



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 159/PUU-XXI/2023**

Concerning

**The Constitutionality of Aligning the Minimum Age Requirements
for Presidential and Vice-Presidential Candidates with the Interpretation
of the Decision of the Constitutional Court Number 90/PUU-XXI/2023**

- Petitioner** : Yuliantoro
- 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** : The provisions regarding the minimum age requirements for Presidential and Vice Presidential candidates which can be commensurate with the condition that they have previously held elected public positions in Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023, are contrary to the principle of popular sovereignty in Article 1 paragraph (2) of the 1945 Constitution, the requirements to become president and vice president in Article 6 paragraph (2) of the 1945 Constitution, a democratic regional head elections in Article 18 paragraph (4) of the 1945 Constitution, the recognition of specific and special regional government in Article 18B paragraph (1) of the 1945 Constitution, the guarantee of equal position in law and government in Article 27 paragraph (1) of the 1945 Constitution, the guarantee of rights to advance oneself and fight for rights in Article 28C paragraph (1) of the 1945 Constitution, the guarantee of fair legal certainty in Article 28D paragraph (1) of the 1945 Constitution, the guarantee of equal opportunities in government in Article 28D paragraph (3) of the 1945 Constitution, the guarantee of freedom from discriminatory treatment in Article 28I paragraph (2) of the 1945 Constitution, and the guarantee of respect for other people's human rights in orderly social life as stated in Article 28J paragraph (1) of the 1945 Constitution;
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Wednesday, January 31, 2024
- Overview of Decision** :

The Petitioner qualifies himself as an individual Indonesian citizen who has the right to vote in the general elections. With these qualifications, the Petitioner considers his constitutional rights as guaranteed by Article 1 paragraph (2), Article 6 paragraph (2), Article 18 paragraph (4), Article 18B paragraph (1), Article 27 paragraph (1), Article 28C paragraph (1),

Article 28D paragraph (1) and paragraph (3), Article 28I paragraph (2) and Article 28J paragraph (1) of the 1945 Constitution are injured by the enactment of the norms of the articles being petitioned for review;

Regarding the Court's authority, because the petition is submitted to review the constitutionality of norms of law, *in casu* Article Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition of the Petitioner;

Regarding the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has been able to specifically describe his constitutional rights which in his opinion are actually or at least potentially injured by the enactment of the norms being petitioned for review, namely the right to elect a president and vice president who are directly elected by the people in the general election as guaranteed in the 1945 Constitution. Therefore, it is evident that there is a logical connection and causal relationship (*causal verband*) between the presumed injury of the Petitioner's constitutional rights and the enactment of the norms of the article being petitioned for review. Therefore, if the Petitioner's petition is granted, the presumed injury of constitutional rights will not occur. Therefore, regardless of whether the unconstitutionality of the norms of Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to submit the *a quo* petition.

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Before assessing the constitutionality of the norms being petitioned for review, the Court first considers whether the Petitioner's petition can be re-submitted for review or not in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (Constitutional Court Regulation 2/2021). Regarding this matter, the legal norms being petitioned for review in the *a quo* petition has previously been reviewed and decided in the Decision of the Constitutional Court Number 141/PUU-XXI/2023, the Decision of the Constitutional Court Number 145/PUU-XXI/2023, the Decision of the Constitutional Court Number 147/PUU-XXI/2023, the Decision of the Constitutional Court Number 148/PUU - XXI/2023, and the Decision of the Constitutional Court Number 150/PUU-XXI/2023, these four decisions were declared in sessions open to the public on 16 January 2024. After the Court carefully read the previous petitions, it turned out that the *a quo* petition uses different basis for review, namely Article 1 paragraph (2), Article 6 paragraph (2), Article 18 paragraph (4) and Article 18B paragraph (1), Article 28C paragraph (1), Article 28I paragraph (2) and Article 28J paragraph (1) of the Constitution 1945.

Subsequently, regarding the constitutional reasons for the *a quo* Petition, the constitutional reasons for this petition are different because the norm of Article 169 letter q of Law 7/2017 as interpreted in the Decision Number 90/PUU-XXI/2023 does not accommodate the Governor of Special Region of Yogyakarta who is not elected in the general election, it does not accommodate deputy governors, deputy mayors and deputy regents, and it does not accommodate the members of Regional Legislative Council. Therefore, because the basis for review and the constitutional reasons are different, formally, the *a quo* petition may be re-submitted.

Regarding the subject matter of the petition of the Petitioner which states that Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 violates morality, rationality and gives rise to intolerable injustice because it explicitly prohibits, or does not accommodate, namely: *first*, the governor and deputy governor of Special Region of Yogyakarta; *second*, deputy governor, deputy regent and deputy mayor; and *third*, the members of the provincial Regional Legislative Council, the members of the district Regional Legislative Council and the members of the municipal Regional Legislative Council who are under 40 (forty) years of age to be proposed as presidential candidates and vice presidential candidates starting from the 2024 General Election, 2029 General Election and so on, the Court considers as follows:

Whereas substantially the Court has previously considered the things in the argument of the Petitioner in the Decision of the Constitutional Court Number 141/PUU-XXI/2023. Regarding this matter, the legal considerations in Sub-paragraph **[3.14.1]** which substantially states that there are 3 (three) main points related to the minimum age requirement of 40 (forty) years to become a presidential candidate and vice presidential candidate. *First*, the desire to lower the minimum age requirement to lower than 40 (forty) years. *Second*, the minimum age requirement of 40 (forty) years can be commensurate with (become an alternative to) public official that someone has occupied/is currently occupying. *Third*, the minimum age requirement of 40 (forty) years can be commensurate with (become an alternative to) the position previously or currently occupied which was elected through general elections (elected official). From the three main points above, the main issue in the Petitioner's argument is that the governor and deputy governor of Special Region of Yogyakarta, deputy regional heads and members of the provincial Regional Legislative Council and members of the district/municipal Regional Legislative Council have not been accommodated. Regarding the deputy regional heads and members of provincial/district/municipal Regional Legislative Council, the Court has considered the matter in Sub-paragraph **[3.14.1.2]** of the Decision of the Constitutional Court Number 141/PUU-XXI/2023. In these considerations it is clear that the age of 40 years is equated with public official or position of state administrator that someone has occupied or currently occupies as referred to the statutory regulations can be said to be broad and there are differences between the said statutory regulations. However, the positions of governor and deputy governor have been stated clearly in the sub-paragraph **[3.14.1.2]**. This means that the Petitioner's argument which states that the position of "deputy regional head" is not accommodated in the Decision of the Constitutional Court which commensurate the minimum age requirement of 40 (forty) years as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 with the new interpretation which states "must be at least 40 (forty) years of age or have occupied/is currently occupying positions elected through general elections including regional head elections" is a way of interpreting decisions that is not comprehensive. In this case, although Article 18 paragraph (4) of the 1945 Constitution which regulates the governors, regents and mayors as heads of provincial, regency and municipal regional governments respectively is not followed by the positions of deputy governor, deputy regent and deputy mayor, however juridically, a number of laws have interpreted the position of regional head to include the position of deputy regional head. In fact, because deputy regional heads (deputy governor, deputy regent and deputy mayor) are positions which are included as the position of regional head, the Decision of the Constitutional Court Number 141/PUU-XXI/2023 commensurate the minimum age requirement of 40 (forty) years with the regional head and/or deputy regional head as elected official.

Regarding the issue of members of the provincial Regional Legislative Council or district/municipal Regional Legislative Council as understood by the Petitioner in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 which states "must be at least 40 (forty) years of age or have occupied/is currently occupying positions elected through general elections including regional head elections" can be said to be a way of interpreting decisions that is not comprehensive. By using a comprehensive understanding, the phrase "positions elected through general elections" in the verdict of the Decision of the Constitutional Court Number 90/PUU-XXI/2023 covers all officials elected through the general elections. This means that within the limits of reasonable reasoning, the minimum age of 40 (forty) years is equivalent to the position previously or currently occupied which is elected through general election (elected official) and it covers all types of elections, including general elections for members of the provincial Regional Legislative Council and members of the district/municipal Regional Legislative Council. In this case, the Court needs to emphasize on the phrase "including regional head elections" in the *a quo* Decision of the Constitutional Court Number 90/PUU-XXI/2023, it should also be understood as the Court's way of confirming that the phrase "general election" includes the regional head elections. Such confirmation is important because some groups still think that general election does not include the regional head election. Therefore, everyone who has occupied or is currently occupying positions elected through general elections, including regional head elections, refers to the decision of the Constitutional Court Number 90/PUU-XXI/2023, the position is commensurate to 40 years of

age, including the positions of deputy regional head and members of the Provincial Regional Legislative Council and members of the Regency/Municipal Regional Legislative Council.

Regarding the Petitioner's argument that the governor and deputy governor of Special Region of Yogyakarta are not accommodated in the Decision of the Constitutional Court Number 90/PUU-XXI/2023, the Court needs to emphasize that the *a quo* decision must be interpreted as inseparable from the Decision of the Constitutional Court Number 141/PUU-XXI/2023. In this regard, by referring to the legal considerations of sub-sub-paragraph [3.14.1.2] of the Decision of the Constitutional Court Number 141/PUU-XXI/2023, even though the governor and deputy governor of the Special Region of Yogyakarta are not included in the category of elected officials, if this is linked to the meaning of Article 169 letter q of Law 7/2017, the position of governor of the Special Region of Yogyakarta is a position that is included in the group as intended in the Decision of the Constitutional Court Number 90/PUU-XXI/2023. However, because the status of the Special Region of Yogyakarta is a special region as intended in Article 18B paragraph (1) of the 1945 Constitution, the status of the governor and deputy governor of the Special Region of Yogyakarta can be determined and harmonized in accordance with the spirit of the Decision of the Constitutional Court Number 90/PUU-XXI/2023 which was later strengthened by the Decision of the Constitutional Court Number 141/PUU-XXI/2023 which substantially states that the Court transfer the authority to the Legislators.

The Court emphasizes that the efforts to adjust the minimum age requirements for presidential candidates and vice presidential candidates as stated in Article 169 letter q of Law 7/2017 which has been interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023, or the efforts to commensurate the requirements to those of state officials or public official, and including the commensurate positions or alternative positions with the elected official still constitutes the authority of and is in the realm of legislators. In the event that the legislators intend to adopt all these options, the amendment to Law 7/2017 will be implemented for the 2029 General Election and the subsequent general elections.

Whereas the Court considers that there is no relevance in considering the Petitioner's arguments which dispute the Decision of the Constitutional Court Number 141/PUU-XXI/2023 with the Decision of the Constitutional Court Number 90/PUU-XXI/2023 because these arguments are not in the realm of constitutionality review that the Petitioner may submit to Court. Moreover, even if it is true that there has been a shift in the Court's stance regarding the previous Court Decision, *quod non*, this can be justified because the Court is not prohibited from shifting from its previous stance to the extent that there are new, stronger and more fundamental reasons.

Pursuant to the legal considerations above, the Court is of the opinion that the Petitioner's argument which states that Article 169 letter q of Law 7/2017 as interpreted by the Decision of the Constitutional Court Number 90/PUU-XXI/2023, is contrary to the principle of popular sovereignty, the requirements for becoming president and vice president, the democratic regional head elections, the recognition of specific and special regional government, the guarantee of equal position in law and government, the guarantee of the right to advance oneself and fight for rights, the guarantee of fair legal certainty, the guarantee of equal opportunities in government, the guarantee of freedom from discriminatory treatment, the guarantee of respect for other people's human rights in orderly social life as stated in the 1945 Constitution, this argument is legally unjustifiable in its entirety.

Accordingly, the Court subsequently passed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.