

The Influence of the Constitutional Court Ruling No 90/PUU-XXI/2023 on the Authority and Marvel of the Constitutional Court as Guardian of the Constitution

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Abstract

The Constitutional Court was formed to maintain the integrity of the Constitution through a deeper interpretation based on the 1945 Constitution. This journal discusses the influence of CC Decision No. 90/PUU-XXI/2023 on the Authority and Dignity of the Constitutional Court as Guardian of the Constitution. The study combines a literature review methodology with a qualitative approach. The research results show that CC Decision No. 90/PUU-XXI/2023 is contrary to the Constitutional Court's authority based on the 1945 Constitution. The addition of new regulations that were previously unregulated or not is not outside the Constitutional Court's jurisdiction, but rather the legislative authority. Research examines the importance of maintaining judicial neutrality to prevent abuse of power. The Constitutional Court, as the Guardian of the Constitution, must pay attention to the rights of citizens and maintain the balance of power. With this controversial decision, in the context of the CC authority which should be limited to constitutional review and maintaining the neutral role of the judiciary in fighting abuse of power by the legislature and executive. Even though the Constitutional Court is the final decision maker on laws based on the 1945 Constitution, its authority is limited to reviewing laws and is not involved in the legislative realm.

Keywords: *Constitutional Court, CC Decision No 90/PUU-XXI/2023.*

A. INTRODUCTION

The decision of the Constitutional Court (CC) must be implemented immediately after it is decided at a plenary session open to the public which is binding. Based on Article 24C of the 1945 Law, the CC has the authority to decide cases at the first and final level, where its decision is final. The CC decision is considered the final step for justice seekers. Since it was announced at the public plenary session, the decision has had firm and clear legal consequences (Fajar, 2013). The decision of the CC is final and binding from the perspective of the laws discussed in the book

The CC was formed to maintain the integrity of the Constitution through deeper interpretation. This interpretation is used to resolve problems faced by certain powers that are given direct authority by the Constitution. Therefore, interpretation must be done only once and is binding, and decisions must be made at the first and last level and cannot be cancelled.

One of the powers of the CC is to review laws that conflict with the 1945 Constitution. As was the case with Chief Constitutional Court Anwar Usman, who was proven and dismissed as chairman of the CC. This case started with the reading

of the CC decision No. 90/PUU-XXI/2023, namely: *"Minimum 40 (forty) years old" is contrary to the 1945 Republic of Indonesia Constitution and does not have binding legal immunity, as long as it does not mean "at least 40 (forty) years old or has previously held or is currently holding a position elected through elections, including regional elections."*

The decision of the CC which was taken shortly before the deadline for registering presidential and vice presidential candidates expired made a bad mark in the history of the CC. The Constitutional Court is expected to be able to balance political interests, but instead appears to be involved in these political interests.

Based on the legal perspective, determining the minimum age limit for presidential and vice presidential candidates is not the authority of the CC, but rather the authority of the DPR and the President as law makers, while the authority of the CC is to review laws that are contrary to the 1945 Constitution. Meanwhile, in this case, the CC has added new norms without involving executive and legislative as makers of laws, so it is not appropriate based on the initial model of the existence of the Constitutional Court itself, namely testing existing norms based on the 1945 Constitution. Changes in the substance of a decision are a natural thing in deciding cases, but usually occur over a long period of time .

In Indonesia, Chapter IX of the 1945 Republic of Indonesia Constitution, Articles 24, 24A, 24B, 24C, and 25 regulate judicial power. Specifically, this is regulated in number 48 of 2009 the Judicial Power Law which functions as general guidelines and a basis for establishing the foundations, principles and guidelines for all judiciary in Indonesia, as well as providing direct instructions for the implementation of the 1945 Republic of Indonesia Constitution.

Several previous studies, such as Febriansyah & Prayitno (2023), stated that the application of the powers of the CC in the CC Decision No. 90/PUUXXI/2023 concerning Election Law 7/2017 Article 169 (q) was considered to be contrary to the 1945 Constitution and did not have legal value. Furthermore, Trisni and Susilawati (2023) in the results of their research, Decision No. 90/PUU-XXI/2023 must be constructed separately from the controversy that accompanies it and must be institutionalized constructively. Subandri (2023) The CC must truly carry out its functions, duties and mandate in accordance with the constitution, so that through Constitutional Judges who have a statesmanlike spirit the CC can produce decisions that can provide a sense of justice in society. Based on several studies, it can be seen that the phenomenon that shows that Constitutional Court Decision No. 90/PUU-XXI/2023 is a step in the decline of democracy was shown to the public when the decision was read out.

This study specifically highlights how the authority of the CC as guardian of the constitution does not exceed the limits of its authority as a judicial institution based on the 1945 Constitution. so haste is closely related to power politics. Thus, various opinions emerged among the public regarding the good and bad of this decision. In practice, the constitution is often used to fulfill certain political agreements that only last for a moment. Through this case, the author is interested in further analyzing the

influence of CC Decision No. 90/PUU-XXI/2023 on the Authority and Dignity of the CC as Guardian of the Constitution.

B. METHODS

The research design uses qualitative literature review methods, which is a systematic, clear and replicable method. The aim is to identify, assess and compile research results and ideas that have been created by researchers and practitioners (Rahayu et al., 2019). Literature data sources were accessed through national and international journal sites such as Google Scholar, Science Direct, Scopus, and Scispace AI with the search keyword MK Decision No. 90/PUU-XXI/2023. Information obtained from legitimate sources is classified and then analyzed qualitatively, namely describing documents qualitatively in effective sequences, systems, logic, through and sentences, which are useful for interpreting, providing information and understanding the results of the analysis.

C. RESULTS AND DISCUSSION

1. Constitutional Court (CC)

Constitutional state Indonesia is a with a constitution based on basic legal principles, human values, sovereignty and equality. A rule of law is a state whose government is directed to carry out and serve the basic needs of every citizen without distinction of religion, social level or social strata. The government system is established not with power, but with legal authority or rights and obligations (Qamar, 2018).

As the highest basic law, the 1945 Constitution influences the structure and mechanisms of state administration. According to Jimly Asshiddiqie, the 1945 Constitution contains two strategic conceptual foundations. First, as a basis for the administration and structure of state administration. Mechanisms for sharing power, institutional relations and controlling power are influenced by the 1945 Constitution as the basis for the constitutional structure. Second, as a tool for enacting laws. As the highest Constitution, the 1945 Constitution, the legal provisions contained therein are based on the translation of the 1945 Constitution, and because the authority for translation lies in the 1945 Constitution, the legal provisions contained therein are the same as the 1945 Constitution. They must not conflict (Jimly, 2011).

According to K.C. Wheare (2003), the term "constitution" has two meanings. First, it refers to the constitutional system as a whole, which includes the laws that establish, regulate, or supervise the system of government. These regulations are legal because they are documented in legal documents that serve as a legal basis in court. Second, there are non-legal or extralegal constitutions, such as agreements, customs, or other things that are not considered legal by the courts. This constitution includes formal constitutions and laws.

The CC is a state institution that exercises independent judicial power in administering justice in order to protect justice and law. The Constitutional Court has four authorities regulated based on the 1945 Constitution, namely:

- a. Decide on the first and final level, the decision is final in evaluating the law against the Constitution;
- b. Decide disputes regarding the authority of state institutions based on the Constitution;
- c. Deciding on the dissolution of political parties
- d. Resolve disputes over election results

2. The Authority and Dignity of the CC as Guardian of the Constitution after CC Decision No 90/PUU-XXI/2023

Starting with decision No. 90/PUU-XXI/2023 regarding the Age Limit Requirements for Presidential and Vice-Presidential Candidates, there have been pros and cons among the public. On October 16 2023, the CC read out the decision on the material review regarding Law No. 7 of 2017 article 169 (q) regarding the minimum age of 40 years for presidential and vice-presidential candidates. In reality, the decision contains many irregularities which raise the question of whether this constitutional court is a "Family Court".

The decision of the CC was decided by a non-unanimous vote, because there were concurring opinions and dissenting opinions among the constitutional judges. Some judges were of the opinion that the case should be rejected, others were of the opinion that the case should be granted, and there were even those who were of the opinion that the case should not be accepted. If seen from a legal perspective, there are differences of opinion from the constitutional judges, then the majority judge's opinion should be followed. Changes regarding the substance of decisions are indeed a natural thing, but usually occur over quite a long period of time (Sri P, 2023). So the author is of the opinion, if this happens over a short period of time and creates big questions and concerns about the possibility of interference from other parties who definitely have an interest in decision No. 90/PUU-XXI/2023.

The Constitutional Court decision was submitted by PSI based on a petition registered as case No. 29/PUU-XXI/2023. In this case, PSI requested that the Constitutional Court change the minimum age limit for presidential and vice-presidential candidates to 35 years. The judge rejected the application based on the results of the considerations, because it was deemed unreasonable according to law and also discriminatory. Based on the authority of the CC, determining the minimum age limit for presidential and vice-presidential candidates is not the authority of the CC, but rather the authority of the President/Executive and the DPR/Legislature as legislators. Similar to No. 29/PUU-XXI/2023, the judge also rejected No. 51/PUU-XXI/2023 with the applicant being a representative of the Garuda party and No. 55/PUU-XXI/2023 with the applicant being a number of Regional Leaders.

The only case that was granted by the CC in the Material Review of Article 169 (q) of the Election Law was a lawsuit filed by a student from Solo, namely Almas Tsaqibbirru Re A. The lawsuit was also recorded in case No. 90/PUU-XXI/2023 which contained a petition so that the minimum age limit of 40 years is not binding if the person concerned has experience as a regional head, be it provincial or district/city.

The decision making on the lawsuit filed by Almas was characterized by dissenting opinions by four judges and concurring opinions by two judges. As well as three constitutional judges who have different opinions.

All judges, except the chairman of the Constitutional Court Anwar Usman, attended the Judges' Deliberation Meeting No. 29-51-55/PUU-XXI/2023. As a result of the Judges' Deliberation Meeting, this application was rejected by the judges, with two judges choosing a different opinion. Meanwhile, in decision No. 90-91/PUU-XXI/2023, the chairman of the Constitutional Court was present and a number of judges expressed their support for the alternative model proposed by the applicant. For the author, taking into account the family relationship of Chief Constitutional Court Anwar Usman who is the brother-in-law of the seventh President, Jokowi as the father of Gibran who will be nominated as vice presidential candidate in the 2024 election, this decision damages the dignity of the CC as the guardian of the constitution because it was made before the presidential candidate registration period and vice presidential candidate in the 2024 election.

3. The Honor of the Judiciary in the Constitutional Court (CC)

The dignity of the judiciary in the CC as the Guardian of the Constitution based on the 1945 Constitution was questioned after decision No. 90/PUU-XXI/2023 contained the Age Limit Requirements for Presidential and Vice-Presidential Candidates which the CC ruled on Material Review article 169 (q) Law No. 7 of 2017 regarding elections is read.

Before issuing its decision on Application No. 90/PUU-XXI/2023, the Constitutional Court determined the age limit for presidential and vice presidential candidates based on an open legal policy. Citing several previous decisions regarding age requirements for public office. In several of these policies, the Constitutional Court noted that the 1945 Constitution gives legislative institutions the freedom to determine the lowest age requirements in the applicable law. In fact, on the same day, the Constitutional Court changed its view in case no. 90/PUU-XXI/2023, the Petitioner added another condition, namely "*always or currently holding elected office, including regional elections*".

In this case, the author questions again the concept of open legal policy which has been stipulated in Decision Number 29/PUU-XXI/2023. To avoid circumventing the law, the Constitutional Court (CC) sometimes ignores open legal policies that consider the same arguments in its decisions. Worse yet, the CC stated that the President and DPR accepted the age limit provisions of Article 169(q) in their entirety. The facts in Cases No. 29/PUU-XXI/2023, No. 50/PUU-XXI/2023, and No. 51/PUU-XXI/2023 are cited by the Election Law. When issuing these three decisions, the CC actually ignored the facts of the case.

The inconsistency of the CC in deciding cases is shown by the open legal policy perspective. When the judge compared the lowest age of presidential candidates in several countries, a 40 year old person could become president/vice president if he

met the requirements. The plaintiff had previously used this comparison in Case No.2 29/PUU-XXI/2023, but the Constitutional Court rejected the claim.

Prof. Saldi Isra admitted that the decision made by the Constitutional Justices regarding this incident was unusual and strange, and inconsistent with the Court's decision. In Decision No. 29-51-55/PUU-XXI/2023, the CC clearly stated that the age criteria for letter q of Article 169 are: Law 7/2017, namely the legislative and executive authority to change it. in fact, MK changed this setting within minutes.

Constitutional Justice Sardi Isra said that Anwar Usman, Chief Justice of the CC, was not present at the Judges' Deliberation Meeting on Decision No. 29-51-55/PUU-XXI/2023 and the judges agreed to reject the request, but there were two judges who had different opinions. In case No. 90-91/PUU-XXI/2023, the Chairman of the CC was present before the Judges' Deliberation Meeting and several of the judges changed their stance to agree to the alternative model requested by the applicant. In this application there was a formal defect because the applicant withdrew his application, canceled his intention again, and then sent a letter canceling the withdrawal. The applicant's behavior appears to be playing with the honor of the CC. The Constitutional Court is actually continuing the process and considering in depth the application which has been rejected.

The author believes that this decision will go down in history as a setback for democracy with one of the worst decisions in the history of the CC. This decision was fraught with conflicts of dynastic political interests. No matter how hard the president and his family try to deny it, this decision remains the worst decision in the history of the CC in exercising its final authority according to the 1945 Constitution.

4. The Competence of the CC is Based on the Rule of Law

Based on Law No. 24 of 2003, the duties and functions of the CC are to handle constitutional issues regarding certain constitutional issues to ensure that the constitution is implemented correctly based on the wishes of the people and democratic ideals.

There are functions of the Constitutional Court, including:

- a. Guardian of the Constitution
- b. Final translator of the constitution
- c. Guardian of Human Rights
- d. Guardian of the constitutional rights of citizens
- e. Guardian of democracy

In carrying out its authority, the CC is regulated in Law No. 8 of 2011. The Constitutional Court Law states the duties and functions of the CC, to decide on a lawsuit caused by multiple interpretations of the Constitution. As a judicial institution, the CC has the authority to substantively and formally review legal norms for violations of the constitution. In processing requests for formal review based on Article 51A of the Law on Amendments to the CC, the process of reviewing and making decisions by the CC relies on statutory regulations that regulate how laws are made. In the Procedural Law of the CC, judicial review is regulated in the CC Law

Articles 50 to Article 60, the Law on Amendments to the UUMK and MK Regulation no. 06/PMK/2005 namely Guide to Procedures in Judicial Review Cases.

The duties and functions of the CC, according to the General Review of the Law, are to adjudicate constitutional cases to ensure that the constitution is used fairly and in accordance with the wishes of the people and democratic principles regarding constitutional experiences caused by different interpretations of the constitution.

The CC as a Court of Law has the authority to substantively and formally review legal norms for violations of the Constitution. In processing requests for formal review based on Article 51A of the CC Amendment Law, the CC review and decision will be based on statutory regulations and regulate the procedures for making statutory regulations.

The use of the authority of the CC in decision No. 90/PUU-XXI/2023 has given rise to various opinions from legal experts, one of which is the Professor at the Faculty of Law, Brawijaya University, namely Prof. Dr. M. Ali, S.H., M.H., expressed his opinion regarding Decision No. 90/PUU-XXI/2023, which adds standards that are not in accordance with the initial idea of the decision. Meanwhile, the CC decision granted the request to add new regulations that were previously unregulated or did not exist. In fact, from a scientific point of view, this is not in accordance with the CC authority based on the 1945 Constitution, with the initial concept of the CC existence being to test existing regulations or those proposed by law-forming institutions. If you want to test existing rules, the alternative is to test whether the rules are constitutional or not. That is, if you look at the age of 40, you have to decide whether the age of 40 is constitutional or unconstitutional.

This decision caused controversy because it was considered biased and favored certain parties who were related to the judge in deciding the case. The judge was then proven guilty of violating 5 codes of ethics, namely the principles of impartiality, integrity, thoroughness and skill, independence and appropriateness and decency, which resulted in Anwar Usman's dismissal as chairman of the Constitutional Court.

According to the author, because this is related to the presidential and vice-presidential nomination process, the CC decision cannot be separated from political considerations. It is interesting that the CC decision shows that President Jokowi's son, Gibran Rakabuming, and the Chief Constitutional Court's nephew, Anwar Usman, will benefit from this decision. Because the registration period for presidential and vice presidential candidates is getting closer, this decision cannot be separated from the political context. If the Chief Justice of the CC has a close relationship with the president, this will present a problem because the judge may not be involved in the case being discussed. So, who benefits from this conclusion? Due to the fact that Gibran is President Jokowi's son, the verdict is clearly in his favor.

D. CONCLUSION

Judges are responsible for law enforcement and play an important role in the courts. Justice can be given to people who seek justice through the judicial function of examining, accepting and deciding on expected cases. It is not surprising that a judge

is very responsible for deciding cases under his authority when carrying out and completing his duties. In the decision issued by MK judge No. 90/PUU-XXI/2023, tarnished the reputation of this institution as guardian of the constitution by deciding cases that gave rise to pros and cons among the Indonesian people because they were full of political interests. With the decision issued by the CC no. 90/PUU-XXI/2023, resulted in the chairman of the CC Anwar Usman. must undergo a trial for violating the code of ethics by the Honorary Council of the CC, thus giving rise to a perception of pros and cons among the public that decision No. 90/PUU-XXI/2023 is a political order to pass Gibran as a Vice Presidential Candidate.

The CC as the guardian of the constitution has an important role in a democratic rule of law. In the Indonesian constitutional system, the Constitutional Court essentially functions as the guardian of the constitution, ensuring that the constitution becomes the basis of the state and is consistently enforced in all elements of the state and society. The mandate of the Constitutional Court is to monitor and ensure compliance and implementation of the Constitution, as well as encourage and manage the democratic process in accordance with the Constitution.

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