

Analysis of the Constitutional Court's Decision Regarding the Age Limit for Presidential and Vice-Presidential Candidates in Connection with the Principle of Nemo Judex in Causa Sua

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ABSTRACT

The purpose of this thesis research is to examine the violation of the principle of Nemo Judex in Causa Sua. The principle of Nemo Judex in Causa Sua by Constitutional Court Judges in Constitutional Court Decision Number 90/PUU-XXI/2023. The research method used in this study is normative juridical research. The approach employed is a legislative approach and a literature study. The data collection tools used are primary, secondary, and tertiary legal materials. The data collection procedure is a document study. The data analysis used is qualitative analysis. The results of the study indicate that there was a violation of the Principle of Nemo Judex In Causa Sua in the determination of the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age limit for Presidential and Vice-Presidential Candidates set by the Constitutional Court. As a Constitutional Court judge, Anwar Usman should have realized that the Constitutional Court Decision Number 90/PUU-XXI/2023 would have an impact on himself and his family. Therefore, as a Constitutional Court judge, he should have resigned in accordance with the Principle of Nemo Judex In Causa Sua, which is one of the fundamental principles in case handling. The application of this principle is very important to ensure that the decision can be reached fairly and without any intervention. The Constitutional Court Decision Number 90/PUU-XXI/2023 is a final and binding decision. Although the decision is final and immediately effective, the Constitutional Court can still be declared "invalid and has no legal force", due to the fact that the decision was not read out in public.

Keywords: *Constitutional Court, Judicial Ethics, Procedural Justice*

1. Introduction

In a country, constitutional law is the highest law, therefore all regulations that apply under it must contain norms that refer to and follow the norms above it or the principle of Lex Superior Derogate Lex Inferiori.¹ To ensure this principle, a mechanism or procedure must be in place to test the constitutionality of every regulation against the constitution. The existence of judicial power is intended to resolve this issue, namely the power to test a norm, or Court of Law. In Indonesia, the institutions authorized to test laws and regulations are the Supreme Court and the Constitutional Court (MK).²

¹ Husnu Abadi, *Pemikiran Kodifikasi Hukum Administrasi Negara Indonesia* (UIR Press, 2004).

² Mardian Wibowo, 'Mahkamah Konstitusi Dan Pengujian Undang-Undang', *Jurnal Hukum IUS QUIA IUSTUM*, 11.27 (2004), pp. 1-6, doi:10.20885/iustum.vol11.iss27.art1.

The Constitutional Court is a judicial institution established to uphold law and justice within its jurisdiction. As an exercise of judicial power, the Constitutional Court has a constitutional function, namely a judicial function aimed at upholding law and justice.³ In the field of state administration, the Constitutional Court is defined as the guardian of the constitution which has the function of upholding constitutional justice in the life of society.⁴ The Constitutional Court has an obligation to promote and ensure that the constitution is respected and implemented by all components of the state consistently and responsibly. The Constitutional Court also plays an interpretive role, ensuring that the spirit of the constitution remains alive and inspires the continuity of national and social life.⁵

In carrying out their duties, Constitutional Court judges must adhere to the applicable principles or principles, one of which is the Principle of *Nemo Judex in Causa Sua*, the principle of *nemo judex in causa sua* means that no one can be a good judge in their case. This means that a judge will not be able to act fairly in cases that concern him or are related to his authority and obligations. Constitutional Court judges are not permitted to try such cases. This principle is in accordance with Article 17 paragraph (5) of Law Number 48 of 2009 concerning Judicial Power, namely "A Judge or Clerk is obliged to withdraw from the trial if he has a direct or indirect interest in the case being examined, either of his own free will or at the request of the litigant." This principle is the core of the article above which is not written directly but its meaning is implied.

As a judge, a judicial institution has a code of ethics that must be adhered to. For institutions under the Supreme Court, the code of ethics for judges is regulated in the Joint Decree of the Supreme Court of the Republic of Indonesia Number 047/KMA/SKB/IV/2009 and the Chairman of the Judicial Commission Number 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Guidelines for Judges' Conduct. For Constitutional Court judges, the code of ethics for judges is regulated in the Regulation of the Constitutional Court of the Republic of Indonesia Number 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Conduct for Constitutional Judges. Since the Decision of the Constitutional Court Number 005/PUU-IV/2006 of 2006 which removed Constitutional Judges from the supervision of the Judicial Commission, supervision of Constitutional Judges has been carried out internally. In fact, the Constitutional Court already has an internal oversight mechanism through the implementation of a code of ethics as regulated in the Regulation of the Constitutional Court No. 07/PMK/2005. However, following the Constitutional Court's ruling, improvements were made, outlined in Constitutional Court Regulation No. 09/PMK/2006 concerning the Implementation of the Declaration

³ Dinda Agustin Wulandari and Winarno Budyatmojo, 'Pengujian Undang-Undang (Judicial Review) Dalam Kewenangan Mahkamah Konstitusi', *Sovereignty*, 1.4 (2022), pp. 692-700.

⁴ M. Husnu Abadi, *Bunga Rampai Politik Hukum: Dari Sistem Pemilihan Umum Sampai Hak-Hak Ekonomi Sosial Budaya*, (CV. Budi Utama).

⁵ Titik Triwulan, *Pokok-Pokok Hukum Tata Negara* (2006).

of the Code of Ethics and Conduct for Constitutional Judges. Alleged violations of the code of ethics for judges will be processed internally by the Constitutional Court, in accordance with Constitutional Court Regulation No. 10/PMK/2006 concerning the Constitutional Court's Honorary Council.⁶

The Constitutional Court (hereinafter referred to as MK) has ruled on a petition filed by Almas Tsaqibbiru Re A, a student, who claimed there had been a violation of his constitutional right to be elected and to vote for presidential and vice-presidential candidates under the age of 40 in the 2024 Election. The applicant is an admirer of Gibran Rakabuming Raka, the Mayor of Solo, who is still 35 years old. The reason put forward by the applicant is age discrimination or ageism. In addition, if someone has been elected and held an executive position, then he has been tested and has experience in leading the region. The applicant feels that if a figure admired by the younger generation cannot register as a presidential candidate, then it is unconstitutional. The Constitutional Court ruled regarding the age limits for presidential and vice-presidential candidates (presidential and vice-presidential candidates) submitted by Almas Tsaqibbiru Re A, namely Constitutional Court Decision Number 90/PUU-XXI/2023. The verdict in the Constitutional Court Decision Number 90/PUU-XXI/2023 is to grant the applicant's request in part and declare that Article 169 letter q of the Election Law is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "being at least 40 years old or having/currently holding a position elected through general elections including regional head elections."

In Constitutional Court Decision Number 90/PUU-XXI/2023, the termination process was deemed to have violated the principle of *nemo iudex in causa sua*. The principle of *nemo iudex in causa sua* states that no one may act as a judge in a case that is related to them.⁷ This means that an individual is not permitted to serve as a judge in a case if there is a conflict of interest. The principle contained in the principle of *nemo iudex in causa sua*, is in line with the provisions contained in Law Number 48 of 2009, Article 17 paragraph (5) concerning Judicial Power, which mandates that a judge is obliged to immediately resign from the trial if the judge has an interest, either directly or indirectly, in the case being handled. This act of resignation can be carried out either on the judge's personal initiative or in response to a request from the parties involved in the case.

The Constitutional Court's decision regarding the age limit for presidential and vice-presidential candidates has sparked negative public reaction, as it was deemed unprocedural, as the then-chief justice, Anwar Usman, was the uncle of the vice-presidential candidate, Gibran Rakabuming Raka. This violated the principle of *nemo iudex in causa sua*, a fundamental principle in the Indonesian

⁶ Ellydar Chaidir, 'Perlunya Pengawasan Terhadap Kode Etik Dan Perilaku Hakim Konstitusi Dalam Rangka Menjaga Martabat Dan Kehormatannya', *Uir Law Review*, 1.2 (2017).

⁷ Riska Ari Amalia, Gatot Dwi Hendro Wibowo, and Kaharudin, 'Konflik Asas Ius Curia Novit Dengan Asas Nemo Iudex in Causa Sua Dalam Putusan Mahkamah Konstitusi Nomor 005/Puu-Iv/2006', *Education and Development*, 3 (2019).

judicial system, particularly within the jurisdiction of the Constitutional Court. This violation has been subject to an examination and decision by the Constitutional Court's Honorary Council (MKMK) based on requests from several parties. In the Constitutional Court's Honorary Council Decision Number 2/MKMK/L/11/2023, the Chief Justice of the Constitutional Court, Anwar Usman, was sentenced to a sanction in the form of dismissal from his position as Chief Justice of the Constitutional Court by the Constitutional Court's Honorary Council.

The imposition of sanctions on Anwar Usman, as Chief Justice of the Constitutional Court, does not automatically annul Decision Number 90/PUU-XXI/2023, even though this decision has clearly proven that in issuing his decision, the Chief Justice of the Constitutional Court, namely Anwar Usman, clearly violated the Code of Ethics for Constitutional Judges and the principle of *nemo iudex in causa sua*. Unlike the Constitutional Court (MK), in the judicial sphere below the Supreme Court, if a judge is proven to have violated the code of ethics that affects his decision, then the parties in the criminal case can file an appeal, cassation, or judicial review. If this principle of *nemo iudex in causa sua* is not fulfilled by the Constitutional Court Justice, this has the potential to cause a very crucial polemic. This incident could result in a loss of public trust in the existence of the Constitutional Court in the Indonesian state system.

2. Research Method

The type of research used is Normative Legal research, namely library legal research, normative legal research includes research on legal principles, research on legal systematics, research on the level of vertical and horizontal synchronization, comparative law, legal history. where this research discusses the principle of *nemo iudex in causa sua* which is violated in the Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the Age Limit for Presidential and Vice Presidential Candidates. The sources used in this decision are primary legal sources, namely the Constitutional Court Decision Number 90/PUU-XXI/2023 and related statutory regulations. Then there are secondary legal sources, namely literature and prior research related to this research.

3. Result and Discussion

3.1. Analysis of the Violation of the Principle of *Nemo Iudex In Causa Sua* in Constitutional Court Decision 90/PUU-XXI/2023 Concerning the Age Limit for Presidential and Vice Presidential Candidates

The Constitutional Court is an institution that holds judicial power, as regulated in Article 1 point 3 of Law Number 48 of 2009 concerning Judicial Power, as well as in Article 1 point 1 of Law Number 8 of 2011 which is the second amendment to Law

Number 24 of 2003 concerning the Constitutional Court. These provisions are the result of a constitutional amendment aimed at establishing the Constitutional Court and granting the institution the rights and authority to uphold the law in Indonesia.

In this case, the Material Review Application listed in case Number 90/PUU-XXI/2023 was filed by a student at Surakarta State University (UNS) named Almas Tssaqibbirru. The applicant stated that based on Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court in conjunction with Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, the applicant is a party who feels that his/her rights and/or constitutional rights have been violated due to the enactment of the law. Based on the applicable laws and regulations, the party entitled to act as the applicant is:⁸

1. Individual Indonesian citizens
2. Customary legal community units, as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law
3. Public or private legal entities, or:
4. State institutions

In the preliminary hearing held on September 5, 2023, it was noted that the applicant was an admirer of the Mayor of Surakarta for the 2020-2025 period, Gibran Rakabuming Raka. In his statement, the applicant assessed that during his leadership, the Mayor of Surakarta had succeeded in increasing economic growth from 1.74 percent to 6.25 percent. Furthermore, according to the applicant, Gibran Rakabuming Raka, who was 35 years old at the time, had been able to build and advance the city of Surakarta by upholding honesty, moral integrity, and adhering to and following his duties in serving the community and the state.⁹

Regarding the Petitioner's legal standing in Constitutional Court Decision Number 90/PUU-XXI/2023, there are several things that need to be understood in determining the Petitioner's legal standing to file his petition with the Constitutional Court. Before that, it is important to explain the Petitioner's role in the Decision. In this case, the Petitioner is a student named Almas Tsaqibbiru from Surakarta University. In his petition, the Petitioner granted special power of attorney to several advocates. The petition submitted relates to Article 169 letter q of Law Number 7 of 2017 concerning the age limit for presidential and vice presidential candidates.¹⁰

Despite a number of issues related to Legal Standing, the Constitutional Court remains

⁸ Raji, Agatha Augustin, and Frangky Jonatan, 'Analisis Putusan Mahkamah Konstitusi Nomor 90/PUU/XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden', *JLEB: Journal of Law Education and Business*, 2.2 (2024).

⁹ Agung Bahayu Adji, 'Konstitusionalitas Perubahan Usia Calon Presiden Dan Calon Wakil Presiden Dalam Negara Hukum Demokrasi', *Jurnal Riset Ilmiah*, 1 (2024).

¹⁰ Arya Arpiansyah, Lauddin Marsumi, and Salmawati, 'Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Batas Usia Calon Presiden Dan Calon Wakil Presiden Republik Indonesia', *Journal Lex Philosophy (JLP)*, 5.2 (2024).

of the opinion that the applicant in case Number 90/PUU-XXI/2023 meets the requirements as an applicant and recognizes the applicant's legal standing, regardless of whether the arguments submitted can be proven or not. The applicant explains that his constitutional rights have been impaired due to the enactment of a Law, namely Article 169 letter q of Law Number 7 of 2017 concerning General Elections. In this case, the applicant states that he is an Indonesian citizen, as can be proven through his Identity Card (KTP), and explains his status as a student. In addition, the applicant is also a voter in the 2024 Election and has the potential to run for President or Vice President. Thus, regarding the constitutional loss faced by the applicant related to the petitioned Article, there is a clear causal relationship.¹¹

In relation to the object of the petition, namely Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections which regulates provisions regarding the age requirements for presidential and vice-presidential candidates, this can be categorized as a form of open legal policy. The applicant understands that the authority to regulate the age limit for presidential and vice-presidential candidates is not regulated in the constitution. Therefore, the regulation regarding the age limit for presidential and vice-presidential candidates is an open legal policy granted to the legislators. Thus, the Constitutional Court needs to understand that the determination of the age limit for presidential and vice-presidential candidates is the result of a legal policy made by the legislators, where the choice of the legislators in this case is not prohibited and does not conflict with the 1945 Constitution. However, in Constitutional Court Decision Number 7/PUU-XI/2013, it is stated that the authority regarding the age limit will be the responsibility of the Constitutional Court if there are issues related to constitutionality.¹²

In connection with the judicial review of Article 169 letter q of Law Number 7 of 2017 concerning General Elections, the Constitutional Court has decided the case through Decision Number 90/PUU-XXI/2023, with the following ruling:

1. Granting the applicant's request in part;
2. Declaring that Article 169 letter q of Law No. 7 of 2017 concerning General Elections, which states "at least 40 years old," is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "at least 40 years old or has/is currently holding a position elected through general elections including regional head elections," so that the full contents of Article 169 letter q of Law No. 7 of 2017 concerning General Elections read "at least 40 years old or has/is currently holding a position elected through general elections including regional head elections";
3. Ordering the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

¹¹ Muhammad Ridho Prima Ndaru, *Analisis Legal Standing Pemohon Tentang Syarat Calon Presiden Dan Wakil Presiden Perspektif Hukum Acara Mahkamah Konstitusi* (Studi Putusan Mahkamah Konstitusi Nomor: 90/PUU-Xxi/2023, Skripsi (Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri, 2024).

¹² 'Putusan Mahkamah Konstitusi Nomor: 90/PUU-XXI/2023'.

In the Constitutional Court's decision, the principle of *Nemo Judex In Causa Sua* was violated in the Constitutional Court's Decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and vice-presidential candidates. This can be seen in Judge Saldi Isra's opinion, which questioned the involvement of Judge Anwar Usman, the Chief Justice of the Constitutional Court, in the determination of Constitutional Court Decision Number 90/PUU-XXI/2023.

It should be noted that in the Constitutional Court Decision Number 29-51-55/PUU-XXI/2023, there was no involvement of Judge Anwar Usman in making the decision, so that the 8 judges at that time unanimously decided that the age limit for Presidential and Vice Presidential Candidates was an open legal policy.

The principle of *Nemo Judex In Causa Sua* states that a judge is prohibited from making decisions that are directly or indirectly related to his or her own interests. This principle aligns with the principles of impartiality and independence in the judicial system. In Constitutional Court Decision Number 90/PUU-XXI/2023, there was a violation of the principle of *Nemo Judex In Causa Sua*, where Judge Anwar Usman had a conflict of interest. This became clear from the petition filed by the applicant, an admirer of Gibran Rakabuming Raka, who is Judge Anwar Usman's nephew.

As a Constitutional Court judge, Anwar Usman, who should be aware that the Constitutional Court Decision Number 90/PUU-XXI/2023 will have an impact on himself or his family, as a Constitutional Court judge, should resign in accordance with the principle of *nemo judex in causa sua*, which is one of the very important principles in handling the case of the Constitutional Court Decision Number 90/PUU-XXI/2023 so as to ensure that this decision is a fair decision and without any intervention.

At the time, Chief Justice of the Constitutional Court, Justice Anwar Usman, firmly pressured his fellow Constitutional Court justices to grant the petition regarding Constitutional Court Decision Number 90/PUU-XXI/2023. This action can be seen as a violation of the principles of integrity, as well as propriety and decency, which resulted in the petition being approved against Constitutional Court Decision Number 90/PUU-XXI/2023.

Violation of the Principle of *Nemo Judex In Causa Sua* under the jurisdiction of the Supreme Court implies that the resulting decision can be considered invalid. This refers to the provisions of Article 17 Paragraph (5) of Law Number 48 of 2009 concerning Judicial Power, which states that a judge who does not recuse himself from the trial when he has a direct or indirect interest in his case, either based on his own will or at the request of the litigants, can result in the decision being null and void by law. In this case, the injured party has the right to file a legal remedy in the form of an appeal with a different composition of the panel of judges.

If a Constitutional Court judge does not recuse himself from a case in which he is deemed to have an interest, either directly or indirectly, in accordance with the principle of *nemo judex in causa sua*, this will only create problems for the Constitutional Court judge himself. This problem can refer to a violation of the Code of Ethics which has the potential to result in the heaviest sanction, namely dismissal

as a Constitutional Court judge. However, this will not affect the decisions taken by the Constitutional Court. This is due to the characteristics of Constitutional Court decisions which are final and binding, so that the decision remains valid and must be implemented by all parties, even if in the process of making it there is a violation of the Code of Ethics by the Constitutional Court judge.

3.2. Analysis of the Legal Impact on Constitutional Court Judges in Constitutional Court Decision Number 90/PUU-XXI/2023 Linked to the Principle of *Nemo Judex In Causa*

In the implementation of the Constitutional Court's procedural law, particularly in decision number 90/PUU-XXI/2023, there are a number of provisions that must be observed, particularly regarding the behavior of Judges. This is in line with the provisions of Article 17 paragraph (3) of Law Number 48 of 2009 concerning Judicial Power. Such behavior can be considered a violation of the judge's code of ethics, considering that a judge is prohibited from trying parties who have family ties. Based on Article 17 paragraph (3) of the Law in question, it is stated that a judge is required to recuse himself from the trial if he has a blood or marriage relationship up to the third degree, or has a husband or wife relationship even though they are divorced, with the chairman, one of the member judges, the prosecutor, the advocate, or the clerk. Therefore, in this context, the definition of family includes blood or marriage relationships up to the third degree, as well as husband or wife relationships even though they have divorced. Thus, the Chief Justice of the Constitutional Court should take steps to recuse himself from the process of resolving this problem to avoid a conflict of interest in decision-making, which is feared could have implications for unprofessionalism and injustice. Judge Anwar Usman's involvement in the hearing of Decision Number 90/PUU-XXI/2023 directly raises allegations of a conflict of interest. As the uncle of Gibran Rakabuming Raka, a presidential candidate who could potentially benefit from the Constitutional Court (MK) ruling, Anwar Usman is in a position that raises doubts about his impartiality in adjudicating this case.¹³

Decision Number 90/PUU-XXI/2023 is a violation of the court of law and the court of justice, this violation of the court of law is in the form of granting the applicant's request regarding the minimum age limit requirement for presidential and vice-presidential candidates of 40 years with the addition of an alternative requirement in the form of experience as a regional head, this is a violation of the court of law because the requirements for presidential and vice-presidential candidates are an open legal policy which is the authority of the legislative body, so the Constitutional Court does not have the authority to amend Article 169 letter q of Law Number 7 of 2017 concerning General Elections.

A violation of the court of justice occurred when the Chief Justice of the Constitutional

¹³ Agus Susanto, 'Kewenangan Judisial Badan Pengawas Pemilu Dalam Perspektif Asas *Nemo Judex in Causa Sua*', *MLJ Merdeka Law Journal*, 1.2 (2020).

Court, Anwar Usman, was involved in the handling of Decision Number 90/PUU-XXI/2023. In this situation, Anwar Usman was a consciously interested party, both directly and indirectly. This resulted in a violation of the Constitutional Court's code of ethics and the principle of *nemo iudex in causa sua*, a fundamental principle of the judicial system.

In the context of the principle of *nemo iudex in causa sua*, Anwar Usman's participation in the decision raises serious questions about the integrity of the judicial process. His presence could give the impression that the decision taken by the Constitutional Court in this case has the potential to be less than entirely objective or fair, due to the possibility of personal or family influences. Therefore, Anwar Usman's involvement in the hearing of decision Number 90/PUU-XXI/2023 is considered contrary to the principle of *nemo iudex in causa sua* and violates the provisions of Article 17 paragraph (5) of Law Number 48 of 2009 concerning Judicial Power. This raises doubts about the fairness of the judicial process that should be guaranteed by a judicial institution such as the Constitutional Court.¹⁴

In the Constitutional Court's Honorary Council's decision No. 2/MKMK/L/11/2023, Judge Anwar Usman was clearly proven to have violated the principle of impartiality, based on concrete evidence. The principle of impartiality stipulates that a Constitutional Justice must recuse himself from examining a case if he is unable, or is deemed unable, to act impartially. This is especially true for specific reasons, including if the Constitutional Justice or a member of his family has a direct interest in the decision.

Judge Anwar Usman has clearly violated the Principle of Integrity, which states that every judge's behavior and actions during the court process and in the decision of a case should not raise public suspicion that there is interference from other parties that could disrupt the enforcement of law and justice. Judge Anwar Usman's participation in adjudicating and deciding the case concerning the age limit requirements for presidential and vice-presidential candidates does not reflect his efforts to prevent public suspicion of his involvement in efforts to facilitate the candidacy of his nephew. As a result, public suspicion of the Reported Judge's involvement in deciding the case reinforces the perception that justice is not being upheld properly. As a result, public trust in the image and authority of the Constitutional Court has sharply declined.

In the Constitutional Court's Honorary Council decision Number 2/MKMK/L/11/2023, Anwar Usman was found to have committed a serious violation of the Constitutional Court's Code of Ethics and Conduct. These violations relate to the principles enshrined in the *Sapta Karsa Utama*, namely the Principle of Impartiality, the Principle of Integrity, the Principle of Competence and Equality, the Principle of Independence, and the Principle of Appropriateness and Courtesy.

¹⁴ Amran Anshary Kelilauw and Zuhad Aji Firmantoro, 'Analisis Legal Standing Dan Konsistensi Putusan Mahkamah Konstitusi Dalam Pengujian Materiil UU Nomor 7 Tahun 2017 Tentang Pemilihan Umum: Studi Kasus Putusan No. 90/PUU-XXI/2023', *Jurnal Ilmu Hukum, Humaniora, Dan Politik*, 2 (2024).

Furthermore, the Honorary Council also imposed a sanction in the form of dismissal from the position of Chief Justice of the Constitutional Court on Anwar Usman as Chief Justice of the Constitutional Court.

The Constitutional Court's decision, issued several days before the closing of registration for presidential and vice-presidential candidates, created a new problem for the General Elections Commission (KPU). At that time, the KPU accepted the registration and confirmed Gibran Rakabuming Raka as vice-presidential candidate. The Election Organizers' Honorary Council (DKPP) ruled that the chairman and members of the General Elections Commission (KPU) had violated the code of ethics regarding their follow-up to the Constitutional Court's (MK) ruling on the age limit for presidential and vice-presidential candidates. The DKPP stated that the actions of the chairman and members of the KPU were constitutional, but inconsistent with the administrative procedures for the election stages. The KPU's actions, from accepting the registration and confirming Gibran Rakabuming Raka (Gibran) as vice-presidential candidate, were deemed inappropriate because the KPU had not revised KPU Regulation Number 19 of 2023 concerning the Nomination of President and Vice President (PKPU Number 19 of 2023). Thus, Gibran's registration should not be accepted because KPU Regulation Number 19 of 2023 still stipulates that candidates must be at least 40 years old. In other words, the KPU must immediately draft changes to the KPU Regulation and consult with the Indonesian House of Representatives and the government through a hearing as stipulated in Article 75 paragraph (4) of Law Number 7 of 2017 concerning Elections (UUPemilu).

Constitutional Court Decision Number 90/PUU-XXI/2023 is a final decision. The final nature of a Constitutional Court decision means that the decision immediately obtains permanent legal force from the moment it is pronounced and no other legal filings can be made. The final nature of a Constitutional Court decision also includes binding legal force (final and binding). According to Sri Soemantri, a final decision must be binding and cannot be overturned by any institution. Therefore, if a decision is declared final, it must also be accompanied by a binding nature to provide legal certainty.

If a violation of the code of ethics occurs in connection with Constitutional Court Decision No. 90/PUU-XXI/2023, this will only impact the judge in question at the Constitutional Court. Currently, there are no provisions governing legal remedies, such as a request to annul the Constitutional Court's decision. As stated by Sri Soemantri, the final nature of the Constitutional Court's decision is that it has binding legal force and cannot be overturned by any institution.

In contrast to the Constitutional Court, violations of the code of ethics that occur within the legal environment of the Supreme Court are regulated by Article 17 paragraph (5) of Law Number 48 of 2009 concerning Judicial Power. In this case, if a judge does not recuse himself from the trial when he has a direct or indirect interest in the case being examined, either of his own free will or at the request of the litigant, then the decision is considered invalid. Legal remedies that can be taken in this situation include appeal, cassation, or judicial review with a different composition of the panel of judges.

This creates a difference in legal remedies against decisions in the Constitutional Court and the Supreme Court. There should be legal remedies against decisions in the Constitutional Court if the judge who tried is proven to have violated the code of ethics, this is in accordance with Article 17 paragraph (7) of Law Number 48 of 2009 concerning Judicial Power, which explains that violations of cases where the judge or clerk has a direct or indirect interest in the case, the decision can be re-examined with a different composition of the panel of judges. The Constitutional Court also applies Law Number 48 of 2009 concerning Judicial Power in carrying out its trials in accordance with Article 24 paragraph (2) of the 1945 Constitution, so that the Constitutional Court should be able to take legal remedies against decisions that are proven to have violated the code of ethics against the judge who tried the case against the decision.

Regarding the final and binding decision, in accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution, it is regulated as follows "The Constitutional Court has the authority to adjudicate at the first and final level, the decision of which is final, to test the Law against the Constitution". Denny Indrayana, one of the reporters in the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023, is of the opinion that the final and binding decision is a legal principle. However, every legal principle has exceptions. With this in mind, exceptions to a legal principle must be very limited, logical, and accountable.

One method that creates exceptions to a legal principle is through legal discovery (*rechtsvinding*). This often occurs when there is a legal vacuum (*rechtsvacuum*). In this context, it is important to understand the meaning of the concept of judge-made law, which is a characteristic of the common law system but has also become an integral part and is applied in civil law systems, including in Indonesia. Exceptions to the final and binding principle of Constitutional Court decisions are necessary, considering that some decisions exceed reasonable limits and are flawed beyond tolerance. If left unchecked, this has the potential to damage the dignity, authority, and honor of the Constitutional Court itself.

Despite its finality and immediate effect, the Constitutional Court's decision can still be declared "invalid and without legal force." This is due to the absence of a public reading of the decision and the possibility of a conflict of interest experienced by the judge in handling the case. This situation is known as judicial disqualification or recusal, which is regulated in Article 17 Paragraphs (5) and (6) of Law Number 48 of 2009 concerning Judicial Power.

Denny Indrayana also argued that the mechanism for declaring a Constitutional Court decision invalid must be carried out carefully and precisely. The Constitutional Court should issue a declaration of invalidity through a re-examination of the same case. This re-examination cannot be considered a violation of the *ne bis in idem* principle, as it essentially constitutes a correction to the initial examination, which was attended by judges with conflicting interests.

Thus, the Constitutional Court Decision Number 90/PUU-XXI/2023 should be able to

be re-examined in accordance with the reasons for the Exception to the final and binding principle regarding the Constitutional Court's decision and in accordance with the provisions contained in Article 17 Paragraph (7) of Law Number 48 of 2009 concerning Judicial Power.

4. Conclusion

The Constitutional Court (MK), in case No. 90/PUU-XXI/2023, has decided to amend Article 169 letter q of Law No. 7 of 2017 concerning General Elections, which relates to the minimum age limit for presidential and vice-presidential candidates. The Constitutional Court partially granted the applicant's request by interpreting the age requirement as an alternative criterion, allowing candidates under the specified age but with experience as regional heads to run. Although there were dissenting opinions from several Constitutional Court judges, this decision is final.

The Constitutional Court's decision in case Number 90/PUU-XXI/2023 decided to amend Article 169 letter q of Law Number 7 of 2017 concerning Elections, which regulates the minimum age limit for presidential and vice-presidential candidates. This decision raises the potential for a conflict of interest, as reflected in the involvement of Anwar Usman as Chief Justice of the Constitutional Court, who has a relationship with Gibran Raka Bumi Raka. Therefore, this decision is considered to benefit Gibran Raka Bumi Raka, who has the potential to become a presidential and vice-presidential candidate, which in turn contradicts the principle of *nemo iudex in causa sua*. This is reinforced by the issuance of the Constitutional Court's Honorary Council decision No. 2/MKMK/L/11/2023. Anwar Usman was proven to have committed a serious violation of the Code of Ethics and Conduct of Constitutional Judges with the sanction of dishonorable dismissal as Chief Justice of the Constitutional Court.

5. References

- Agung Bahayu Adji, 'Konstitusionalitas Perubahan Usia Calon Presiden Dan Calon Wakil Presiden Dalam Negara Hukum Demokrasi', *Jurnal Riset Ilmiah*, 1 (2024)
- Agus Susanto, 'Kewenangan Judisial Badan Pengawas Pemilu Dalam Perspektif Asas Nemo Iudex in Causa Sua', *MLJ Merdeka Law Journal*, 1.2 (2020)
- Amalia, Riska Ari, Gatot Dwi Hendro Wibowo, and Kaharudin, 'Konflik Asas Ius Curia Novit Dengan Asas Nemo Iudex in Causa Sua Dalam Putusan Mahkamah Konstitusi Nomor 005/PUU-IV/2006', *Education and Development*, 3 (2019)
- Amran Anshary Kelilauw, and Zuhad Aji Firmantoro, 'Analisis Legal Standing Dan Konsistensi Putusan Mahkamah Konstitusi Dalam Pengujian Materiil UU Nomor 7 Tahun 2017 Tentang Pemilihan Umum: Studi Kasus Putusan No. 90/PUU-XXI/2023', *Jurnal Ilmu Hukum, Humaniora, Dan Politik*, 2 (2024)
- Arpriansyah, Arya, Lauddin Marsumi, and Salmawati, 'Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Batas Usia Calon

- Presiden Dan Calon Wakil Presiden Republik Indonesia”, *Journal Lex Philosophy (JLP)*, 5.2 (2024)
- Aryo Wasisto, ‘Dampak Pelanggaran Kode Etik Penyelenggaraan Pemilu Terhadap Kepercayaan Publik’, *Pusaka*, 16.3 (2024)
- Ellydar Chaidir, ‘Perlunya Pengawasan Terhadap Kode Etik Dan Perilaku Hakim Konstitusi Dalam Rangka Menjaga Martabat Dan Kehormatannya’, *Uir Law Review*, 1.2 (2017)
- Husnu Abadi, *Pemikiran Kodifikasi Hukum Administrasi Negara Indonesia* (UIR Press, 2004)
- M. Husnu Abadi, *Bunga Rampai Politik Hukum: Dari Sistem Pemilihan Umum Sampai Hak-Hak Ekonomi Sosial Budaya*, (CV. Budi Utama)
- Muhammad Ridho Prima Ndaru, *Analisis Legal Standing Pemohon Tentang Syarat Calon Presiden Dan Wakil Presiden Perspektif Hukum Acara Mahkamah Konstitusi* (Studi Putusan Mahkamah Konstitusi Nomor: 90/Puu-Xxi/2023, Skripsi (Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri, 2024)
- ‘Putusan Mahkamah Konstitusi Nomor: 90/PUU-XXI/2023’
- Raji, Agatha Augustin, and Frangky Jonatan, ‘Analisis Putusan Mahkamah Konstitusi Nomor 90/PUU/XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden’, *JLEB: Journal of Law Education and Business*, 2.2 (2024)
- Titik Triwulan, *Pokok-Pokok Hukum Tata Negara* (2006)
- Wibowo, Mardian, ‘Mahkamah Konstitusi Dan Pengujian Undang-Undang’, *Jurnal Hukum IUS QUIA IUSTUM*, 11.27 (2004), pp. 1–6, doi:10.20885/iustum.vol11.iss27.art1
- Wulandari, Dinda Agustin, and Winarno Budyatmojo, ‘Pengujian Undang-Undang (Judicial Review) Dalam Kewenangan Mahkamah Konstitusi’, *Sovereignty*, 1.4 (2022), pp. 692–700