

**Interpretation of Minimum Age Limit for Regional Head and Vice
Regional Head Candidates: Supreme Court Decision Number
23P/HUM/2024 Vs. Constitutional Court Decision Number
70/PUU-XXII/2024**

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Article Info

Received: 2022-08-12
Revised: 2023-02-21
Accepted: 2023-03-31

Keywords:

Constitutional Court;
Supreme Court;
Constitutions;
Democracy.

Abstract

Regarding the provisions on the minimum age limit for candidates for regional heads and deputy heads, has been regulated in Law Number 10 of 2016 concerning Elections. In the latest development, there are decisions of the Supreme Court and the Constitutional Court which further interpret this minimum age limit. The House of Representatives wanted to revise the Regional Election Law, and the revision plan carried out by the House of Representatives intended to use the SC's decision as a reference in determining the minimum age limit for candidates for regional heads and deputy heads. The plan has caused controversy because the CC's decision should have been used as a reference. This article uses a normative legal writing method with a statutory approach, as well as a case approach based on the SC's decision Number 23P/HUM/2024 and the CC's decision Number 70/PUU-XXII/2024. This article aims to analyze the interpretation of the minimum age limit based on the decisions of the two institutions, examine the legal force of the two decisions and the implications of the exclusion of the CC's Decision on democracy and the constitution. This paper finds that legal products tested by the CC have a higher position in the hierarchy of legislation, and the CC's decision is final and binding, so in interpreting the minimum age limit for regional head and deputy regional head candidates, must refer to the CC's decision. If the House of Representatives ignores the CC's decision, it can have a negative impact on the constitution and democracy.

I. Introduction

A while ago, the House of Representatives (DPR) drafted a bill related to the election of regional heads and deputy regional heads as a form of revision to the Regional Election Law. The bill contains requirements for candidates for regional heads and deputy regional heads, one of which is regarding the minimum age requirement for candidates for regional heads and deputy regional heads.¹ However, in the Regional Election Bill, the provisions regarding the age limit for candidates for regional heads and deputy regional heads refer to the Supreme Court Decision Number 23P/HUM/2024 which stipulates that the age limit of 30 years must be met at the time of inauguration. Whereas in the Constitutional Court Decision Number 70/PUU-XXII/2024 it states that the age limit requirement must be interpreted at the time of determining the regional head candidates. The Constitutional Court Decision is based on the provisions on candidate requirements for all state officials as stated in the Law, including the requirements for presidential and vice-presidential candidates.

In Article 7 Paragraph (2) letter e of the Regional Election Law Number 10 of 2016, it states that "Candidates for Governor and Candidates for Deputy Governor must be at least 30 (thirty) years old for Candidates for Governor and Candidates for Deputy Governor and 25 (twenty five) years old for Candidates for Regent and Candidates for Deputy Regent and Candidates for Mayor and Candidates for Deputy Mayor", if observed more closely, there is indeed no clarity regarding when the age limit can be applied, whether at the time of the determination of regional head candidates or at the time of inauguration. With the unclear interpretation, it creates legal uncertainty and gives rise to various interpretations.² However, according to the Constitutional Court's considerations, adding a new phrase to the article is not necessary, because from the beginning the law states that the age limit for regional head candidates must be met at the time of the determination of candidates and not at other stages, as other regulations regulate the requirements for candidates for state officials. If a new phrase is added to emphasize the article, it will give the anomaly in the article compared to other laws.³

The judge's considerations in Supreme Court decision Number 23P/HUM/2024 are apparently different, the judge is of the opinion that the phrase "calculated from the time the candidate pair is determined" in Article 4 Paragraph (1) letter d of the General Election Commission Regulation Number 9 of 2020 has reduced the original intent of Law Number 10 of 2016, especially in accommodating opportunities for young people to participate in building the nation and state.⁴ So in his considerations, the judge stated that Article 4 paragraph (1) letter d of the General Election Commission Regulation Number 9 of 2020, which originally read "At least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty five) years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the date of the determination of

¹Fitri Novia Heriani, (2024), diakses dari <https://www.hukumonline.com/berita/a/abaikan-putusan-mk-terkait-batas-usia--dpr-dan-presiden-dinilai-langgar-konstitusi-lt66c6644f46160/>, diakses pada 18 September 2024.

² E. Fernando M Manullang. (2017). *Legisme, Legalitas dan Kepastian Hukum*. Jakarta: Prenada Media, 2017.

³ Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024.

⁴ Putusan Mahkamah Agung Nomor 23P/HUM/2024.

the Candidate Pair" is contrary to the provisions of Law Number 10 of 2016 and does not have binding legal force, as long as it is not interpreted as "at least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty five) years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the date of the inauguration of the elected Candidate Pair".

Then, with the existence of these differences in interpretation, it creates legal uncertainty regarding which norms or decisions are applicable and binding. To find out more about this, it is necessary to understand the position and authority of the two institutions and the nature of their decisions.⁵ Based on the principle of check and balance, the SC and CC have the same position, but what distinguishes them is the scope and authority of the two institutions.⁶ Legal products reviewed by the Constitutional Court have a higher position in the legal hierarchy in Indonesia compared to legal products reviewed by the Supreme Court.⁷ The Supreme Court has the authority to materially test regulations under the Law while the Constitutional Court has the authority to materially test Laws under the 1945 Constitution and Government Regulations in Lieu of Laws.⁸ Then if the Draft Law made by the House of Representatives is approved and ratified, it can threaten the constitution and democracy in Indonesia because all regulations in Indonesia should not conflict with the Law above it as regulated in Law Number 12 of 2011 concerning the Formation of Legislation.

2. Research Method

The study uses a normative legal research type with a statutory approach, namely Law Number 10 of 2016, then a case approach that focuses on the Supreme Court decision number 23P/HUM/2024 which is carried out by analyzing cases related to the formulation of the problem and comparing it with the Constitutional Court decision Number 70/PUU-XXII/2024. The data sources used in this study are secondary data sources that focus on primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are Law Number 10 of 2016, Supreme Court decision number 23P/HUM/2024 and Constitutional Court decision number 70/PUU-XXII/2024. Secondary legal materials, in the form of legal journals, expert opinions, and scientific works related to the research topic assisted by legal dictionaries and legal encyclopedias as tertiary legal materials.

3. Results and Discussion

⁵ Iskandar Muda, Bintan R. Saragih, Ferry Edwar. (2023). "Constitutional Authority Based on the Constitutional Court Decision in Indonesia". *Fiat Justisia Jurnal Ilmu Hukum*. Vol. 17. No 3. p. 221.

⁶ Sunarto Sunarto. (2016). "Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia". *Masalah-Masalah Hukum*. Vol. 45. No. 2. p. 159.

⁷ Budianto Eldist Daud Tamin. (2019). "Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (Perma) Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia." *Lex Administratum*. Vol. 6. No. 3

⁸ Nurambiya, Muhammad Abdul Aziz, and Demson Tiopan. (2023). "Harmonisasi Antara Lembaga Yudikatif Mahkamah Konstitusi dan Mahkamah Agung dalam Dinamika Hukum Tata Negara: Analisis Terkait Keseimbangan Kekuasaan di Indonesia." *UNES Law Review*. Vol. 6. No. 2. p. 5205

The Authority of the Constitutional Court and the Supreme Court in Conducting Judicial Review

The Constitutional Court and Supreme Court have the authority to conduct judicial review.⁹ The objects of judicial review for these two institutions are regulations and legislation contained in the hierarchy of Indonesian legislation,¹⁰ as regulated in Law Number 12 of 2011 concerning the Formation of Legislation, Article 7 Paragraph (1) of which states that the types and hierarchy of legislation in Indonesia are as follows ¹¹:

- a. 1945 Constitution;
- b. Decree of the People's Consultative Assembly;
- c. Law/Government Regulation in Lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regulation; and
- g. Regency/City Regulation.

Then in paragraph (2) it is explained that the legal force of laws and regulations is in accordance with the hierarchy as mentioned in paragraph (1). Thus, all laws and regulations must be subject to the laws and regulations above them because their legal force comes from the laws and regulations above them.¹² If it's found against the laws and regulations at the higher level, then this is where the need for judicial review authority is needed to create synchronization and a level of conformity and harmony between the laws and regulations at a lower level and the laws and regulations above it.

Regarding the judicial review authority of the Constitutional Court, this is regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹³ The Constitutional Court has the authority to test whether a law is in accordance with the Constitution or not and to refuse to implement laws and other regulations that are considered to be contrary to the Constitution, this is called "Judicial Review".¹⁴

Meanwhile, the Supreme Court also has judicial review authority as regulated in Article 24A paragraph (1) which states that the Supreme Court has the authority to adjudicate at the cassation level, test statutory regulations under the Law against the

⁹ Janpatar Simamora. (2013). "Analisa yuridis terhadap model kewenangan judicial review di Indonesia". *Mimbar Hukum*. Vol. 25. No. 3. p. 395.

¹⁰ Ahmad Fauzan, Ayon Diniyanto, and Abdul Hamid. (2022). "Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court." *Journal of Law and Legal Reform*. Vol. 3. No. 3. P. 410.

¹¹ Hakim, Muhammad Naufal. (2024). "Hirearki Peraturan Perundang-Undangan Indonesia." *Ethics and Law Journal: Business and Notary*. Vol. 2. No. 1. p. 149.

¹² Kushadianto, Miftaful Murachim Budy, and Marsudi Dedi Putra. "Implikasi Hierarki Hukum Dalam Pembentukan Undang-Undang: Pengaruhnya Terhadap Penafsiran dan Penegakan Hukum." *Syntax Idea*. Vol. 6. No. 3. p. 1477.

¹³ Rangga Wijaya. (2023). "Fungsi Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945." *IJOLARES: Indonesian Journal of Law Research*. Vol. 1. No. 1. p. 24.

¹⁴ Diyar Ginanjar Andiraharja. (2021). "Judicial Review Oleh Mahkamah Konstitusi Sebagai Fungsi Ajudikasi Konstitusional Di Indonesia." *Khazanah Hukum*. Vol. 3. No. 2. p. 71.

Law, and has other authority granted by the Law.¹⁵ Thus, the object of judicial review authority of the two institutions implementing judicial power is in a different scope. Meanwhile, in Article 24 Paragraph (2) of the 1945 Constitution which states that "Judicial power is exercised by a Supreme Court and the Judicial Body under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court". The establishment of the Constitutional Court is necessary because Indonesia has made fundamental changes to the 1945 Constitution, Indonesia has adopted new principles in the state system, namely the principle of separation of powers and "check and balances" as a replacement for the parliamentary supremacy system that was previously in effect.¹⁶

The Supreme Court's authority to conduct judicial review is also regulated in Article 20 paragraph (2) letter b of Law Number 48 of 2009 concerning Judicial Power, and Article 31 paragraph (1) of Law Number 5 of 2004, the Supreme Court has the authority to test laws and regulations under the law against the law. Regarding the authority of the Supreme Court to conduct Judicial Review, it is also regulated in Article 7 paragraph (1) and Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, stating that the Supreme Court also has the authority to conduct judicial review, the difference with the Constitutional Court lies in the legal products it reviews.¹⁷ Therefore, the object of the a quo Right to Material Review is the General Election Commission Regulation and the Panel of Judges considers the object of the Right to Material Review to be included in the type and hierarchy of statutory regulations under the Law/Government Regulation in Lieu of Law so that it meets the qualifications as an object in the request for material review which is the authority of the Supreme Court.¹⁸

Judge's Considerations in Supreme Court Decision Number 23P/HUM/2024

The Supreme Court judge has interpreted the minimum age limit provisions for regional head and deputy regional head candidates in Decision Number 23P/HUM/2024. The interpretation aims to obtain legal certainty based on the applicant's application in the judicial review case. The applicant in the case is the Partai Garda Indonesia (Partai Garuda), while the respondent is the General Election Commission. The object of the application that is the subject of the material test is Article 4 paragraph (1) letter d of the General Election Commission Regulation Number 9 of

¹⁵ Muhammad Faqih. (2020). "Kedudukan, Tugas Pokok, dan Fungsi serta Eksistensi Mahkamah Agung di Indonesia." *MIMBAR YUSTITIA: Jurnal Hukum dan Hak Asasi Manusia*. Vol. 4. No. 1. p. 35.

¹⁶ Puguh Windrawan. (2013). "Gagasan Judicial Review dan Terbentuknya Mahkamah Konstitusi di Indonesia". *Supremasi Hukum*. Vol. 2. No. 1. pp. 5-6.

¹⁷ Yofi Permatasari, Andika Jinaratana, and Rasji Rasji. (2022). "Proses Peninjauan Kembali Sebagai Wewenang Mahkamah Agung Berdasarkan Undang-Undang Kekuasaan Kehakiman." *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat*. Vol. 2. No. 8. p. 1541.

¹⁸ Baren Sipayung, et al. (2023). "Lembaga Peninjauan Kembali untuk Menciptakan Miracle of Justice dalam Sistem Peradilan di Indonesia." *Indonesian Journal of Social and Humanities*. Vol. 1. No. 1. p. 48.

2020 concerning the Fourth Amendment to the General Election Commission Regulation Number 3 of 2017 concerning the Nomination of the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor, which states that:

“(1) Indonesian citizens can become candidates for Governor and Deputy Governor, Regent and Deputy Regent, or Mayor and Deputy Mayor by fulfilling the following requirements: be at least 30 (thirty) years old for candidates for Governor and Deputy Governor and 25 (twenty five) years old for candidates for Regent and Deputy Regent or candidates for Mayor and Deputy Mayor as of the date of the determination of the Candidate Pair”

The applicant argues that the object of the application conflicts with higher laws and regulations, namely Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. The provisions of this Article have caused losses for the Applicant, because the General Election Commission interpreted the requirement of a minimum age of 30 (thirty) as calculated from the determination of the Candidate Pair.¹⁹ Meanwhile, the provisions of Article 7 paragraph (2) letter e of Law Number 10 of 2016 only contain a requirement of a minimum age of 30 (thirty) and there is no more explicit explanation.²⁰ In conducting the material test, the judge finally decided with the following considerations:

a. Freedom of Democracy

The judge stated that if the age requirement for Regional Head Candidates is limited only to the time the candidate pair is determined by the Respondent, then there is potential for loss and discrimination for citizens or political parties who cannot nominate themselves or nominate regional head candidates who will only reach the age of 30 years for Governor/Deputy Governor and 25 years for Regent/Deputy Regent and Mayor/Deputy Mayor when they have passed the stage of determining the candidate pair.

b. Original Intent of The Law

The judge is of the opinion that the General Election Commission's interpretation has cut the original intent of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. Limiting the nomination age to 30 years for Governors/Deputy Governors, and the nomination age to 25 years for Regents/Deputy Regents and Mayors/Deputy Mayors since the determination of the candidate pair by the Respondent, will only describe the implementation of Law Number 10 of 2016 from

¹⁹ Peraturan Komisi Pemilihan Umum Nomor 9 Tahun 2020 tentang Perubahan Keempat Atas Peraturan Komisi Pemilihan Umum Nomor 3 Tahun 2017 tentang Pencalonan Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, dan/atau Walikota dan Wakil Walikota.

²⁰ Pasal 7 Ayat (2) Huruf E Undang-Undang Republik Indonesia Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang.

the Respondent's perspective as the election organizer, but does not describe the entire original intent contained in Law Number 10 of 2016.

In judicial review, the term original intent or originalist interpretation method is used.²¹ This originalist interpretation emphasizes the assessment of legal norms based on the original meaning or original intent.²² Interpretation of the constitution using the original intent method is interpreted as an interpretation based on the initial spirit of the formation of a written constitution through debate during the drafting of the 1945 Constitution, the opinions of the drafters of the constitution in relation to understanding the basic goals and foundations of the state.

Constitutional Justice of the Republic of Indonesia, I Dewa Gede Palguna, explained that one of the strong reasons for using the originalist method of interpretation is to understand the original intention of the constitution makers when designing and ratifying a regulation.²³ This approach aims to maintain the authenticity and basic spirit of the constitution so that it does not deviate from its original purpose, so that the interpretation of the law does not change according to the preferences of certain individuals or groups.²⁴ The originalist method is considered important in the context of maintaining legal stability and providing legal certainty, especially in a legal system that bases its legitimacy on the text and history of the formation of the constitution.²⁵

c. Philosophical spirit of the Constitution

The judge considered that because philosophically the spirit of the constitution as reflected in Article 6 paragraph (2) of the 1945 Constitution places the most important emphasis on state organs and officials who occupy those positions, the true meaning of the minimum age for positions in the constitutional legal system of the Republic of Indonesia must be interpreted as the age at which the person concerned is appointed and given authority by the state to carry out a governmental action and all rights and obligations are attached to him as a state organ or as a government official or state administrator.

Based on the series of legal considerations above, the Supreme Court is of the opinion that the object of the petition is contrary to the provisions of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia 2016 Number 130, Supplement to the State Gazette Number 5898) and does not have binding legal force, as long as it is not interpreted as "*at least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty five) years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as*

²¹ Keith Whittington. (1999). *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review*. Kansas: University Press of Kansa.

²² Leonard Williams Levy. (2000). *Original intent and the framers' constitution*. Maryland: Rowman & Littlefield.

²³ Agnes Harvelian, et al. (2020). "Constitutional Interpretation of Original Intent on Finding the Meaning of Social Justice Ithehe Constitutional Review." *Yustisia Jurnal Hukum*. Vol. 9. No. 3. pp. 349-350.

²⁴ Thomas B Colby. (2018). "Originalism and structural argument." *Nw. UL Rev*. Vol. 113. No. 6. pp. 1330-1331.

²⁵ James Allan. (2000). "Constitutional Interpretation V. Statutory Interpretation: Understanding the Attractions of 'Original Intent'." *Legal Theory*. Vol. 6. No. 1. p. 120.

of the inauguration of the elected Candidate pair".²⁶

1. Judge's Considerations in Constitutional Court Decision Number 70/PUU-XXII/2024

The Constitutional Court Judge in case number 70/PUU-XXII/2024 has decided on the interpretation of the provisions on the minimum age limit for regional head and deputy regional head candidates. The articles requested are Article 7 paragraph (1) and Article 7 paragraph (2) letter e of Law 10/2016 concerning General Elections. The basis for the applicants' requests in the judicial review application includes:

a. According to the Applicants, it is not true that the age calculation mechanism in Article 7 paragraph (1) and Article 7 paragraph (2) letter e of Law 10/2016 is calculated "since the inauguration of the elected pair" because nomination and inauguration are two phrases in the law which contain different provisions and are regulated separately.

b. That according to the Applicants, almost all provisions regarding minimum age requirements related to the position of elected official apply from the time the candidate is determined, not from the time the candidate is inaugurated.

The applicants believe that by not explicitly stating when the requirements must be met, the process of nominating regional heads and deputy regional heads becomes legally uncertain and undemocratic. The applicants also believe that the norm of Article 7 paragraph (2) letter e of Law 10/2016 becomes unconstitutional if it is not interpreted or the phrase "counting from the determination of the candidate pair" is added. Regarding the application, the judge ruled with the following considerations:

a. Historical approach

The minimum age requirements for candidates have been regulated in four laws and one government regulation in lieu of law, as follows ²⁷:

1) Article 13 paragraph (1) letter e of Law Number 22 of 2014 concerning the Election of Governors, Regents and Mayors (Law 22/2014)

2) Article 7 letter e of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors (Perppu 1/2014)

3) Article 7 letter e of Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Law 1/2015)

4) Article 7 letter e of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Law 8/2015).

In addition, all the norms that require a minimum age limit as regulated in the four laws and the Perppu have never explicitly or clearly stated/regulated the phrase "calculated from the time the candidate pair is determined" in determining the limit for calculating the minimum age in question.

b. Systematic approach

Systematically, the minimum age limit to be nominated as a candidate for governor and vice governor, and candidate for regent and vice regent, as well as

²⁶ Putusan Mahkamah Agung, Op. cit.

²⁷ Putusan Mahkamah Konstitusi, Op.cit.

candidate for mayor and vice mayor is always placed in the chapter that regulates the "candidate requirements". The minimum age limit requirement is always regulated or placed in the group of chapters that regulate the requirements of candidates, not in other chapters. There is a sequence of series or stages of activities that are in one link, namely the registration stage, research on candidate requirements, and determination of regional head and deputy regional head candidates. Because they are in one link, everything related to the requirements must be met before the determination of the candidate is carried out. This means that, within the limits of reasonable reasoning, research on the fulfillment of these requirements must be carried out before the stage of determining the candidate pair.

The mechanism of the systematic approach method in the context of judicial review is a structured process consisting of interrelated steps to ensure that testing of a legal norm is carried out logically, sequentially, and responsibly. This systematic approach ensures that the Court's decision is based on a comprehensive and structured analysis, resulting in a decision that is fair and consistent with constitutional principles.²⁸

c. Comparative and practical approaches

Due to these considerations, the judge decided that Article 7 paragraph (2) letter e of Law 10/2016 is a clear norm, so that it cannot and does not need to be given or added another or different meaning other than that considered in the a quo decision, namely that the requirements in question must be fulfilled in the nomination process that culminates in the determination of candidates. Within the limits of reasonable reasoning, adding a new meaning to Article 7 paragraph (2) letter e of Law 10/2016, including as requested by the Applicants, will position that Article norm to be different (anomalous) among all norms within the scope of requirements for regional head candidates and deputy regional head candidates. If the meaning is added to the norm of Article 7 paragraph (2) letter e of Law 10/2016 as requested by the Applicants, other norms within the group of potential candidate requirements are interpreted as not having to be fulfilled during registration, research, and determination as regional head candidates and deputy regional head candidates. If such conditions occur, the new interpretation in question has the potential to create legal uncertainty regarding other conditions regulated in Article 7 paragraph (2) of Law 10/2016. This means that this interpretation is not in line with the guarantee of legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

2. Legal Force of Supreme Court Decision Number 23P/HUM/2024 and Constitutional Court Decision Number 70/PUU-XXII/2024

The legal force of the Supreme Court decision Number 23P/HUM/2024 and the Constitutional Court decision Number 70/PUU-XXII/2024 are fundamentally different based on the authority and function of each institution in the Indonesian legal system. The two institutions have different roles in overseeing the law and the constitution, so the legal force of their decisions is also different. One common problem that often arises

²⁸ Ali Arianneshad and Hadi Tahan Nazif. (2023). "A systematic approach to the constitution based on text coherence patterns." *Journal of Legal Studies*. Vol. 15. No. 3. P. 530.

is the issue of the validity of the Constitutional Court's decision. Observing the regulations in several countries that generally adhere to the Kelsenian Model, such as Austria, Germany, Italy, Colombia, Russia, South Korea, and South Africa.²⁹ This strengthens that the Constitutional Court's decision is categorized as *erga omnes* so that it must automatically be implemented by all branches of the State in organizing national life.³⁰ Theoretically, Indonesian regulations have a firm position if the Constitutional Court's decision is final and binding.³¹ The final Constitutional Court decision is generally identified with the *res judicata* decision. The *res judicata* decision means that only a higher court decision can overturn a lower court decision. In fact, in this context, all legal experts know that there is no decision that is higher than the Constitutional Court's decision.³² Moreover, the Constitutional Court's decision cannot be cancelled or revised by another decision for the same case, which is contrary to the principle of *ne bis in idem*.³³

The Constitutional Court's decision is *mutatis mutandis* final and binding because the judge decides it in an open session by reading it out. Although the Constitutional Court is interested in its decision being respected and obeyed, *ipso facto*, the Constitutional Court does not have the legal apparatus or legal instrument to implement its decision. Based on the decision, there are no police officers, court bailiffs, or other legal mechanisms to implement the Constitutional Court's decision that must be taken or implemented later. Thus, the authority to implement the Constitutional Court's decision depends on other institutions or organs, whether the decision is accepted, and whether the address of the Constitutional Court's decision is ready to be obeyed. In this position, the factual instrument of the Constitutional Court's authority as its application must refer to the Constitution itself. Ideally, the implementation of the Constitutional Court's decision is the guardian of the sanctity of the State's legal basis. As the holder of authority, the Constitutional Court should be able to guarantee that the essence of the basic values adopted by the State must be embedded in community life as a true reflection of the implementation of the constitutional review that has been carried out.

However, as a follow-up to this recognition, there are no provisions in normative law that clearly explain the position of the Supreme Court and Constitutional Court decisions in the hierarchy of laws and regulations.³⁴ For some countries that adhere to

²⁹ Muhammad Suhenriko. (2023). "Implementasi Teori Hierarki Hans Kelsen Terhadap Perumusan Kebijakan di Indonesia." *Jurnal Ilmiah Multidisipin*. Vol. 1. No. 2. P. 66.

³⁰ Geofani Milthree Saragih. (2022). "Tinjauan Yuridis Terhadap Tindak Lanjut Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Oleh Lembaga Negara Di Indonesia." *JOM Fakultas Hukum Universitas Riau*. Vol. 9. No. 1. p. 8.

³¹ Amien Ru'ati, Garciano Nirahua, and Ronny Soplantila. (2022). "Kekuatan Eksekutorial Putusan Mahkamah Konstitusi Yang Bersifat Final Dan Mengikat di Indonesia." *PATTIMURA Legal Journal*. Vol. 1. No. 1. p. 25.

³² Febriansyah Ramadhan, and Ilham Dwi Rafiqi. (2021). "Study of constitutional court decisions cancelling all norms in the law." *Legality: Jurnal Ilmiah Hukum*. Vol. 29. No. 2. p. 288.

³³ Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar. (2023). "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang terhadap Undang-Undang Dasar 1945 di Indonesia." *Jurnal Konstitusi*. Vol. 20. No. 2. p. 290.

³⁴ Siti Tiara Maulia and Witra Rahmad. (2024). "Hierarki Lembaga Negara Di Indonesia". *Jurnal Hukum dan Kewarganegaraan*. Vol. 4. No. 9. p. 3.

the judge made law tradition, the judge's decision is the law. However, this situation is quite different from Indonesia which does not adhere to this tradition. Based on this understanding, further explanation is needed regarding the position and implementation of the Constitutional Court's decision which authoritatively has the highest sovereignty in conducting tests in the hierarchy of laws and regulations in Indonesia.³⁵

This paper argues that if the strengthening of the status and legal standing of the Constitutional Court's decision has been regulated in the revision of the Constitutional Court Law, the provisions of this revision become the basis for the Supreme Court's obligation to comply with the Constitutional Court's decision in conducting Judicial Review and issuing other regulations. Why is this issue of status and position significant? This paper assesses that the root of the problem that arises in the logic of the normative system is rooted in the legal gap that occurs due to the absence of the position of the Constitutional Court's decision, especially the Constitutional Court's decision in the hierarchy of laws and regulations that are not assumed to be positive law. This legal gap can trigger the occurrence of silence of law, namely the law does not provide a complete statement on legal questions.³⁶ The emergence of this uncertainty must distinguish the real legal gap caused by an unclear legal concept and excessive legal decisions.

The legal system is considered to have a legal gap when it does not provide any statement regarding the normative status of a particular act. Usually this arises because the act is not regulated in the legal system. An illustration of the existence of a legal gap that triggers the absence of law, namely when there is 'positive permission' in the legal system but there are no supporting legal norms that communicate what must be done or what an institution may do. The analogy, in this context, is that the Constitutional Court has positive permission to conduct a constitutional review, but there are no further laws and regulations that explain the position of the decision. In cases where there is a difference with the Constitutional Court's decision, the Supreme Court decision Number 23P/HUM/2024 will only apply if it does not conflict with the Constitutional Court's decision or the norms that have been tested by the Constitutional Court. If there is a conflict, then the regulations tested in the Supreme Court's decision must be adjusted or ignored if the Constitutional Court's decision has specifically regulated.

1. Implications of Rejection of The Constitutional Court Decision

If the House of Representatives chooses to use the Supreme Court decision instead of the Constitutional Court decision in determining the age limit for regional head and deputy regional head candidates, there are several legal norms and principles of state administration that will be violated. This happens for several reasons, first, the positions of the CC and SC in the Indonesian legal system have different authorities and cannot replace each other, especially in terms of testing laws. Second, the legal products reviewed by the two judicial institutions have different positions in the Indonesian legal hierarchy. Third, when there is the same issue regarding what is requested to the SC and CC, then the CC decision has final and binding power, thus making the decisions below it no longer have legal force. If the CC

³⁵ Hari Purwadi, Sapto Hermawan, Ardyllis Alves Soares, Zsofia Nemeth-Szebeni, Febrian Indar Surya Kusuma. (2024). "Resolving the judiciary tensions between the constitutional court and the supreme court of Indonesia". *jurnal of Indonesian legal studies*. Vol. 9. No. 1. P. 323.

³⁶ Gamal Abdul Nasir. (2017). "Kekosongan Hukum & Percepatan Perkembangan Masyarakat." *JHR (Jurnal Hukum Replik)*. Vol. 5. No. 2. p. 176.

decision is set aside, then there will be several norms that have the potential to be violated, namely:

1) The Principle of Constitutionality (Supreme Legal Norm)

According to Article 24C of the 1945 Constitution, the Constitutional Court is the only institution that has the authority to test laws against the 1945 Constitution.³⁷ Thus, the Constitutional Court is the main guardian of the constitutionality of laws. If the House of Representatives ignores the Constitutional Court's decision in determining the age limit, this violates the principle of constitutionality because the Constitutional Court's decision is final and binding, according to Article 47 of Law No. 24 of 2003 concerning the Constitutional Court. This means that no other institution can ignore or reject the implementation of the Constitutional Court's decision.³⁸

2) The Principle of Legal Certainty

Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, and certainty of fair law. The Constitutional Court's decision aims to provide legal certainty for the norms of the law being tested, including in terms of the age limit for regional head and deputy regional head candidates.³⁹ Ignoring the Constitutional Court's decision for the sake of the Supreme Court's decision can create legal uncertainty, especially because the Constitutional Court's decision has established a new norm that must be followed. This step can result in confusion regarding the applicable age standards, especially among regional head candidates, election organizers, and the public.

3) The Principle of Hierarchy of Legislation

In the hierarchy of legislation in Indonesia, the 1945 Constitution is the highest law, and the Constitutional Court is the institution that has the authority to interpret the Constitution against the laws below it. If the House of Representatives prioritizes the Supreme Court's decision, it means that the House of Representatives places the Supreme Court's decision above the Constitutional Court's decision, which is contrary to the principle of the hierarchy of legal norms in which the constitution and the authority of the Constitutional Court above it must be upheld.

4) Norms of Authority Between State Institutions

The Constitutional Court and the Supreme Court have different authorities according to Article 24A and 24C of the 1945 Constitution. The Constitutional Court is tasked with testing laws against the constitution, while the Supreme Court has the authority to test laws and regulations below the law (for example, government regulations, regional regulations) against the law.⁴⁰ Choosing the Supreme Court's decision over the Constitutional Court's decision means ignoring the division of authority and has the potential to violate the norm of authority between state institutions, thus causing non-compliance with the principle of checks and balances.

³⁷ Demas Brian Wicaksono. (2021). "Article 24C Paragraph 1 of the 1945 Constitution of the Republic of Indonesia: History and Critical Analysis of Disputes on the Authority of State Institutions." *Britain International of Humanities and Social Sciences (BIOHS) Journal*. Vol. 3. No. 2. p. 407.

³⁸ Arif Wibowo. (2022). "Analisis Problematika Yang Terjadi Pada Putusan Mahkamah Konstitusi Yang Bersifat Final Dan Mengikat: Mahkamah Konstitusi." *Jurnal Penelitian Multidisiplin*. Vol. 1. No. 2. Pp. 103-104.

³⁹ Siti Halilah and Mhd Fakhurrahman Arif. (2021). "Asas Kepastian Hukum Menurut Para Ahli." *Siyasah: Jurnal Hukum Tata Negara*. Vol. 4. No. 2.

⁴⁰ Anila Robbani. (2023). "Mahkamah Konstitusi dalam Kontruksi Lembaga Peradilan Indonesia: Bahasa Indonesia." *Sovereignty*. Vol. 2. No. 2. p. 139.

5) The Principle of Finality of Constitutional Court Decisions

According to Article 10 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, the Constitutional Court's decision is final and binding. This means that all parties, including the House of Representatives, are required to submit to and implement the Constitutional Court's decision without exception. If the House of Representatives still chooses the Supreme Court's decision, this violates the principle of finality and supremacy of the Constitutional Court's decision.

The implications of this exclusion will also have an impact on democracy in Indonesia. Modern democracy relies on the supremacy of the constitution as the highest law. The Constitutional Court is an institution tasked with testing the constitutionality of laws and ensuring that regulations do not violate the rights of citizens. By rejecting the Constitutional Court's decision, the House of Representatives directly weakens the supremacy of the constitution and the principle of the rule of law. This could create a precedent that Constitutional Court decisions can be ignored by state institutions, so that other institutions could take similar steps in the future. Democracy will also be threatened if the supremacy of law is no longer respected. Democracy requires legal certainty to provide protection to citizens.⁴¹ The Constitutional Court's decision should provide final and binding legal clarity, in accordance with the provisions of the 1945 Constitution. If the Constitutional Court's decision is ignored, there will be uncertainty regarding the age limits for regional head candidates, and there is a possibility that regulations can be interpreted or changed according to the interests of certain parties. This causes confusion among the public and has the potential to cause legal conflicts in the future.

6) Comparison of Indonesian and South Korea Regulations

Based on the constitution of the Republic of Korea or South Korea in Chapter I: General Provisions Article 1 number (1) The Republic of Korea shall be a democratic republic. The state of South Korea is a unitary state in the form of a democratic republic whose power is divided into three institutions, namely the executive, legislative and judiciary.⁴² The judicial power in South Korea is almost the same as in Indonesia, namely held by two institutions, the Supreme Court, the Supreme Court, and the Constitutional Court, the Constitutional Court, both of which have different authorities in carrying out judicial functions.⁴³ Some of the authorities of the Constitutional Court in South Korea are regulated in the provisions of Article 68 paragraph (1) in conjunction with. Article 68 paragraph (2) of the Constitutional Court Act of Korea (Constitutional Court Act of South Korea) which reads: 1) "Any person who claims that the basic rights guaranteed by the Constitution have been violated by the implementation or non-implementation of government power may file a Constitutional Lawsuit, except for a regular court ruling, with the Constitutional Court: Provided that if there is a settlement process regulated by other laws, no person may file a Constitutional Lawsuit without going through all of those processes" 2) "If a motion filed under Article 41 (1) for adjudication of the constitutionality of a law is rejected, the party may file a Constitutional Lawsuit with the Constitutional Court. In this case, the party may not repeatedly file a request

⁴¹ Ias Muhlashin. (2021). "Negara Hukum, Demokrasi Dan Penegakan Hukum Di Indonesia." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*. vol. 8. No. 1. P. 89.

⁴² Gi-Wook Shin. (2020). "South Korea's democratic decay." *Journal of Democracy*. Vol. 31. No. 3. pp 106-107.

⁴³ Albert HY Chen, Hongyi Chen, and Andrew Harding, eds. (2018). *Constitutional Courts in Asia: A Comparative Perspective*. Cambridge University Press.

for adjudication of the constitutionality of a law for the same reason in the procedure of the case in question.”⁴⁴

The constitutional lawsuit authority of the Constitutional Court of South Korea is related to the authority of the Constitutional Court of South Korea in conducting judicial review, where the only party that can file a judicial review application against the constitutionality of a law in South Korea is the court through a decision or motion or application filed by the party using applicable laws and regulations.⁴⁵ Furthermore, to provide space for the party whose motion is rejected, they can file the applicable law as the object of the constitutional lawsuit case. Thus, the Constitutional Court of South Korea can only accept a constitutional lawsuit application that has previously gone through legal efforts, if the case has been decided in a regular court, then the constitutional lawsuit application can be filed within 90 days from the date the decision is received.⁴⁶

Then regarding the age limit of candidate candidates in the general election, it is regulated in Article 16 (Electoral Eligibility) and Article 17 (Criteria for Calculating Age) of South Korea's Election Law. The article reads⁴⁷:

Article 16 paragraph (2):

“A national of 25 years of age or older shall be eligible for election as a member of the National Assembly. “

Article 16 paragraph (3):

“A national who is aged 25 years or older and registered as a resident in a district under the jurisdiction of the relevant local government for at least 60 consecutive days (from the record date of the official list of eligible voters up to the election day consecutively, in cases of any person who had been sent to a foreign country in public services and has returned to the Republic of Korea after 60 days before the election day) as of the election day, shall be eligible for election for the relevant local council member and the head of the local government. In such cases, a period of 60 days shall not be interrupted by establishment, abolition, division, or merger of the local government, or change in the boundary of a district (including a change of district under any subparagraph of Article 28).

Article 17 (Criteria for Calculating Age):

“The age of an eligible voter and a person eligible for election shall be calculated as of the election day.”

From the provisions of Article 16 and Article 17, it can be concluded that the minimum age limit for regional head and deputy regional head candidates is 25 years old on election day. The provisions regarding this age limit are explicitly regulated in these articles, namely with the "election day" clause, so the age requirement must be met on election day and not at the time of candidate determination or inauguration. With this clause, it has provided legal certainty so that it can avoid multiple interpretations for candidate pairs and for all South Korean citizens

⁴⁴ Ben-Rafael Galanti, Sigal, and Alon Levkowitz. (2015). "Attitudes towards judicial review in Japan and South Korea: indications for the existence of a liberal-democratic civic culture." *International Review of Sociology*. Vol. 25. No. 2. p. 329.

⁴⁵ Ahmad Wijaya and Nasran Nasran. (2021). "Comparison Of Judicial Review: A Critical Approach to The Model in Several Countries." *Jurnal Legalitas*. Vol. 14. No. 2. p. 86.

⁴⁶ Joon Seok Hong. (2019). "Signaling the Turn: The Supermajority Requirement and Judicial Power on the Constitutional Court of Korea." *The American Journal of Comparative Law*. Vol. 67. No. 1. p. 180.

⁴⁷ South Korean Elections Act.

4. Conclusion

The Supreme Court interprets the minimum age limit for regional head and deputy head candidates must be met "at the time of inauguration", while the Constitutional Court interprets that the minimum age limit must be met "at the time of determination" of the candidate pair. This is different from South Korea, which determines the minimum age limit for election candidates to be calculated "on election day" as regulated in the South Korea's Elections Act. If we further understand the position, authority and nature of the Decisions of the two institutions, the Constitutional Court's decision has a higher position than the Supreme Court's decision in terms of judicial review because the legal products being reviewed have different positions as in the hierarchy of laws and regulations in Indonesia. The Constitutional Court's decision has final and binding legal force and has an *erga omnes* nature, which means that the Constitutional Court's decision must be obeyed by all people and other institutions. Therefore, the Constitutional Court's decision in interpreting the minimum age limit for regional head and deputy regional head candidates must be followed and must not be ignored. If the House of Representatives chooses to refer to the Supreme Court's decision by ignoring the Constitutional Court's decision in determining the minimum age limit for regional head and deputy regional head candidates in the draft of the new regional election law, it will have a negative impact on the country's constitution and democracy.

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