CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 141/PUU-XXI/2023

Concerning

The Judicial Review of Norms for Minimum Age Requirements for Candidates for President and Vice President Interpretation by the Constitutional Court Decision

Petitioner	:	**Brahma Aryana**
Type of Case	:	Judicial Review of Law Number 7 of 2017 concerning General Elections (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	:	Article 169 letter q of Law 7/2017 as interpreted by Court Decision Number 90/PUU-XXI/2023 is presumed to be contrary to the 1945 Constitution.
Verdict	:	**On the Preliminary Injunction** To declare that the petition for Preliminary Injunction is inadmissible. **On the Merits** To dismiss the Petitioner's petition entirely.
Date of Decision	:	Wednesday, 29 November 2023
Overview of Decision	:	

The Petitioner is an individual Indonesian citizen who feels prejudiced by the norms of Article 169 letter q of Law 7/2017 as interpreted by Court Decision Number 90/PUU-XXI/2023 because, in the decision-making process, there was a serious violation of the Seven Key Principles (*Sapta Karsa Hutama*) committed by one of the constitutional justice. The Petitioner feels that the ethics violation has caused legal uncertainty regarding the constitutional interpretation of Article 169 letter q of Law 7/2017.

Regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of norms of law, *in casu* Article 169 letter q of Law 7/2017 as interpreted by Constitutional Court Decision Number 90/PUU-XXI/2023 against the 1945 Constitution, which is one of the Court's authority, the Court has the authority to hear the *a quo* petition.

Regarding the petition for preliminary injunction, it turns out that the *petitum* of the Petitioner's petition for preliminary injunction, in essence, states that the *a quo* petition for preliminary injunction is only submitted by the Petitioner if the Court does not decide on the subject of the petition after the Petitioner registers a revised Petition. In the *a quo* case, because the Court decides on the subject of the Petitioner's petition as soon as the Petitioner submits the revised Petition without going through a follow-up examination hearing (Plenary), the petition for preliminary injunction becomes no longer relevant for consideration and must be declared inadmissible.

Whereas because the *a quo* petition is clear, under the provisions of Article 54 of the Constitutional Court Law, the Court is of the opinion that it is not urgent nor needed to hear statements from the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas the Court has passed down Constitutional Court Decision Number 90/PUU-XXI/2023, pronounced in a trial open to the public on 16 October 2023. Constitutional Court Decision Number 90/PUU-XXI/2023 above, as well as the Constitutional Court decisions in general, under the provisions of the norms of Article 10 paragraph (1) of the Constitutional Court Law, is a Decision decided by judiciary bodies at the first and last level with a final decision. In addition, under the provisions of Article 47 of the Constitutional Court Law and Article 77 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws (PMK 2/2021), Constitutional Court Decision Number 90/PUU-XXI/2023 has had the permanent legal force since it was pronounced in a plenary session open to the public. Regarding Constitutional Court Decision Number 90/PUU-XXI/2023, linked to the provisions of the norms of Article 10 and Article 47 of the Constitutional Court Law and Article 77 of PMK 2/2021, the Court is of the opinion that the *a quo* Decision is a decision passed down by a judiciary body at the first and last level with a final decision, meaning that a legal action cannot be taken against the decision. This is because, the Constitutional Court as a constitutional judiciary body in Indonesia does not recognize a tiered system which contains the essence of having a judiciary in tiers, in which the judiciary body at a higher level has the authority to make corrections to the decisions of the judiciary body at a lower level as a form of "legal remedy". This is also the case with the nature of Constitutional Court decisions, which are final and have permanent legal force since they are pronounced in a plenary session open to the public. This also confirms that the Constitutional Court decisions are in force and binding and must be obeyed by all citizens, including state institutions since they are pronounced in a plenary session open to the public unconditionally. Therefore, with the application of the provisions as described above, as a juridical consequence, if a legal subject or a certain party has an opinion that, regarding a Constitutional Court Decision, there is still an issue of the constitutionality of norms regarding the constitutionality issues that have been decided or granted by the Constitution Court, then a judicial review of the unconstitutionality of the norms in question may be submitted to the Constitutional Court to the extent it is not prevented by the provisions of Article 60 of the Constitutional Court Law or Article 78 of PMK 2/2021, or be petitioned to have a legislative review by proposing changes to the legislators.

In fact, Article 17 of Law 48/2009 is a provision regulating the realization of an integrated justice system, consisting of the Supreme Court and the judiciary bodies subordinate to it in the general judicature environment, religious judicature environment, military judicature environment, and state administrative judicature environment. Likewise with the Constitutional Court. However, each judiciary body, both the judiciary in the Supreme Court and its subordinate judiciary, as well as the Constitutional Court, in carrying out the duties of its judicial authority, relies on procedural law which regulates the procedures in each special judiciary, each of which has different characters and legal consequences if the procedural law in question is not fulfilled. Thus, if looked closely, the provisions of the norms of Article 17 of Law 48/2009 contain general provisions, and not all provisions in the article in question can be applied in the judicial practice of the Constitutional Court. For example, in the provisions of Article 17 paragraph (6) and paragraph (7) of Law 48/2009. If it is linked to the provisions of Article 10 paragraph (1) and Article 47 of the Constitutional Court Law and Article 77 of PMK 2/2021, then it is evident that such provisions of Article 17 paragraph (6) and paragraph (7) of Law 48/2009 cannot be applied to assess legal consequences on a Constitutional Court decision where there has been a legal event as referred to in other provisions contained in the provisions of Article 17 of Law 48/2009. Because, as previously considered, a Constitutional Court decision is a decision passed down by the judiciary body at the first and last level and has permanent legal force since it is pronounced in a plenary session open to the public. Likewise, the mandate of Article 17 paragraph (7) of Law 48/2009 providing that the cases are re-examined with different compositions of the panel of judges, is a provision that cannot possibly be implemented by the Constitutional Court, because every decision made must be pursuant to the provisions of Article 45 paragraph (4) of the Constitutional Court Law and Article 66 paragraph (3) of PMK 2/2021, which require Decisions to be made by deliberation to reach consensus in plenary sessions of constitutional justices chaired by the chairman of the session. This means that each case must be decided by 9 (nine) or at least 7 (seven) constitutional justices. Thus, the formation of a different panel to re-examine cases as

referred to by Article 17 paragraph (7) of Law 48/2009 cannot possibly be implemented in the Constitutional Court.

Pursuant to the description of the legal considerations, in considering the arguments of the Petitioner's petition, especially regarding the unconstitutionality of norms as argued by the Petitioner, the Court places more emphasis on relying on the Constitutional Court Law which is specific in nature and this is in line with the principle of "*lex specialis derogat legi generali*", namely, the more specific provisions override general provisions because the two provisions have the same equality, taking into account the provisions of Article 17 of Law 48/2009 to the extent they are relevant, *in casu* Article 17 paragraph (1) to paragraph (5) of Law 48/2009 applies generally to the holders of judicial power. Meanwhile, regarding Article 17 paragraph (6) and paragraph (7) of Law 48/2009 as considered above, the norms of this article cannot be applied to the Constitutional Court, which is a court of first and last level. Moreover, there are 9 (nine) Constitutional Justices in the Constitutional Court, and the decision-making must be carried out by 9 (nine) Constitutional Justices or at least by 7 (seven) Constitutional Justices.

After the Court carefully examines the consideration of MKMK Decision Number 2/2023, page 358, stating: “However, Decision 90/PUU-XXI/2023 has become legally effective (*de jure*). In this case, the Ethics Council must and will continue to uphold the principle of *res judicata pro veritate habitur* and may not comment or even review the substance of the relevant decision because the Constitutional Court decision is final and binding.” From the consideration of the MKMK Decision in question, it has been proven and confirmed that the MKMK does not in the least assess that Constitutional Court Decision Number 90/PUU-XXI/2023 is legally flawed, but instead confirms that the Decision in question is legally effective, final, and binding. Therefore, if this is related to the provisions of Article 17 paragraph (6) of Law 48/2009, there is an MKMK Decision that in the conclusion section on page 380 states: 1.) The Ethics Council has no authority to assess a Constitutional Court decision, *in casu* Constitutional Court Decision Number 90/PUU-XXI/2023. 2.) Article 17 paragraph (6) and paragraph (7) of Law 48/2009 cannot be applied in the decisions regarding judicial review of the 1945 Constitution by the Constitutional Court.

This also proves and confirms that the MKMK has an opinion that assessing the validity or invalidity of a decision due to a violation of the code of ethics, especially in relation to Article 17 paragraph (1) to paragraph (5) of Law 48/2009, cannot be applied to assess decisions of judicial review cases at the Constitutional Court include, *in casu* to assess the validity or invalidity of Constitutional Court Decision Number 90/PUU-XXI/2023. By referring to the provisions of Article 17 paragraph (1) to paragraph (5) of Law 48/2009 and MKMK Decision No. 2/2023, the provisions of Article 10 paragraph (1), Article 45 paragraph (4), Article 47 of the Constitutional Court Law as well as Article 66 paragraph (3) and Article 77 of PMK 2/2021, the Court is of the opinion that the Petitioner's argument that Constitutional Court Decision Number 90/ PUU-XXI/2023 contains external intervention, has a conflict of interest, is a legally flawed decision, creates legal uncertainty and contains violations of the principles of the rule of law and the independence of judicial power, cannot necessarily be justified.

Even though it is not included *expressis verbis* in the 1945 Constitution, minimum age requirements to become candidates for president and vice president were one of the discussions in amendments to the 1945 Constitution. Even though it was one of the issues discussed, it was agreed that the minimum age requirements would not be regulated, so it was submitted as material subject to the delegation of Article 6 paragraph (2) of the 1945 Constitution. When placed in a comparative context, the decision to not regulate *expressis verbis* in the constitution is universally acceptable. In this case, referring to the constitutions of other countries, on the one hand, several countries include minimum age requirements to become candidates for president and vice president in their respective constitutions. Meanwhile, on the other hand, several countries do not regulate such minimum limits in their constitutions. Regarding the minimum age requirements, if we refer to the provisions in the constitution after the amendments to the 1945 Constitution, the minimum age requirement was regulated, which was at least 35 (thirty-five) years old, when the general elections of the president and vice president were still separate from the general elections of legislative members, namely in the 2004, 2009 and 2014 General Elections. However, when the general elections for the president and vice president were held together with the general elections for legislative members in a simultaneous general election regime between the general elections of the president and vice president with the general elections for legislative members starting in 2019, the age requirement for candidates of the president and vice president was increased to be at

least 40 (forty) years old. Referring to this empirical perspective, the minimum age requirements to become candidates for president and vice president are open to being "adjusted" according to the needs of the dynamics of the state administration to the extent the adjustment to these dynamics is regulated by law. The Court can understand that many groups want changes, including lowering the age limit for candidates for president and vice president. Given the many variants in question accompanied by various kinds of arguments surrounding them, the Court cannot and will not possibly determine which minimum age requirements can be said to be constitutional for becoming candidates for president and vice president. Therefore, changes to the minimum age requirement, including the possibility of determining the maximum age limit for becoming candidates for president and vice president, are under the authority of the legislators.

Regarding the minimum age requirement of 40 (forty) years that can be referred (correlated) to public office or a state administration position that has been/is currently held by a person to become a candidate for president and/or vice president, after the Court read various provisions of statutory regulations, there are several definitions regarding "state official" or "state administrator". For example, Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion, and Nepotism (Law 28/1999); and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination (Law 40/2008) provide that State Administrators are state officials who carry out executive, legislative or judicial functions and other officials whose main functions and duties are related to state administration in accordance with provisions of applicable laws and regulations (vide Article 1 number 1 Law 40/2008). Meanwhile, under Article 122 of Law Number 5 of 2014 concerning State Civil Apparatus, state officials are the president and vice president; the chairman, deputy chairman and members of the People's Consultative Assembly; the chairman, deputy chairman and members of the House of Representatives; the chairman, deputy chairman and members of the Regional Representative Council; the chairman, deputy chairman, junior chairman and chief justice at the Supreme Court as well as the chairman, deputy chairman and judges at all judiciary bodies except *ad hoc* judges; the chairman, deputy chairman and members of the Constitutional Court; the chairman, deputy chairman and members of the Financial Audit Board; the chairman, deputy chairman and members of the Judicial Commission; the Chairman and deputy chairman of the Corruption Eradication Commission; ministers and ministerial level positions; the heads of the Republic of Indonesia's representations abroad as the extraordinary, full authority ambassadors; the governors and deputy governors; regents/mayors and deputy regents/deputy mayors; and other state officials determined by law. State officials or state administrators cover a very broad definition. In this case, the Court can understand the desire to make a reference to or create an alternative minimum age requirement for candidates for president and vice president. However, because the definition of state officials or state administrators as contained in several statutory regulations is too broad, in order not to give rise to legal uncertainty, the legislators can make or determine definitively which state officials or state administrators can be referred to or correlated to replace the minimum age requirement for candidates for president and vice president.

Juridically, referring or creating alternatives to a minimum age requirement of 40 (forty) years as a requirement for candidates for president and vice president has been agreed by Constitutional Court Decision Number 90/PUU-XXI/2023. Even though there has been a new interpretation of the norms of Article 169 letter q of Law 7/2017, if necessary, the legislators still have the authority to further revise or adjust regarding the elected officials to be referred or correlated to the minimum age for candidates for president and vice president. This adjustment is justifiable so that the positions of the president and vice president are not too far from the elected officials which will be referred to the positions of the president and vice president. This is because the position of the President is the highest position of the governing powers of the state (Article 4 paragraph (1) of the 1945 Constitution), which is important and strategic in a constitutional democratic country with a presidential system. In addition, the President holds a position as head of state and also head of government. Constitutionally, the President's powers are regulated in Chapter III concerning the Governing Powers of the State. In carrying out the duties as the president, If the president passes away, resigns, is discharged, or is not able to conduct his/her obligations, he/she shall be replaced by the vice president up to the expiry of his/her term of office [Article 8 paragraph (1) of the 1945 Constitution]. Therefore, the vice president position has become a substantive, important, and strategic position in a constitutional democratic country that adheres to a presidential system. Considering how substantive, important, and strategic the positions of the president and vice president are, the requirements for becoming candidates for president or vice president must be in accordance with the weight of their

positions. Even though there is no position that is commensurate with the position of the president, at least one must look for a position that is not far away from the position of the president that comes from the results of the general elections (elected officials). For example, lawmakers could consider the position of governor as an alternative to be referred to the minimum age requirements for candidates for president and vice president. Moreover, a province is like a miniature of a country on a lower scale. Each province has a (geographical) area, (demographic) population, and regional government, in this case, the governor together with the provincial regional legislative council. In fact, Article 18 paragraph (1) of the 1945 Constitution provides, "The Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies and municipalities, whereby every one of those provinces, regencies, and municipalities has its regional government, which shall be regulated by laws". Article 18 paragraph (1) of the 1945 Constitution clearly determines regional levels of hierarchy from the largest to the smallest, namely from the Unitary State of the Republic of Indonesia then down to the provincial and then regency/municipal levels. Given the existence of the hierarchy within the levels of government, the minimum age requirements for becoming the president, governor, regent/mayor should be made in stages. The legislators' legal political design that created minimum ages may have been intended to accommodate the possibility of a person pursuing a career path as a regional head starting from the lowest level, namely municipality, regency, and province. This means that when a person becomes a regent or mayor at the age of 25 (twenty-five) years, within 1 (one) period of his leadership as regent or mayor he/she will already be 30 (thirty) years old so that in just one period he/she can contest the Governor election. After 2 (two) terms as the Governor, he/she can contest the Presidential election. Such career levels and stages are important to build in order to provide experience and knowledge in leading an area with its variety of problems so that it is expected that when a regional head raises his leadership status to a higher level, he/she will be very ready and mature. For example, someone who originally serves as the governor then runs to become a candidate for president or vice president. On the other hand, the challenges as the president and vice president are more complicated and complex in the midst of a pluralistic, multi-ethnic, and multicultural Indonesian society with a multitude of problems from political, economic, social, cultural, and security aspects, especially in the rapidly changing global challenges. Therefore, the figures of candidates for president and vice president must be figures who are emotionally mature, physically and mentally competent, and intellectual in thought and must be figures who can be catalysts for unifying the nation. Therefore, changes to the alternative formulation of the minimum age requirements for becoming candidates for president or vice president, if needed, based on reasonable reasoning, would be to have served as the governor, the requirements for which are then determined further by the legislators as part of an open legal policy. The efforts to adjust the minimum age requirements for candidates for president and vice president as stated in Article 169 letter q of Law 7/2017 as interpreted in Constitutional Court Decision Number 90/PUU-XXI/2023, or the efforts to refer to state officials or state administrators, including referring to positions that come from the results of the general elections (elected officials), are still within the realm of the legislators. In this case, the Court needs to emphasize that, in the event that the legislators will adapt to all these options, the changes to Law 7/2017 will be implemented for the 2029 General Election and the general elections after that. Therefore, in the future, if the legislators make changes to the provisions of norms of Article 169 letter q of Law 7/2017 as interpreted in Constitutional Court Decision Number 90/PUU-XXI/2023, they should refer to the criteria for these limitations. Pursuant to the entire series of legal considerations above, it is evident that Article 169 letter q of Law 7/2017 as interpreted by Constitutional Court Decision Number 90/PUU-XXI/2023 is not contrary to the principles of the rule of law and is not contrary to the protection of the right to fair legal certainty as stated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Court is of the opinion that the arguments of the Petitioner's petition are entirely legally unjustifiable.

Accordingly, the Court passed down a decision in which the verdict was as follows:

On the Preliminary Injunction

To declare that the petition for Preliminary Injunction is inadmissible.

On the Merits

To dismiss the Petitioner's petition entirely.