality and rejects discriminatory treatment, while creating a more open political climate for all. The decision also encourages the regeneration process in national leadership and opens up greater space for the younger generation to appear in the political arena, in line with the state's commitment to guaranteeing the civil and political rights of every citizen.

The change in the age limit of candidates for President and Vice President decided by the Constitutional Court has a closely related impact on human rights guaranteed in Article 28D paragraphs (1) and (3) of the 1945 Constitution of the Republic of Indonesia. As part of the state constitution, these articles guarantee a number of fundamental rights for

¹⁷ Mimin Dwi Hartono dkk., *Dampak Proyek Strategis Nasional Terhadap Hak Asasi Manusia* (Jakarta: Komisi Nasional Hak Asasi Manusia RI, 2024), 12.

¹⁸ Nurika Falah Ilmania, Benny Krestian Heriawanto, dan Pinastika Prajna Paramita, "Tanggung Jawab Yang Lahir Dari Kewajiban Atas Kesehatan Masyarakat Di Masa Pandemi Covid-19 Dalam Perspektif HAM (Hak Asasi Manusia)," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 1 (20 Januari 2022): 93, <https://doi.org/10.33474/yur.v5i1.14078>.

¹⁹ Muhammad Fadli Efendi, "Perbandingan Hukum Internasional Dan Nasional Tentang Hak Asasi Manusia," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 2 (12 Januari 2023): 228, <https://doi.org/10.33474/yur.v5i2.9071>.

citizens, including the right to be involved in government.

Constitutional Court Decision No 90/PUU-XXI/2023 has an impact on a person to obtain recognition of every citizen is a legal subject. This is a form of recognition of a person that includes the right to life, the right to politics and the right to receive protection for the rights of citizens to get equal opportunities in government, in line with the principle of non discrimination as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.²⁰

The impact of this decision is also significant on the right to obtain fair legal protection, as this decision provides a new interpretation that opens up opportunities for citizens who have held or are currently holding regional head positions to run for president or vice president, even though they have not reached the age of 40. On the other hand, the impact of this decision on legal certainty in Indonesia is that it creates misalignment or differences in meaning between norms, both contained in one regulation between articles in the same law, as well as between different laws.²¹

Constitutional Court Decision No. 90/PUU-XXI/2023 removes the 40-year age limit for Presidential and Vice Presidential candidates with the condition of having experience as a Regional Head. This policy is in line with the principle of non-discrimination in human rights and Article 28D Paragraph (3) of the 1945 Constitution because it provides wider opportunities for the younger generation to participate in politics. This expands the right of citizens to be elected by not prioritizing competition, thus strengthening substantive justice in politics.

In the principle of legal justice, the age restriction in Article 169 letter q of Law Number 7/2017 on Elections is contrary to Article 28D Paragraph (3) of the 1945 Constitution of the Republic of Indonesia because it causes discrimination, so this decision is a step to protect human rights from unfair treatment. On the other hand, the requirement of experience as a regional head has the potential to cause new discrimination, because not all citizens have equal opportunities to occupy these positions due to political and economic factors.²²

²⁰ Deltiya Cahayani dkk., "Analisis Kritis Atas Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Kontek Perlindungan Hak Konstitusional Warga Negara Dan Hak Asasi Manusia," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (29 Mei 2024): 171, <https://doi.org/10.62383/amandemen.v1i3.280>.

²¹ Salsabila Tri Wanda Rizky, "Analisis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Mengenai Ambang Batas Umur Capres dan Cawapres 2024 Perspektif Fikih Siyasah" (Skripsi, Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2024), <https://digilib.uinkhas.ac.id/39751/>.

²² Elva Imeldatur Rohmah, "Dinamika Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Usia Calon Presiden dan Wakil Presiden," *PROGRESIF: Jurnal Hukum* 18, no. 1 (30 Juni 2024): 121, <https://doi.org/10.33019/progresif.v18i1.4636>.

The Impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on the Democratic System in Indonesia

In Constitutional Court Decision No. 90/PUU-XXI/2023, several parties argued that the age change could provide opportunities for the younger generation to make significant changes in increasing political participation. Some argue that the decision prioritizes the interests of the government and The House of Representatives, which risks weakening democracy and disrupting the balance of power. This has sparked debate about the role and independence of the Constitutional Court as a judicial institution.

Its impact on the principles of justice and the integrity of the judiciary in Indonesia's democracy could impact the country's political and legal system in the long term. There is an assumption that the decision was influenced by a conflict of interest, thus contradicting the principle of *Nemo Jux in Causa Sua*.²³ The adoption of a new legal norm that excludes age restrictions risks legal uncertainty and unpredictability in future elections, especially if the revision of laws and regulations is delayed.²⁴

The impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on the quality of elections in Indonesia is very complex and has various implications, both positive and negative. The positive impact of this decision on the quality of elections is that it can improve the quality of leadership by ensuring that candidates for President and Vice President have adequate track records and competencies. This is expected to produce leaders who are better prepared to face the challenges of governance, thus having a positive impact on the quality of elections. On the other hand, the negative impact of this decision on the quality of elections is that it is considered to limit opportunities for young figures who have never served as regional heads or other positions before, thus creating injustice.

The inconsistency with previous decisions, namely, Decision No. 29/PUU-XXI/2023, No. 51/PUU-XXI/2023, and No. 55/PUU-XXI/2023, has triggered doubts about the independence of the Constitutional Court and decreased public confidence in elections.²⁵ The alleged conflict of interest and violation of the code of ethics by the Chief Justice of the Constitutional Court worsened

²³ Kristiawan Putra Nugraha, Dela Puspitasari, dan Riska Anggraini, "Analisis Legal Reasoning dan Dampak Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Jurnal Fundamental Justice* 5, no. 2 (30 September 2024): 91, <https://doi.org/10.30812/fundamental.v5i2.4433>.

²⁴ Abdul Wahid dan Suriyanto Suriyanto, "Analisis Kewajiban Legislasi DPR Dan Pemerintah Dalam Menindaklanjuti Putusan Mahkamah Konstitusi No. 90/PUU-XXI/2023," *Iblam Law Review* 4, no. 3 (30 September 2024): 170, <https://doi.org/10.52249/ilr.v4i3.502>.

²⁵ Selvi Christina Situmeang, Ardilafiza Ardilafiza, dan Ari Wirya Dinata, "Inconsistency of the Constitutional Court Regarding the Minimum Age Requirement for Presidential and Vice-Presidential Candidates:

public perception. In addition, this decision is considered to exceed legislative authority, create legal uncertainty, and open space for politicization of the judiciary.

Setting an age limit limits the political involvement of young people, while a decision-making process that has been highlighted for alleged violations of the code of ethics and the principle of independence could undermine public trust and weaken the integrity of the Constitutional Court.²⁶ This condition presents a serious challenge to democracy, which should uphold the values of justice, equality and non-discrimination in the national political order.

The impact on public participation in politics has increased after the Constitutional Court Decision No. 90/PUU-XXI/2023, as evidenced by the increasing involvement of the younger generation in politics, candidacy in regional head elections, and the public response on social media regarding the issue of age limits for Presidential and Vice Presidential candidates. Opportunities for the younger generation are greater, so that they can improve the quality of leadership at the national level, which in turn can strengthen the democratic system. Openness in politics

can provide opportunities for those with leadership experience, expanding representation in society.

This decision not only broadens political access, but also has the potential to enrich political dynamics by involving more voices and perspectives that were previously underrepresented. Meanwhile, the possibility of oligarchy and dynastic politics raises concerns. Figures who come from political elite families or have great economic power tend to run more easily, which can lead to the dominance of certain groups in government and reduce the diversity of aspirations in politics.

In the democratic principle of fair and honest elections as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia, this decision shows the different views of judges in interpreting the principle of fair and honest elections,²⁷ where the majority judges focus on formal procedures, while the minority judges emphasize the substance and ethics of elections. This difference has led to a lack of clarity in establishing the appropriate standard to ensure that elections are fair and honest.

Inkonsistensi Mahkamah Konstitusi Terkait Syarat Minimal Usia Calon Presiden dan Wakil Presiden,” *Jurnal Konstitusi* 21, no. 4 (1 Desember 2024): 614, <https://doi.org/10.31078/jk2145>.

²⁶ Muhammad Daffa Fadhillah, Ridham Priskap, dan Bustanuddin, “Analisis Yuridis Putusan Mahkamah Konstitusi Terkait Batas Usia Pencalonan Presiden Dan Wakil Presiden,” *Limbago: Journal of Constitutional Law* 4, no. 3 (31 Oktober 2024): 333, <https://doi.org/10.22437/limbago.v4i3.37447>.

²⁷ S. Sulistyowati dkk., “Refleksi Putusan Mahkamah Konstitusi Pada Pemilihan Presiden Tahun 2024 Terhadap Politik Dan Demokrasi Indonesia,” *Qanuniya: Jurnal Ilmu Hukum* 1, no. 1 (30 Juni 2024): 12–13, <https://doi.org/10.15575/qanuniya.v1i1.826>.

Not only that, this decision also raises concerns about unfair treatment in the election process. This decision shows recognition that the provisions in Article 169 letter q of Law Number 7/2017 on Elections have the potential to harm a person's constitutional rights, even though these rights should be protected by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This situation reflects a possible violation of the principle of justice guaranteed in the constitution.²⁸

In addition, the Constitutional Court Decision No. 90/PUU-XXI/2023 has an impact on freedom of speech by encouraging wider political engagement, especially among the younger generation. With increased engagement, it is expected that more views can be represented in public discussions, thus broadening perspectives and enriching the ideas that develop. But on the other hand, increased participation without adequate understanding risks triggering the spread of information that has the potential to reduce the quality of debate in the public sphere.

On the other hand, the Constitutional Court Decision No. 90/PUU-XXI/2023 has an unfair impact because it changes the minimum

age limit for candidates for President and Vice President, which is considered to cause unequal treatment of certain age groups who should have the same opportunities.²⁹ The Constitutional Court is considered inconsistent because it has previously rejected similar requests regarding the age limit of presidential and vice-presidential candidates in Decisions Number 29/PUU-XXI/2023, 51/PUU-XXI/2023 and 55/PUU-XXI/2023.³⁰

The dissenting opinions of several constitutional judges further strengthened the indications of uncertainty in this decision. The judges expressed uncertainty and concern over the inconsistency of the Constitutional Court's decision and the open legal policy status of the case object.

Constitutional Court Decision No. 90/PUU-XXI/2023 risks bringing democracy and the rule of law to unforeseen situations, such as decreased public trust in the Constitutional Court and increased political interference in the judiciary, because it involves the Constitutional Court in practical political dynamics. This decision is also considered an indication of the reduced independence of Constitutional Court judges. This decision is discriminatory and contains

²⁸ Delfina Gusman dan Pascoal Da Costa Oliveira, "Age Limitations for Presidential and Vice Presidential Candidates Post Constitutional Court Ruling Number 90/PUU-XXI/2023 A Democratic Perspective," *Jurnal Hukum Dan Peradilan* 12, no. 3 (30 November 2023): 609, <https://doi.org/10.25216/jhp.12.3.2023.607-628>.

²⁹ Ahdi Hidayat dkk., "Analisis Yuridis Terhadap Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dikaitkan Dengan Mahkamah Konstitusi Sebagai Positif Legislator," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 3 (26 Mei 2024): 88, <https://doi.org/10.62383/humif.v1i3.292>.

³⁰ Dirga Achmad dan Aulia Audri Rahman, "Kontra Produktif Putusan Mahkamah Konstitusi Nomor 29/PUU-XXI/2023 Mengenai Batas Usia Capres-Cawapres," *Jurnal Esensi Hukum* 6, no. 1 (2024): 2-3, <https://doi.org/10.35586/jsh.v6i1.323>.

substantive irregularities when compared to the previous decision, namely Constitutional Court Decision No. 55/PUU-XXI/2023.

In addition, this Constitutional Court Decision has exceeded its authority. The examination and decision-making process is considered to violate the Sapta Karsa Utama principle adopted from "The Bangalore Principles of Judicial Conduct 2002"³¹ the ethical guidelines for the behavior of constitutional judges established by the Constitutional Court, such as impartiality, integrity, competence, equality, independence, courtesy, and discretion. As a result, there was public suspicion of the decision so that a number of parties considered that it had exceeded the authority of the Constitutional Court.

To strengthen the democratic system in the legal system based on Constitutional Court Decision No. 90/PUU-XXI/2023, better transparency is needed to ensure that the decision-making process at the Constitutional Court is carried out openly in order to encourage public participation in the legal process through discussion forums or public consultations so that their aspirations can be heard and considered. In addition, it is necessary to ensure that every decision of the Constitutional Court considers and protects

human rights, so that people feel safe and their rights are recognized.

CONCLUSIONS

Constitutional Court Decision No. 90/PUU-XXI/2023 has a significant impact on young people, human rights, and democratic principles in Indonesia. This decision opens up space for more inclusive political participation for young people who have experience as regional heads, thus encouraging the regeneration of national leadership. In terms of human rights, this decision strengthens the protection of citizens' constitutional rights, particularly related to equality, non-discrimination, and the right to be elected, as guaranteed in Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

However, from the point of view of a democratic system, this decision raises concerns over the potential politicization of judicial institutions and legal uncertainty due to inconsistencies in decisions and alleged conflicts of interest, which risks reducing public confidence in the Constitutional Court. Therefore, strict supervision and balanced policies are needed so that this decision truly strengthens the rule of law, maintains the integrity of democracy, and protects the constitutional rights of all citizens.

³¹ Bintang D, Mela Roido B. S, dan Ghasela Julianna A, "Pelanggaran Kode Etik: Pelanggaran Kode Etik Yang Dilakukan Oleh Anwar Usman Selaku Ketua Mahkamah Konstitusi," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 2 (6 Desember 2023): 49, <https://doi.org/10.572349/kultura.v1i2.269>.

BIBLIOGRAPHY

- Achmad, Dirga, dan Aulia Audri Rahman. "Kontra Produktif Putusan Mahkamah Konstitusi Nomor 29/PUU-XXI/2023 Mengenai Batas Usia Capres-Cawapres." *Jurnal Esensi Hukum* 6, no. 1 (2024): 1–14. <https://doi.org/10.35586/jsh.v6i1.323>.
- Amin, Khairul. "Syarat Usia Pencalonan Presiden Dan Wakil Presiden: Perbandingan Hukum Indonesia Dan Amerika Serikat." *Proceedings of Airlangga Faculty of Law Colloquium* 1, no. 24 November 2024 (24 November 2024): 324–32.
- Arisuma, Neri, Arifin Saleh, Salman Alfarisi, dan Fickry Juliansyah. "Implikasi Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023 Terhadap Demokrasi Dan Regenerasi Kepemimpinan Nasional." *LLJ (Lex Lectio Law Journal)* 3, no. 2 (2024): 66–75. <https://doi.org/10.61715/jll.v3i2.92>.
- Azhar, Fauzi Muhamad, dan Fahririr Fahririr. "Dampak Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Terkait Batas Usia Pencalonan Presiden Dan Wakil Presiden Dalam Perspektif Keadilan Negara Hukum." *Jurnal BATAVIA* 1, no. 5 (29 September 2024): 241–49.
- Bangsawan, Moh Indra, dan Kukuh Ari Febrianto. "The Politics of Electional Law in Indonesia." *Proceeding International Conference Restructuring and Transforming Law* 2, no. 1 (18 September 2023): 199–205.
- Cahayani, Deltiya, Moch Fahmi Faozi, Muhamad Sunan Rizky, Resna Amelia Putri, dan Shinta Devy Melani. "Analisis Kritis Atas Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Kontek Perlindungan Hak Konstitusional Warga Negara Dan Hak Asasi Manusia." *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (29 Mei 2024): 170–74. <https://doi.org/10.62383/amandemen.v1i3.280>.
- D, Bintang, Mela Roido B. S, dan Ghasela Julianna A. "Pelanggaran Kode Etik: Pelanggaran Kode Etik Yang Dilakukan Oleh Anwar Usman Selaku Ketua Mahkamah Konstitusi." *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 2 (6 Desember 2023): 47–54. <https://doi.org/10.572349/kultura.v1i2.269>.
- Efendi, Muhammad Fadli. "Perbandingan Hukum Internasional Dan Nasional Tentang Hak Asasi Manusia." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 2 (12 Januari 2023): 227–45. <https://doi.org/10.33474/yur.v5i2.9071>.
- Fadhillah, Muhammad Daffa, Ridham Priskap, dan Bustanuddin. "Analisis Yuridis Putusan Mahkamah Konstitusi Terkait Batas Usia Pencalonan Presiden Dan Wakil Presiden." *Limbago: Journal of Constitutional Law* 4, no. 3 (31 Oktober 2024): 329–39. <https://doi.org/10.22437/limbago.v4i3.37447>.
- Fauzi, Mirza Muhammad. "Analisis Putusan Mahkamah Konstitusi Nomor 116/PUU XXI/2023 Tentang Parliamentary Treshold Dalam Perspektif Demokrasi." Tesis, Universitas Muhammadiyah Surakarta, 2024. <https://eprints.ums.ac.id/128657/>.
- Gusman, Delfina, dan Pascoal Da Costa Oliveira. "Age Limitations for Presidential and Vice Presidential Candidates Post Constitutional Court Ruling Number 90/PUU-XXI/2023 A Democratic Perspective." *Jurnal Hukum Dan Peradilan* 12, no. 3 (30 November 2023): 607–28. <https://doi.org/10.25216/jhp.12.3.2023.607-628>.

- Hadji, Kuswan, Muhammad Arvin Zakiy Fuadi, Ryan Aji Kusuma, Sheva Andika Ramajagandhi, Deriel Pratama Putra, Muhammad Hafish Afif Saputra, dan Revaldo Putra Magantara. "Analisis Yuridis Terhadap Sengketa Putusan MK Nomor 90/PUU-XXI/2023 Tentang Uji Materi Terhadap Pasal 169 Huruf q Undang – Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum." *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 3, no. 1 (2025): 88–94. <https://doi.org/10.59581/doktrin.v3i1.4368>.
- Hartono, Mimin Dwi, Hari Reswanto, Delsy Nike, Nadia Farikhati, Azis Pratama, Utari Putri Wardanti, dan Hajmudin Hekmatiar. *Dampak Proyek Strategis Nasional Terhadap Hak Asasi Manusia*. Jakarta: Komisi Nasional Hak Asasi Manusia RI, 2024.
- Hidayat, Ahdi, M. Haykel, Rizqi Ulmaliyah Alhaddi, Selsa Selviana, dan Siva Delvina. "Analisis Yuridis Terhadap Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dikaitkan Dengan Mahkamah Konstitusi Sebagai Positif Legislator." *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 3 (26 Mei 2024): 79–95. <https://doi.org/10.62383/humif.v1i3.292>.
- Ilmania, Nurika Falah, Benny Krestian Heriawanto, dan Pinastika Prajna Paramita. "Tanggung Jawab Yang Lahir Dari Kewajiban Atas Kesehatan Masyarakat Di Masa Pandemi Covid-19 Dalam Perspektif HAM (Hak Asasi Manusia)." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 1 (20 Januari 2022): 89–106. <https://doi.org/10.33474/yur.v5i1.14078>.
- Najati, Nailina. "Transparansi Pelaporan Dana Kampanye Dalam Mewujudkan Pemilu Yang Berintegritas (Studi Kasus Laporan Dana Kampanye Partai Politik Pemilihan Umum 2019 Di Kabupaten Blora)." Tesis, Universitas Muhammadiyah Surakarta, 2022. <https://eprints.ums.ac.id/96813/>.
- Nata, Akbar Raga, dan Muhammad Rifki Ramadhani Baskoro. "Analisis Dampak Putusan Hakim Mahkamah Konstitusi Terhadap Putusan MK Nomor 90/PUU-XXI/2023." *Sanskara Hukum dan HAM* 2, no. 02 (30 Desember 2023): 105–17. <https://doi.org/10.58812/shh.v2i02.288>.
- Nugraha, Kristiawan Putra, Dela Puspitasari, dan Riska Anggraini. "Analisis Legal Reasoning dan Dampak Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023." *Jurnal Fundamental Justice* 5, no. 2 (30 September 2024): 89–104. <https://doi.org/10.30812/fundamental.v5i2.4433>.
- Palupi, Retno Maria. "Akibat Hukum Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023 Terhadap Sistem Demokrasi Di Indonesia." *DISPUTANDUM: Jurnal Hukum Dan Kemanusiaan* 1, no. 1 (20 Juni 2024): 48–60.
- Rawls, John. *A Theory of Justice Revised Edition*. Harvard: Harvard University Press Cambridge, 1999.
- Rizky, Salsabila Tri Wanda. "Analisis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Mengenai Ambang Batas Umur Capres dan Cawapres 2024 Perspektif Fikih Siyasah." Skripsi, Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2024. <https://digilib.uinkhas.ac.id/39751/>.
- Rohmah, Elva Imeldatur. "Dinamika Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Usia Calon Presiden dan Wakil Presiden." *PROGRESIF: Jurnal Hukum* 18, no. 1 (30 Juni 2024): 100–131. <https://doi.org/10.33019/progresif.v18i1.4636>.
- Situmeang, Selvi Christina, Ardilafiza Ardilafiza, dan Ari Wiryana Dinata.

- "Inconsistency of the Constitutional Court Regarding the Minimum Age Requirement for Presidential and Vice-Presidential Candidates: Inkonsistensi Mahkamah Konstitusi Terkait Syarat Minimal Usia Calon Presiden dan Wakil Presiden." *Jurnal Konstitusi* 21, no. 4 (1 Desember 2024): 609–34. <https://doi.org/10.31078/jk2145>.
- Sulistiyowati, S., Dewi Nadya Maharani, Gusti Bintang Maharaja, dan Hanifa Putri Manoppo. "Refleksi Putusan Mahkamah Konstitusi Pada Pemilihan Presiden Tahun 2024 Terhadap Politik Dan Demokrasi Indonesia." *Qanuniya : Jurnal Ilmu Hukum* 1, no. 1 (30 Juni 2024): 10–25. <https://doi.org/10.15575/qanuniya.v1i1.826>.
- Syafakhorr Rahman, Moh, Nazil Mahazin, dan Universitas Nurul Jadid. "Analisis Kode Etik Hakim Mahkamah Konstitusi pada Perkara Nomor 90/PUU-XXI/2023." *Policy and Law Journal* 1, no. 1 (14 September 2024): 1–7.
- Ulya, Fika Nurul, Vitorio Mantalean, dan Achmad Nasrudin Yahya. "Hakim Saldi Isra Sebut MK Masuk Jebakan Politik Usai Putuskan Usia Capres-Cawapres." *Kompas.com*, 16 Oktober 2023. <https://nasional.kompas.com/read/2023/10/16/19445651/hakim-saldi-isra-sebut-mk-masuk-jebakan-politik-usai-putuskan-usia-capres>.
- Wahid, Abdul, dan Suriyanto Suriyanto. "Analisis Kewajiban Legislasi DPR Dan Pemerintah Dalam Menindaklanjuti Putusan Mahkamah Konstitusi No. 90/PUU-XXI/2023." *Iblam Law Review* 4, no. 3 (30 September 2024): 168–80. <https://doi.org/10.52249/ilr.v4i3.502>.
- Wicaksono, Demas Brian. "Potensi, Implikasi dan Penyelesaian Sengketa Kewenangan Komisi Nasional Hak Asasi Manusia dengan Kepolisian Republik Indonesia." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 8, no. 1 (31 Agustus 2024): 17–35. <https://doi.org/10.33474/yur.v8i1.21873>.
- Yoga Siwananda, I Made Adi Widnyana, dan I Made Sugita. "Tinjauan Hukum Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Menjamin Perlindungan Hak Konstitusional Masyarakat." *VYAVAHARA DUTA* 19, no. 2 (30 Oktober 2024): 122–33. <https://doi.org/10.25078/vyavaharaduta.v19i2.3891>.
- Yuliana, Adelia, Adzra Ardelia Tuasalamony, Al Fath, Alizcia Dora Parhusip, Anggie Febriani, dan Handar Subhandi Bakhtiar. "Analisis Tingkat Kepercayaan Publik Terhadap MK Pasca Putusan Nomor 90/PUU-XXI/2023." *Jurnal Hukum Statuta* 3, no. 2 (15 April 2024): 74–91. <https://doi.org/10.35586/jhs.v3i2.9095>.
- Zuhdi, Achmad, dan Ari Ade Kamula. "Legitimasi Hukum Asing Sebagai Pertimbangan Putusan oleh Mahkamah Konstitusi: Perbandingan Antara Indonesia dan Afrika Selatan." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 2 (20 Juni 2024): 272–96. <https://doi.org/10.33474/yur.v7i2.21634>.

The Impact of the Constitutional Court Decision Number 90/PUUXXI/2023 (on Human Rights and the Democratic System in Indonesia)

ORIGINALITY REPORT

6%

SIMILARITY INDEX

7%

INTERNET SOURCES

11%

PUBLICATIONS

2%

STUDENT PAPERS

PRIMARY SOURCES

1

ejournal.uhb.ac.id

Internet Source

3%

2

riset.unisma.ac.id

Internet Source

2%

3

www.jurnalhukumdanperadilan.org

Internet Source

2%

Exclude quotes On

Exclude matches < 2%

Exclude bibliography On