

Reconfiguring Presidential Age Requirements in Indonesia: Constitutional Tensions and Political Implications of Constitutional Court Decision No. 90/PUU-XXI/2023

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Abstract

The reformulation of presidential and vice-presidential age requirements in Indonesia following Constitutional Court Decision No. 90/PUU-XXI/2023 has generated a significant shift in both constitutional law and democratic practice. The decision not only reinterprets the minimum age provision but also introduces an alternative eligibility criterion based on prior executive experience, thereby transforming what was originally a legislative open legal policy into a product of judicial construction. This study aims to analyze the reconfiguration of presidential age requirements and examine its constitutional and political implications. The research employs a normative legal method, utilizing statutory, conceptual, and comparative approaches. The findings reveal that judicial intervention in determining candidacy requirements has expanded the role of the Constitutional Court from a negative legislator into an active norm-shaping institution. This development generates constitutional tensions, particularly concerning legal certainty, the principle of separation of powers, and democratic legitimacy. Furthermore, the reform carries significant political implications, influencing elite competition, patterns of political representation, and public trust in democratic institutions. This study argues that the judicial reconstruction of age requirements risks blurring institutional boundaries and enabling the politicization of constitutional interpretation. Therefore, reforms concerning fundamental aspects of electoral regulation should be conducted through transparent and participatory legislative processes to maintain a balance between the rule of law and democratic legitimacy.

Keywords: *Presidential Age Limits; Constitutional Law; Constitutional Court; Democracy; Legal Certainty.*

Abstrak

Perubahan batas usia pencalonan presiden dan wakil presiden di Indonesia pasca Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 menimbulkan pergeseran signifikan dalam konstruksi hukum tata negara dan praktik demokrasi. Putusan tersebut tidak hanya menafsirkan ulang ketentuan usia minimum, tetapi juga memperkenalkan alternatif syarat berbasis pengalaman jabatan, sehingga mengubah karakter norma dari open legal policy legislatif menjadi produk interpretasi yudisial. Penelitian ini bertujuan untuk menganalisis rekonfigurasi batas usia tersebut serta mengkaji implikasi konstitusional dan politik yang ditimbulkannya. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan. Hasil penelitian menunjukkan bahwa intervensi yudisial dalam menentukan syarat pencalonan telah memperluas peran Mahkamah Konstitusi dari negative legislator menjadi aktor yang berkontribusi dalam pembentukan norma hukum. Kondisi ini memunculkan ketegangan konstitusional, terutama terkait kepastian hukum, prinsip pemisahan kekuasaan, dan legitimasi demokrasi. Selain itu, perubahan tersebut juga memiliki implikasi politik yang signifikan terhadap dinamika kompetisi elite, representasi politik, serta kepercayaan publik terhadap institusi demokrasi. Penelitian ini berargumen bahwa rekonstruksi batas usia

melalui mekanisme yudisial berpotensi mengaburkan batas kewenangan antar lembaga negara serta membuka ruang bagi politisasi hukum. Oleh karena itu, reformasi terhadap aturan fundamental dalam sistem pemilu seharusnya dilakukan melalui proses legislasi yang transparan dan partisipatif guna menjaga keseimbangan antara supremasi hukum dan legitimasi demokrasi.

Kata Kunci: Batas Usia Presiden; Hukum Tata Negara; Mahkamah Konstitusi; Demokrasi; Kepastian Hukum.

Intorduction

The regulation of presidential and vice-presidential candidacy requirements constitutes a fundamental element in shaping the architecture of democratic governance. In constitutional democracies, eligibility criteria (particularly age requirements) are not merely administrative thresholds but normative instruments that reflect the balance between political inclusivity and institutional stability. As noted by Jimly Asshiddiqie, constitutional arrangements concerning leadership selection are inherently linked to the broader design of democratic legitimacy (Asshiddiqie, 2009). In the Indonesian context, this issue has gained renewed significance following recent judicial developments that have redefined the legal framework governing presidential eligibility.

At the core of the controversy lies Article 169 letter (q) of Law Number 7 of 2017 on General Elections, which stipulates a minimum age of 40 years for presidential and vice-presidential candidates. This provision has long been understood as part of the legislature's open legal policy, allowing flexibility within constitutional limits. However, as emphasized in Indonesian legal scholarship, such policy discretion must still operate within the boundaries of constitutional coherence and democratic accountability (Lindsey & Butt, 2018). The emergence of judicial intervention has disrupted this balance, raising questions about the stability of statutory norms.

The Constitutional Court Decision No. 90/PUU-XXI/2023 represents a pivotal moment in Indonesia's constitutional trajectory. By introducing an alternative eligibility pathway namely prior experience as a regional head, the Court effectively reinterpreted the statutory provision without formal legislative amendment. Scholars such as Simon Butt and Tim Lindsey have previously highlighted the evolving role of Indonesia's Constitutional Court in shaping substantive legal norms, rather than merely annulling unconstitutional provisions (Lindsey & Butt, 2018). This development raises concerns regarding the Court's transformation from a negative legislator into a more proactive constitutional actor.

From a theoretical perspective, the debate over age requirements intersects with broader discussions on constitutional interpretation and democratic representation. The tension between legal certainty and constitutional adaptability has long been debated in comparative constitutional theory. As argued by Mark Tushnet, courts in transitional democracies often face pressures to respond to political demands, sometimes at the expense of doctrinal consistency (Tushnet, 2008). This dilemma is particularly relevant in Indonesia, where constitutional adjudication increasingly intersects with politically sensitive issues.

Moreover, the issue cannot be detached from the dynamics of political interests and elite competition. Age requirements may function as instruments of political inclusion or exclusion, depending on how they are formulated and applied. In Indonesia's evolving democracy, electoral regulations are frequently shaped by strategic considerations among political actors. Research on Indonesian politics demonstrates that legal frameworks are often contested arenas where elite interests are negotiated and institutional rules recalibrated (Curato & Fossati, 2020; Mietzner, 2020).

Comparative constitutional practices further demonstrate that there is no universal consensus regarding the appropriate age threshold for national leadership. While the United States sets a minimum age of 35 years, other jurisdictions adopt more flexible or stricter approaches depending on their constitutional traditions. According to Tom Ginsburg and Aziz Z. Huq, such variations reflect deeper differences in how democracies conceptualize the relationship between experience, representation, and institutional resilience (Ginsburg & Huq, 2018; Jakab, 2018).

In Indonesia, the controversy surrounding the Constitutional Court's decision has generated polarized public discourse, raising concerns about the integrity of democratic institutions. The debate has extended beyond legal circles into broader societal discussions, illustrating how constitutional issues can shape public trust. As observed in national legal scholarship, the reinterpretation of candidacy requirements has triggered concerns over the politicization of constitutional adjudication (Sanjaya et al., 2025). This polarization highlights the fragile intersection between law and politics in contemporary Indonesia.

Against this background, this study seeks to critically examine the reconfiguration of presidential age requirements in Indonesia, focusing on the constitutional tensions and political implications arising from Constitutional Court Decision No. 90/PUU-XXI/2023. By employing a normative legal approach complemented by conceptual and comparative

analysis, this research aims to contribute to the discourse on constitutionalism and democratic governance. The importance of maintaining a balance between judicial interpretation and legislative authority has been emphasized in Indonesian rule of law scholarship, particularly in the context of post-reformasi constitutional development (Chandranegara et al., 2019; Repansah, 2025). Ultimately, this study argues that resolving the controversy over age requirements requires a recalibration of institutional roles to preserve democratic legitimacy without undermining legal certainty.

Research Method

This study employs a normative legal research design, focusing on the examination of legal norms, principles, and doctrines governing presidential eligibility within Indonesia's constitutional framework. Normative legal research is particularly appropriate for analyzing statutory provisions and judicial decisions because it emphasizes the interpretation of authoritative legal sources rather than empirical data. As explained by Peter Mahmud Marzuki (Amalia et al., 2016; Marzuki, 2017), this type of research is directed toward generating prescriptive legal arguments through systematic legal reasoning. Accordingly, the study seeks to construct doctrinal insights regarding the reconfiguration of age requirements in Indonesian constitutional law.

The research adopts a combination of statutory, conceptual, and comparative approaches. The statutory approach is utilized to examine relevant legal instruments, including constitutional provisions and legislative regulations governing presidential candidacy. In contrast, the conceptual approach allows for the exploration of key legal doctrines such as constitutionalism and legal certainty, which serve as analytical foundations for this study. Johnny Ibrahim (Ibrahim, 2006) highlights that integrating these approaches enables a more comprehensive understanding of the relationship between positive law and legal theory, particularly in normative legal scholarship.

Furthermore, this study incorporates a comparative legal approach to situate Indonesia's regulatory framework within a broader global context. Comparative analysis provides a systematic means of identifying similarities and divergences across legal systems, thereby offering evaluative insights into the strengths and limitations of domestic regulations. In comparative legal methodology, the functional approach is often used to assess how different legal systems address similar issues, as discussed in leading

methodological literature (Veigel, 2021), allowing this research to move beyond mere description toward analytical evaluation.

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include constitutional provisions, statutes, and judicial decisions, while secondary materials encompass academic literature such as books and peer-reviewed journal articles. These materials are analyzed using qualitative legal analysis, emphasizing interpretation, argument construction, and doctrinal synthesis. According to Soerjono Soekanto, normative legal research requires a structured analytical process in which legal norms are systematically examined and logically connected to produce coherent conclusions (Soekanto & Mamudji, 2015), ensuring both academic rigor and methodological consistency.

Results and Discussion

Constitutional Reconfiguration of Presidential Age Requirements: From Legislative Policy to Judicial Interpretation

The regulation of presidential age requirements in Indonesia has traditionally been situated within the domain of legislative authority, reflecting the principle of open legal policy. Under this framework, the legislature is granted discretion to determine eligibility criteria, including age thresholds, as long as such provisions do not contradict constitutional mandates. The minimum age requirement of 40 years, as stipulated in Article 169 letter (q) of Law No. 7 of 2017, exemplifies a normative choice aimed at ensuring leadership maturity and institutional stability. As noted by Peter Mahmud Marzuki, legislative policies in the field of electoral law often embody a balance between normative ideals and pragmatic governance considerations (Marzuki, 2017).

However, the emergence of Constitutional Court Decision No. 90/PUU-XXI/2023 marks a significant shift in the constitutional treatment of such requirements. The decision introduced an alternative pathway for candidacy, allowing individuals with prior experience as regional heads to bypass the age threshold. This reinterpretation effectively altered the substance of the statutory provision without formal legislative amendment, thereby raising fundamental questions about the scope of judicial authority. In constitutional theory, such developments are often associated with the expansion of judicial roles beyond traditional

interpretative functions (Tushnet, 2008), particularly in transitional democracies where courts are increasingly called upon to resolve politically sensitive issues.

The shift from legislative policy to judicial interpretation reflects a broader transformation in Indonesia's constitutional practice. Rather than merely invalidating unconstitutional provisions, the Constitutional Court appears to have engaged in constructive interpretation by adding new normative elements to existing legislation. Scholars such as Simon Butt and Tim Lindsey have observed that the Indonesian Constitutional Court has, in several instances, assumed a more proactive role in shaping legal norms, thereby blurring the distinction between adjudication and legislation (Lindsey & Butt, 2018). This phenomenon raises concerns regarding the erosion of the negative legislator doctrine, which traditionally limits courts to annulling unconstitutional norms without creating new ones.

From a doctrinal perspective, the reconfiguration of age requirements challenges the principle of legal certainty, which requires that laws be clear, stable, and predictable. The introduction of alternative criteria through judicial interpretation risks creating ambiguity in the application of legal norms, particularly when such criteria are not explicitly grounded in statutory text. As emphasized in comparative constitutional scholarship, judicial innovation must be carefully balanced against the need to preserve the coherence of the legal system (Jakab, 2018), ensuring that courts do not undermine the very certainty they are meant to uphold. Key Constitutional Shifts Identified:

1. The transformation of age requirements from a legislative policy domain into a subject of judicial reinterpretation.
2. The expansion of the Constitutional Court's role from negative legislator to a more proactive norm-shaping institution.
3. The emergence of normative dualism, where statutory provisions coexist with judicially constructed criteria.
4. The potential weakening of legal certainty and predictability in electoral regulations.

The emergence of these shifts indicates a deeper constitutional reconfiguration that extends beyond the specific issue of age requirements. It reflects an evolving judicial philosophy in which courts actively participate in the development of legal norms, particularly in areas where legislative frameworks are perceived as inadequate or contested. In this regard, the Constitutional Court's decision can be interpreted as part of a broader

trend toward judicialization of politics, where legal institutions increasingly influence political outcomes (Alberdi, 2024).

Nevertheless, this expanded judicial role raises critical concerns regarding the separation of powers. By effectively modifying statutory provisions, the Court risks encroaching upon the legislative domain, thereby disrupting the institutional balance envisioned in the constitutional framework. As argued by Tom Ginsburg, the legitimacy of judicial intervention depends on its adherence to constitutional boundaries and its ability to maintain public trust (Ginsburg, 2009). When courts are perceived as overstepping their mandate, their authority may be questioned, potentially undermining the rule of law.

In the Indonesian context, the reconfiguration of presidential age requirements also reveals the interplay between legal reasoning and political considerations. Judicial decisions, particularly those involving electoral regulations, do not operate in a vacuum but are embedded within broader socio-political dynamics. Empirical studies on Indonesian constitutionalism have shown that judicial rulings often intersect with elite interests and political contestation, shaping both legal outcomes and political trajectories (Mietzner, 2020). This intersection further complicates the assessment of the Court's decision, as it blurs the line between principled adjudication and political accommodation.

Ultimately, the transformation of age requirements from a legislative policy into a product of judicial interpretation underscores the need for a clearer delineation of institutional roles within Indonesia's constitutional system. While judicial interpretation is essential for resolving legal ambiguities, it must be exercised within the limits of constitutional authority to preserve legal certainty and democratic legitimacy. As highlighted in Indonesian legal scholarship (Decision No. 90/PUU-XXI/2023, 2023), sustainable constitutional governance requires a careful balance between judicial innovation and legislative supremacy, ensuring that legal reforms are achieved through transparent and accountable processes rather than ad hoc judicial intervention.

Constitutional Tensions and the Limits of Judicial Power in Democratic Governance

The reconfiguration of presidential age requirements through judicial interpretation inevitably generates constitutional tensions, particularly in relation to the scope and limits of judicial power within a democratic system. At the heart of this issue lies a fundamental

question: to what extent can courts legitimately reshape legal norms without encroaching upon the domain of the legislature? Constitutional theory traditionally positions courts as guardians of the constitution, tasked with ensuring that legislative acts conform to higher legal norms. However, when courts move beyond annulment and begin to construct new normative frameworks, the boundary between adjudication and legislation becomes increasingly blurred (Waldron, 2006).

This tension is closely related to the longstanding debate between judicial activism and judicial restraint. Judicial activism, in its expansive form, allows courts to interpret constitutional provisions dynamically in response to evolving societal needs. In contrast, judicial restraint emphasizes deference to legislative authority and cautions against judicial overreach. As argued by Aharon Barak, constitutional adjudication inevitably involves value judgments, yet such discretion must be exercised within principled limits to avoid undermining democratic processes (Barak, 2009). The challenge, therefore, lies in distinguishing legitimate constitutional interpretation from impermissible judicial law-making.

In the Indonesian context, the Constitutional Court's intervention in redefining age requirements can be seen as an instance of substantive judicialization, where courts play an active role in shaping political outcomes. This phenomenon aligns with what Ran Hirschl conceptualizes as juristocracy, a condition in which judicial institutions acquire significant influence over core political questions (Hirschl, 2005; Levine, 2004). While such developments may enhance rights protection in certain contexts, they also raise concerns about democratic accountability, particularly when unelected judges effectively determine the rules of political competition.

Moreover, the principle of separation of powers becomes increasingly strained when judicial decisions alter the substance of legislative norms. Classical constitutional theory, as articulated by Montesquieu, underscores the importance of maintaining functional distinctions between branches of government to prevent the concentration of power (Brennan, 2022; Montesquieu, 2025). When courts assume quasi-legislative functions, this balance is disrupted, potentially leading to institutional friction and legitimacy deficits. The Indonesian case illustrates how judicial intervention, even when grounded in constitutional reasoning, can generate perceptions of overreach if it is seen to substitute rather than interpret legislative intent.

At a deeper theoretical level, the tension also reflects competing conceptions of constitutional legitimacy. On one hand, legitimacy may derive from the courts' role in safeguarding constitutional values and correcting deficiencies in legislative action. On the other hand, democratic legitimacy is rooted in popular representation and legislative deliberation. As noted in critical constitutional scholarship, the expansion of judicial power often creates a paradox: the more courts intervene to protect constitutional principles, the greater the risk of diminishing democratic participation (McCorkindale, 2009). This paradox is particularly salient in cases involving electoral regulations, where the rules of political competition are directly at stake.

The Indonesian experience further demonstrates that constitutional tensions are not merely abstract theoretical concerns but have tangible implications for governance and public trust. When judicial decisions are perceived as politically motivated or insufficiently grounded in legal reasoning, they may erode confidence in both the judiciary and the broader constitutional system. Empirical studies in comparative constitutional law suggest that the durability of judicial authority depends not only on formal powers but also on societal acceptance and institutional credibility (Aguar Aguilar, 2023; Helmke & Ríos-Figueroa, 2011). In this regard, the legitimacy of judicial intervention is inseparable from its perceived neutrality and adherence to constitutional limits.

Ultimately, the challenge lies in delineating a sustainable model of judicial power that reconciles the need for constitutional interpretation with the imperatives of democratic governance. Courts must navigate a delicate balance between responsiveness and restraint, ensuring that their decisions enhance rather than undermine the rule of law. As highlighted in contemporary legal theory, the legitimacy of judicial authority is contingent upon its capacity to operate within clearly defined constitutional boundaries while maintaining fidelity to democratic principles (Gerards, 2023; Kavanagh, 2010). In the Indonesian case, this requires a recalibration of judicial practice to prevent the overextension of judicial power while preserving its essential role in constitutional adjudication.

Political Implications of Age Requirement Reform: Elite Competition, Representation, and Democratic Legitimacy

The reformulation of presidential age requirements in Indonesia cannot be understood solely as a legal development; it must also be situated within the broader dynamics of

political competition. Electoral regulations, particularly those governing candidacy, play a decisive role in structuring the arena in which political elites compete for power. By altering eligibility criteria, legal reforms may inadvertently or deliberately reshape the configuration of political actors, influencing who can realistically participate in the highest levels of governance. As emphasized in comparative political analysis, institutional rules are often strategically contested because they determine access to power (Chakravarty & Przeworski, 1992; DeCanio, 2024).

From the perspective of elite theory, changes in age requirements may affect patterns of elite circulation, either facilitating renewal or reinforcing existing power structures. Classical theorists such as Vilfredo Pareto argue that political stability depends on the continuous renewal of elites, preventing stagnation and oligarchic consolidation (Swe Dberg, 1980). In the Indonesian context, however, the introduction of alternative eligibility criteria, such as prior experience as a regional head may not necessarily democratize access but instead privilege individuals who are already embedded within established political networks. This raises concerns that the reform may reproduce elite dominance rather than expand inclusivity.

Moreover, the political implications of age requirement reform extend to issues of representation, particularly the inclusion of younger generations in national leadership. In democratic theory, political representation is not merely about formal participation but also about substantive inclusion of diverse societal groups. Lowering or flexibilizing age thresholds is often justified as a means of enhancing generational representation and addressing the aspirations of younger citizens. However, as noted in contemporary democratic studies, representation is shaped not only by formal rules but also by structural inequalities that influence political recruitment and candidacy (Pitkin, 2023).

The Indonesian case illustrates a paradox in this regard. While the reinterpretation of age requirements appears to open new avenues for younger candidates, the requirement of prior executive experience may simultaneously restrict access to those with established political capital. This dual effect creates what may be described as selective inclusivity, where opportunities are expanded in form but constrained in practice. Empirical analyses of electoral systems suggest that such mechanisms often benefit politically connected actors rather than genuinely broadening participation (Mayne, 2012; Norris, 2011). Consequently, the reform may have limited impact on substantive democratization.

In addition to elite competition and representation, the reform of age requirements has significant implications for democratic legitimacy. Legitimacy in democratic systems is closely tied to the perception that political processes are fair, transparent, and governed by stable rules. When eligibility criteria are altered through judicial intervention rather than legislative deliberation, questions arise regarding the procedural legitimacy of such changes. As highlighted in democratic theory, the legitimacy of institutional arrangements depends not only on their outcomes but also on the processes through which they are established (Hoffmann & Scharpf, 1999; Scharpf, 2011).

The perception of judicially driven reform as politically motivated may further erode public trust in democratic institutions. Studies on democratic backsliding indicate that when legal frameworks are perceived as instruments of elite manipulation, citizens' confidence in the fairness of electoral competition declines (Garber Fuentes, 2019). In Indonesia, the controversy surrounding the Constitutional Court's decision has intensified public scrutiny of both the judiciary and the electoral system, reflecting broader concerns about the integrity of democratic governance. This underscores the importance of maintaining institutional neutrality in the regulation of political competition.

Ultimately, the political implications of age requirement reform reveal the complex interplay between law, power, and legitimacy in democratic systems. While legal changes may be framed as efforts to enhance inclusivity or adapt to evolving political realities, their actual impact depends on how they interact with existing structures of power and representation. As argued in contemporary political scholarship, democratic resilience requires not only formal compliance with legal norms but also the preservation of public trust and institutional credibility (Easton, 1975). In this sense, the Indonesian experience highlights the need for a more transparent and participatory approach to electoral reform, ensuring that changes to fundamental political rules are grounded in democratic deliberation rather than contingent judicial interpretation.

Conclusion

The reconfiguration of presidential age requirements in Indonesia reflects a profound shift in the relationship between legislative authority and judicial power within the constitutional system. This study demonstrates that the reinterpretation introduced through Constitutional Court Decision No. 90/PUU-XXI/2023 has transformed what was originally

a domain of open legal policy into an arena of judicial construction. Such a transformation not only alters the substantive meaning of eligibility criteria but also redefines the institutional boundaries between branches of government. As a result, the issue of age requirements can no longer be understood solely as a matter of statutory regulation, but rather as a manifestation of evolving constitutional practice shaped by judicial intervention.

Furthermore, the findings reveal that this reconfiguration generates significant constitutional tensions, particularly in relation to legal certainty, separation of powers, and democratic legitimacy. While judicial interpretation plays an essential role in maintaining constitutional order, its expansion into norm-creating functions risks undermining the predictability of legal rules and the balance of institutional authority. At the same time, the political implications of such reforms highlight the complex interplay between law and power, where changes in eligibility criteria may influence elite competition, patterns of representation, and public trust in democratic processes. These dynamics underscore the importance of critically assessing the broader consequences of judicial involvement in politically sensitive domains.

Ultimately, this study argues that sustainable constitutional governance requires a careful recalibration of institutional roles to ensure that judicial authority is exercised within its proper limits while preserving democratic accountability. Reforms concerning fundamental aspects of electoral regulation, such as presidential eligibility, should ideally be pursued through transparent and participatory legislative processes rather than ad hoc judicial reinterpretation. By reaffirming the primacy of deliberative law-making and maintaining the integrity of constitutional boundaries, Indonesia can strengthen both the rule of law and the legitimacy of its democratic system in the face of ongoing political and institutional challenges.

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