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**MINIMUM AGE REQUIREMENTS FOR REGIONAL HEAD CANDIDATES
AFTER CONSTITUTIONAL COURT DECISION NO. 70/PUU-XXII/2024 AND
SUPREME COURT DECISION NO. 23 P/HUM/2024**

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ABSTRACT

The purpose of this study is to understand, explain, and analyze the Ratio Legis of Constitutional Court Decision No. 70/PUU-XXI/2024 and Supreme Court Decision No. 23 P/HUM/2024 and the Juridical Implications of Constitutional Court Decision No. 70/PUU-XXI/2024 and Supreme Court Decision No. 23 P/HUM/2024 related to minimum age requirements for regional head candidates. This research method uses the normative juridical legal research method, using the statute approach and the conceptual approach. The results of this research are First, the Ratio Legis of the Constitutional Court Decision No. 70 / PUU-XXI / 2024, namely, the Constitutional Court considers in Decision Number 70 / PUU / XII / 2024 that Article 7 paragraph (2) letter e of Law 10/2016 has provided legal certainty. According to the Constitutional Court, the minimum age calculation for candidates for regional heads is still calculated from the “determination of the candidate pair” because both the historical approach and systematic approach continue to use the calculation since the “determination of the candidate pair.” While the Ratio Legis of the Supreme Court Decision No. 23 P/HUM/2024, the Supreme Court considers that the phrase “at least 30 years old for Governors and Deputy Governors and 25 years old for Regents and Deputy Regents” in PKPU No. 9 of 2020 is a form of inconsistency that can cause injustice to citizens and is also not by the principle of legal certainty; therefore, the Supreme Court changed the regulation and calculated the minimum age requirement for Regional Head Candidates starting from the “Inauguration of Candidate Pairs,” which was originally calculated from the “Determination of Candidate Pairs.” Secondly, the juridical implications of these two decisions are that there is a dualism of legal norms, or at least differences in interpretation, that have the potential

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to cause legal uncertainty and also uncertainty in the implementation of Pilkada. However, by using the principle of *lex posterior derogat legi prior*, the Supreme Court decision can be overruled.

Keywords: Minimum Age Requirement, Regional Head Candidates, Constitutional and Supreme Court

1. INTRODUCTION

The authority of the Constitutional Court as in Article 24C paragraph (1) of the 1945 Constitution, one of which is to examine the law against the 1945 Constitution, the article reads: “The Constitutional Court has the authority to hear cases at the first and last instance and its decision is final to test the law against the Constitution”. Currently, the Constitutional Court conducts many judicial reviews of laws that apply and are considered to violate the Constitution. In conducting judicial review of laws for constitutional violations, the Constitutional Court maintains constitutional principles by ensuring that a law does not violate the Constitution (Wahid et al., 2024). According to the recapitulation of law review cases by the Constitutional Court, it was found that the Court had decided approximately 240 (two hundred and forty) cases in 2024 (Wiryono, 2025). This aims to make the law in line with the 1945 Constitution, so that it does not contain things that are multi-interpretive. The laws being tested by the Constitutional Court include General Election Commission Regulation Number 9 of 2020, concerning the Fourth Amendment to General Election Commission Regulation Number 3 of 2017, which pertains to Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors.

General Election Commission Regulation Number 9 of 2020 concerning the Fourth Amendment to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors is a reference for organizing Regional Head elections, especially in the 2024 Regional Elections. This law regulates the procedures and requirements for becoming a candidate for Governor and Deputy Governor, including

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the minimum age limit. In Article 4 paragraph (1) letter of General Election Commission Regulation Number 9 of 2020 concerning the Fourth Amendment to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors, namely at least 30 (thirty) years old for candidates for Governor and candidates for Deputy Governor.

However, a polemic arose when the Supreme Court issued Decision No. 23 P/HUM/2024 on the application by the Garda Republik Indonesia Party (Garuda Party) regarding the Application for Objection to the Right to Material Test of General Election Commission Regulation Number 9 of 2020 concerning the Fourth Amendment to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors, in this decision the Supreme Court stated that the Law does not explicitly determine the point in time when the minimum age requirement must be met. In its ruling, the Supreme Court emphasized that the minimum age of 30 years for regional head candidates is calculated from the date of the elected candidate pair's inauguration, not from the stage of candidate determination. This decision provides a new interpretation of KPU regulations, which has important implications for the process of nominating and determining candidates for regional heads.

The interpretation of the Constitutional Court in the Judicial review, Decision of the Constitutional Court Number Case No. 70/PUU-XXII/2024 Testing Article 7 paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law against the 1945 Constitution of the Republic of Indonesia emphasizes that the minimum age requirement for candidates for Regional Heads must be calculated from the determination of candidate pairs by the General Election Commission, not during the inauguration. The Constitutional Court thinks that this interpretation is more in line with

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the Indonesian legal system and the practice of organizing previous Regional Head Elections.

Another problem arises when the Legislation Body of the House of Representatives tends to use the Supreme Court's decision in setting the age limit. If we look at this situationally, we can trace back that among the state institutions that have a tradition of exercising judicial power, among others, is the Constitutional Court, this authority is stipulated in Article 24 C paragraph (1) of the 1945 Constitution in its function as guardian of the constitution, namely the authority of the Constitutional Court to hear cases at the first and final levels and its decisions have a final and constitutional nature.

The authority of the Constitutional Court is (Mas, 2019):

1. Examining the law against the 1945 Constitution of the Republic of Indonesia;
2. Deciding disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia Year 1945;
3. Deciding on the dissolution of a political party; and
4. Deciding on the opinion of the House of Representatives regarding alleged violations of the President or Vice President;
5. Deciding disputes over election results.

In the Anglo-Saxon tradition, the idea of Constitutional Review first became a matter of discourse. In 1796, a judicial review suit was filed with the United States Supreme Court (Hamdani et al., 2025). As a historical example of the Marbury and Madison case, in the judicial review of the United States Supreme Court, which, in the direction of its legitimacy as a federal court, is not given the authority to review laws, the United States constitutional institution is fundamentally a political constitution (Hamdani et al., 2023). John Marshall, Chief Justice of the United States Supreme Court in 1803, finally examined and decided the Marbury and Madison cases. Historically, this is how the practice of judicial review was carried out by the United States at the beginning of the 19th century, the term the guardian of the Constitution of the United States of America or the Supreme Court is the institution that guards the Constitution. began to be a constitutional reform that inspired the constitution of the country that implemented it. At

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that time, judicial review was a new doctrine in its application in the development of legal history in the United States and inspired other countries (Rustam et al., 2022). The history of the establishment of the institution of the Constitutional Court in Indonesia begins with the adoption of the idea of a Constitutional Court in the constitutional amendments carried out by the MPR in 2001 as formulated in the provisions of Article 24 paragraph (2), Article 24C, and Article 7B of the 1945 Constitution as a result of the Third Amendment passed on 9 November 2001. After the passing of the Third Amendment to the 1945 Constitution, hereinafter referred to as the 1945 Constitution, to await the establishment of the Constitutional Court, the MPR determined that the Supreme Court would temporarily carry out the functions of the Constitutional Court as stipulated in Article III of the Transitional Rules of the Fourth Amendment to the 1945 Constitution (Darmani, 2015).

The House of Representatives and the Government then drafted the Constitutional Court Law (Fauzia et al., 2023). After an in-depth discussion, the House of Representatives and the Government jointly approved Law No. 24/2003 on the Constitutional Court on August 13, 2003, and it was ratified by the President on that day. Two days later, on August 15, 2003, the President, through Presidential Decree No. 147/M/2003, appointed the first constitutional judges, followed by their swearing-in at the State Palace on August 16, 2003. The next chapter of the Constitutional Court's journey was the delegation of cases from the Supreme Court to the Constitutional Court, on October 15, 2003, which marked the beginning of the operation of the Constitutional Court as one of the branches of judicial power according to the provisions of the 1945 Constitution (Darmani, 2015).

2. RESEARCH METHODS

The type of legal research used in this research is Normative Juridical, or known as the Doctrinal Legal Research Method. This means that the type of research in this paper uses legal materials as research data in the form of primary data, secondary data, and

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tertiary data. This research is theoretical and aims to analyze legal concepts, principles, norms, and their application in the legal system. The data collection technique uses library research, namely by collecting relevant legal materials, both primary legal materials (legislation and jurisprudence), secondary legal materials (literature).

3. DISCUSSION

The different views regarding the minimum age calculation norm between Supreme Court Decision 23/2024 and Constitutional Court Decision 70/2024 have created legal uncertainty. Legal uncertainty has an impact on the execution of the decision by the decision addressee. Instead of resolving debates and interpretation issues related to the minimum age limit for regional head candidates, the two Decisions have created other debates and interpretations related to the enforceability and compliance with court decisions.

The dualism of norms between the Supreme Court Decision and the Constitutional Court Decision a quo makes interpreters tend to cherry-pick from the two decisions by their respective interests. Sentences in the decision that do not back up their interests are discarded. The favorable ones are stabbed as “*sales*”. It is repeated, as if it is the most correct, while confusing other views (Suroso, 2021).

In the political dynamics in the House of Representatives (DPR RI), at the beginning of the Legislation Body Meeting, the majority of factions in the DPR RI preferred to accommodate the Supreme Court Decision rather than the Constitutional Court Decision. Deputy Chairman of the Legislative Body (*Baleg*) of the House of Representatives, Ach Baidowi, said that the Supreme Court's decision more clearly and in detail regulates the provisions on the age requirements for nominating regional heads. Meanwhile, the Constitutional Court's decision only rejected the entire petition. According to Baidowi, everything submitted by members of the Baleg DPR regarding the two decisions is logically correct, but there are legal norms that must be referred to (DA, 2024). Furthermore, according to Democratic Party politician, Benny K Harman, the

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Constitutional Court's decision also did not annul the Supreme Court's decision, so that, as the legislators see, both have the same norms. Unless the Constitutional Court's decision states that the Supreme Court's decision does not apply. Benny even criticized the Constitutional Court, which is often considered great because it has the authority to cancel or give meaning to the law as if taking over the legislative function of the DPR (DA, 2024).

Another view from a Baleg member from the PDIP faction, TB Hasanuddin, said that in the inventory list of problems (DIM) that caused debate regarding the age requirements for regional head candidates, it was clear that the bill emphasized the regulation of candidates, not elected regional heads. Furthermore, the former member of Commission I of the House of Representatives gave an example of becoming a TNI officer through a military academy. The limit is when it is determined to be a military academy cadet, not when his position is appointed as lieutenant (DA, 2024).

Meanwhile, the Constitutional and Administrative Law Society, in a press statement on its Instagram @cals_indonesia, stated that the Constitutional Court's decision could roll out the red carpet for President Joko Widodo's son, Kaesang Pangarep, to run for Deputy Governor of Central Java, who had not met the age requirement when determining candidate pairs. Therefore, the Constitutional and Administrative Law Society calls for the following:

- 1) The President and the House of Representatives stop the discussion of the Revision of the Pilkada Law and comply with the Constitutional Court Decision Number 60/PUU-XXII/2024 dated August 20, 2024, and the Constitutional Court Decision Number 70/PUU-XXII/2024 dated August 20, 2024;
- 2) The KPU follows up on the Constitutional Court Decision Number 60/PUU XXII/2024 dated August 20, 2024, and the Constitutional Court Decision Number 70/PUU-XXII/2024 dated August 20, 2024;
- 3) If the revision of the Pilkada Law is continued by ignoring the Constitutional Court Decision, the entire community will defy the tyranny and autocracy of President Joko Widodo's regime and his supporting political parties by boycotting the 2024 elections.

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Another view is that the Constitutional Court Decision overrides the Supreme Court Decision based on the object of the test, so that the Constitutional Court Decision applies. This view is not entirely correct, because both the Supreme Court Decision and the Constitutional Court Decision are final, binding, and *erga omnes*.

Second, the Constitutional Court in its Decision No.110-111-112 113/PUU-VII/2009 stated that if the law on which the Supreme Court decides and hears judicial review cases is canceled by the Constitutional Court and declared unconstitutional, then court decisions that are not by the Constitutional Court Decision become invalid because they lose their basis. Meanwhile, referring to the legal considerations of Constitutional Court Decision 70/2024 paragraphs (3.17) and (3.18), the Constitutional Court did not add another or different meaning and the provisions of Article 7 paragraph (2) of the Pilkada Law have never been canceled and declared contrary to Article 28D paragraph (1) of the 1945 Constitution by the Constitutional Court. Thus, Supreme Court Decision 23/2024 does not lose its basis, because the Pilkada Law has not been annulled or declared unconstitutional by the Constitutional Court. Therefore, Supreme Court Decision 23/2024 is still valid and relevant to be obeyed and followed by the decision addressee.

Thirdly, the Supreme Court Decision is also strongly suspected of having political interests in it. Here are some important points why this Supreme Court Decision is related to political interests:

- 1) The timing of the decision is close to the elections: This Supreme Court decision was issued ahead of the registration stage for regional head candidates for the 2024 simultaneous regional elections. Changes to rules in the middle of the electoral stage process (known as The Purcell Principle in electoral law) often raise suspicions of a specific purpose.
- 2) Direct benefit to specific individuals: This change in the age limit from registration to inauguration is considered to specifically benefit individuals who have not yet reached the age of 30 at registration, but will reach that age at inauguration. This is widely attributed to the potential candidacy of certain individuals who have close ties to power.
- 3) The speed of the decision process: The relatively fast process of judicial review at the Supreme Court, only a matter of days after the petition was registered, also

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raised questions among the public and observers. This speed is considered unusual for a decision of this importance.

- 4) The lack of convincing legal arguments: Some constitutional law observers consider that the legal considerations in the decision are not strong enough or convincing enough. This strengthens the suspicion that there are other motives beyond pure legal considerations.
- 5) Allegations and interventions and Political Dynasties: The previous Constitutional Court (MK) ruling (albeit with a different number, 90/PUU-XXI/2023), which also changed the age requirement for presidential and vice-presidential candidates and generated controversy, reinforced the narrative of an attempt to perpetuate political dynasties. This Supreme Court decision, in the same context, is considered part of a similar pattern.

Thus, Supreme Court Decision 23/2024 and Constitutional Court Decision 70/2024 are both problematic. The Supreme Court Decision 23/2024 not only annulled the phrase “as of the determination of the candidate pair” in the KPU Regulation a quo, but also created a new legal norm in the form of the phrase “as of the inauguration of the candidate pair”, which the rules of the game related to the minimum age limit of the candidate pair are the authority of the legislators or in the context of open legal policy.

Likewise, the Constitutional Court Decision 70/2024 even though it rejected the petitioners' request and maintained the original intent of Article 7 paragraph (2) letter e of the Pilkada Law and warned every citizen without exception to comply with the Constitutional Court Decision, the Constitutional Court's decision regarding the minimum age limit for candidate pairs also tends to be inconsistent. In several decisions, the Constitutional Court stated that the determination of the minimum age requirement is an open legal policy of the legislator. In some decisions, the Constitutional Court also exceeded its authority by creating new norms related to the age requirements for public officials.

The existence of conflicting legal norms due to the two decisions of the Judiciary can have an impact on people becoming increasingly reluctant to plunge into and participate in politics, because there are no definite rules of competition and law. In fact, as the tradition of democratic elections, according to Adam Przeworski (1991), is an

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election with predictable procedures but unpredictable results (IJRS, 2024). The state is not just about obeying court decisions. The rule of law is also about legal certainty (BBC, 2024). By the principle of *ubi jus incertum, ibi jus nullum*, where there is no legal certainty, there is no law.

However, in the end, Commission II of the DPR and KPU agreed to implement the Constitutional Court's decision regarding the parliamentary threshold and the minimum age requirement for regional head candidates. The two Constitutional Court decisions have been included in the draft amendment to KPU Regulation (PKPU) Number 8 of 2024. Article 15 of PKPU Number 8 of 2024 concerning the nomination of governors and deputy governors, regents and deputy regents, and mayors and deputy mayors states: "The minimum age requirement of 30 (thirty) years for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as referred to in Article 14 paragraph (2) letter d is counted since the determination of the elected Candidate Pair."

With such a situation, the action to be taken when there is a conflict between the Constitutional Court's decision and the Supreme Court decision is to base the analysis on the doctrine of validity or enforceability of norms, so as to find the rationalization of which decision should be implemented by the KPU. The validity or enforceability of norms is a doctrine that explains the binding force of a norm, so that it must be implemented (Sudarsono, 2017).

The validity of a norm is a doctrine that explains how and what the requirements of a legal norm are to be legitimate or valid, and then can be applied to the community. By analyzing using the doctrine of norm validity and the hierarchy of norms described above, it can be explained that a regulation is actually in the form of a hierarchy, and higher-level regulations must be the source and basis for the formation of lower-level regulations, and must not conflict. On this basis, it can be concluded that higher laws and regulations must be the basis for determining the validity of lower laws and regulations (Assidiqie & Safaat, 2006).

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The existence of the doctrine can be used as a reference by the KPU in making decisions, what actions should be taken by the KPU against the conflict between the Supreme Court's decision and the Constitutional Court's decision, or the PTUN's decision. With the level or hierarchy of a legal product that is tested and the basis of the test, it certainly has a legal effect on the hierarchy of norm validity in the Supreme Court and Constitutional Court decisions. If there is a conflict between the Supreme Court's decision and the Constitutional Court's decision, then the decision with the basis of testing and the object of testing in the hierarchy of testing higher laws and regulations, in this case, the Constitutional Court's decision has a higher validity or legal validity than the Supreme Court's decision (Helmi, 2019).

Thus, the KPU's actions finally rely on the Constitutional Court's decision, because of the higher position of the Constitutional Court's decision with the touchstone of the 1945 Constitution, which is the highest law in Indonesia (Alfath, 2019). The occurrence of conflicting decisions like this will very likely happen again from these two judicial institutions; this is not the first time this has happened. After the issuance of the Supreme Court's decision, which was inconsistent with the Constitutional Court's decision in the same case, it is necessary to think about a new format regarding the authority to examine laws and regulations from the two holders of judicial power. Otherwise, similar cases will continue to occur and cause legal uncertainty and polemics, which are the risks of having two lines of examination of laws and regulations in the Indonesian legal system (Abustan, 2017).

According to the author, the existence of two judicial bodies that have the same authority to review laws and regulations in Indonesia will always have the opportunity for conflicting decisions, such as this case. The implementation of judicial review of laws and regulations, by only distinguishing different objects and institutions, but within the same state power (judicial power), will cause problems. The separation of judicial authority between the Supreme Court and the Constitutional Court, as it currently stands, is not ideal because it can cause problems. Because there will always be a link between

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the law and the regulations below it, it is not ideal if there are two judicial institutions that conduct testing of laws and regulations.

In addition to uniting the testing of laws and regulations under one roof, the author also feels the need to renew the authority of these two institutions according to their original concept, namely the Supreme Court with the concept of court of justice only focuses on the part of providing justice, and the Constitutional Court with the concept of court of law only focuses on enforcing all laws and regulations against the 1945 Constitution from irregularities, For example, as a court to provide justice, the Supreme Court also has the authority to examine laws and regulations, of course this is not by its concept as a court of justice, and the Constitutional Court as a court of law in one of its authorities also deals with the field of justice, namely giving a decision on the opinion of the DPR to dismiss the President or Vice President.

Mahfud MD argues that the competence of the two judicial power institutions should be regulated by the Constitutional Court to handle conflicts of laws and regulations to ensure the consistency of all laws and regulations, while the Supreme Court handles conflicts between persons and/or institutions (MD, 2015). A similar view was also presented by Jimly Asshiddiqie. According to him, ideally, the state institution that examines laws and regulations should be united in just one institution (Asshiddiqie, 2020). The unification under one roof of testing this legislation requires an amendment to the 1945 Constitution. Amendments can be made by adding the authority of the Constitutional Court in Article 24C of the 1945 Constitution, which is to test all laws and regulations in Indonesia (Sirajuddin & Ramadhan, 2019).

Constitutional reconstruction is difficult to do all at once, but phasing is required. But partial amendments that are enacted instantly will disrupt constitutional law. If this continues, the constitution will only reflect the views and interests of the framers in the context of today's political transition, and many of the framers were unenlightened under the political socialization of the New Order; the interests are parochial, momentary, and

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irritating to the public. Constitutional changes by the MPR must undergo amendment (Yunaldi, 2018).

4. CLOSING

The juridical implication of the Constitutional Court Decision No. 70/PUU-XXI/2024 and the Supreme Court Decision No. 23 P/HUM/2024 related to the Minimum Age Requirement for Regional Head Candidates is the dualism of legal norms or at least differences in interpretation that have the potential to cause legal uncertainty and also uncertainty in the implementation of Pilkada. However, by using the principle of *lex posterior derogat legi priori*, the Supreme Court's decision can be overruled based on the principle of *lex posterior derogat legi priori*. In addition, the touchstone used in the Constitutional Court Decision is higher in the hierarchy of laws and regulations than the Supreme Court Decision. Specifically, the Constitutional Court Decision examines the law against the 1945 Constitution of the Republic of Indonesia, whereas the Supreme Court Decision examines laws and regulations under the law. The Constitutional Court's decision on the law has final and binding legal force and applies to all (*erga omnes*); therefore, the decision must be followed by all parties.

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