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# Analysis the Supreme Court Decision and the Constitutional Court Decision Regarding the Age Limit for Regional Head Candidates

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**Abstract:** This study purpose to analyze a decision made by Constitutional Court Number 70/PUU-XXII/2024 and the decision made by Supreme Court Number 23 P/HUM/2024 Relate to the age limit for a region head candidates. In the context of the hierarchy of norms in Indonesia, the dualism of authority to examine laws and regulations by the Supreme Court and the Constitutional Court often leads to conflicts of substance. The study used in this research is a type of normative juridical research method by approaching the law and case studies to assess whether there is a conflict of norms and legal vacuum. The results show that there are differences in interpretation between the two institutions regarding the minimum age of candidates for regional heads, which has an impact on legal uncertainty. To overcome this problem, it is necessary to reform the mechanism for testing statutory instruments, including the proposal for a single test at the Constitutional Court or the addition of norms to the Supreme Court Law regarding the validity of decisions in the event of changes in statutory norms. Research with the title analysis of this is expected to be a contribution to the optimization of the legal system in Indonesia.

**Keyword:** Constitutional Court, Supreme Court, Testing of Laws and Regulations, Age Limit for Regional Head Candidates.

## INTRODUCTION

As a form of implementation of the constitutional mandate that mandates the Indonesian state as a state of legal sovereignty as legal sovereignty, as defined in Article 1, paragraph (3) of Indonesia's 1945 Constitution, Indonesia has regulated how to run the life of the nation and state through several regulatory instruments (Hadi, 2022). The regulatory instruments are prepared based on the adaptation of Hans Kelsen's thought which states that higher norms can form and serve as a source of norms below them (Muhammad Fadli Efendi, 2022). The implementation of Hans Kelsen's thought can be seen in the provisions of Law No. 12/2011 on

the Establishment of Legislation which regulates the hierarchy of regulatory instruments, especially in Indonesia.

Along with the hierarchy in the regulation of Laws and Regulations, there are consequences of potential conflicts between the regulations themselves. Such a thing can result in the absence of legal certainty in society, especially if a Legislation is related to the authority of an institution, where legal certainty is one of the objectives of the establishment of a regulation (Prayogo, 2016). In an effort to overcome the problem of legal conflicts in the hierarchy of existing regulations in Indonesia, the State on the basis of the constitution as stipulated in Article 24 of the 1945 Constitution gives special authority directly to institutions engaged in judicial power to provide a decision through a regulatory review mechanism (Mikraj et al., 2024).

Jimly Asshiddiqie in his book on judicial review of legislation explains that in the context of US law, the term judicial review refers to legal action to challenge or test three types of legal norms, namely *regeling* (regulations), *beschikking* (decisions), and *verdicts* (decisions) through judicial channels. In the context of judicial review, especially those involving the authority of the court, the term review means to see, assess, or re-examine. When a law has been passed, the review is referred to as judicial review.

In practice, there are 2 judicial power institutions authorized to conduct a regulatory review in Indonesia (Satriawan, 2022). the first is the Constitutional Court. as mentioned in the Indonesian constitution that the constitutional court is authorized to, among others, test whether a law is constitutional, give a decision when there is a dispute between state institutions, dissolve a political party through its decision, and handle cases in the field of elections relating to the results of the general election itself.

In addition to the authority mentioned above, there is another authority which according to Palguna, the authority is more dominant as an obligation, namely giving a decision related to alleged violations by state leaders if the House of Representatives gives its opinion (Palguna, 2018).

The second is the Supreme Court. The Supreme Court, when accumulated, is given the authority to adjudicate at the last level, namely cassation, provide decisions related to testing legislation where the law is the material for consideration, provide consideration if there is an application for clemency from a convict, resolve problems that fall under the authority of the lower courts, provide advice or advice relating to law to state officials, supervise the lower courts and manage the Supreme Court as an organization.

Although it has been divided in such a way, in practice there are still conflicting decisions as a result of the substance that is tested to the Constitutional Court and the Supreme Court. Most recently in 2024, there was a conflicting decision between the decision number 23 P/HUM/2024 that made by the supreme court and decision number 70/PUU-XXII/2024 made by Constitutional Court regarding when a candidate for a regional leader must meet the minimum age limit for candidates in the regional election. In the Supreme Court's decision read out on May 29, 2024, the Panel of Judges interpreted that a candidate for regional head must meet the minimum age to become a regional head as stipulated in the Pilkada Law at the time of inauguration. Meanwhile, in the Constitutional Court decision read out on August 20, 2024, the Panel of Judges interpreted that when viewed historically, a candidate for regional head must meet the minimum age to become a regional head at the time of being determined as a candidate for regional head after fulfilling the requirements in order to be determined as a candidate for regional head.

With the different interpretations in two decisions that made by the constitutional Court and the supreme Court regarding when a candidate for a regional leader must meet the age limit requirements as stipulated in the law on regional elections, there is no legal certainty among the wider community. Based on the dynamics that occur, this study suppose to analyze both

decisions decided by the constitutional court and decided by the supreme court relating to the limit of an age of candidates for regional heads.

## **METHOD**

The author in preparing this article uses a legal research method that is also commonly used, namely normative juridical. That is, research on Legislation whose main focus is to analyze whether there has been a conflict of norms and a vacuum of norms. Meanwhile, in terms of approach, the approach that the author takes during this research is a legal approach by looking at how the arrangements related to the authority of state institutions, especially the power engaged in the judiciary, which has the authority to conduct a test of the instruments of existing laws and regulations in Indonesia and also a case approach which in this case is related to the conflict between rulings issued by the Supreme Court and the Constitutional Court.

## **RESULTS AND DISCUSSION**

As mentioned in the introduction, the Supreme Court and the Constitutional Court are connected due to the hierarchy of regulatory instruments. Which both are given the authority to examine the regulatory instrument in accordance with the level of authority. Although the authority granted to the supreme court and the authority granted to the constitutional court have been divided, Jimly Ashidiqie provides several important notes regarding the division of duties of the Constitutional Court and the Supreme Court in Indonesian constitutional practice (Isra, 2020).

The first note is that the division of authority to review regulatory instruments given to the Constitutional Court and the Supreme Court does not go in the same direction as the concept of separation of powers adopted by the post-Amendment Indonesian constitution. The second note is the potential for conflicting decisions as a result of testing the same substance. The second note is the potential for conflicting decisions as a result of testing the same substance.

Specifically for the second note, normatively, there has actually been an effort to prevent it with the norm provisions of Article 55 of the Constitutional Court Law, which implies that if there is a review of regulatory instruments at the Supreme Court and the law under consideration is being tested at the Constitutional Court, then the ongoing review process at the Supreme Court “must be stopped”, whose meaning was later changed through Decision Number 93/PUU-XV/2017 issued by the Constitutional Court, to “must be postponed” until there is a decision from the Constitutional Court (Isra, 2015). However, the norm in the above provision only refers to situations where the Supreme Court has not issued its decision. Thus, despite the norm as mentioned above, there will still be a potential conflict between the decision issued by the Supreme Court and also the decision issued by the Constitutional Court which causes a lack of legal certainty.

Since the presence of the Supreme Court which was later followed by the Constitutional Court, when looking at past events, several decisions from both of them prove that there have been conflicting decisions as a result of examining interrelated substances. Such as the case that occurred in 2009 where there were conflicting decisions relating to the number of votes of political parties (kompas.com, 2009). Then in 2018 related to the nomination of a member of a political party in the contestation of the regional representative council election (Syarif, 2023). The latest, as mentioned in the introduction, is that in 2024 there was another conflicting decision due to the testing of interrelated substances, namely related to the age limit of regional head candidates.

To better understand the problems that occur in a series of conflicting decisions between the decisions made by Supreme Court and decision made by Constitutional Court regarding to the limit of an age of candidates for regional heads, the author will present the results of the author's analysis of how the position of the constitutional Court and the position of the supreme

Court in giving a decisions related to the age limit of candidates for regional heads based on decisions that have been issued by both as follows:

### **Constitutional court decision**

1. The object of the test conducted is to examine the constitutionality of the norm provisions of Article 7 paragraph (2) letter e of Law 10/2016 against the 1945 Constitution;
2. The main problem highlighted in this decision is the absence of a minimum age "calculation mechanism" norm, which causes multiple interpretations between the court "since the determination of the candidate pair" and "since the inauguration";
3. The legal approach taken is Constitutional: the principle of legal certainty
4. The main principle to be considered is the constitutional rights of citizens;
5. The verdict given is Stating that the minimum age of a candidate for regional head must be met at the time of being appointed as a candidate for the leadership of a region;

### **Supreme Court Decision**

1. The object of the test carried out is to examine the material conformity of the regulations stipulated by the KPU regarding the mechanism of regional head elections against Law Number 10/2016 which is a guideline in the implementation of a regional head election;
2. The main problem with this decision is that the phrase "minimum age is calculated since the determination of the candidate pair" is considered to add requirements that are not regulated in Article 7 paragraph (2) letter e of Law 10/2016, so that the Supreme Court indirectly takes the role of the legislature in its decision because it creates a new norm situation.
3. The Supreme Court in its legal approach to its decisions takes a more legalistic approach by looking at the suitability of technical regulations;
4. The main principle to be considered is the hierarchy of laws;
5. The decision given was that the Supreme Court stated that the minimum age requirement of a candidate for a regional leader is calculated not at the time of determination, but at the time of the inauguration of the elected pair of regional leader candidates. The norm in the General Election Commission Regulation is considered invalid to the extent that it contradicts the law.

From the description above, we can see that there are conflicting decisions between the Supreme Court and the Constitutional Court. In the Supreme Court's decision, the Panel of Judges interpreted that a candidate for regional head must meet the minimum age to become a regional head as stated in the Regional Head Election Law at the time of inauguration. While the Constitutional Court in its decision, the Panel of Judges interpreted that historically, a candidate for regional head must meet the minimum age to become regional head at the time of being determined as a candidate for regional head after fulfilling the requirements to be determined as a candidate for regional head.

The following are some of the implications of conflicting decisions caused by testing of interrelated substances in the Supreme Court and the Constitutional Court that the author can present:

1. For the candidates, the decision made by Supreme Court provides room for candidates who are only eligible at the time of inauguration, but has the potential to create uncertainty during the nomination process. Meanwhile, the decision made by Constitutional Court is more to emphasize the need for clear rules so that candidates understand when age is calculated, avoiding conflicts of interpretation.
2. For the General Election organizers, the Supreme Court Decision annulled the provisions in the General Election Commission Regulation, so the Election Commission must revise the technical rules and this has been done by the Election Commission. Meanwhile, the

Constitutional Court stated the need to revise the law to avoid multiple interpretations so that there would be no repetition of the same dynamics in the future.

3. For the electoral system, the decision made by Supreme Court only focused on the hierarchical conformity of legal norms, but did not consider the practical implications. While the decision of the Constitutional Court emphasizes the importance of organizing democratic and legally certain elections.

In addition to what has been explained previously, there are things that are quite interesting during the analysis process related to the note by Jimly Ashidiqie as mentioned above is related to the division of testing authority. The Supreme Court in its decisions uses the 1945 Constitution as its touchstone in addition to the competence to review granted by the 1945 Constitution. In its decision on page 60 and page 61, the Supreme Court twice used the 1945 Constitution as its consideration.

In its reasoning, the Supreme Court stated that the opinion submitted was in accordance with the main idea contained in Article 6 paragraph (2) of the 1945 Constitution, which stipulates that the requirements to become President and Vice President must be further determined by law. This affirms that in the Indonesian constitutional system, the most fundamental regulation is regarding state organs and the officials who occupy them.

Furthermore, the Supreme Court argued that philosophically, the spirit contained in Article 6 paragraph (2) of the 1945 Constitution emphasizes the importance of regulating state organs and the officials holding those positions. Therefore, the meaning of the minimum age for positions in the Indonesian constitutional law system should be understood as the age at which the individual is appointed and authorized by the state to carry out government duties, with all the rights and obligations attached to the position as a state organ or state official (Supreme Court Decision No. 23 P/HUM/2024 pp.60-61).

The Supreme Court through the decision has exceeded the limits of its authority and taken the authority of the Constitutional Court, which should only use the Law as a legal consideration in testing legal instruments (Fauzan, 2017).

The purpose of giving the authority to examine a regulation to the Supreme Court and the Constitutional Court is to provide justice, usefulness, and legal certainty. However, the existence of several contradictions caused by different interpretations of the Supreme Court and the Constitutional Court has certainly eliminated the essence of the original purpose of granting this authority, namely the aim of providing legal certainty.

By looking at the dynamics that have occurred, there have been many proposals from Constitutional Law Experts in Indonesia. the proposal that quite often appears to the public is that the testing of regulatory instruments be carried out in the Constitutional Court only. The proposal given is by seeing that the Constitutional Court is an institution authorized to interpret the constitution (Wijoyo et al., 2020). In addition, there are other advantages that will be obtained if the proposal from constitutional law experts is implemented, namely the Supreme Court can focus on its duty to adjudicate the person (person) and the Constitutional Court can also focus on its duty as an institution that adjudicates norms (Shakti et al., 2023).

However, the proposal has yet to be implemented. The non-implementation of the proposal from the constitutional law experts above is not without reason, because to implement the plan, the 1945 Constitution must first be amended. The question is whether it is currently possible to make amendments? This is because in the past 10 years, the issue of amending the constitution has often arisen, but until now there has never been an amendment since the 4th amendment to the constitution which was carried out last in 2002 (Mas, 2018).

With the uncertainty of whether amendments can be made, in the author's opinion, in an effort to overcome the dynamics of testing regulatory instruments in the Constitutional Court and the Supreme Court, there are other alternatives that do not require amendments to the constitution. As the author has stated previously, the Law on the Constitutional Court has

contained a norm that anticipates that there will be no substantive conflict in the examination of regulatory instruments in the Constitutional Court and the Supreme Court.

However, the norm only accommodates if the Supreme Court has not issued a decision related to the Right to Material Test, so that if the Supreme Court issues a decision there will still be substantive conflicts that result in legal uncertainty. With such a situation, in the opinion of the author, there has been a legal vacuum, especially in the Supreme Court Law regarding decisions in the Right to Materil Test whose test stone is the Law. Because in Indonesian constitutional practice, laws more often undergo changes or additions in meaning either directly by the legislature or through Constitutional Court decisions.

Therefore, in the opinion of the author, there is a need for additional norms in the Law on the Supreme Court to accommodate if the test in this case is the law that has changed. The addition of the norm in question is "The Supreme Court's decision is final as stated in article 9, and the Supreme Court's decision applies as long as there are no changes in norms or new interpretations of the law that is the test stone". So that with the addition of these norms, it can accommodate if there is a susbtantive conflict between the Supreme Court and the Constitutional Court regarding which decision later must be followed. Because with the addition of the norm as mentioned above, it also confirms the norm contained in Article 55 of the Constitutional Court Law that the Supreme Court's decision regarding the examination of regulatory instruments also depends on the decision of the Constitutional Court.

## CONCLUSION

The main issue of concern is the difference in interpretation between the two institutions, where the Supreme Court in Decision No. 23 P/HUM/2024 decided that the minimum age of regional head candidates is calculated at the time of inauguration, while the Constitutional Court in Decision No. 70/PUU-XXII/2024 determined that the minimum age is calculated at the time of candidate determination. This difference creates significant legal uncertainty, especially because both decisions are final and binding, and there is no legal mechanism that clearly determines which decision must be followed. Thus, the author highlights the weaknesses of the legal system in Indonesia, especially in regulating the dualism of authority to review laws and regulations.

Overall, through this article the author emphasizes the importance of revamping the legal system in Indonesia to achieve better legal certainty. The conflicting decisions between the Supreme Court and the Constitutional Court not only reflect weaknesses in the regulation of the authority of the two institutions, but also show the urgency to strengthen inter-institutional synergy in supporting the rule of law. The proposed reforms can be the first step towards creating a more effective, fair and consistent system of judicial review of laws and regulations.

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