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The Age Limit for Presidential and Vice-Presidential Candidates in Constitutional Court: An Implication of Ethical Sanctions for Judges

Muhammad Fauzan[1]
Dewi Iriani[2]*
Arief Budiono[3]
Mahesa Rannie[4]
Elsa Sintya Marvinda[5]

[1] *Universitas Jenderal Soedirman*
[2,5] *Institut Agama Islam Negeri Ponorogo*
[3]*Universitas Muhammadiyah Surakarta*
[4]*Universitas Sriwijaya*

*✉ *dewi.iriani@iainponorogo.ac.id*

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Abstract:
Almas filed a lawsuit to lower the minimum age requirement for presidential and vice-presidential candidates from 40 to 35 years, arguing that the existing rule contradicts the 1945 Constitution. This lawsuit sparked debate but also created opportunities for young and talented candidates to run for office. The Constitutional Court partially granted the lawsuit through Decision No. 90/PUU-XXI/2023, maintaining the minimum age at 40 but allowing exceptions for those with experience as regional heads. This ruling was controversial as it introduced a new legal interpretation within Indonesia's constitutional system. This study aims to analyze how Constitutional Court judges interpret the age requirement for presidential and vice-presidential candidates and how the court's final authority in this decision has become a subject of controversy. The research employs a jurisprudential approach, examining court decisions as primary data and supplementing them with secondary data from literature reviews, the 1945 Constitution, and the Election Law (2017). Findings indicate that Decision No. 90/PUU-XXI/2023 remains controversial as it is perceived to be inconsistent with constitutional and democratic principles. Additionally, several Constitutional Court judges were sanctioned by the Court's Honorary Council for ethical violations, further fueling the debate surrounding this ruling. Despite the controversy, the decision remains final and binding, while also opening opportunities for younger leaders with prior leadership experience to run for president or vice president before reaching the age of 40.

Keywords:
age limit; presidential candidates; reconstruction; vice presidential candidates.

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Introduction

The 1945 Constitution is the Republic of Indonesia's constitution and its highest source of law. Article 7 of the 1945 Constitution states that the president and the vice president hold office for five years and may subsequently be reelected for the same office for only one term of office. To become president and vice president, they must meet the age limit requirement, which is at least 40 years old, but the age limit requirement was submitted for judicial review by Almas Tsaqibbirru.[1] Almas sued for the minimum age of presidential and vice-presidential candidates, 40 years to 35 years. Almas believed that if it is not changed, it will be contrary to

[1] Meitika Candra Lantiva, "Inilah Sosok Almas Tsaqibbiru, Mahasiswa Solo Yang Muluskan Jalannya Gibran Maju Pilpres 2024," *Radar Jogja*, October 2023.

the Republic of Indonesia's 1945 Constitution. Legal considerations regarding the contents of The Constitutional Court Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential Candidates and Vice-Presidential Candidates. The Republic of Indonesia's Constitutional Court judges partially granted Almas' lawsuit, and the petition was *a quo*, not *nebis in idem*. Constitutional Court judges decided the minimum age limit for presidential and vice presidential candidates was 40 years, with the addition that the candidate must have had experience becoming a regional leader.

The decision of Constitutional Court judges is final and binding as regulated in Article 10 paragraph (1) of the Constitutional Court Law (2014). One of the duties of the Constitutional Court is to conduct a review of the law. The Constitutional Court Law (2014) was passed as a derivative law. This law explains the guidelines and regulations of the Constitutional Court institution, intending to realize a state that aims to organize a prosperous and just state and society. The Constitutional Court has the same authority as the Supreme Court regarding judicial power, and it is also effective because the decision is final and binding.[2] This provision is in line with Hans Kelsen, as quoted by Qoroni and Winarto, who stated that laws will run effectively if they are constitutional. Apart from that, it is a fact that the Constitutional Court has the authority to examine laws and regulations.[3]

The interpretation of legislation cannot be separated from Hans Kelsen's theory of legislation. Hans Kelsen introduced the hierarchy of legal norms theory (*Stuffenbau* theory, i.e., the hierarchical legal structure). According to him, legal norms are tiered in a hierarchy (structure); lower norms are based on the higher norms. Then, Hans Nawiarski perfected the Step-Building Theory developed by Hans Kelsen. Nawiaski's theory is called the Theory of the Gradual Structure of the Legal System. The order of norms according to this theory is as follows: 1) Fundamental state norms (*Staatsfundamentalnorm*). 2) Basic rules of the state (*staatsgrundgesetz*). 3) Formal law (*formell gesetz*), 4) Implementing regulations and autonomous regulations (*verordnung en autonome satzung*).[4] The hierarchy and structure of these laws and regulations' legal systems are adopted by the Indonesian state through judges' legal interpretation. Judges are allowed to interpret the law. For instance, they interpret the laws and regulations of Article 169 letter (q) No. 7 of the General Election Law (2017), namely the minimum age limit for presidential and vice-presidential candidates.

Research on similar cases has been conducted several times. The first one was a paper written by Subandri (2024), who wrote about the requirements of presidential and vice-presidential candidates. He suggested that there should be an opportunity for candidates who are less than 40 years old to give an opportunity and abolish restrictions.[5] Another previous research was conducted by Utomo (2024), analyzed the amendment to Article 169 letter q of the General Election Law (2017) on the Age Limit for Presidential and Vice-Presidential

[2] Virto Silaban and Kosariza, "Kedudukan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia," *Jurnal of Constitutional Law* 1, no. 1 (2021): 1–17.
[3] Waisol Qoroni and Indien Winarwati, "Kedaulatan Rakyat Dalam Konteks Demokrasi Di Indonesia," *Jurnal Inicio Legis* 2, no. 1 (2021): 51, https://doi.org/10.21107/il.v2i1.11079.
[4] Muhammad Fikri and Sunny Ummul, "Implementasi Teori Hans Nawiasky Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Demokrasi Dan Ketahanan Nasional* 1, no. 1 (2022): 2.
[5] Rio Subandri, "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden," *Jaksa: Jurnal Kajian Ilmu Hukum Dan Politik* 2, no. 1 (2024): 135–53, https://doi.org/https://doi.org/10.51903/jaksa.v2i1.1512.

Candidates. It was concluded that changes to this law, which allow people under 40 years to become presidential and vice-presidential candidates with the requirement of having had experience becoming a regional head, were considered a form of structured political nepotism. This condition is because such a law can create a political dynasty.[6] Adji et al (2024) conducted another previous study. He studied the age limit of presidential and vice presidential candidates stipulated in Article 169 letter q of The General Election Law (2017). The Constitutional Court's decision was not unanimous, and there were anomalies in the Constitutional Court judges' considerations.[7]

Different from the discussion studied in previous research, the difference between the authors' research is that the authors' research studies the Constitutional Court judge's interpretation of the minimum age limit for presidential and vice-presidential candidates in the Indonesian constitutional system. This research studies the reconstruction of the Constitutional Court judges' authority in creating a final and binding decision against The Constitutional Court Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates. This study aims to contribute ideas to Constitutional Court judges in making decisions that must follow the primary laws and not deviate from the provisions of the 1945 Constitution. As stated in Article 10 clause (1) of the Constitutional Court Law (2014), decisions made by the Constitutional Court are final and binding, even in cases involving ethical and moral violations or conflicts of interest by the judges. This paper analyzes the reconstruction of the Constitutional Court's decision regarding the minimum age requirement for presidential and vice-presidential candidates within Indonesia's constitutional system. The discussion focuses on the interpretation of the age limit by the Constitutional Court judges and the implications of ethical violations in Decision No. 90/PUU-XXI/2023.

Method

Peter Mahmud Marzuki revealed that the legal research method, legal doctrine, and legal principles help overcome legal problems and find legal rules. Furthermore, Marzuki used normative legal research as legal logic from a normative perspective to find the truth. Logic in normative legal research originated from legal science, whose objects were sourced from the law.[8] This research was normative research which employed the qualitative approach which described the research object, namely the Constitutional Court Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates. The normative legal research approach can be carried out through legal principles and doctrines, legal discoveries in cases *in concreto*, legal systematics, legal history, legislations, cases, comparisons, and concepts.[9] From the various approaches presented by Abdulkadir

[6] Wahyu Wiji Utomo, "Persfektif Rasional Choice Dan Nepotisme Pada Perubahan Pasal 169 Huruf Q Undang-Undang Nomor 7 Tahun 2017 Tentang Batas Usia Calon Presiden Dan Wakil Presiden," *Jurnal Ilmiah Muqoddimah* 8, no. 1 (2024): 349–59, https://doi.org/10.31604/jim.v8i1.2024.349-359.
[7] Agung Bayu Adji, Hedwig Adianto Mau, and Mardi Candra, "Konstitusionalitas Perubahan Usia Calon Presiden Dan Calon Wakil Presiden Dalam Negara Hukum Demokrasi," *Sentri: Jurnal Riset Ilmiah* 3, no. 1 (2024): 16–25, https://doi.org/10.55681/sentri.v3i1.2116.
[8] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2023).
[9] Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum (The Law and Legal Research)* (Bandung: Citra Aditya Bakti, 2014).

Muhammad, this study only used the legal research approach method in the forms of: 1) The statutory approach which was implemented on regulations, namely the Constitutional Court Decision No. of 2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates as well as other laws and regulations and 2) The conceptual approach in the form of doctrines or theories of judicial interpretation and principles of statutory regulations.

Normative research was conducted through literature or library studies.[10] The legal sources of the research were excavated through data originating from library documents into primary data. There are three types of data sources: primary, secondary, and tertiary [11]. Library research was analyzed from the literature through books, research, journals, and other documents related to the research [12]. This study used a normative research method in examining the Constitutional Court Decision No.90/PUU-XXI/2023. It employed the qualitative method to explain the analysis of the minimum age limit for presidential and vice-presidential candidates. Research data were sourced from: (1) Primary data sources in the form of The 1945 Constitution, Law No. 7 of 2017 on Elections, Constitutional Court Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates and (2) Secondary sources in the form of books, journals, and research papers related to the minimum age limit for presidential and vice-presidential candidates in the Indonesian constitutional system.

Discussion

1. Constitutional Court Judges' Interpretation on the Minimum Age Limit for Presidential and Vice-Presidential Candidates in the Indonesian Constitutional System

In this term, Hans Kelsen stated that constitutional legislative rules would effectively test whether or not certain legal products are considered worthy/unworthy to be constitutionally changed through an organ/institution called the *Verfassungsgerichtshoft* or the Constitutional Court. In Austria, the Constitutional Court was formed outside of the Supreme Court, which means that it stands alone. Hans Klesen's idea of the Constitutional Court formation is called the Kelsenian Model. In Indonesia, constitutional law is given the authority to examine laws with a final and binding decision. Thus, the decision actually reflects how the constitutional judge interprets the law in line with or against the Constitution.

This issue began with a lawsuit filed by a Faculty of Law, University of Surakarta student named Almas Tsaqibbirru. Almas sued for a judicial review on the Election Law (2017) and a judicial review of the 1945 Constitution. Almas' application was registered in the document in file No. 29/PUU-XXI/2023. Then, Almas received application No. 28/PUU-V/2007. The core of Almas' lawsuit regarding the content of Article 169 letter (q) of the Election Law (2017) is that this law is deemed to not have a binding legal force. It is deemed to violate and conflict with the constitutional rights and interests of the applicant regarding the Constitutional

[10] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat (Normative Legal Research, A Short Review)* (Jakarta: Raja Grafindo Persada, 2016).
[11] Taufani Suteki and Galang, *Metodologi Penelitian Hukum: Filsafat, Teori Dan Praktik* (Depok: Rajawali Press, 2018).
[12] Johny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007).

Court Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates. The difference between the quo petition and petition No. 29/PUU-XXI/2023 is that this petition focuses more on the age of presidential and vice presidential candidates who are at least 40 years old or have experience as a regional leader.

Table 1. The Constitutional Court's Consideration and Dissenting Opinion in Granting Almas' Petition

Consideration	Dissenting Opinion
The Constitutional Court considered that an applicant may submit an application by fulfilling some requirements, including having Indonesian citizenship and having a legal standing.	Judge Saldi Isra stated, "On Decision of the Constitutional Court No. 90/PUU -XXI/2023 as in Decision of the Constitutional Court No. 29/PUU-XXI/2023, Decision of the Constitutional Court No. 51/PUU-XXI/2023, and Decision of the Constitutional Court No. 55/PUU-XXI/2023 (hereinafter written as Decision of the Constitutional Court No. 29-51-55/PUU-XXI/2023), I reject the *a quo* submission as its demands were the same as the previous decision."
The Constitutional Court has stated to have granted part of the applicant's plea. Then, the Constitutional Court stated that Article 169 letter q of The General Elections Law (2017) on the General Election, namely "At least 40 years of age", violates the 1945 Constitution and does not have a binding power. Thus, in complete, Article 169 letter q of The General Election Law (2017) on the General Election states, "At least 40 (forty) years of age or has had an experience or is having a position that was chosen through the general election, including the Election of Regional Heads."	Two judges had different reasoning (concurring opinions). The two debut judges were Judge Enny Nurbaningsih and Judge Daniel Yusmic P. Foekh. They agreed that the age limit for presidential and vice presidential candidates is 40 years old or having experience becoming a Governor.
To achieve the participation of quality and experienced candidates, the Constitutional Court assessed that a state official who has had experience becoming a member of the Regional Representative Assembly, a member of the Legislative House, a member of the Regional Legislative House, a Governor, a Regent, or a Mayor already has adequate capabilities in participating in the *in casu* national leadership contestation as a presidential and vice presidential candidate in the general election even if he/she is aged less than 40 years old.	Another Constitutional Judge, Wahiduddin Adams, also showed his dissenting opinion in assessing the decision. He suggested that the granting of that case would make the Constitutional Court practice something that is commonly called 'legislating or governing from the bench' or without enough constitutional support or sufficient reason. He stated that in this case, the judicial power should be directed as the independence to not commit a certain thing. Adams stated, " Considering that based on several argumentative descriptions above, I suggest that the Court should reject the applicant's submission." Then, a different opinion was expressed by a Constitutional Court judge who mentioned the legal position. Almas stated that if that submission is not in one's interest, where the name Suhartoyo is stated in previous cases, then it should also be applied.

Source: Decision No. 90/PUU-XXI/2023 & No. 29/PUU-XXI/2023

In Indonesia, the constitutional review is the authority of the Constitutional Court in the form of a judicial review.[13] At the beginning of the Reformation Era, constitutional review in the form of legislative review became the authority of the People's Consultative Assembly, which has now been revoked and is no longer valid after the issuance of the Constitutional

[13] Rustam Rustam, Tat Marlina, and Duwi Handoko, "Sejarah Pembentukan Dan Kewenangan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Dimensi* 11, no. 2 (April 25, 2022): 270–81, https://doi.org/10.33373/dms.v11i2.3973.

Court Law (2014). Article 1 states that the Constitutional Court is the executor of judicial power. Therefore, legislative review in the form of judicial review is the authority of the Constitutional Court. Constitutional Court judges conduct judicial review of legislation through legal discovery and legislation interpretation.

In providing legal considerations, Constitutional Court judges refer to three principles: (a) the principle of legal certainty, (b) the principle of justice based on the provisions of the articles of the 1945 Constitution, namely Article 24 clause (1) on the independent judicial power to organize trials to uphold law and justice, and (c) Article 28D clause (1) and Article 28H clause (2) state that judges must have the principle of legal benefit to produce quality decisions and meet the expectations of justice seekers. The provisions of Article 24 and Article 28 of the 1945 Constitution emphasize the balance of citizens' fundamental rights and obligations. Judges interpret the provisions of laws and regulations using grammatical, systematic, historical, teleological, anticipatory, restrictive, and extensive interpretation methods. In addition, the judge's interpretation of the law also requires logical reasoning. There are four types of logical reasoning: analogous or abstract, *a contrario,* legal fiction, and representation or legal construction.[14] In this case, the implementation of these various interpretation models is as follows:

Table 2. The Implementation of the Various Interpretation Models

Interpretation Model	Description
Analogous or abstract: providing an interpretation of a legal provision.	Judges will think analogously and legally on Constitutional Court Decision No. 90/PUU-XXI/2023 on the Age Limit of Presidential and Vice-Presidential Candidates, considering that it contradicts Article 169 (q) The General Election Law (2017) and The 1945 Constitution of the Republic of Indonesia. Therefore, Constitutional Court judges must consider the contents of the decision submitted by the applicant because a decision's essence lies in its contents. In considering the contents of the decision, Constitutional Court judges must reflect a sense of justice, provide legal certainty, and provide benefits to the community.
***A contrario*:** an interpretation of law based on denial.	Article 9 clause (1) of Law No. 13 of 2022 on the Formation of Legislation states that if a law is suspected of violating The 1945 Constitution, it will be tested by the Constitutional Court. Constitutional Court Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates is contrary to Article 169 (q) The General Election Law (2017) and The 1945 Constitution of the Republic of Indonesia. The Constitutional Court judges reconsidered the decision's contents before making it so that the public could accept it.
Legal fiction: an interpretation of the law that is not based on legal facts	Constitutional Court judges consider the applicant's application, which contains the Constitutional Court judges' constitutionality test of the legal norms in Article 169 Letter q of The General Election Law (2017). In addition, the court further examines the legal status of the applicant and the basis for his application.
Representation or legal construction: constructing statutory regulations.	The judge can interpret the law differently. So, Constitutional Court judges must set aside the application to revoke the *quo* case. Then, Constitutional Court judges will consider the applicant's application. In considering decisions, Constitutional Court judges must technically master legal theories, such as the interpretation of laws and theories of the principles of statutory regulations. In deciding cases, judges are also referred to as "dissenting juris," which means that judges are allowed to

[14] Dewi Iriani, "Hukum Sebagai Alat Kontrol Sosial Dan Sistem Supremasi Penegakan Hukum," *Justicia Islamica* 8, no. 1 (August 25, 2016): 139–59, https://doi.org/10.21154/justicia.v8i1.527.

	deviate from a provision, making it contrary to the community's sense of justice. This act is legally valid based on Article 28 clause (1) of The Constitutional Court Law (2014). It is stated that ensuring that its decisions fulfill the sense of justice in the community is mandatory.

Source: Iriani (2016)[15]

The rule of law regulates all aspects of social, state, and national life, including government, and must be based on laws that align with the national legal system.[16] The stages of planning, drafting, discussing, ratifying, decision-making, and enacting are usually steps that need to be taken in structuring a law [17]. However, these steps are indeed carried out according to the needs and conditions and the nature and hierarchy of legal provisions. While the philosophy underlying the preparation of the legal scheme will affect the steps taken to prepare it so it can be enforced, the author believes that legal principles must be considered. Legal principles are used when making and designing legal regulations. It must follow the principles of legislation, which contain legal values, namely the principle of good legislation design and the principle of the legislation content substance. These principles are fundamental to implement because they are the foundation or basis for forming legal norms. So, if not applied, it can be canceled.

The formation of legislation makes the legislation formation principles a legal norm in the legislation that will be formed. When the legislation formation principles are used as a legal norm, if these principles are not met or implemented, it will result in sanctions.[18] Some principles apply in the formation of laws and regulations, which include three parts.[19] First, the law has been determined to be a formulation of legal norms. Second, the principles related to the formulation of legislation. Third, the principles are contained in the material content of laws and regulations.[20]

First, the legal principle has been determined to be a formulation of legal norms. Legal norms are the basis of the Indonesian state's constitution or fundamental law. The law has norms and rules in formulating a constitution. Basic norms are prioritized over the state constitution. According to Hans Kelsen, as stated by Arimba (2023), the basic norms of the state (*Staatsfundamentalnorm*) are its fundamental norms.[21] The legal rules of the Unitary State of the Republic of Indonesia adopted from The 1945 Constitution are the highest essential source of law. Second, the principles related to the formation of legislation. The application of legal principles in the formation of Indonesia's legislation in the form of favorable Indonesian legal regulations is stated in the Legislation Formation Law (2022).[22]

[15] Iriani.
[16] A. Rizhan, "Konsep Hukum Dan Ide Keadilan Berdasarkan Teori Hukum Statis (Nomostatics) Hans Kelsen," *Kodifikasi* 2, no. 1 (2020): 61–71.
[17] A. M. D. Mappatunru, "The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum Indonesia," *Indonesian Journal of Criminal Law* 2, no. 2 (2020): 132– 152, https://doi.org/10.31960/ijocl.v2i2.541.
[18] Rokilah Rokilah and Sulasno Sulasno, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Ajudikasi : Jurnal Ilmu Hukum* 5, no. 2 (December 29, 2021): 179–90, https://doi.org/10.30656/ajudikasi.v5i2.3942.
[19] Rizhan, "Konsep Hukum Dan Ide Keadilan Berdasarkan Teori Hukum Statis (Nomostatics) Hans Kelsen."
[20] Rokilah and Sulasno, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan."
[21] Cahya Iradi Arimba, "Hans Kelsen's Nomostatics and Nomodinamics Legal Theory," *Jurnal Voice* 2, no. 2 (2023): 55–63, https://doi.org/10.37893/jv.v2i2.773.
[22] M. Y. A. Syaputra, "Kajian Yuridis Terhadap Penegasan Hiearaki Peraturan Perundang-Undangan Di Indonesia Dalam Perspektif Stufen Theorie," *Jurnal Mercatoria* 9, no. 2 (2016): 95–103, https://doi.org/10.31289/mercatoria.v9i2.433.

This law contains provisions regarding the formation of legal regulations. It distinguishes between the legal regulation formation principles and the substantive principles of legal regulations' content. Third, the principles contained in the legislation's material content. Regarding the decision of Constitutional Court judges, the authors consider that the regulations did not follow the principles of legislation. This contradiction is because one of them contradicts Article 169 (q) of the Election Law (2017). The public has not yet accepted the decision of Constitutional Court judges.

The principle of determining legal rules regulated in Article 5 of the Legislation Formation Law (2022) is called procedural rules or formal legal principles.[23] The drafting of legislation must be based on the principles that make legislation, including 1) Clarity of purpose, 2) The authority of the founder or relevant person in charge, 3) Correspondence between the type of hierarchy and the content material, 4) Its ability to be implemented, 5) Usefulness and benefits, and 6) Clarity of language and transparency. [24] When designing a legal regulation, the principle of law is the basis for consideration. However, in theory, it cannot be justified; the principle of law cannot directly be used as a formator of legal regulatory provisions. In addition, in Article 6 of Law No. 12 of 2011, the importance of the legislation's content is a substantive legal principle when formulating legislation. Legal regulations should reflect the following principles: 1) protection, 2) humanity, 3) unity, 4) justice, 5) equality in the face of the law, and 6) legal system of legal regulations form the content of a norm, form, and structure of legal regulations, using the correct methods and procedures.

It should be noted that written and unwritten law is a concept of thought from the Constitutional Court Judge, which was previously uttered and then arranged into a sentence.[25] Because each word has a double meaning, even multiple meanings, the normative law symbolizes other written regulations. Therefore, legal interpretation is needed. Legal interpretation is a method of understanding the meaning of legal texts. Legal interpretation is used in resolving cases and making decisions. Legal interpretation by judges is needed. Judges must examine and try cases that do not have regulations or have not yet been regulated.[26]

Judges have the right to interpret laws according to their beliefs and to decide a case. From various legal facts, the Decision of Constitutional Court judges No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates is contrary to Article 169 (q) of the Election Law (2017) and the 1945 Constitution.[27] The contents of the Constitutional Court's Decision No. 90/PUU-XXI/2023 on the Minimum Age Limit for Presidential and Vice-Presidential Candidates state that they can run as Presidential and Vice Presidential candidates when they are aged 40 years old or have served as Regional Heads or

[23] Bayu Dwi Anggono, "Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusinya," *Masalah - Masalah Hukum* 47, no. 1 (2018): 1–9, https://doi.org/10.14710/mmh.47.1.2018.1-9.
[24] F. Fathorrahman, "Politik Hukum Hierarki Peraturan Perundang-Undangan Indonesia," *Hukmy: Jurnal Hukum* 1, no. 1 (2021): 73–90, https://doi.org/10.35316/hukmy.2021.v1i1.73-90.
[25] B. A. Hidayatullah, "Rekonstruksi Pengawasan Etik Hakim Mahkamah Konstitusi Dalam Perspektif Hukum Administrasi Negara," *Staatsrecht* 1, no. 1 (2021): 39–51, https://doi.org/10.14421/staatsrecht.v1i1.2374.
[26] Afif Kholid, "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia," *Jurnal Hukum* 6, no. 11 (2014).
[27] A. Putra, "Sifat Final Dan Mengikat Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang," *Jurnal Yudisial* 14, no. 3 (2022): 291, https://doi.org/10.29123/jy.v14i3.425.

are currently serving as Regional Heads.[28] The Constitutional Court judges' decision will produce legal norms so as not to cause multiple interpretations of laws and regulations. Constitutional Court judges' decisions should follow the leading case of the legislation's judicial review. It should not deviate from the provisions of The 1945 Constitution.

2. Reconstruction of the Authority of the Constitutional Court Judge's Decision is Binding and Final against the Constitutional Court Judge's Decision Number 90/PUU-XXI/2023 Concerning the Minimum Age Limit for Presidential Candidates and Vice Presidential Candidates.

The decision of the Constitutional Court No. 90/PUU-XXI/2023 was controversial. The controversies of this Constitutional Court were a consequence that was obtained before the nomination of presidential and vice-presidential candidates. Thus, it had a strong weight and was put in the spotlight.[29] This controversy caused many parties to have differing opinions. Jimly Asshiddiqie stated that the Constitutional Court's authority is only limited to revoking norms. It has the role of a negative legislator rather than of a positive legislator. Therefore, the Constitutional Court is a judicative institution that only has the role of leaving or revoking norms that were formed by the Legislative House and the President, which have the role of positive legislators [30]. Therefore, the additional phrase/norm on the age of presidential and vice-presidential candidates in the Decision of the Constitutional Court No. 90/PUU-XXI/2023 made this decision have a greater burden of controversy.

The decision of the Constitutional Court on the required age limit for presidential and vice-presidential candidates in Article 169 letter q of the Election Law (2017) was a hot topic in the public realm. In its Decision No. 90/PUU-XXI/2023 on the age requirement of presidential and vice-presidential candidates, the Constitutional Court added a positive norm that should be the authority of an open legal policy.[31] Various public opinions on the Constitutional Court's decision keep on arising. Some argue that this age limit does not always reflect the desired qualifications of a leader. On the other hand, there was an argument that states that an age limit may be deemed as one of the fixed factors that a leader possesses the required maturity and experience.[32]

Various material examination submissions have been made on Article 169 letter q of the Election Law (2017). They were read by the Constitutional Court. Some of these submissions include Decision No. 29/PUU-XXI/2023 (PSI/*Partai Solidaritas Indonesia*/The Indonesian Solidarity Party), 51/PUUXXI/2023 (*Partai Garuda*/The Garuda Party), 55/PUU-XXI/2023

[28] H. Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan (Studi Kasus Putusan MK Nomor: 90/PUU-XXI/2023)," *Unizar Law Review* 6, no. 2 (2023), https://doi.org/10.36679/ulr.v6i2.60.
[29] Christine S. T. Kansil and Destiana Vani Candra, "Putusan Mahkamah Konstitusi Terkait Usia Calon Presiden Dan Calon Wakil Presiden," *UNES Law Review* 6, no. 4 (2024), https://doi.org/10.31933/unesrev.v6i4.
[30] G. I. F. Rahmat and T. Susilowati, "Constructive Analysis Of The Existence Of Constitutional Court Decisions In The National Legal System (Analytical Study Of Constitutional Court Decision Number 90 / PUU-XXI / 2023 In The Perspective Of Protection Of Citizens ' Rights)," *Perkara: Jurnal Ilmu Hukum Dan Politik* 1, no. 4 (2023): 124–137, https://doi.org/https://doi.org/10.51903/perkara.v1i4.1493.
[31] Dwiky Arief Darmawan and Andy Usmina Wijaya, "Teori Opened Legal Policy Dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Gorontalo Law Review* 7, no. 1 (2024): 111–25, https://doi.org/10.32662/golrev.v7i1.3355.
[32] Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan (Studi Kasus Putusan MK Nomor: 90/PUU-XXI/2023)."

(some Regional Heads), and 90/PUU-XXI/2023 (Faculty of Law, University of Surakarta students). Concerning the various submissions that have been proposed, the Constitutional Court strictly rejects the decision of the applicant with Decision Numbers 29, 51, and 55 under the reason that the material examination submission was deemed to be outside of the Constitutional Court's area of authority (constitutional area).[33] Rejections of previous submissions increased the controversial value of this decision.

Another controversy was that in the democratic legal system, integrity and compliance with the ethical code are crucial pillars that support public trust in justice institutions, including the Constitutional Court. In the judicial context of the Constitutional Court, *ethics* are often defined as an ethical code that constitutional judges must follow. This ethical code is crucial as it becomes the main requirement that marks the integrity and independence of the Constitutional Court [34]. As individuals who carry out that authority, constitutional judges are state officials that must fulfill the high standard of integrity and professionalism. This obligation is because, as an institution that stands above other courtly institutions, the Constitutional Court does not only have a legal responsibility. However, it must also maintain ethical and moral values. It is hoped that judges who have the function of the executor and the spearhead of the justice system, which has relations with the public, may have high expertise in considering and making legal decisions.[35]

Sapta Karsa Hutama, which is the ethical code of the Indonesian Constitutional Court, is a moral basis and a behavioral guideline for all Constitutional Court judges. This ethical code is a legal basis in the law of the Constitutional Court, which states that every Constitutional Court judge must comply with that ethical code. This provision states that the application of the Constitutional Court ethical code needs to be carried out as an ethical guideline for Constitutional judges in carrying out their tasks. This ethical code aims to guard various aspects, including the dignity, credibility, and integrity of the Constitutional Court. In addition, to enforce the ethical-moral standard of this code, it needs to be carried out as an ethical guideline for constitutional courts. This ethical code reflects the Constitutional Court's commitment to achieving legal supremacy and justice in Indonesia.[36] The content of the Constitutional Court's ethical code is as follows:[37]

> *First, the principle of independence. It is the main prerequisite for the achievement of an image in the legal state and the guarantee of law and justice enforcement. The principle of independence is attached in the examination process up to the decision-making process in every case.*

[33] Dirga Achmad and Aulia Audri Rahman, "Kontra Produktif Putusan Mahkamah Konstitusi Nomor 29/PUU-XXI/2023 Mengenai Batas Usia Capres-Cawapres," *Jurnal Esensi Hukum* 6, no. 1 (2024): 1–14, https://doi.org/https://doi.org/10.35586/jsh.v6i1.323.
[34] Nala Syandhira Suzeeta and Kayus Kayowuan Lewoleba, "Pelanggaran Kode Etik Oleh Hakim Mahkamah Konstitusi Terkait Dengan Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023), https://doi.org/10.5281/zenodo.10252190.
[35] Mohammad Iqbal Alif Auliadi et al., "Konsekuensi Pelanggaran Kode Etik Hakim Mk Terhadap Berlakunya Putusan MK Nomor 90/PUU-XXI/2023," *Sosio Yustisia : Jurnal Hukum Dan Perubahan Sosial* 4, no. 1 (2024): 1–16, https://doi.org/10.15642/sosyus.v4i1.544.
[36] Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan (Studi Kasus Putusan MK Nomor: 90/PUU-XXI/2023)."
[37] Cantika Dhea Marshanda Zulqarnain, Nararya Salsabila Zamri, and Raesa Mahardika, "Etik Dalam Kasus Pemberhentian Ketua Mk Anwar Usman Terkait Putusan Batas Usia Capres Dan Cawapres Pada Pemilu 2024," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 2 (2023): 85–94, https://doi.org/10.572349/kultura.v1i2.282.

Second, the principle of non-partiality. It is a principle that is attached to the function of constitutional judges, which demands them to become neutral and not siding a particular group. This principle is closely related to all stages in the legal process, starting from the examination up to the decision-making process in every case. Therefore, this principle may give a guarantee that every law and justice may be carried out well.

Third, the principle of integrity. It is the mental attitude that reflects the unity and balance in every constitutional judge's personality in carrying out their tasks during their serving period.

Fourth, the principle of appropriateness and decency. It is a personal norm that must be applied and reflected in every constitutional judge's behavior. Constitutional judges arrive to professionally carry out their tasks, which collect various aspects of society's sense of respect and trust through their personality.

Fifth, the principle of equality. It is a principle that will guarantee equal treatment to all human beings based on the values of Pancasila, namely a just and civilized humanity. This principle upholds equality and does not perceive someone based on his/her background.

Sixth, the principle of capability and precision: This principle is a crucial prerequisite in the implementation of justice that may be trusted by Indonesian society. Constitutional judges' capability will be reflected in their professional ability to implement tasks.

Seventh, the principle of wisdom. This principle will demand judges to act and behave according to legal norms as well as consider other norms in Indonesian society.

Based on the introduction that has described the case's chronology, it can be identified that there were deviations in the Constitutional Court's decision-making process of case No. 90/PUU-XXI/2023. Through this decision, it is stated that there is an additional requirement that makes this decision deemed deviant, namely the existence of the inconsistency in the Constitutional Court's statement in a similar case. At the start, the Constitutional Court stated that this case should become the authority of the legislative institution. However, when a similar case was resubmitted with a special emphasis on a certain figure (i.e., Gibran Rakabuming) in its submission, the Constitutional Court accepted part of this submission [38]. Departing from this, suspicion of an ethical code violation arose. It was deemed that the judge's behavior on this decision was too political and that it emphasized the self-interest of a certain party, namely the Former Head of the Constitutional Court, Anwar Usman, as the uncle of Gibran Rakabuming (the party that obtained the benefit of this decision). He was one of the vice-presidential candidates who were to become participants in the 2024 General Election).[39]

The violation of law that several parties felt led some elements to report the existence of an ethical code violation by Constitutional Court judges. Denny Indrayana, Zico Leonard Djagardo Simanjuntak, LBH Yusuf, and a representative of fifteen professors/academicians who were part of the Constitutional and Administrative Law Society (CALS) reported the

[38] Zulqarnain, Zamri, and Mahardika.
[39] YLBHI, "Anwar Usman Terbukti Melakukan Pelanggaran Etik Berat, Seharusnya Diberhentikan Dari Hakim Mahkamah Konstitusi," 2023.

suspicion of ethical code violation in the determination of the Constitutional Court Decision No. 90/PUU-XXI/2023 to the Constitutional Court's Honorary Assembly to obtain further assessment. Following this controversial decision, the Honorary Assembly of the Constitutional Court *(Majelis Kehormatan Mahkamah Konstitusi - MKMK)* was formed based on the Decision Letter of the Constitutional Court Head No. 10 of 2023 as a response to many reports on the suspicion of severe ethical code violation, which entered the Constitutional Court.[40] In carrying out its task, *MKMK* carried out an examination and sought information through a series of trials, starting from the initial trial and further examination until the final decision was reached. After organizing various trials and obtaining information from related parties, the *MKMK* issued Decision No.02/*MKMK*/L/11/2023, based on Constitutional Court Decision No. 09/PMK/2006 on the Application of Ethical Code Declaration and the Behavior of Constitutional Judges, which was called *Sapta Karsa Hutama.*[41]

The *MKMK* Decision No. 2/*MKMK*/L/11/2023 states that Anwar Usman, as the Constitutional Court Head, was proven to have carried out an ethical code violation with the determination of Decision No. 90/PUU-XXI/2023 on the Age Limit of Presidential and Vice-Presidential Candidates. The report on the ethical code violation was not only imposed on the Constitutional Court Head, but other constitutional judges were also reported to have carried out this violation. There was a conflict of interest which influenced the determination of the Constitutional Court Decision No. 90/PUU-XXI/2023, violating the principle of judge's independence that is regulated in the Constitutional Court ethical code and judicial behavior referring to "The Bangalore Principles of Judicial Conduct 2002" which has been well-accepted by countries which apply the "Civil Law" or the "Common Law" systems. It has been adapted to the legal and court system in Indonesia as well as the ethics of the national life.

Anwar Usman was proven to have violated five principles, namely the non-partiality principle, the integrity principle, the capability and precision principle, the independence principle, and the capability and decency principle.[42] This violation was delivered in a trial, which was organized on Tuesday, November 7th, 2023, in the Plenary Trial Room, Building I of the Constitutional Court. This study summarize Anwar Usman's violations as follows: In the non-partiality principle, in the application of number 5 letter b, this principle obliges the constitutional judge to back down from the examination of a case if that judge is deemed not to be able to act neutrally or if there is a familial relationship that is deemed to have a direct interest. This principle was in line with article 17 clause (3) the Judicial Power Law (2009). It was identified that Usman did not have the good faith to back down in case No. 90/PUU-XXI/2023. Thus, he was proven to have violated the judicial behavior ethical code.[43]

Usman has also violated the integrity principle on the application of number 2. This principle emphasizes that the behavior and actions of constitutional judges should increase

[40] Sutan Sorik, Mirza Nasution, and Nazaruddin Nazaruddin, "Eksistensi Majelis Kehormatan Mahkamah Konstitusi (Studi Keputusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01 *MKMK* X 2013)," *Jurnal Konstitusi* 15, no. 3 (2018): 666–87, https://doi.org/10.31078/jk15310.

[41] Mahkamah Konstitusi, "Keputusan Dewan Etik," MKRI Website, 2018.

[42] Fradhana Putra Disantara et al., "Ekstentifikasi Kewenangan Majelis Kehormatan Mahkamah Konstitusi Dalam Memperkuat Gagasan Constitutional Ethics," *Jurnal Litigasi (e-Journal)* 24, no. 1 (2023), https://doi.org/10.23969/litigasi.v24i1.7232.

[43] Nadia Intan Fajarlie, "Pakar Hukum Tegaskan 3 Kejanggalan Besar Dalam Putusan MK Terkait Batas Usia Capres-Cawapres," *Kompas TV*, November 2023.

society's trust in the Constitutional Court's reputation and credibility. Departing from this case, many counter-narrations were published in the media and the public criticized this case through social media. These actions reflect the public's sceptic attitude, which doubts the Constitutional Court's credibility. Moreover, this action shows that Usman has failed to apply the integrity principle which leads to the decreasing public trust in the Constitutional Court.

In the capability and precision principle, constitutional judges are demanded to be professionally capable and personally precise in carrying out their tasks. One of the reporters in the first initial trial of the *MKMK*, Violla Reininda, a representative of CALS (Constitutional and Administrative Law Society), stated that Usman was deemed incapable of carrying out his judicial leadership function when faced with a concurring opinion situation by two judges who were substantially a dissenting opinion, creating a deviant decision. This action violated the application of principle number 5, which demands constitutional judges to guarantee the efficient, good, and timely resolution of a case. The independence principle is closely related to the Constitutional Court's dignity as a justice institution. Through the trial of the final decision, the *MKMK* stated that Usman deliberately opened an outside party's intervention in the process of making Decision No. 90/PUU-XXI/2023, which violates the application of numbers 1, 2, and 3 of this decision. Application number 0 of the appropriateness and decency principle states that constitutional judges cannot use or uncover confidential information which was obtained when carrying out their job for other interests that are not related to the courtly task. In this case, the *MKMK* opined that the nine reported judges failed to protect confidential information in the Judge Deliberation Meeting, which was deemed to have leaked as its content was reported in mass media, namely Tempo Magazine.

The Constitutional Court Decision No. 90/PUU-XXI/2023 regards the age limit of presidential and vice-presidential candidates in the general election in 2024. In this context, the *MKMK* has a crucial role, as it was known that Usman, the Constitutional Court Head, has a familial relationship with the president. He is the husband of Idayadi, who is the biological younger sister of President Joko Widodo. Thus, this creates a conflict of interest regarding the involvement of the Constitutional Court Head, Anwar Usman, who has a familial relationship with the individual that is highlighted in the examined case.[44] It is stated in plea No. 90/PUU-XXI/2023 that the applicant indicated that there was an effort to encourage Gibran Rakabuming Raka so that he may become a presidential or vice-presidential candidate in 2024. In resolving a case, a constitutional judge should strongly hold the principle that has been stipulated in the Constitutional Court Decision No. 09/PMK/2006 on the Imposition of the Ethical Code Declaration and Constitutional Judges' Behavior, also known as *Sapta Karsa*, which contains the ethical code and judicial behavior on non-partiality and the principle of appropriateness/decency.[45]

[44] Yahya Lutfi Kurniawan et al., "Analisa Yuridis Dissenting Opinion Putusan Nomor 90/PUU XXI/2023 Terkait Argumen Open Legal Policy Dan Etika Hakim MK," *Gudang Jurnal Multidisiplin Ilmu* 1, no. 6 (2023): 192–197, https://doi.org/10.59435/gjmi.v1i6.180.
[45] L. Lidya, "Pemberlakuan Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 5 (2024): 1763–1778, https://doi.org/10.38035/jihhp.v4i5.2246.

The *MKMK's* decision to impose sanctions for this ethical violation is actually an existing jurisprudence. The *MKMK* is an instrument that was formed by the court to uphold and maintain its dignity, nobility, and honour, as well as to uphold the Ethical Code and Behavior of Constitutional Judges.[46] In considering one of its *objectum litis,* the justice process of the Constitutional Court regards the constitutionality issue of the law, which emphasizes the public interest that is protected by the constitution as the highest law and is not merely for individual interests. Thus, it requires a high standard of accountability.[47] Based on the Decision of the Constitutional Court (2014), the Ethical Assembly and the *MKMK* are institutions that have the job of carrying out and supervising the Ethical Code and Guidelines for Judicial Behavior of the Constitution. These two institutions have an important role in maintaining the integrity and ethical standards in the constitutional law system. They have the responsibility to make sure that constitutional judges comply with the Ethical Code and Guidelines to Judicial Behavior of the Constitution, which is a standard of professional behavior that must be followed by all constitutional judges. These institutions originate from the Constitutional Court internals and function as internal supervisors.[48]

The emergence of a suspicion of an ethical code violation by Constitutional Court judges in this case led to a big question on the legal consequences and legitimacy of that decision. The verdict of the ethical code violation is its jurisprudence. This case does not only hurt institutional honour but may also potentially shake up the foundation of constitutional justice that must be highly upheld. Its jurisprudence is that Constitutional Court judges may be imposed with a verdict if, in making a decision, they violate the ethical code and cannot obtain protection under the reason of "judicial independence".

The *MKMK* is an institution that has a role in maintaining the integrity and professionalism of constitutional judges. However, based on the Decision of the Constitutional Court No. 1 of 2023 on the *MKMK*, the *MKMK* does not have the authority to revoke the Constitutional Court's decision. Article 41 states that the *MKMK* only imposes sanctions in the form of an oral warning, a written warning and an unhonorable termination. Therefore, Constitutional Court Decision No. 90/PUU-XXI/2023 still applies even though there were dissenting opinions in the *MKMK*. This condition reflects the legal principle that the Constitutional Court's Decision is final and binding. Even though there is room for debates and discussion, the Constitutional Court's Decision must be respected and accepted by all parties, including the *MKMK*.[49] Constitutional Court Decision No. 90/PUU-XXI/2023 also has a wide legal implication. An analysis of this decision reflects the existence of a constitutional commercialization and an ethical code violation. It raises a question on wider regulatory changes, namely the change in the stipulations on the requirement of presidential

[46] Dodi Haryono, "Metode Tafsir Putusan Mahkamah Konstitusi Dalam Pengujian Konstitusional Undang-Undang Cipta Kerja," *Jurnal Konstitusi* 18, no. 4 (2022): 774–802, https://doi.org/10.31078/jk1843.

[47] Z. A. Firmantoro, "Menimbang Kedudukan Majelis Kehormatan Mahkamah Konstitusi Republik Indonesia Pasca Lahirnya Undang-Undang Nomor 7 Tahun 2020 Considering the Position of Assembly Court in the Republic of Indonesia after the Establishment of Law Number 7 in 2020," *Jurnal Konstitusi* 17, no. 4 (2020): 899–918, https://doi.org/10.31078/jk1749.

[48] Yoyon Mulyana Darusman, Amelia Haryanti, and Susanto Susanto, "Kedudukan Majlis Kehormatan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 10, no. 2 (2023): 147–60, https://doi.org/10.32493/SKD.v10i2.y2023.37110.

[49] F. Febriansyah and S. Prayitno, "Analisis Hukum Terhadap Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023 Tentang Batas Usia Capres Dan Cawapres," *Jurnal Mitra* 2, no. 3 (2023).

and vice-presidential candidates who are 40 years old or have had experience becoming a regional leader. This provision opens the opportunity for potential leaders who are less than 40 years old to nominate as presidential and vice presidential candidates so long as they have had experience becoming a regional head.[50]

Constitutional Court Decision No. 90/PUU-XXI/2023 may influence the image and the public trust towards this court even though its decision is final and binding. Therefore, some steps need to be taken to recover the public trust and maintain the Constitutional Court's integrity, such as implementing *MKMK*'s decision and letting the judge who was deemed to have violated the ethical sanction serve his punishment. The *MKMK*'s existence may become an answer to internally supervising constitutional judges. The *MKMK* can give society the certainty that the Indonesian justice institution is still appropriate to obtain the public trust. Therefore, an analysis of the application of the *MKMK* decision and its link to Constitutional Court Decision No. 90/PUU-XXI/2023 shows that the two decisions are interrelated and have significant legal implications[51] Even though the *MKMK* does not have the authority to revoke the Constitutional Court's decision, it was the right choice to impose sanctions on the constitutional judge who violated the ethical code.

Conclusion

Constitutional Court judges interpreted that the minimum age of presidential and vice-presidential candidates was the same as the initial formulation, which was 40 years old. However, there was an additional positive norm where that candidate had experience or was placed in a position that was chosen through the general election, including as a regional head. This interpretation was because the public position is deemed to be able to be juxtaposed with the age of 40 years as it accommodates one's governmental experience. Thus, this opens up an opportunity for young but experienced people who have not reached 40 years of age.

Concerning the implications of proven ethical violations in Decision No. 90/PUU-XXI/2023, even though it was proven that there was a violation of ethics in the legal sense, the decision of the Constitutional Court judges is binding and final. However, such an ethical violation personally impacted the judge as he was sanctioned by the Honorary Assembly of the Constitutional Court.

[50] K. Novitalia, K. Hasibuan, and B. Aspani, "Kredibilitas Mahkamah Konstitusi Pasca Putusan No. 90/PUU-XXI/2023," *Jurnal Hukum Solusi* 22 (2024): 1–20, https://doi.org/10.36546/solusi.v22i1.1076.
[51] Deltiya Cahayani et al., "Analisis Kritis Atas Putusan Mahkamah Konstitusi Nomor 90/PUUXXI/2023 Dalam Kontek Perlindungan Hak Konstitusonal Warga Negara Dan Hak Asasi Manusia," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (2024): 170–74, https://doi.org/10.62383/amandemen.v1i3.280.

References

Achmad, Dirga, and Aulia Audri Rahman. "Kontra Produktif Putusan Mahkamah Konstitusi Nomor 29/PUU-XXI/2023 Mengenai Batas Usia Capres-Cawapres." *Jurnal Esensi Hukum* 6, no. 1 (2024): 1–14. https://doi.org/https://doi.org/10.35586/jsh.v6i1.323.

Adji, Agung Bayu, Hedwig Adianto Mau, and Mardi Candra. "Konstitusionalitas Perubahan Usia Calon Presiden Dan Calon Wakil Presiden Dalam Negara Hukum Demokrasi." *Sentri: Jurnal Riset Ilmiah* 3, no. 1 (2024): 16–25. https://doi.org/10.55681/sentri.v3i1.2116.

Anggono, Bayu Dwi. "Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusinya." *Masalah - Masalah Hukum* 47, no. 1 (2018): 1–9. https://doi.org/10.14710/mmh.47.1.2018.1-9.

Arimba, Cahya Iradi. "Hans Kelsen's Nomostatics and Nomodinamics Legal Theory." *Jurnal Voice* 2, no. 2 (2023): 55–63. https://doi.org/10.37893/jv.v2i2.773.

Auliadi, Mohammad Iqbal Alif, Omy Fajar Reza Pradana, Laila Intansari, and Samsul Arifin. "Konsekuensi Pelanggaran Kode Etik Hakim Mk Terhadap Berlakunya Putusan MK Nomor 90/PUU-XXI/2023." *Sosio Yustisia : Jurnal Hukum Dan Perubahan Sosial* 4, no. 1 (2024): 1–16. https://doi.org/10.15642/sosyus.v4i1.544.

Cahayani, Deltiya, Moch Fahmi Faozi, Muhamad Sunan Rizky, Resna Amelia Putri, and Shinta Devy Melani. "Analisis Kritis Atas Putusan Mahkamah Konstitusi Nomor 90/PUUXXI/2023 Dalam Kontek Perlindungan Hak Konstitusonal Warga Negara Dan Hak Asasi Manusia." *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (2024): 170–74. https://doi.org/10.62383/amandemen.v1i3.280.

Darmawan, Dwiky Arief, and Andy Usmina Wijaya. "Teori Opened Legal Policy Dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023." *Gorontalo Law Review* 7, no. 1 (2024): 111–25. https://doi.org/10.32662/golrev.v7i1.3355.

Darusman, Yoyon Mulyana, Amelia Haryanti, and Susanto Susanto. "Kedudukan Majlis Kehormatan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 10, no. 2 (2023): 147–60. https://doi.org/10.32493/SKD.v10i2.y2023.37110.

Disantara, Fradhana Putra, Febri Falisa Putri, Sylvia Mufarrochah, and Elsa Assari. "Ekstentifikasi Kewenangan Majelis Kehormatan Mahkamah Konstitusi Dalam Memperkuat Gagasan Constitutional Ethics." *Jurnal Litigasi (e-Journal)* 24, no. 1 (2023). https://doi.org/10.23969/litigasi.v24i1.7232.

Fajarlie, Nadia Intan. "Pakar Hukum Tegaskan 3 Kejanggalan Besar Dalam Putusan MK Terkait Batas Usia Capres-Cawapres,." *Kompas TV*, November 2023.

Fathorrahman, F. "Politik Hukum Hierarki Peraturan Perundang-Undangan Indonesia." *Hukmy: Jurnal Hukum* 1, no. 1 (2021): 73–90. https://doi.org/10.35316/hukmy.2021.v1i1.73-90.

Febriansyah, F., and S. Prayitno. "Analisis Hukum Terhadap Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023 Tentang Batas Usia Capres Dan Cawapres." *Jurnal Mitra* 2, no. 3 (2023).

Fikri, Muhammad, and Sunny Ummul. "Implementasi Teori Hans Nawiasky Dalam Peraturan Perundang-Undangan Di Indonesia." *Jurnal Demokrasi Dan Ketahanan Nasional* 1, no. 1 (2022): 2.

Firmantoro, Z. A. "Menimbang Kedudukan Majelis Kehormatan Mahkamah Konstitusi Republik Indonesia Pasca Lahirnya Undang-Undang Nomor 7 Tahun 2020 Considering the Position of Assembly Court in the Republic of Indonesia after the Establishment of Law Number 7 in 2020." *Jurnal Konstitusi* 17, no. 4 (2020): 899–918. https://doi.org/10.31078/jk1749.

Haryono, Dodi. "Metode Tafsir Putusan Mahkamah Konstitusi Dalam Pengujian Konstitusional Undang-Undang Cipta Kerja." *Jurnal Konstitusi* 18, no. 4 (2022): 774–802. https://doi.org/10.31078/jk1843.

Hidayatullah, B. A. "Rekonstruksi Pengawasan Etik Hakim Mahkamah Konstitusi Dalam Perspektif Hukum Administrasi Negara." *Staatsrecht* 1, no. 1 (2021): 39–51. https://doi.org/10.14421/staatsrecht.v1i1.2374.

Ibrahim, Johny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2007.

Iriani, Dewi. "Hukum Sebagai Alat Kontrol Sosial Dan Sistem Supremasi Penegakan Hukum." *Justicia Islamica* 8, no. 1 (August 25, 2016): 139–59. https://doi.org/10.21154/justicia.v8i1.527.

Kansil, Christine S. T., and Destiana Vani Candra. "Putusan Mahkamah Konstitusi Terkait Usia Calon Presiden Dan Calon Wakil Presiden." *UNES Law Review* 6, no. 4 (2024). https://doi.org/10.31933/unesrev.v6i4.

Kholid, Afif. "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia." *Jurnal Hukum* 6, no. 11 (2014).

Kurniawan, Yahya Lutfi, Cleo Farrel Piyantoni, Ruchyat Angga Permana, and Niluh Ketut Candra Kasih. "Analisa Yuridis Dissenting Opinion Putusan Nomor 90/PUU XXI/2023 Terkait Argumen Open Legal Policy Dan Etika Hakim MK." *Gudang Jurnal Multidisiplin Ilmu* 1, no. 6 (2023): 192–197. https://doi.org/10.59435/gjmi.v1i6.180.

Lantiva, Meitika Candra. "Inilah Sosok Almas Tsaqibbiru, Mahasiswa Solo Yang Muluskan Jalannya Gibran Maju Pilpres 2024." *Radar Jogja*, October 2023.

Lidya, L. "Pemberlakuan Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023." *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 5 (2024): 1763–1778. https://doi.org/10.38035/jihhp.v4i5.2246.

Mahkamah Konstitusi. "Keputusan Dewan Etik." MKRI Website, 2018.

Mappatunru, A. M. D. "The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum Indonesia." *Indonesian Journal of Criminal Law* 2, no. 2 (2020): 132– 152. https://doi.org/10.31960/ijocl.v2i2.541.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2023.

Muhammad, Abdulkadir. *Hukum Dan Penelitian Hukum (The Law and Legal Research)*. Bandung: Citra Aditya Bakti, 2014.

Novitalia, K., K. Hasibuan, and B. Aspani. "Kredibilitas Mahkamah Konstitusi Pasca Putusan No. 90/PUU-XXI/2023." *Jurnal Hukum Solusi* 22 (2024): 1–20. https://doi.org/10.36546/solusi.v22i1.1076.

Putra, A. "Sifat Final Dan Mengikat Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang." *Jurnal Yudisial* 14, no. 3 (2022): 291. https://doi.org/10.29123/jy.v14i3.425.

Qoroni, Waisol, and Indien Winarwati. "Kedaulatan Rakyat Dalam Konteks Demokrasi Di Indonesia." *Jurnal Inicio Legis* 2, no. 1 (2021): 51. https://doi.org/10.21107/il.v2i1.11079.

Rahmat, G. I. F., and T. Susilowati. "Constructive Analysis Of The Existence Of Constitutional Court Decisions In The National Legal System (Analytical Study Of Constitutional Court Decision Number 90 / PUU-XXI / 2023 In The Perspective Of Protection Of Citizens ' Rights)." *Perkara: Jurnal Ilmu Hukum Dan Politik* 1, no. 4 (2023): 124–137. https://doi.org/https://doi.org/10.51903/perkara.v1i4.1493.

Rizhan, A. "Konsep Hukum Dan Ide Keadilan Berdasarkan Teori Hukum Statis (Nomostatics) Hans Kelsen." *Kodifikasi* 2, no. 1 (2020): 61–71.

Rokilah, Rokilah, and Sulasno Sulasno. "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan." *Ajudikasi : Jurnal Ilmu Hukum* 5, no. 2 (December 29,

2021): 179–90. https://doi.org/10.30656/ajudikasi.v5i2.3942.

Rustam, Rustam, Tat Marlina, and Duwi Handoko. "Sejarah Pembentukan Dan Kewenangan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia." *Jurnal Dimensi* 11, no. 2 (April 25, 2022): 270–81. https://doi.org/10.33373/dms.v11i2.3973.

Silaban, Virto, and Kosariza. "Kedudukan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia." *Jurnal of Constitutional Law* 1, no. 1 (2021): 1–17.

Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat (Normative Legal Research, A Short Review)*. Jakarta: Raja Grafindo Persada, 2016.

Sorik, Sutan, Mirza Nasution, and Nazaruddin Nazaruddin. "Eksistensi Majelis Kehormatan Mahkamah Konstitusi (Studi Keputusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01 MKMK X 2013)." *Jurnal Konstitusi* 15, no. 3 (2018): 666–87. https://doi.org/10.31078/jk15310.

Subandri, Rio. "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden." *Jaksa: Jurnal Kajian Ilmu Hukum Dan Politik* 2, no. 1 (2024): 135–53. https://doi.org/https://doi.org/10.51903/jaksa.v2i1.1512.

Suteki, Taufani, and Galang. *Metodologi Penelitian Hukum: Filsafat, Teori Dan Praktik*. Depok: Rajawali Press, 2018.

Suzeeta, Nala Syandhira, and Kayus Kayowuan Lewoleba. "Pelanggaran Kode Etik Oleh Hakim Mahkamah Konstitusi Terkait Dengan Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023." *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023). https://doi.org/10.5281/zenodo.10252190.

Syaputra, M. Y. A. "Kajian Yuridis Terhadap Penegasan Hiearaki Peraturan Perundang-Undangan Di Indonesia Dalam Perspektif Stufen Theorie." *Jurnal Mercatoria* 9, no. 2 (2016): 95–103. https://doi.org/10.31289/mercatoria.v9i2.433.

Ulum, H., and Sukarno. "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan (Studi Kasus Putusan MK Nomor: 90/PUU-XXI/2023)." *Unizar Law Review* 6, no. 2 (2023). https://doi.org/10.36679/ulr.v6i2.60.

Utomo, Wahyu Wiji. "Persfektif Rasional Choice Dan Nepotisme Pada Perubahan Pasal 169 Huruf Q Undang-Undang Nomor 7 Tahun 2017 Tentang Batas Usia Calon Presiden Dan Wakil Presiden." *Jurnal Ilmiah Muqoddimah* 8, no. 1 (2024): 349–59. https://doi.org/10.31604/jim.v8i1.2024.349-359.

YLBHI. "Anwar Usman Terbukti Melakukan Pelanggaran Etik Berat, Seharusnya Diberhentikan Dari Hakim Mahkamah Konstitusi," 2023.

Zulqarnain, Cantika Dhea Marshanda, Nararya Salsabila Zamri, and Raesa Mahardika. "Etik Dalam Kasus Pemberhentian Ketua Mk Anwar Usman Terkait Putusan Batas Usia Capres Dan Cawapres Pada Pemilu 2024." *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 2 (2023): 85–94. https://doi.org/10.572349/kultura.v1i2.282.