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Analysis Dissenting Opinion and Concurring Opinion in Decision MK No.90/PUU-XXI/2023 Perspective Siyasah Qadhaiyyah

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Abstract: In the Constitutional Court Decision NO. 90/PUU-XXI/2023, which discusses the age limit for presidential and vice-presidential candidates, there are several discrepancies in the trial process. This is due to two constitutional judges presenting different arguments but reaching the same conclusion (Concurring Opinion) and four constitutional judges expressing differing opinions (Dissenting Opinion). There is an anomaly where the two judges with Concurring Opinions should be more appropriately categorized under Dissenting Opinions. If we examine the reasoning of the two judges with Concurring Opinions, it can be assessed that their arguments lean more towards the Dissenting Opinion, but their opinions shifted to the part that granted the request. The problem formulation to be discussed includes, first, how to analyze the Dissenting Opinion and Concurring Opinion of the judges in the Constitutional Court Decision No. 90/PUU-XXI/2023, which reflects differing views among the judges regarding the substance of the case examined, and second, how to view and interpret the Constitutional Court Decision No. 90/PUU-XXI/2023 regarding the judges' opinions in the trial from the perspective of Siyasah Qadhaiyyah, such as the principles of public policy in Islam that are oriented towards the welfare of the community.

Keyword: Concurring Opinion, Dissenting Opinion, Fiqh Siyasah.

INTRODUCTION

In the Constitutional Court proceedings, the judges' decision does not have to be unanimous, because the decision is made based on the majority vote of the nine constitutional judges present. This means that as long as the majority of the judges agree with a decision, the decision is valid even if there are judges who disagree or have different opinions. The opinions of the judges are also included in the official ruling of the Constitutional Court and can provide additional insights into the various legal perspectives among the judges. This shows that the decision-making process in the Constitutional Court is collective and deliberative, considering various legal perspectives before reaching a final decision.

In the Constitutional Court ruling No. 90/PUU-XXI/2023, which discusses the age limit for presidential and vice-presidential candidates, there were several deviations in the trial

process. As stated by constitutional law expert Bivitri Susanti, the Constitutional Court's decision to partially grant the judicial review request regarding the age limit for presidential and vice-presidential candidates, setting it at 40 years or having experience as a regional head, seems to reflect a protracted debate among the judges. Due to the presence of two constitutional judges who presented different arguments but reached the same conclusion (Concurring Opinion) and four constitutional judges who expressed differing opinions or disagreed (Dissenting Opinion). (Bivitri Susanti, constitutional law expert, online interview, accessed on October 16, 2023, https://nasional.kompas.com).

In principle, a judge's decision in a case is not entirely agreed upon by the judges who rendered the verdict. Sometimes, a judge may also disagree with the decision made in the panel of judges. If such a situation occurs, the differing opinion of the judge is referred to as a Dissenting Opinion or commonly known as a differing opinion. Meanwhile, a Concurring Opinion or commonly known as a separate opinion is a written opinion by a judge in a case that agrees with the final decision made by the majority of judges, but based on different or additional reasons. This opinion allows judges to express their views more specifically or emphasize certain aspects. (Lilik Mulyadi, 2009).

In the Constitutional Court ruling No. 90/PUU-XXI/2023, the outcome was that 3 judges approved it, namely Anwar Usman, Manahan Sitompul, and Guntur Hamzah; 2 judges had a Concurring Opinion, namely Enny Nurbaningsih and Daniel Yusmic; and 4 judges had a Dissenting Opinion, namely Saldi Isra, Wahiduddin Adams, Suhartoyo, and Arief Hidayat. In this case, there is an inconsistency where the two judges with their Concurring Opinions should be categorized as Dissenting Opinions because Enny Nurbaningsih has a different reason from the statement "At least 40 (Forty) years old or experienced as a governor with requirements determined by the lawmakers." Meanwhile, Daniel Yusmic has the reason "At least 40 (Forty) years old or experienced as a provincial regional head." If we look at the reasons of these two judges, it can be assessed that their reasons lean more towards Dissenting Opinions because their reasons have the minimum requirement to become a Governor, yet somehow their opinions were shifted to the granting section.

The issues related to Dissenting Opinion and Concurring Opinion are regulated in Law Number 48 of 2009 Article 14 concerning Judicial Power, which states, "In deliberation sessions, each judge is obliged to present written considerations or opinions on the case being examined and which become an inseparable part of the decision. In the event that a unanimous agreement cannot be reached in the deliberation session, differing opinions of the judges must be included in the decision."

Aside from that, this decision also indicates that Anwar Usman, as the Chief Justice of the Constitutional Court, showed bias and should have recused himself from handling this case due to a conflict of interest, known as "judicial disqualification," or "recusal," or in Latin, the principle "nemo iudex in causa sua," which means a judge should not hear a case in which they have a personal interest. This prohibition is closely related to the principle of judicial impartiality, which is one of the main foundations for the presence of a fair judiciary. (MKMK Decision No.2/MKMK/L/11/2023, dated October 23, 2023, p. 18.).The problem formulation to be discussed is as follows: First, how to analyze the Dissenting Opinion and Concurring Opinion of the judges in the Constitutional Court Decision No. 90/PUU-XXI/2023, which reflects differing views among the judges regarding the substance of the case examined. Second, how to view and interpret the Constitutional Court Decision No. 90/PUU-XXI/2023 regarding the judges' opinions in the trial from the perspective of Siyasah Qadhaiyyah, which are the principles of public policy in Islam oriented towards the welfare of the community.

METHOD

In order to provide answers to the formulated problems, it is necessary to have a research method. Because a research method is one of the ways used to search, analyze, process, and discuss the data within a study in order to obtain and examine an issue. (Joko Subagyo, 2015).

The type of research used here is library research, which involves collecting library data obtained from various library information sources related to the research object, such as through research abstracts, indexes, reviews, journals, and reference books. This research aims to collect data and information relevant to the research topic, specifically regarding the Constitutional Court Decision No. 90/PUU-XXI/2023. (Sugiyono, 2010).

The nature of this research is analytical, which is a method that examines an object with the aim of systematically and objectively describing facts, characteristics, features, and the relationships between existing elements and certain phenomena. This research provides an exposition aimed at obtaining the applicable legal conditions in a specific place regarding existing legal phenomena or a particular legal event occurring in society. (Keelan, 2005).

In this research, the study uses a statutory approach, which includes the legislation found in the Constitutional Court session No. 90/PUU-XXI/2023. Additionally, it employs a case approach, which examines cases related to the legal issues at hand. Furthermore, it utilizes a conceptual approach, a type of approach in legal research that provides an analytical perspective on problem-solving in legal studies, viewed from the aspects of the underlying legal concepts, or even from the values contained within the legal issues.

RESULTS AND DISCUSSION

Analisis Dissenting Opinion dan Concurring Opinion Pada Putusan MK No. 90/PUU-XXI/2023

In principle, a judge's decision in a case is not entirely agreed upon by the judge who made the decision; sometimes, a judge may not agree with the decision made by the panel of judges. If such a situation occurs, a differing opinion from a judge is called a Dissenting Opinion, which means a differing opinion from a judge in a trial. A Dissenting Opinion occurs when a judge disagrees with the majority decision in a case and then writes their own opinion explaining the reasons for their differences. Then, a Concurring Opinion is a differing reason from a judge in a trial. A Concurring Opinion occurs when a judge agrees with the final outcome of the decision but has different or additional reasons for reaching that conclusion. The judge writes their own opinion explaining those additional or different reasons. This opinion allows the judge to express their views more specifically or emphasize certain aspects. (Lilik Mulyadi, 2009).

Concurring Opinion itself does not have the binding legal force like the majority opinion, but this opinion can provide a different perspective or a more detailed explanation that can serve as a reference for similar cases in the future, whether in the Constitutional Court or other courts. (Imam Mahdi, 2011).

Regardless of the ambiguity of the direction of the Concurring Opinion, this opinion can still and is often practiced in various judicial systems in the future because the Concurring Opinion itself is an opinion that can provide additional insights and also reflect the diversity of judges' thoughts. Meanwhile, if we only apply two options for the judge's opinion, namely granting and Dissenting Opinion, it will simplify the decision but also eliminate important nuances in legal thinking. The existence of a Concurring Opinion also demonstrates the diversity of judicial opinions to ensure that all aspects of a case have been carefully considered and are useful in supporting the verdict, the development of law, and public understanding of the reasons behind the verdict, which is the advantage of this Concurring Opinion. The drawbacks of a Concurring Opinion include the potential for confusion, as the public or parties involved in the case may be perplexed by the various differing reasons. There is also the

potential for controversy, as it can trigger prolonged debates and lead to legal complexity. Concurring Opinions are often considered unimportant because they rarely become the majority opinion; they do not seek alternative outcomes or reasons. Concurring Opinion itself is merely a small voice to comment on the majority decision or sometimes to further explain the meaning of the majority opinion; those who concur also view the majority as an incomplete or poor writing. On the contrary, a Dissenting Opinion has intrinsic value; the Dissenting Opinion raises the majority's questions to formulate a better opinion by challenging the court's decision and often its reasoning. This decision explains the injustice with the majority party and further reviewed, sometimes the Dissenting will become the majority when the court changes personnel, so while the dissent can explain both sides of the legal debate, the rarely given Concurring Opinion is a "yes, but" opinion rather than a "no, and here is the opinion." (Meg Penrose, "Legal Clutter: How Concurring Creates Unnecessary Confusion and Encourages Litigation." Journal Texas A&M Law Scholarship, 2023. Translation)

In this Constitutional Court ruling, which discusses the minimum age limit for presidential and vice-presidential candidates, it certainly provides different perspectives from the judges themselves. However, if we read the outcome of this ruling, we as the general public may not fully understand the process of this trial. As we have discussed, among the 9 (nine) judges who participated in the judges' deliberation meeting (RPH), there were inconsistencies with the verdict that were deemed not in line with the judges' opinions, resulting in this decision being partially granted.

Regarding the Court's decision, there were differing opinions (Concurring Opinion) from two constitutional judges, namely constitutional judge Enny Nurbaningsih who stated that "the age requirement is at least 40 (forty) years or has experience as a governor with requirements determined by the lawmakers." Then constitutional judge Daniel Yusmic stated that "the age requirement is at least 40 (forty) years or has experience as a provincial regional head." If we look at both judges' reasons, we can conclude that their opinions lean more towards the Dissenting Opinion rather than the granting part because both have the same tone, which is that the granting is directed towards parties who have previously or are currently serving as Governor.

Legal Information Institute at Cornell Law School defines a Concurring Opinion as follows:

"A Concurring Opinion is an opinion that agrees with the majority opinion but does not agree with the rationale behind it." En lugar de unirse a la mayoría, el juez concurrente escribirá una opinión separada describiendo la base de su decisión. (A dissenting opinion is one that agrees with the majority opinion, but disagrees with the legal reasoning behind it. Rather than joining the majority, dissenting judges will write a separate opinion describing the reasoning behind their decision.).

Based on the definition above, a Concurring Opinion is written to show different reasoning, not a different ruling.

In this case, Constitutional Judge Enny Nurbaningsih and Constitutional Judge Daniel Yusmic actually wrote different reasoning and different decisions, which should have been packaged in the form of a Dissenting Opinion. However, the reported Judge, as the Chief Justice of the Constitutional Court, did not fulfill his leadership role to ensure that the placement of views was not inconsistent. The reported Judge violated competence and equality by not optimally performing his leadership function and not upholding procedural law as it should be. The reported Judge did not clarify the substance and decision conveyed in the Concurring Opinion of Constitutional Judge Enny Nurbaningsih and Constitutional Judge Daniel Yusmic, which caused inconsistencies in the ruling.

However, it should be noted that a Concurring Opinion itself does not have the binding legal force like a majority decision, but this opinion can still influence the development of law

in the future. This opinion can provide a different perspective or a more detailed explanation that can serve as a reference for similar cases in the future, both in the Constitutional Court and in other courts.

According to MKMK Decision No.5/MKMK/L/11/2023, Anwar Usman as the Chief Justice of the Constitutional Court in the panel of judges for Constitutional Court Decision No.90/PUU-XXI/2023 committed violations of the provisions of the Code of Ethics and Guidelines for the Behavior of Constitutional Judges as regulated in PMK 09/2006 on:

a. Principle of Impartiality
b. Principle of Integrity
c. Principle of Decency and Courtesy
d. Principle of Competence and Equality
e. Principle of Wisdom and Prudence
f. Principle of Independence

In the MKMK Decision No. 5/MKMK/L/11/2023, it is explained that the reported judges are also suspected of intentionally and knowingly distorting the Constitutional Court's decision in case No. 90/PUU-XXI/2023 by partially granting the petitioner's request and declaring Article 165 letter q of Law No. 7/2017 contrary to the 1945 Constitution of the Republic of Indonesia and not legally binding by adding the phrase "or have ever/currently held a position elected through a general election including regional head elections." This addition of the norm, besides being beyond the authority of the Constitutional Court, was also not agreed upon by the majority of the Court's judges.

The full decision reads:

"Declares Article 169 letter q of Law No. 7 of 2017 on General Elections (State Gazette of the Republic of Indonesia of 2017 No. 182, Supplement to the State Gazette of the Republic of Indonesia No. 6109) which states, 'at least 40 (forty) 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 (forty) years old or having held a position elected through a general election including regional head elections.' Therefore, Article 169 letter q of Law No. 7 of 2017 on General Elections fully reads 'at least 40 (forty) years old or having held a position elected through a general election including regional head elections.”

Previously, in case Number 29-51-55/PUU-XXI/2023, the majority of the Constitutional Court judges agreed to leave the provision of Article 169 letter q to the lawmakers, namely the president and the DPR, because the article is an open legal policy." (open legal policy). However, in a very manipulative manner, the decision was ultimately granted only because three judges agreed with the decision a quo. The three reported judges are Constitutional Judge Anwar Usman (in this case Judge I), Constitutional Judge Guntur Hamzah (in this case Judge II), and Constitutional Judge Manahan Sitompul. (in casu Hakim Terlapor III).

These three judges also agreed that Petition Number 90/PUU-XXI/2023 was partially accepted by adding the phrase "at least 40 (forty) years or having held an elected position through a general election, including regional head elections."

While two other judges who gave different reasons (Concurring Opinion) namely:

a. Constitutional Judge Enny Nurbaningsih in her petition stated: "at least 40 (forty) years old or experienced as a governor with requirements determined by the lawmaker."
b. Constitutional Judge Daniel Yusmic in his petition stated: "at least 40 (forty) years old or experienced as a provincial regional head."

Thus, the two judges clearly rejected the phrase "at least 40 (forty) years or having held an elected position through a general election including regional head elections" which was approved by 3 (three) Constitutional Court judges (in this case, the reported judges) above.

Meanwhile, the other 4 (four) Constitutional Court judges had a different opinion (Dissenting Opinion), namely:

a. Honorable Constitutional Judge Wahidudin Adams opined: "The Court should reject the Applicant's Petition".
b. Honorable Constitutional Judge Saldi Isra opined: "The Court should decide that the provision of Article 169 letter q is an open legal policy and should be returned to the President and the DPR as the Lawmakers".
c. Honorable Constitutional Judge Arief Hidayat opined: "The Court rejected the letter of cancellation of the case withdrawal and granted the withdrawal of the Applicant's case because the Applicant has proven to be not serious and earnest in submitting the a quo petition".
d. Honorable Constitutional Judge Suhartoyo opined, "The Applicant's Petition cannot be accepted".

From that format, it is clear that the decision Number 90/PUU-XXI/2023 does not meet the quorum. In other words, the a quo decision with the phrase "at least 40 (forty) years or having held a position elected through a general election including regional head elections," is suspected to have occurred due to manipulation and legal circumvention, resulting in the a quo case being partially granted. The decision is only considered Quorum if the opinions of Constitutional Judge Enny Nurbaningsih and Judge Daniel Yusmic, who are "experienced as provincial regional heads/or experienced as Governors," are included in the decision, not the opinions of the three reported judges.

The fact shows that the decision-making in case Number 90/PUU-XXI/2023 does not reflect the Principle of Equality among the constitutional judges. The absence of the principle of equality among the Constitutional Court judges ultimately resulted in a very peculiar decision in the history of the Constitutional Court.

Dissenting Opinion and Concurring Opinion in the Perspective of Siyasah

In Islam, particularly in Fiqh Siyasah Syar'iyyah, there is a branch that discusses judiciary matters, namely Siyasah Qadhaiyyah, which is a part of fiqh siyasah formed to handle cases that require decisions based on Islamic law. Islamic judicial institutions play a role in resolving disputes or conflicts within the context of democratic life in modern countries. As a state institution responsible for resolving conflicts and adjudicating each case fairly, the judiciary plays a role in creating peace in society through the enforcement of the law. The main goal of Islamic justice is to achieve the welfare of the community by upholding Islamic law. (Ahmad Sudirman, 2020). Therefore, the opinions of the judges in the Constitutional Court's decisions, which fall within the scope of Siyasah Qadhaiyyah, are necessary to resolve disputes or conflicts in the context of democratic life in our country to achieve consensus for the continuity of state governance. Siyasah Qadhaiyyah plays an important role in building a fair and effective Islamic judicial system. Therefore, this knowledge helps judges and other legal practitioners to understand the principles of Islamic justice and apply them correctly in the judicial process. Judicial policy also helps to achieve justice and peace in Islamic society.

In Siyasah Qadhaiyyah, judges (qadhi) are given the space to exercise ijtihad, which often leads to differences of opinion among judges in interpreting and applying the law. As long as this ijtihad is carried out correctly and based on a deep understanding of the principles of sharia, these differences of opinion are not only permitted but also regarded as a sign of intellectual richness in Islamic law. Different opinions from judges, such as Dissenting Opinion and Concurring Opinion, are not explicitly explained, but in Fiqh Siyasah Syar'iyyah, there is Siyasah Qadhaiyyah that serves as an answer and is one of the aspects of Islamic law that discusses the judicial system.

In this matter, there is an Imam who discusses justice in Islam, namely Imam Al-Mawardi. Al-Mawardi himself did not explicitly name his theory with a specific name. However, Al-Mawardi's theory or thought gave rise to the theory of governance in his book

Ahkam Sulthaniyah, which combines political and legal dimensions, consistently adhering to the values of Islamic teachings. This is evident from the assumption that these theories are relevant both from ancient Greek and Western thought, but are based on religious understanding and beliefs. This includes the arrangement of state management, such as judicial power and judges as the executors of that power. (Hanif Fudin Azhar, 2019). His ideas about judicial independence, the requirements to become a judge, and the limitations on judicial power are still relevant today and have become fundamental principles in the modern judicial system. As for some theories proposed by him related to this title, they are as follows.

Judicial Power Theory, Al-Mawardi emphasizes the importance of judicial independence from political and other external influences. He believes that judges must be impartial and fair in carrying out their duties. Theory of the Requirements to Become a Judge, Al-Mawardi established the conditions that must be met by prospective judges, such as being Muslim, having sound mind, being just, and possessing deep knowledge of religion and law. The Theory of the Scope of Judicial Power, Al-Mawardi formulated the scope of judicial authority, including resolving legal cases, enforcing the law, and providing legal advice to the ruler. The Theory of Limiting Judicial Power, Al-Mawardi also emphasized the importance of limiting judicial power to prevent arbitrary actions by judges.

According to this book, it is permissible for a follower of one school of thought to appoint a judge from another school of thought because a judge has the right to exercise independent judgment in making legal decisions. They do not have to refer to their own school of thought when making legal decisions regarding actual cases and other legal matters. For example, a judge who follows the Shafi'i school may have a different perspective from a judge who follows the Hanafi school in deciding a particular case. This is recognized in Islamic legal tradition where no school of thought is considered always correct, and judges are allowed to follow the school of thought that they believe is most appropriate for the case they are facing. According to this explanation, we can understand that judges have their own independent judgments, leading to differing opinions for and against in a trial. (Khalifurrahman & Faturrahman, 2014)

If a judge's decision has been enacted and a new case of the same nature arises, the judge must re-ijtihad, allowing for a new legal decision even if it contradicts the first ijtihad. Similarly, in Decision MK No. 29/PUU-XXI/2023, which conducted a judicial review of Article 169 letter q of the Election Law submitted by the PSI party, then case Number 51/PUU-XXI/2023 submitted by the Garuda Party, and case Number 55/PUU-XXI/2023 submitted by the same party discussing the minimum age limit for presidential and vice-presidential candidates, in this decision, there were several judges who had differing interpretations between Decision MK No. 29/PUU-XXI/2023 and Decision MK No. 90/PUU-XXI/2023.

The Qur'an itself discusses how the trial process should proceed, which must possess the qualities of justice and trustworthiness, as stated in Surah An-Nisa verse 58, which reads:

اِنَّ اللّٰهَ يَأْمُرُكُمْ اَنْ تُؤَدُّوا الْاَمٰنٰتِ اِلٰٓى اَهْلِهَاۙ وَاِذَا حَكَمْتُمْ بَيْنَ النَّاسِ اَنْ تَحْكُمُوْا بِالْعَدْلِۗ اِنَّ اللّٰهَ نِعِمَّا يَعِظُكُمْ بِهٖۗ اِنَّ اللّٰهَ كَانَ سَمِيْعًاۢ بَصِيْرًا

"Indeed, Allah commands you to deliver trusts to those who are entitled to them." When you establish laws among people, you must establish them fairly. Indeed, Allah gives you the best teachings. Indeed, Allah is All-Hearing and All-Seeing."

This verse explains that upholding justice is a necessity and delivering trust must be done accurately; judges must also act fairly in every decision made. If a Judge himself is not trustworthy and cannot be fair and uphold the law of Allah, then Hell awaits him. This is in accordance with the Hadith of the Prophet Muhammad (peace be upon him) which means, "There are three types of judges: two in Hell and one in Paradise. The one who knows the truth and judges accordingly will be in Paradise. The one who knows the truth but deviates in his judgment will be in Hell. And the one who judges among people with ignorance will also be in Hell."

The reported judges have clearly violated the principles of this Quranic verse and have failed to be exemplary judges. As we know, there is bias, which is an unjust behavior, and the reported judges have breached the trust of their oath when they were appointed as judges of the Constitutional Court.

As for the verse of the Qur'an that discusses behaving justly towards anyone without regard for personal interests, relatives, or family, as in Surah An-Nisa verse 135 which reads:
غَنِيًّا اَوْ فَقِيْرًا فَاللّٰهُ اَوْلٰى بِهِمَاۗ فَلَا تَتَّبِعُوا الْهَوٰٓى اَنْ تَعْدِلُوْا ۚ وَاِنْ تَلْوٗٓا اَوْ تُعْرِضُوْا فَاِنَّ اللّٰهَ كَانَ بِمَا تَعْمَلُوْنَ خَبِيْرًا
"O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or your parents and relatives." If he (who is burdened in the testimony) is rich or poor, Allah is more deserving of knowing (the benefit) of both. Therefore, do not follow your desires because you want to deviate. (from the truth). If you distort (words) or turn away (refuse to bear witness), indeed Allah is All-Aware of everything you do."

This verse commands to uphold justice even if it goes against personal, family, or kin interests. This shows a very strong commitment to the principles of justice in Islam. Biased behavior in legal decisions is also a serious violation in Islam and contradicts the principles of justice emphasized in Sharia. The consequences for an unjust judge can include moral responsibility in the afterlife, removal from office, and disciplinary action. Sharia principles demand that judges must be fair, impartial, and act based on truth and integrity.

Based on the above case, in Islam, Dissenting Opinion and Concurring Opinion are not explained in detail, but if the judges have different opinions (ijtihad), it is allowed. However, judges are clearly not allowed to act untrustworthy and unjust in a trial because this violates the provisions of Islamic law. Thus, it can be concluded that, according to Sharia, the decision process of the Constitutional Court No. 90/PUU-XXI/2023 is not in accordance with the laws and provisions regulated in Islam.

CONCLUSION

Based on the discussion above, the MK Decision No. 90/PUU-XXI/2023 should not be granted because there was interference from several judges in the decision, due to the dirty interference of the Reported Judge in this decision and violations of the judges' code of ethics, including conflicts of interest, bias, and shifts in meaning in the Concurring Opinion of the two judges. The Reported Judge has been proven to have committed serious violations of the Code of Ethics and Conduct of Constitutional Judges as outlined in the Sapta Karsa Hutama, the Principle of Impartiality, the Principle of Integrity, the Principle of Competence and Equality, the Principle of Independence, and the Principle of Decency and Courtesy. The Reported Judge, as the Chief Justice of the Constitutional Court, has been proven not to perform the function of judicial leadership optimally, thereby violating the Sapta Karsa Hutama, the Principle of Competence and Equality, and it is appropriate to impose a sanction of dismissal from the position of Chief Justice of the Constitutional Court on the Reported Judge.

In Islam, judges are required to behave justly, impartially, and act based on truth and integrity. From the perspective of Siyasah Qadhaiyyah, judges (qadhi) are given the space to perform ijtihad, which often leads to differing opinions among judges in interpreting the law. However, as long as ijtihad is conducted correctly and based on a deep understanding of the principles of Sharia, differing opinions are also considered a sign of intellectual richness in Islamic law.

On the issue of Dissenting Opinion and Concurring Opinion (differences of opinion), Imam Al-Mawardi also discussed it, albeit not very explicitly. He held the view that if a follower of one school of thought appoints a judge from another school of thought, it is because a judge has the right to exercise independent judgment in delivering legal decisions. He does not have to refer to his own school of thought when making legal decisions on actual cases and other legal matters. For example, a judge who follows the Shafi'i school might have a different

perspective from a judge who follows the Hanafi school in deciding a particular case. This is acknowledged in Islamic legal tradition where no school of thought is considered always correct, and judges are allowed to follow the school that they believe is most appropriate for the case they are facing. According to this explanation, we can understand that judges have their own ijtihad, which leads to differing opinions for and against in a trial. However, since Indonesia predominantly follows the Shafi'i school of thought, where our fiqh references tend to be the same, this can be analogized as a difference of opinion or belief among the judges as something permissible.

REFERENCE

"Concurring Opinion," LII/Legal Information Institute, diakses 9 Oktober 2024, https://www.law.cornell.edu/wex/concurring_opinion.

Ahmad Sudirman, "Analisis Siyasah Qadhaiyyah Terhadap Peran Dan Fungsi Lembaga Pengadilan Tata Usaha Negara Dalam Mengadili Sengketa Pemilu", (Skripsi, Fakultas Syariah Universitas Islam Negeri Raden Intan Lampung, 2020).

Al-Mawardi, "Ahkam Sulthaniyah", trans. Khalifurrahman & Faturrahman (Jakarta : Qisthi Press, 2014)

Bivitri Susanti, pakar hukum tata negara, wawancara daring, diakses pada 16 Oktober 2023, https://nasional.kompas.com

Hanif Fudin Azhar, "Pemikiran Imam Al-Mawardi tentang Politik dan Hukum Kekuasaan Kehakiman di Indonesia" ", (Skripsi, Program Studi Hukum Tata Negara, IAIN Purwokerto, 2019).

Imam Mahdi, Hukum Tata Negara Indonesia, (Yogyakarta: Teras, 2011)

Joko Subagyo, Metode Penelitian dalam Teori dan Praktek (Jakarta : PT Rineka Cipta, 2015)

Keelan, Ms, Metide Penelitian Kualitatif Bidang Filsafat, (Jakarta : Paradigma, 2005)

Lilik Mulyadi, Putusan Hakim dalam Hukum Acara Perdata Indonesia, (Bandung: PT Citra Aditya Bakti, 2009)

Meg Penrose, "Legal Clutter : How Concurring create Unnecessary Confusiun and Encourage Litigation". Journal Texas A&M Law Scholarship, 2023. Terjemahan

Putusan MKMK No.2/MKMK/L/11/2023, tanggal 23 Oktober 2023

Sugiyono, Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif dan R&D. (Bandung : Alfabeta, 2010)

Undang-Undang Nomor 48 Tahun 2009 Pasal 14.