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Ratio Decidendi of Supreme Court Decision No. 23 P/HUM/2024 on Judicial Review of Age Requirements for Candidates for Governor

Yensi Prasilia¹, Ahmad Rustan², Nur Nashriani Jufri³, Adi Muliawansyah Malie⁴.

¹Muhammadiyah Kendari University, Indonesia, yensyyazid@gmail.com

²Muhammadiyah Kendari University, Indonesia, ahmad.rustan@umkendari.ac.id

³Muhammadiyah Kendari University, Indonesia, nur.jufri@umkendari.ac.id.

⁴Airlangga University, Indonesia, adimuliansyahmalie@gmail.com

Corresponding Author: ahmad.rustan@umkendari.ac.id²

Abstract: Regional elections are a means of exercising popular sovereignty that allows citizens to directly elect leaders at the regional level while providing legitimacy to democratically elected governments. In their journey, political elites often use various methods to become contestants or to prevent their political opponents from competing by changing various legal rules that are considered ‘obstructing’ their political goals through judicial review (JR) at the Supreme Court against regulations under the law. This study aims to analyse the ratio decidendi of Supreme Court Decision No. 23 P/HUM/2024 which changes the age requirement for nominating regional head candidates from the age when they are determined as candidates by the KPU to the inauguration requirement. This research is a type of legal research using 2 (two) types of legal approaches, namely statute approach and conceptual approach. The results showed that the ratio decidendi in the case considered the importance of providing opportunities for the younger generation to participate in the political process and the human rights aspect that age restrictions can be considered a violation of individual political rights. This consideration is a real mistake considering that the position of the judge in deciding JR cases at the Supreme Court acts as a Negative Legislator who is limited to making an assessment of whether the regulation that is the object of the test is contrary to the law as the touchstone? Textually, the KPU regulation that is the object of the test is still in line with the Law so that the petition should be rejected.

Keyword: Ratio Decidendi, judicial review, Supreme Court.

INTRODUCTION

The election of Governors and Deputy Governors in Indonesia is one of the concrete manifestations of the implementation of democracy at the regional level that allows people to choose leaders who will run the government in their area. In line with the principles of democracy, the mechanism of regional head elections is regulated through various strict

regulations, one of which is Law No. 10/2016 on Regional Head Elections (Pilkada). The law stipulates various requirements for candidates for governor and deputy governor, including a minimum age requirement of 30 years. This minimum age requirement is not just a number, but is based on the belief that a candidate for regional leader must have sufficient maturity, experience, and capacity to manage the government, handle the complexity of public issues, and make strategic decisions for the benefit of the people (Nunung Puji Rahayu and Adhitya Widya Kartika, 2023).

However, through Decision No. 23 P/HUM/2024, the Supreme Court changed this interpretation. In this decision, the Supreme Court stated that the minimum age requirement of 30 years does not have to be fulfilled at the time of candidate determination, but rather at the time of inauguration. This decision created a polemic among the public and academics, especially among constitutional law experts. Some argue that this change in interpretation has the potential to provide a loophole for candidates who have not met the age requirement at the time of nomination, but will reach it before the inauguration. This is considered to open up the possibility of manipulation and provide political benefits for certain parties who take advantage of the uncertainty of enforcing these rules (Ega Adriansyah, 2024).

Strong criticism of this decision came from various groups, including constitutional law experts such as Bivitri Susanti and Titi Angraini. Bivitri Susanti emphasised that this decision has the potential to undermine the basic principles of fair and open political competition. According to her, the age requirement is part of the mechanism that ensures equality among candidates, so this change in interpretation could disrupt the integrity of the electoral process. Furthermore, she underlined that the provisions regarding when the requirement must be met should have been clear and consistent from the start, to prevent legal uncertainty that could potentially affect the overall election results (Ady Thea Dea, 2024).

Titi Angraini, an election observer who also criticised the decision, highlighted the aspect of legal uncertainty resulting from this change in interpretation. According to her, the electoral process, which consists of various stages from nomination, determination, campaign, to election and inauguration, must be regulated with high legal certainty. When basic requirements such as age do not have a clear time for fulfilment, this can create uncertainty in the entire election process. In addition, he also highlighted the potential negative impact on the legitimacy of election results, where the ruling could give a disproportionate advantage to certain candidates.

Furthermore, this change in interpretation by the Supreme Court raises questions about the limits of the judiciary's role in interpreting technical electoral regulations. The extent to which the Supreme Court has the authority to change or interpret administrative and technical provisions, such as age requirements, is a contentious issue. According to some, the interpretation of technical requirements such as age should be under the authority of the executive rather than the judiciary, in this case the KPU, which is in charge of organising elections. This transfer of authority is considered to create an imbalance in the division of roles between the EMB and the judiciary (Baron de Montesquieu, 2021).

In a broader context, Supreme Court Decision No. 23 P/HUM/2024 can also be seen as part of the dynamics of the development of electoral law in Indonesia. This decision shows that the technical aspects of electoral regulations can still be the subject of serious debate, especially when it comes to legal certainty and fairness in the electoral process. Therefore, it is necessary to conduct a more in-depth study to understand the legal implications of this decision, both in terms of the principles of legal certainty, justice in political contestation, and its impact on stability and public confidence in the democratic process.

In accordance with the description of this background, the focus of the problem to be studied is the ratio decidendi of Supreme Court Decision No. 23 P/HUM/2024 which changes

the age requirement for the nomination of regional head candidates from the age when they are determined as candidates by the KPU to the inauguration requirement. The research is important to be revealed to provide a prescription of how the case should be decided by the Supreme Court in a Judicial Review case. This analysis is also expected to contribute to the development of election regulations that are more consistent, fair, and able to guarantee legal certainty in the future.

METHOD

This research uses a normative juridical method by combining several approaches, namely the statute approach, conceptual approach, and case approach, pendekatan konseptual (conceptual approach), dan pendekatan kasus (case approach) (Peter Mahmud Marzuki, 2010). Melalui Through a statutory approach, this research analyses in depth various relevant regulations, such as Law No. 10/2016 on the Election of Governors, Regents, and Mayors, General Election Commission (KPU) Regulation No. 9/2020 on Stages, Programs, and Schedules of Regional Head Elections, and Supreme Court Decision No. 23 P/HUM/2024 which is the main subject of the study. In addition, a conceptual approach is used to understand and examine relevant legal concepts in the context of regional head elections, including the concepts of democracy, political rights, and age limits for regional head candidates. (Hargono, et al, 2024). This approach aims to dig deeper into the juridical, political, and social implications of the decision (Hargono, et al, 2024).

The case approach is conducted by examining Supreme Court Decision No. 23 P/HUM/2024 in the context of applicable laws and regulations and the political dynamics in Indonesia. This approach allows the research to see the application of the law in concrete terms, as well as identify the practical impact of the decision on the implementation of regional elections and the political rights of the community. Through this case analysis, the research is able to further explore the conflict of law aspects and long-term implications of the age requirement for regional head candidates stipulated in the decision (Mukti Fajar and Yulianto Achmad, 2010).

RESULTS AND DISCUSSION

T Age Requirements for Candidates for Governor and Deputy Governor in Regional Head Elections

Age requirements for candidates for regional heads are an important aspect of election arrangements in various countries. In Indonesia, the age requirement for regional head candidates is regulated in Article 7 paragraph (2) letter e of Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law, which states that regional head candidates must be at least 30 years old for candidates for governor and deputy governor and 25 years old for candidates for Regent and Deputy Regent as well as candidates for Mayor and Deputy Mayor. Meanwhile, in Article 4 paragraph (1) letter d of the Regulation of the General Election Commission of the Republic of Indonesia Number 9 of 2020 concerning the Fourth Amendment to the Regulation of the General Election Commission Number 3 of 2017 concerning Nomination for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors, the age requirement of 30 years for Candidates for Governor and Deputy Governor is calculated from the determination of candidate pairs.

In other countries, such as the United States, the age requirement for gubernatorial candidates varies from state to state. Most states set a minimum age of 30 years old, similar to Indonesia, but some set a lower minimum age, such as 25 years old (Makhya, S, 2023). This shows that despite similarities in basic principles, the implementation of age

requirements can differ depending on the political and social context of each state. In the context of regional head elections in other countries, such as in Australia, the age requirement for regional head candidates is also set at 18 years, but with additional conditions regarding citizenship and residence (Sherman, R, etc al, 2013). This shows that while there are similarities in age requirements, other factors such as citizenship and experience are also important considerations in the nomination process. This aims to ensure that candidates have sufficient experience and maturity to lead.

The age requirement for candidates for Governor and Deputy Governor was eventually changed from being calculated at the time of the determination of candidate pairs to at the time of inauguration. The change was based on the result of JR at the Supreme Court based on Decision No. 23 P/HUM/2024. The decision has significant implications in the context of election law in Indonesia, not only being a technical issue, but also touching fundamental aspects of constitutional law.

In the context of the constitution, Article 28D of the 1945 Constitution gives every citizen the right to participate in elections, including running for public office. This article guarantees that everyone has the right to fair recognition, protection and legal certainty before the law. The age requirement in the law aims to ensure that candidates for office have sufficient maturity and experience. The age of 30 for gubernatorial candidates and 25 for regent or mayoral candidates is considered a relevant indicator in assessing emotional maturity and leadership competence.

The new Supreme Court Decision provides a new interpretation of the age requirement calculated from the time of inauguration. This more flexible interpretation opens up opportunities for individuals who are not old enough at the time of registration but will reach the required age at the time of inauguration. This change has the potential to provide greater space for the political participation of younger generations, but also raises concerns regarding fairness for candidates who have previously qualified under the old rules.

This new interpretation also raises debates about the consistency of the application of electoral rules. Some parties, such as academics and legal experts, claim that this change could disrupt electoral order and create legal uncertainty. Titi Anggraini, an academic from the University of Indonesia's Faculty of Law, said that a too-narrow understanding of the stages of regional elections could ignore the importance of the determination of candidates by the KPU as part of a continuous electoral process. Changing the age reference from candidate determination to inauguration can also have an impact on the technical implementation of Pilkada, creating uncertainty for candidates who have met the requirements from the start (Ady Thea Dea, 2024).

In her view, Anggraini emphasised the importance of maintaining legal certainty in every stage of the election. Regional head elections are a complex process and each stage plays an important role in ensuring the legality of candidates. Therefore, changes in interpretation by the Supreme Court must be understood in the context of the entire election, so as not to damage the continuity of the stages set by the KPU. Similar criticism came from Bivitri Susanti, an expert in constitutional law, who suggested that changes in legal policies related to the stages of the election should be done carefully to prevent prolonged polemics.

In the context of constitutional law, this change raises discussions about the principles of due process of law and legal certainty. The principle of due process demands that there be transparent and fair legal procedures for all parties involved, including regional head candidates. Fundamental changes such as the age requirement can create legal uncertainty that harms the principle of justice. Candidates should have a clear understanding of the electoral rules from the outset, so that they can plan their steps without facing uncertainty or sudden changes in the interpretation of the rules (Atip Latipulhayat, 2017).

Legal certainty is a key pillar of the legal system, ensuring that laws are applied consistently and predictably. When the Supreme Court gives a more lenient interpretation to the age requirement, it could undermine the legal certainty that candidates and the public at large rely on. Too flexible an interpretation of the law risks creating ambiguity and inconsistency, which in turn can reduce public confidence in the legal system and the electoral process.

The broader impact of this change in interpretation may also affect the integrity and credibility of the electoral process. Elections as instruments of democracy must be run with transparency and accountability. Clear requirements are a key element to keep elections fair. Uncertainty as to when age requirements must be met, whether at the time of the determination of candidates by the KPU or at the time of inauguration, can open up room for manipulation in the nomination process. Candidates who have not actually qualified at the time of registration may continue to compete in the hope of qualifying at the time of inauguration, creating an imbalance in the competition (Abdul Latif, 2010).

This lack of clarity may also lead to protests and legal disputes from candidates who feel aggrieved by the rule change. Those who have prepared according to the old rules may file a lawsuit, fuelling legal and political instability in the electoral context. Changes in the interpretation of the age requirement therefore affect not only individual candidates, but also the entire electoral process and the legal system more broadly.

The change in interpretation of the minimum age requirement by the Supreme Court from at the time of nomination to at the time of inauguration shows inconsistency in the application of the law which has the potential to cause confusion and legal uncertainty. Law No. 10/2016 has clearly stipulated that the minimum age must be met at the time of nomination, so this change in interpretation is considered contrary to the principle of legal certainty. In the context of constitutional law, the provisions of the electoral stages should remain consistent to maintain public confidence in the electoral system. Such changes also affect due process of law, as candidates who have qualified under the old rules may feel disadvantaged. Fair and transparent procedures are essential elements in elections, so sudden changes in nomination rules create unfairness and disrupt fair political competition.

The Supreme Court's decision, on the one hand, provides more opportunities for youth participation in politics, which is in line with the socio-political push to engage more young leaders. However, this must be done carefully so as not to create uncertainty in the electoral rules. The flexibility of interpretation applied must be balanced with the principle of fairness, so as not to disadvantage candidates who comply with the rules from the outset. Uncertainty regarding when the minimum age requirement must be met also has the potential to trigger legal disputes and reduce the integrity and credibility of elections. Consistency in rule enforcement is essential to maintain public confidence in the democratic system, where unpredictable changes can create unfairness in political competition and undermine the stability of the electoral process.

Ratio Decidendi in the Supreme Court Decision and its Implications for Political Dynamics and Legal Certainty

The Supreme Court Decision No. 23 P/HUM/2024 not only created a significant shift in legal interpretation, but also generated a wave of criticism and controversy from various circles, especially constitutional law experts such as Bivitri Susanti and Titi Anggraini. Both highlighted that this decision created confusion regarding legal certainty and potentially opened up opportunities for political motives to influence judicial decisions. They emphasised that the Supreme Court, as the highest judicial institution, has a responsibility to ensure consistent and unchanging legal stability, especially regarding nomination requirements that are an important part of the democratic process. The critique also focuses

on the fundamental question of the KPU's authority as an independent election organiser and whether the Supreme Court overstepped the boundaries of its authority by interpreting the nomination requirements for regional heads, which should be under the authority of the KPU.

From the perspective of constitutional law theory, the Supreme Court should act as a guardian of the constitution and law enforcer that maintains consistency, clarity, and certainty in the application of the law. However, with the decision to change the age requirement for nomination from at the time of nomination to at the time of inauguration, there are concerns that the Supreme Court has exceeded its role. This becomes even more problematic as it interferes with the legislature, which has the authority to set electoral requirements through law. This change in legal interpretation also weakens the authority of the KPU as an institution whose role is to interpret and apply the technical rules governing the nomination process in elections. Thus, uncertainty arises regarding the boundaries of authority between the judiciary and the executive in the context of elections, which in turn can undermine public confidence in an electoral system that is expected to run independently and transparently (Jimly Asshiddiqie, 2006).

The political implications of this decision are also very significant, especially in the context of the 2024 elections, which are dynamic and highly influenced by local political interests. With the change in interpretation regarding the age of candidacy, the Supreme Court opens space for candidates who previously did not meet the age requirements at the time of registration to continue to compete, even though they only meet the requirements at the time of inauguration. This can be utilised by certain political actors to manipulate the nomination process. Criticisms raised by Bivitri Susanti and Titi Anggraini state that this decision blurs the line between law and politics, where juridical considerations can be dragged down by political calculations. Ultimately, this decision could weaken the principle of the rule of law and transparency in the organisation of elections.

From the point of view of legal certainty, this decision has the potential to create a dangerous precedent. Legal certainty is one of the fundamental principles in a rule of law that serves to maintain stability, clarity, and predictability in the application of the law. If basic requirements such as the age of candidacy can be altered or reinterpreted through sudden judicial decisions, then this opens the door for greater uncertainty in the entire electoral process. The public, candidates and political parties will no longer be able to rely on clear and fixed rules, as interpretations may change at any time, depending on court decisions. This can ultimately create uncertainty that undermines legal stability and undermines the basic principles of democracy.

Furthermore, this decision also creates significant polemics related to the principle of separation of powers between the judiciary and the executive, especially in terms of the technical regulation of elections. In a healthy democratic system, the judiciary should maintain its independence by not interfering in technical matters that are the domain of the executive authority, in this case the KPU as an independent election organiser. The Supreme Court's decision to change the nomination requirements for regional heads raises deeper questions about the extent of the judiciary's role in interpreting technical electoral rules, and whether this is in line with the principle of checks and balances in government. If the judiciary oversteps the bounds of its authority and interferes with the executive, such as in the technical regulation of elections, this could create instability in the conduct of elections and weaken public confidence in the independence of state institutions (Mahfud MD, 2009).

This view is in line with the absence of application of the Purcell Principle, a legal principle derived from the *Purcell v. Gonzalez* decision in the United States, which emphasises that changes to electoral rules should not be made too close to the election date to prevent confusion and disruption to the conduct of elections already underway. By not applying this principle, the Supreme Court's decision to change the interpretation of the age

of candidacy for regional heads could cause confusion, and even injustice, for candidates who have complied with the previous rules. The Purcell Principle underlines the importance of maintaining the stability of electoral rules so that they are not changed abruptly, especially in the run-up to an election, in order to ensure a fair, predictable and reliable electoral process for all parties involved (Zainal Arifin Mochtar, 2023).

Supreme Court Decision No. 23 P/HUM/2024 has serious implications for the principles of separation of powers and rule of law in Indonesia. The change in interpretation of the age requirement for nomination from 'at the time of nomination' to 'at the time of inauguration' shows that the Supreme Court has stepped into the area of technical authority that should be the authority of the KPU as the election organiser. This not only fuelled legal uncertainty but also weakened the principle of checks and balances, where the judiciary is expected to act as a watchdog over the rule of law without actively involving itself in executive affairs. When the judiciary is involved in changing technical electoral rules, especially ahead of the 2024 elections, this has the potential to create wider instability and reduce public confidence in the integrity of state institutions. Furthermore, by ignoring the Purcell Principle, which emphasises that electoral rules should not be changed close to the election, this decision increases the risk of confusion among candidates and the public regarding electoral requirements, potentially disrupting a fair and transparent electoral process.

A look at the Ratio decidendi in Supreme Court Decision No. 23 P/HUM/2024 shows that: First, the judges considered the importance of providing opportunities for the younger generation to participate in the political process, which is in line with the spirit of reform and democratization in Indonesia. Second, the judges also considered human rights aspects in this decision. In several studies, there are arguments that age restrictions can be considered a violation of individual political rights. Therefore, the Supreme Court in its decision attempted to balance the interests of the law and human rights, as well as provide space for the younger generation to contribute to governance

Both of the judge's considerations are incorrect. Article 1 paragraph (3) of Perpu No. 1/2014 on the Election of Governors, Regents, and Mayors stipulates that a candidate for Governor is an election participant proposed by a political party, a coalition of political parties, or an individual who registers or is registered at the Provincial General Election Commission. Furthermore, Article 5 paragraph (1) regulates that the election is conducted through 2 (two) stages, namely the preparation stage and the implementation stage, in which there is one stage, namely the determination of candidates for Governor, Regent, and Mayor Candidates by the Provincial KPU. The authority of the Provincial KPU in organizing the Governor Election (Pilgub) begins with the registration of Candidates for Governor to the proposal for the ratification of the appointment of elected candidates. Meanwhile, the inauguration is an executive domain that is regulated separately through Presidential Regulation No. 16/2016 concerning Procedures for the Inauguration of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors. Thus, the inauguration of elected candidates in the Pilgub is not included as part of the Pilgub stage, so that the requirements to be determined as a candidate for Governor must be fulfilled first in accordance with the stages of determining candidates determined by the KPU

The petitioner in the case a quo is the Garda Republik Indonesia Party (Garuda Party) arguing that Article 4 paragraph (1) letter d of KPU Regulation No. 9/2020 is contrary to higher legislation, namely Law No. 10 of 2016. This argument will be tested by the Supreme Court whether the content material in the KPU Regulation is contrary to the Content Material in the Law? The Supreme Court's decision must be supported by strong and rational legal arguments so as not to cause polemics in the community, especially since the JR was carried

out when entering the Pilgub stage, which in the end there was a fundamental change in the interpretation of candidate requirements.

With the change in the interpretation of the age requirement of the Governor candidate calculated from the inauguration, it creates legal uncertainty for various reasons. First, the Pilgub stages may shift according to the stage schedule set by the KPU due to disputes, riots, or natural disasters so that the stages must be delayed which of course will also affect the inauguration schedule so that verification of the fulfillment of the requirements as a candidate pair for regional head becomes difficult to measure. Article 7 in Law No. 10 of 2016 is very clear that what is regulated is the requirements for candidates for Governor, Regent Candidates, and Mayoral Candidates and does not at all regulate the inauguration. Second, the substance submitted by JR regarding the age requirements of candidates regulated in the Pilkada Law and PKPU is very clear and does not cause multiple interpretations. Provisions related to candidate requirements are matters that must be fulfilled before being determined as a candidate and verification of their fulfillment when determined as a candidate, which is the authority of the KPU as the organizer of Pilkada. Meanwhile, the inauguration is the formal authority of the President, which is technically controlled by the Minister of Home Affairs as stipulated in Presidential Regulation No. 16/2016, in which there is no longer the status of regional head candidates who have changed to become elected Regional Heads. Third, considerations from the human rights aspect are also inappropriate if they are considered to inhibit community participation. The age requirement can be seen as a measure to ensure that the proposed candidates have sufficient capacity to carry out their responsibilities as regional leaders. This is in line with democratic principles that emphasize the importance of active participation from individuals who have the capacity to make decisions that impact on people's lives (Dewi and Dinie Anggraeni, 2021).

Constitutionally, Article 28 J of the 1945 Constitution stipulates that “In exercising his rights and freedoms, every person shall be subject to restrictions established by law with the sole purpose of ensuring recognition and respect for the rights and freedoms of others and of meeting just demands in accordance with moral considerations, religious values, security and public order in a democratic society”. This provision clearly stipulates that rights and freedoms are subject to any restrictions imposed by legislation. The 30-year age requirement for candidates for Governor is not discriminatory against certain groups or groups. All people have equal access to participate as candidates as long as they fulfill the requirements that have been set.

CONCLUSION

Based on the results of the analysis and description in this study, it shows that the ratio decidendi in Supreme Court Decision No. 23 P/HUM/2024 is a logical fallacy in interpreting the age requirement for candidates for Governor, which was originally calculated from the time they were appointed as candidates, to be calculated from the time of inauguration. At the time of the inauguration, the position of the candidate for Governor changes to the elected Governor so that there is no longer a candidate for Governor. With the birth of the Supreme Court Decision, it creates legal uncertainty regarding the age requirements of candidates when verifying the fulfillment of the requirements at the time of registration of candidates for Governor by the KPU. From the aspect of authority, the stages of registration and determination of candidates for Governor are the authority of the KPU, while the installation of the Governor is the authority of the President, which is technically carried out by the Minister of Home Affairs. From the aspect of human rights, all people are subject to restrictions as stipulated in Article 28 J of the 1945 Constitution. For this reason, in the case a quo, the Supreme Court should have rejected the JR petition filed by the Garuda Party considering that the position of the judge in the JR case as a Negative Legislator is limited to

assessing whether the regulation that is the object of the test is contrary to the Law as the touchstone or not. Not expanding the norms set out in the law.

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