

Study Of The Decision Of The Constitutional Court No. 90/PUU-XXI/2023 In The Examination Of Law No. 7 Of 2017 Concerning General Elections

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Abstract

The Constitutional Court is a judicial institution that has constitutional authority in interpreting the 1945 Constitution of the Republic of Indonesia and giving legally *binding decisions*. Through this authority, the Constitutional Court has an important role in maintaining the supremacy of the constitution and upholding the principle of the rule of law. This study aims to examine the extent of the Constitutional Court's authority in adding new norms through the testing of the Law on the 1945 Constitution of the Republic of Indonesia and analyze the implications of the Constitutional Court Decision Number 90/PUU-XXI/2023 on Law Number 7 of 2017 concerning General Elections. This research uses a normative juridical approach by examining relevant laws and regulations and decisions of the Constitutional Court. The results of the study show that the Constitutional Court has a wide interpretive space in interpreting constitutional norms, but the addition of new norms must remain within the corridor of the principle of constitutionality and not exceed its authority as *a negative legislator*. This ruling has significant implications for the electoral system in Indonesia, especially related to the establishment of new norms in the constitutional legal process.

Keywords: Constitutional Court, Authority, Testing of laws

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Introduction

In general, the state system divides the power of government into three branches known as the concept of trias politica. This concept was originally put forward by John Locke, who divided state power into three parts, namely executive, legislative, and federative powers. Meanwhile, Montesquieu developed the concept by dividing power into executive, legislative, and judicial. The fundamental difference between Locke's and Montesquieu's views lies in the division of the functions of each power. According to Locke, executive power includes judicial power because adjudication is part of the execution of laws, while federative power related to foreign relations stands as a separate power. On the contrary, Montesquieu argued that executive power also includes federative power because the exercise of foreign relations is included in the executive realm, while judicial power stands alone as an independent institution. The judicial power referred to by Montesquieu is judicial power that functions to enforce law and justice independently.[1]

The development of Constitutional Law in Indonesia is experiencing very rapid dynamics, although it is difficult to describe it, it can be assumed that the development of Constitutional Law in Indonesia has developed both conceptually and in state practice. The development of Constitutional Law in Indonesia can be seen in the establishment of an institution of judicial power, namely the Constitutional Court.[2]

The Constitutional Court is an institution that was formed after the implementation of amendments to the 1945 Constitution of the Republic of Indonesia. In the context of constitutional law, the existence of the Constitutional Court is based on three main constructions. First, the Constitutional Court acts as the guardian of the constitution which is tasked with upholding constitutional justice in the life of society, nation, and state. Second, this institution has the responsibility to encourage and ensure that the constitution is respected and implemented consistently and responsibly by all components of the state. Third, in the face of various constitutional weaknesses, the Constitutional Court plays a role as an interpreter of the law to ensure that the spirit of the constitution remains alive and becomes a guideline in the implementation of state life. Based on this construction, it is clear that the Constitutional Court has a very broad responsibility and authority in maintaining and enforcing the principle of constitutionality in Indonesia.[3]

One of the important aspects that must be contained in the constitution is the guarantee of protection of human rights. Therefore, maintaining the dignity and enforceability of the constitution, especially related to human rights, is the main responsibility of the Constitutional Court as the guardian of the constitution. In the context of a state of law based on the rule of law, the protection of human rights is fundamental and cannot be ignored. Every Indonesian citizen has the right to receive protection for his or her rights as stipulated in laws and regulations, so that the enforcement and promotion of human rights is an integral part of the administration of a just state.[4]

This step started from the proposal of Almas Tsaqibbiru, one of the students of the University of Surakarta who won his lawsuit regarding the age limit for presidential and vice presidential candidates. The final decision of the Constitutional Court sets the age limit for presidential and vice presidential candidates to be at least 40 years old or younger, provided that they have experience as a public official and/or regional head obtained during the election or the regional election process. According to the Petitioner, the provisions of Article 169 letter q of Law Number 7 of 2017 are considered to cause injustice that cannot be tolerated because it limits the people's right to elect the President and Vice President based on the age limit that has been set by the lawmakers. The applicant argues that the provision hinders the emergence of potential young leadership candidates. The applicant also expressed his views on the ideal leader for the Indonesian nation, namely the example of the Mayor of Surakarta for the 2020-2025 period, who is considered to have succeeded in increasing his regional economic growth

by 6.25% after previously experiencing a contraction of -1.74% at the beginning of his term. In addition, the Mayor of Surakarta is considered to have a positive track record in building and advancing the city by upholding honesty, moral integrity, and sincere devotion to the people and the state.

The Government of Indonesia has issued Government Regulation No. 70 of 2020 Regarding the Court's a quo decision, there were different reasons (concurring opinion) submitted by two Constitutional Judges, namely Enny Nurbaningsih and Daniel Yusmic P. Foekh. In addition, there were also dissenting opinions from four Constitutional Judges, namely Wahiduddin Adams, Saldi Isra, Arief Hidayat, and Suhartoyo. In the decision-making process, not all Constitutional Judges always agree with the decisions taken. Differences of opinion among judges are normal in the constitutional judicial process. If there are judges who are not in line with the majority decision, then this view is called a dissenting opinion, which is a different opinion that is put forward as a form of moral and academic responsibility in upholding the principle of constitutional justice.

Literature Review

2.1 Constitutional Court Decision on the Study of Election Law in Indonesia

The Constitutional Court Decision No. 90/PUU-XXI/2023 is an important reference in the study of election law in Indonesia because it changes the interpretation of the norms of the age requirements for presidential and vice presidential candidates in Law No. 7 of 2017. This decision adds an alternative condition that candidates can run even though they are not yet 40 years old, as long as they have served or are serving as regional heads as a result of the election. From a constitutional perspective, this step is seen as a form of constitutional interpretation that shows the tendency of judicial activism because the Constitutional Court does not just cancel norms, but also forms new norms. A number of constitutional law experts criticized the decision because it was considered to have the potential to enter the realm of law-making (positive legislators), thus giving rise to debates about the limits of the Constitutional Court's authority and the principle of separation of powers. On the other hand, political studies consider that this ruling can open up opportunities for younger leadership candidates, although it raises the perception that the ruling benefits certain political groups. The growing literature shows that this ruling has significant implications for the design of the electoral system, the neutrality of the constitutional judiciary, and the quality of Indonesia's electoral democracy. Therefore, the Constitutional Court Decision No. 90/PUU-XXI/2023 is seen as an important precedent that needs to be studied to maintain the principles of people's sovereignty and constitutional dignity. [5]

Research Methodology

In writing this article, a qualitative data analysis method with a normative juridical approach is used which is presented descriptively. This approach is carried out by describing and analyzing policies related to the synchronization of laws and regulations and human rights principles in order to improve the performance of the legal system in Indonesia. Furthermore, a review was carried out to assess the suitability of the implementation of the policy with the applicable normative provisions. Normative legal research is closely related to the application of *pure theory of law* in a legal system. According to Hans Kelsen, law as a norm can only be found in laws and regulations, with the constitution as the basic norm (*grundnorm*). This theory is applied in the constitutional system, especially in countries with a tradition of *civil law* that makes the constitution the highest law in the hierarchy of laws and regulations.[6]

Results

4.1 Regulation Of The Constitutional Court's Authority Over The Implementation Of New Norms In Decision No.90/PUU- XXI/2023

4.1.1 The Authority of the Constitutional Court in the Authority to Test the Law on the Constitution of the Republic of Indonesia in 1945

The 1945 Constitution of the Republic of Indonesia gives authority to the Constitutional Court as an institution that acts as the *guardian of the constitution*. Guarding the constitution means upholding law and justice based on constitutional principles, because the 1945 Constitution of the Republic of Indonesia is the highest law that is the foundation for the entire legal system in Indonesia. In this context, the Constitutional Court has the constitutional position, authority, and responsibility to ensure the implementation of legal constitutionality, namely so that every legislation and actions of state administrators remain in line with the values and norms contained in the constitution.[7]

Every state institution that is formed certainly has inherent functions and authorities as the basis of its existence. Similarly, the Constitutional Court, whose presence in the Indonesian constitutional system was the result of a long process and debate during the implementation of the amendment to the Constitution of the Republic of Indonesia in 1945. The establishment of the Constitutional Court is intended to strengthen the principle of the rule of law, uphold the constitution as the supreme law, and ensure that all the implementation of state power remains within the corridor of constitutionality. [8]

The authority of the Constitutional Court in Indonesia is regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the Constitutional Court has four *constitutional powers* and one *constitutional obligation*). This provision was then clarified in Law Number 24 of 2003 concerning the Constitutional Court. The four constitutional powers of the Constitutional Court include: first, testing the law against the 1945 Constitution of the Republic of Indonesia to ensure the conformity of legal norms with constitutional principles; second, to decide authority disputes between state institutions whose authority is given by the 1945 Constitution of the Republic of Indonesia; third, to decide on the dissolution of political parties if the party is considered to be contrary to the constitution or threatens the integrity of the state; and fourth, to resolve disputes over the results of the general election as a form of enforcing justice in the democratic process. In addition to these four authorities, the Constitutional Court also has one constitutional obligation, namely to give a ruling on the opinion of the House of Representatives regarding alleged violations committed by the President and/or Vice President in accordance with the provisions stipulated in the 1945 Constitution of the Republic of Indonesia.[9]

The Constitutional Court also has the obligation to give a ruling on the opinion of the House of Representatives that the President and/or Vice President is suspected of having committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or reprehensible acts, and/or no longer qualifies as President and/or Vice President as referred to in the 1945 Constitution of the Unitary State of the Republic of Indonesia.[10]

The Constitutional Court's authority in conducting constitutional testing is limited to the testing of the law against the 1945 Constitution of the Republic of Indonesia. Thus, laws and regulations under the law cannot be directly considered to be contrary to the constitution. Hierarchically, regulations under the law can only be judged to be contrary to laws or regulations of higher position. The national legal system has regulated this mechanism through a political policy that gives the Supreme Court the authority to conduct a judicial *review* of laws and regulations under the law. This shows that there is a clear division of authority between the Constitutional Court and the Supreme Court in maintaining the consistency and harmony of the legal system in Indonesia.

The right to test laws and regulations by the Constitutional Court is divided into two, namely material testing and formal testing. Formal testing is a test of the process of forming laws and regulations. According to Jimly Assidique, this statement can be justified, but it still does not cover the full understanding of the formal testing itself. Testing the process of forming laws can indeed be classified as formal testing because it does not concern testing the content of the law. However, the formal test does not only concern the process of forming laws in a narrow sense, but also includes a broader meaning. Formal testing is a test that includes aspects of the form of the law, even regarding the enactment of laws that are no longer classified as part of the process of forming laws. If described from these three criteria, formal testing includes several things, namely :P examination of the implementation of procedures or procedures for the formation of laws, both in the discussion and in decision-making on the draft of a law into law, testing of the form, format, or structure of the law, testing related to the authority of the institution that makes decisions in the process of forming the law; and testing for other things that are not included in the material testing.[11]

Material testing by the Constitutional Court is the authority of the judiciary to assess whether a law is contrary to a higher regulation. This material test is part of the exercise of independent judicial power as stipulated in Article 24 and Article 25 of the 1945 Constitution of the Republic of Indonesia and Article 11 paragraph (1) of the MPR Decree No. III/MPR/1978.

Terminologically, the right of material test (*Materieel Toetsingrecht*) is the authority to examine and assess whether a regulation is contrary to a higher regulation. According to Moh. Kusnadi, the right to material review is the authority of the Supreme Court to determine whether the content of a regulation made by an authorized institution does not conflict with a higher regulation. Based on this understanding, the right to material test by the Constitutional Court can be interpreted as testing the content of the Law to be in accordance with the 1945 Constitution of the Republic of Indonesia.[12]

4.1.2 The Constitutional Court as a Positive Legislature

The Constitutional Court is an institution of judicial power that has the authority to test the Law against the 1945 Constitution of the Republic of Indonesia. In the exercise of its duties, the Constitutional Court often tests various laws, and one of the most frequently tested is the Law on General Elections. The existence of the Constitutional Court can be seen from two different aspects, namely the political aspect and the legal aspect. From the political aspect, the existence of the Constitutional Court is understood as an effort to realize a check and balance mechanism between branches of power based on democratic principles. This right is related to the authority that is usually possessed by the Constitutional Court in various countries, namely to test the constitutionality of laws and regulations and to decide disputes over the constitutional authority of state institutions. The Constitutional Court as a state judicial institution has the duty and authority to cancel a product of laws and regulations if it is contrary to the constitution. Meanwhile, in the process of making norms or laws, it is the authority of the legislative institution, namely the House of Representatives as the law-making institution.

The difference in the implementation of duties between the House of Representatives (DPR) and the Constitutional Court (MK) is often formulated with the terms *positive legislature* and *negative legislature*. The House of Representatives is referred to as *a positive legislature* because it has the authority to form laws and regulations, while the Constitutional Court is referred to as *a negative legislature* because it does not have the authority to form regulations, but only has the authority to interpret and cancel laws and regulations that are contrary to the 1945 Constitution of the Republic of Indonesia.[13]

In its development, the Constitutional Court not only annuls a norm that is considered contrary to the constitution, but also uses a conditional decision model that formulates a "new norm" from a norm that is tested. This clearly shows that the Constitutional Court can

enter the realm of law-making as a *Positive Legislature* through the formulation of new norms in its decisions.

As the guardian of the Constitution, the Constitutional Court should play the role of a *negative legislature that has the* authority to annul laws that are contrary to the 1945 Constitution of the Republic of Indonesia, not participate in the process of its formation. The active involvement of the Constitutional Court in the formation of laws is considered a form of shifting authority that is not in accordance with the ideas of Hans Kelsen, who affirms that the Constitutional Court functions as *negative legislation*, not *positive legislation*.

In its implementation, the Constitutional Court often shows its role as a *positive legislature*, as seen in the Constitutional Court Decision Number 90/PUU-XXI which adds a phrase to Article 169 letter q. This is strengthened by the provisions in the Constitutional Court Regulation Number 2 of 2021 concerning Procedural Procedures in Law Testing Cases, especially Article 73 paragraph (3), which states that the Constitutional Court, If deemed necessary, it can add a judgment other than a conditional grant, refusal, unacceptable, or conditionally unconstitutional. This provision shows that the Constitutional Court not only interprets, but also has the potential to expand the applicable legal norms.

The Constitutional Court's decision is final and binding, meaning that the decision has permanent legal force from the moment it is pronounced and applies to all parties. Although in practice it is possible that there are errors or errors in the decision, but based on the principle of *erga omnes*, the decision of the Constitutional Court cannot be sued, annulled, or submitted by other legal remedies. Thus, every decision of the Constitutional Court must be accepted and implemented as a form of respect for the supremacy of the constitution and the authority of the constitutional judiciary.[14]

According to Muhamad Sadi Is, in applying a norm to a concrete case, the judge of the Constitutional Court is only authorized to interpret the content of the laws and regulations that are tested. Judges play the role of a *negative legislature*, not a *positive legislature*, so they do not have the authority to form, change, or add new legal norms. This is in line with the basic principle of the establishment of the Constitutional Court, namely as an institution that functions to test and cancel laws that are contrary to the 1945 Constitution of the Republic of Indonesia, not as a maker of laws and regulations.

4.2 Implications of the Constitutional Court's Decision in No.90/PUU-XXI/2023 in the Testing of Law No. 7 of 2017 concerning General Elections

4.2.1 Changes in the Age Requirements of Presidential Candidates and Vice Presidential Candidates

The Constitutional Court's decision in Case Number 90/PUU-XXI/2023 filed by a student of the University of Surakarta, Almas Tsaqibbirru, resulted in changes to the provisions of the minimum age limit requirements for presidential candidates and Vice Presidential candidates. In this case, the Constitutional Court granted part of the application to test Article 169 letter q of Law Number 7 of 2017 concerning General Elections. This ruling has significant implications because it substantially changes the norms in the applicable law, especially regarding the age requirement for prospective state leaders.

Amar Decision Number 90/PUU-XXI/2023 Article 169 letter q of Law Number 7 of 2017 concerning Elections states, "at least 40 (forty) years old" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "at least 40 (forty) years old or has been/is occupying a position elected through general elections, including the election of regional heads". So that Article 169 letter q of Law Number 7 of 2017 concerning General Elections reads in full "at least 40 (forty) years old or has been/is occupying a position elected through general elections, including the election of regional heads.

In its legal considerations read by Constitutional Judge M. Guntur Hamzah, the Court stated that the filling of public positions, especially the President and Vice President, needs to involve the participation of candidates who have quality and experience. The Court considers that in the Indonesian constitutional system there are other public positions that are also elected through elections but have different age requirements, such as Governor (30 years old), Regent and Mayor (25 years old), as well as members of the DPR, DPD, and DPRD (21 years old). Nevertheless, the Court affirmed that the positions of President and Vice President have different positions and responsibilities from other public offices, so the constitutional test regarding the age limit for presidential and vice presidential candidates cannot be solely equated with other public offices. Thus, the Court is of the opinion that the age requirement must be viewed proportionately and in accordance with the context of the constitutional responsibilities of the positions of President and Vice President.[15]

Even if someone is not yet 40 years old. However, having experience as a state official elected through elections (members of the House of Representatives, members of the DPD, members of the House of Representatives, Governors, Regents, and Mayors), it does not necessarily mean that a person becomes President and/or Vice President. This is because there are still two constitutional requirements that must be passed, namely the condition proposed by a political party or a combination of political parties (Article 6A paragraph (2) of the 1945 Constitution), and the condition of being elected directly by the people (Article 6A paragraph (1) of the 1945 Constitution). So, even if a person who has experience as a state official but is not promoted or proposed by a political party or a combination of political parties participating in the general election, then of course he cannot be a candidate for President and/or Vice President.

4.2.2 View *Oven Legal* Poland On Testing Age Limit for Presidential and Vice Presidential Candidates

Democracy and people's sovereignty, which essentially means that the government is in the hands of the people, is now undergoing a shift in meaning to power that is completely in the hands of political parties. This causes the principle of people's sovereignty to be distorted because of the dominant role of political parties in the political process and policy formation. On the other hand, the concept of constitutionalism that emphasizes the limitation of power is beginning to be challenged by the application of *Open Legal Policy* or open legal policy. In principle, the two concepts are not contradictory. Constitutionalism functions as a limitation of power so that it is not abused, while *Open Legal Policy* Providing conditional freedom for lawmakers in formulating legal policies. But in practice, the concept *Open Legal Policy* It is now often misinterpreted as "unlimited freedom" for lawmakers, potentially ignoring the basic principles of constitutionalism and shifting the balance between freedom and the limitation of power.

Policy principles *Open Legal Policy* in essence, it is the authority possessed by the law-maker to determine the subject, object, act, event and/or effect, which can be changed at any time by the framer of the Law in accordance with the demands and needs of existing legal developments. The Constitutional Court in a number of its rulings has separated constitutional issues and policy issues *Open legal policy*.

So far, the term *Stuart T* (Policy) is known in the field of public policy science which means free or open, because the meaning of policy always refers to the freedom of officials/authorized parties to do certain things whose implementation is not or has not been clearly regulated in laws and regulations. Therefore, the meaning *Open Legal Policy* is the discretion of the lawmaker in determining a rule, prohibition, obligation or limitation contained in a norm of the law that is being made which is the policy choice of the lawmaker.

Open legal policy has basically not been explicitly regulated in a law and regulations. However, related to *open legal policy*, the Constitutional Court often postulates this when rejecting a case of testing the law against the 1945 Constitution of the Republic of Indonesia

whose focus of testing is on the age limit, for example in the Constitutional Court Decision Number 55/PUU-XXI/2023 on the testing of the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections.

In general, the provisions of *open legal policy* can be seen in the 1945 Constitution of the Republic of Indonesia which reads "all the implementation of the election of the President and Vice President is further regulated in the law". The sentence "further regulated in the law" is part of the provisions of an open legal policy which means all rules to the implementation of the conditions and procedures for the election of the President and Vice President are the authority of the legislative institution.[16]

In this context, the legislative institution actually has a role as the authority to interpret and determine basic considerations in determining the age limit as stipulated in the law. However, through the Constitutional Court Decision No. 90/PUU-XXI/2023, it appears that the Court seems to be creating new norms or interpreting the law more broadly than the original intention of the lawmakers. The ruling shows the tendency of the Constitutional Court to take steps that go beyond its main function as a *negative legislator*, by providing interpretations that have the potential to lead to the formation of new norms. This has raised a debate about the extent to which the Court can interpret the constitution without violating the limits of its authority in the constitutional system..

The Constitutional Court does not always act actively in participating in changing a policy of laws and regulations, in this case, namely the Law. Not a few Constitutional Court decisions are a form of "the court's attitude in restraint or *judicial restraint* to test a policy by postulating that the policy is the domain or authority of the law-makers, namely the House of Representatives (DPR).

The concept of *open legal policy* is still unclear, when a policy falls into the category of what is called "*open legal policy*" and when a policy has constitutional value until the Constitutional Court needs to test or make norms. Departing from this, the Constitutional Court needs to formulate a series of measuring instruments to give consideration to whether a policy is included in the constitutional or included in the "*open legal policy*" concept group.[17]

4.3 Overruling of the Constitutional Court on the Examination of Article 169 Letter q of Law No. 7 of 2017 concerning General Elections

Overruling is a change in the judicial stance by a court against previous decisions that are considered irrelevant or no longer in accordance with the development of law and constitutional justice. In this context, *legal overruling* is carried out as a form of correction to previous legal views in order to find and enforce more appropriate constitutional truths. In other words, *overruling* is a form of renewal of legal interpretation through court decisions that replace or deviate from previous precedents.

Overruling is an act of rejecting previous precedents through changes that are openly carried out by the competent judicial institution. In this case, the judiciary uses its authority to deviate or cancel previous legal views, if it is considered to be inconsistent with the latest developments in law, justice, and constitutional needs.

The Constitutional Court of the Republic of Indonesia as a judicial institution authorized to test the Law on the 1945 Constitution of the Republic of Indonesia has overruled previous decisions through Decision Number 90/PUU-XXI/2023. This decision is related to the testing of Law Number 7 of 2017 concerning General Elections, especially Article 169 letter q which regulates the age limit for Presidential and Vice Presidential candidates. Through this ruling, the Constitutional Court is considered to have changed the direction of legal interpretation that had been previously determined, thereby creating a new precedent in the practice of constitutional testing in Indonesia.[18]

The strength of the Constitutional Court's decision, which *is erga omnes*, which has permanent and final legal force, makes every decision mandatory to be implemented by all parties. Although various problems arose after the issuance of the Constitutional Court Decision No. 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates, it is necessary to realize that the decision is a manifestation of the constitutional authority of the Constitutional Court as mandated in the 1945 Constitution of the Republic of Indonesia and the Law on the Constitutional Court. Therefore, legally and convincingly, the decision has binding force and must be complied with by all legal subjects in Indonesia.

The Constitutional Court as the guardian of the constitution in the constitutional system has the responsibility to maintain democratic principles and protect the constitutional rights of all citizens. In Decision Number 90/PUU-XXI/2023, the Constitutional Court examined the application *for judicial review* related to Article 169 letter q of Law Number 7 of 2017 concerning General Elections, which regulates the minimum age limit for a person to be able to run for President and Vice President.

Initially, in Case No. 29/PUU-XXI/2023 and Case No. 51/PUU-XXI/2023, the applicant submitted an application for the age requirement to be returned to 35 years old as stipulated in the previous Presidential Election law. Their argument involves the view that Article 169 letter q is considered discriminatory, not supported by scientific data, and contrary to the original intention of the formation of the 1945 Constitution of the Republic of Indonesia.³⁷ Despite the significant objections, the Constitutional Court decided to reject the application. Then, Decision No. 90/PUU-XXI/2023 appeared, in which the applicant requested that the age requirement of 40 years for Presidential and Vice Presidential Candidates be ignored if they had served as regional heads. The Constitutional Court, with several inconsistencies, finally decided to grant the request. This decision raises questions in the public about the consistency of the Constitutional Court as a guardian of the constitution.[19]

Conclusion

1. The 1945 Constitution of the Republic of Indonesia gives authority to the Constitutional Court to be the guardian of the constitution. Its authority in Indonesia is regulated in Article 24C paragraph 1 of the 1945 Constitution of the Republic of Indonesia which determines that the Constitutional Court has four constitutional powers. One of its powers is to test the Law against the 1945 Constitution of the Republic of Indonesia. The Constitutional Court in Decision No. 90/PUU-XXI/2023 on the testing of Law No. 7 of 2017 concerning General Elections has made its duty as a Positive Legislature in adding phrases in Article 169 letter q, the authority of the Constitutional Court in adding further phrases is regulated in Constitutional Court Regulation Number 2 of 2021 concerning Procedural Procedures in Law Testing Cases, It is stated that the Constitutional Court in the event deemed necessary can add *amar*, apart from granting, unacceptable, rejecting, or conditionally unconstitutional.
2. The Juridical Implications of the Constitutional Court Decision Number 90/PUU-XXI/2023 on the 2024 General Election of the President and Vice Presidential Candidates of the Republic of Indonesia, can be concluded in 3 things, namely, first, Changes in the Age Requirements of Presidential Candidates and Vice Presidential Candidates, second, Views *Open Legal Policy* (Open Legal Policy) On the Testing of the Age Limit of Presidential Candidates and Vice Presidential Candidates, *third* Overruling or changing the Constitutional Court's stance on the age limit test.
3. Overruling is a change in the attitude of the judiciary to replace precedents that are considered no longer in accordance with legal developments. The Constitutional Court implemented this mechanism through Decision No. 90/PUU-XXI/2023 which changed the interpretation of the age requirements for presidential and vice presidential candidates, thus creating a new precedent in the testing of laws. Although this ruling is final, binding,

and must be complied with, controversy arose because of its differences with the previous ruling, thus raising criticism of the Constitutional Court's consistency as a guardian of the constitution.

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