

## **Age Limit for President and vice president Candidates in Constitutional Court Decision Number 90/PUU-XXI/2023 on *Siyāsah Syar'iyah* Perspective**

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### **Abstract:**

Decision Number 90/PUU-XXI/2023 has changed the provisions for the minimum age limit for presidential and vice presidential candidates who are 40 years old or experienced as regional heads. This decision became a controversial decision because the court placed it as *a positive legislator*. This study discusses: 1) Judicial Legal Politics Related to the Age Limit for Presidential and Vice Presidential Candidates after the Constitutional Court Decision Number 90/PUU-XXI/2023. 2) *Siyāsah Syar'iyah* Review of the Age Limit for Presidential and Vice Presidential Candidates After the Constitutional Court Decision Number 90/PUU-XXI/2023. This type of research is normative juridical with 3 approaches, namely *statue approach*, *conceptual approach*, and *case approach*. The results and findings include: 1) The Constitutional Court Decision Number 90/PUU-XXI/2023 procedurally experienced problems in its formation, but in substance the decision has a progressive character so that the age limit for presidential and vice presidential candidates is not only a quantitative age limit but also adds other options that are qualitative limitations that can be a source of national development law. Judicial Legal Politics related to this decision has *the nature of erga omnes* so that it applies to the public and is binding on all parties. 2) The Constitutional Court's decision number 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates as it has become *a mandarory to the addreset* of the law-making has been in accordance with *siyasa sharia* because it has met several indicators, including not contradicting the *Mashadir al sharia al-islamiyah* (the source of Islamic law), applies the principle of *al-Musawah*, the principle of *'adamul al-haraj*, the principle of *al-Is* and the principle of *al-Maslahah*.

**Keywords:** Age Limit; Presidential Candidate; *Siyasa Shari'iyah*.

### **Introduction**

Indonesia is a country of law, not a country of power. The state of law has *a logical consequence*, namely that all aspects of life in this country must be based on the law,

including all products, laws and regulations, and their derivatives. Indonesia as a country of law must be able to enforce the law that applies fairly and evenly for all its citizens. Indonesia as a country of law must also be able to meet the demands of reason and legitimize *democracy*.<sup>1</sup> The establishment of the Constitutional Court was carried out during the third amendment of the 1945 Constitution in 2001. The purpose of the establishment of the Constitutional Court is to strengthen the constitutional structure in Indonesia in accordance with the principle of *checks and balances* so that it can control and balance each other between institutions instead of *being intervened* and *politicized*.<sup>2</sup>

The Constitutional Court was also formed to realize a democratic system of state government rather than weakening *democracy*<sup>3</sup> as the *triad theory of Politika*.<sup>4</sup> The form of realizing a democratic state government system is by accommodating the authority of the Constitutional Court which is clearly enshrined in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. These powers include examining laws against the Constitution (*Judicial Review*), deciding disputes over the authority of state institutions, deciding the dissolution of political parties and deciding disputes about the results of general elections. The Constitutional Court is also obliged to give a ruling on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.<sup>5</sup>

Based on data from the website of the Constitutional Court of the Republic of Indonesia, the most dominant authority of the Constitutional Court is related to the authority to examine the Law against the Constitution (*Judicial Review*).<sup>6</sup> Throughout 2023, it is proven that the Constitutional Court decided 136 cases out of 202 cases heard with 41 cases or 32% unacceptable, 25 cases or 19% withdrawn, 57 cases or 40% cases rejected, 13 cases or 9% cases granted and among the most laws in the *Judicial Review* is Law Number 7 of 2017 concerning General Elections.<sup>7</sup>

Recently, a legal issue has emerged that has shocked the public ahead of the 2024 general election. The constitutional legal issue concerns the issue of the age limit for presidential and vice presidential candidates which resulted in a controversial verdict in the material test of Article 169 letter q of Law Number 7 of 2017 which was registered in case number 90/PUU-XXI/2023. The issue attracted public attention because it was

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<sup>1</sup> Anugrah Dwi, *The Meaning of Indonesia as a State of Law*, Postgraduate Program of the University of Muhammadiyah North Sumatra, Article <https://pascasarjana.umsu.ac.id/makna-indonesia-sebagai-negara-hukum/> accessed on June 26, 2023

<sup>2</sup> The independence of judges is enshrined in Article 24 of the 1945 Constitution of the Republic of Indonesia, and Article 3 paragraphs (1) and (2) of Law No. 48 of 2009

<sup>3</sup> Janedjri M. Gaffar, *The Position, Function, and Role of the Constitutional Court in the Constitutional System of the Republic of Indonesia*, Constitutional Court of the Republic of Indonesia, [https://www.mkri.id/public/content/infoumum/artikel/pdf/makalah\\_makalah\\_17\\_oktober\\_2009.pdf](https://www.mkri.id/public/content/infoumum/artikel/pdf/makalah_makalah_17_oktober_2009.pdf) (Surakarta, 2009), 6

<sup>4</sup> Yudistira Abdi Rizki, "Student Organizational Structure Based on the Decree of the Director General of Pendis Number 4961 of 2016 Perspective of Trias Politika Theory". *Maliki Interdisciplinary Journal* 2 (3). <http://urj.uin-malang.ac.id/index.php/mij/article/view/4875>. 3

<sup>5</sup> M. Asro, *The Authority of the Constitutional Court in the Constitution of the Republic of Indonesia in 1945*, Faculty of Sharia and Law UIN Sunan Gunung Djati Bandung, *Adliya Journal* Volume 11, Number 2, June 2017 <https://doi.org/10.15575/adliya.v11i2.4857>

<sup>6</sup> *Judicial Review* is a test carried out through the mechanism of judicial institutions on the correctness of a norm which includes testing the content of the law (*material test*) and the formation of laws (*formal test*).

<sup>7</sup> mkri.id. <https://www.mkri.id/index.php?page=web.Berita&id=19903&menu=2>

one of seven rulings with similar issues that caused pros and cons among the public, not only from the material but also from the formal formation of the decision.<sup>8</sup>

The application that most shocked the public was the application for the age limit for presidential candidates and vice presidential candidates submitted by a student of the University of Surakarta, Almas Tsaqibbirru. In fact, this decision resulted in the emergence of 21 reports highlighting alleged ethical violations by nine constitutional judges which have now been proven by the existence of serious ethical violations by the Honorary Assembly of the Constitutional Court (MKMK).<sup>9</sup> The result of Decision Number 90/PUU XXI/2023 is to grant a part.<sup>10</sup> The decision states that Article 169 letter q of Law Number 7 of 2017 is interpreted as:<sup>11</sup> *At least 40 (forty) years old or has been/is occupying a position elected through general elections, including the election of regional heads.*<sup>12</sup>

The problem that will be discussed in this study is how the Judicial Law Politics is related to the Constitutional Court decision 90/PUU-XXI/2023. then can it be materially justified according to *the Islamic view regarding the President's age limit*, the addition of the phrase Age Limit, presidential and vice presidential candidates are 40 years old or have experience serving as regional heads? There are previous studies related to this research, including a journal entitled *Juridical Analysis of Dissenting Opinion Decision Number 90/PUU-XXI/2023 of the Constitutional Court related to the arguments of Open Legal Policy and Ethics of Constitutional Court Judges*. This research was conducted by Yahya Lutfi Kurniawan, Cleo Farrel Piyantoni, Ruchyat Angga Permana, and Niluh Ketut Candra Kasih from the Faculty of Law, University of Bandar Lampung in 2023.

The theory used in this study is Critical Law Theory by M. Unger. Then the research entitled *Legal Analysis of the Constitutional Court Decision Number 90/Puu-Xxi/2023 concerning the Age Limit for Presidential and Vice Presidential Candidates* was researched by Ferdi Febriansyah and Sugeng Prayitno in the form of a Journal from the Painan College of Law in 2023. The results of the study show that the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates is considered unconstitutional and beyond the authority of the Constitutional Court.

Through this research, it is hoped that it can provide insights and positive contributions in understanding deeply and critically related to the Constitutional Court decision Number 90/PUU-XXI/2023 and contribute to the public, academics, and legal practitioners related to controversial issues such as the age limit for presidential and vice presidential candidates. As a result, it is hoped that it can also make a positive contribution to the development of legal thought and policy in Indonesia. In addition, this research is expected to be a foothold to better understand the dynamics and challenges in maintaining the independence and integrity of the Constitutional Court.

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<sup>8</sup> Constitutional Court Decision Number 90/PUU-XXI/2023, decided on October 17, 2023

<sup>9</sup> Online Law, *Violating 5 Principles of the Code of Ethics, Anwar Usman Removed from the Position of Chairman of the Constitutional Court* <https://www.hukumonline.com/berita/a/langgar-5-prinsip-kode-etik--anwar-usman-dicopot-dari-jabatan-ketua-mk-lt654a47cfc992c/> accessed on November 7, 2023

<sup>10</sup> Constitutional Court Decision Number 90/PUU-XXI/2023

<sup>11</sup> Almas is the son of Boyamin Saiman, the Coordinator of the Indonesian Anti-Corruption Society (MAKI). See, Detik Central Java, *Getting to Know Almas Tsaqibbirru, the Figure Behind the Presidential and Vice Presidential Age Lawsuit*, <https://www.detik.com/jateng/berita/d-6987339/mengenal-almas-tsaqibbirru-sosok-di-balik-gugatan-usia-capres-cawapres>, accessed on October 17, 2023.

<sup>12</sup> Constitutional Court Decision Number 90/PUU-XXI/2023

## Method

This study uses a type of *normative juridical* research. The approaches used in this researcher include the *statute approach*, *conceptual approach*, and *Case approach*. The sources of legal materials in this study include primary, secondary and tertiary materials, namely: Primary legal materials that will be used by the researcher include: the 1945 Constitution, Article 169 letter q of Law Number 7 of 2017 concerning General Elections, Constitutional Court Decision Number 90/PUU-XXI/2023, Constitutional Court Decision Number 141/PUU-XXI/2023. Secondary legal materials that will be used in this research are in the form of law books and books related to this research, Law Journals related to this research Tertiary legal materials are supporting legal materials,<sup>13</sup> or materials that provide important instructions and explanations related to primary and secondary legal materials.<sup>14</sup>

Tertiary legal materials that will be used in this study include dictionaries, encyclopedias, newspaper print media, electronic news information and others. The collection of legal materials for this research is through library *research / bibliography research*. Literature Studies are the study of written information related to law obtained from various sources and published thoroughly and needed in normative legal research.<sup>15</sup> The researcher collects materials that are in accordance with the research topic with literature data. The method of analysis of legal materials applied is qualitative juridical.<sup>16</sup> This method focuses on data evaluation without involving numbers, emphasizing more on legal analysis through deductive and inductive inference processes. The researcher will analyze and provide explanations related to Judicial Legal Politics of the Constitutional Court's Decision Regarding the Age Limit for Presidential and Vice Presidential Candidates After Decision Number 90/PUU-XXI/2023 *Siyasah Syariyyah Perspective*

## The Process and Problems of the Constitutional Court's Decision Regarding the Age Limit for Presidential and Vice Presidential Candidates in the Constitutional Court Decision Number 90/PUU-XXI/2023.

Chronological Testing of Article 169 letter (q) of Law Number 7 of 2017 The issue of constitutionalism of the age limit for presidential and vice presidential candidates began with Case Number 29/PUU-XXI/2023, which was registered on March 16, 2023 at 10.00 WIB, submitted by the Indonesian Solidarity Party. They asked the Court to lower the minimum age limit for presidential and/or vice presidential candidates from 40 years to 35 years. Case Number 51/PUU-XXI/2023, which was registered on May 9, 2023 at 10.30 WIB, was filed by the Garuda Party. They asked the Court to determine an alternative to the minimum age requirement of 40 years for presidential and/or vice presidential candidates, namely having experience as a Regional Head or Deputy Regional Head.

Case Number 55/PUU-XXI/2023, which was registered on May 17, 2023 at 09.00 WIB, was filed by Erman Safar (Mayor of Bukit Tinggi 2021-2024), Pandu Kusuma

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<sup>13</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 62.

<sup>14</sup> Bambang Sunggono, *Legal Research Methodology*, PT Raja Grafindo Persada, Jakarta, 2002) 116

<sup>15</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 62.

<sup>16</sup> Muhammad Sidiq Armia, *Determination of Legal Research Methods & Approaches* (Banda Aceh: Indonesian Institute for Constitutional Studies (LKKI), Faculty of Sharia and Law, Ar-Raniry State Islamic University, Banda Aceh, 2022), 39

Dewangsa (Deputy Regent of South Lampung 2021-2026), Emil Elestianto Dardak (Deputy Governor of East Java 2019-2024), Ahmad Muhdlor (Regent of Sidoarjo 2021-2026), and Muhammad Albarraa (Deputy Regent of Mojokerto 2021-2026). They asked the Court to provide an alternative to the minimum age requirement of 40 years, namely experience as a state administrator. Case Number 90/PUU-XXI/2023, which was registered on August 15, 2023 at 13.30 WIB, was filed by Almas Tsaqibbiru Re A, a student.

He asked the Court to have an alternative to the age limit for becoming a candidate for President and/or Vice President, namely experience as a regional head at both the Provincial and Regency/City levels. Case Number 91/PUU-XXI/2023, which was registered on August 15, 2023 at 14.00 WIB, was filed by Arkaan Wahyu Re A, a student of the Law Study Program at the Faculty of Law, Sebelas Maret University (UNS) Surakarta.

He proposed that the Court lower the minimum age limit for presidential and/or vice presidential candidates to 21 years old. Case Number 92/PUU-XXI/2023 requested by Melisa changed the minimum age limit for presidential and vice presidential candidates to 25 years old. Applications are not accepted. Article 105/PUU-XXI/2023, which was requested by Soefianto Soetono and Imam Hermanda. changing the minimum age limit for presidential and vice presidential candidates to 30 years old. The Court granted the withdrawal.

**Table. 01** Application for the Age Limit for Presidential and Vice Presidential Candidates

Article 169 letter (q) of Law Number 7 of 2017

<b>It</b>	<b>Case Number</b>	<b>Applicant</b>	<b>Application Basics</b>	<b>Amar Verdict</b>
<b>1</b>	29/PUU-XXI/2023	Indonesian Solidarity Party	Minimum presidential and vice presidential candidates are 35 years old.	Reject the application entirely.
<b>2</b>	51/PUU-XXI/2023	Garuda Party	Minimum of 40 years of presidential and vice presidential candidates or have experience as state administrators.	Reject the application entirely.
<b>3</b>	55/PUU-XXI/2023	Erman Safar, Pandu Kesuma Dewangsa, et al	Minimum of 40 years of presidential and vice presidential candidates or have experience as state administrators.	Reject the application entirely.
<b>4</b>	90/PUU-XXI/2023	Almas Tsaqibbiru Re A.	The minimum number of presidential and vice presidential candidates is 40 years or has experience as a regional head.	Granting a partial request
<b>5</b>	91/PUU-XXI/2023	Arkaan Wahyu Re A	changing the minimum age limit for presidential and vice presidential candidates to 21 years old.	Applications are not accepted.
<b>6</b>	92/PUU-XXI/2023	Melisa	changing the minimum age limit for presidential and vice presidential candidates to 25 years old.	Applications are not accepted.

7	105/PUU-XXI/2023	Soefianto Soetono and Imam Hermanda.	changing the minimum age limit for presidential and vice presidential candidates to 30 years old.	Granting the withdrawal of the Petitioners' application
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**Source :** Prepared by the Author

Decision Number 90/PUU-XXI/2023 from the Constitutional Court (MK) has caused several problems and controversies, especially due to several inconsistencies and irregularities in the process of testing Article 169 letter q of Law Number 7 of 2017 concerning General Elections Against the 1945 Constitution. *First*, there is a discrepancy in the scheduling of the trial which seems long and postponed. Although it does not violate procedural law, the postponement of the case has the potential to delay justice, which in the end can negate justice itself.

Arif Hidayat, a Judge of the Constitutional Court, proposed that the Court set a reasonable grace period between the hearing of the amendment of the application and the examination of the trial to hear the testimony of the House of Representatives and the Government. *Second*, there was an abnormality in the discussion in the Judges' Consultative Meeting (RPH), where the Chairman was absent due to a potential conflict of interest, but in the end participated in discussing and deciding both cases related to the age limit of presidential and vice presidential candidates.

This raises questions about the consistency and integrity of the discussion and decision-making process in the Constitutional Court. *Third*, there is a controversy related to the withdrawal and cancellation of the withdrawal of the application in Case Number 90/PUU-XXI/2023 and Case Number 91/PUU-XXI/2023. Although the application was initially withdrawn, it was later cancelled without clear coordination, raising doubts about the consistency and integrity of the applicant's part.

The problematic decision of the Constitutional Court Number 90/PUU-XXI/2023 which has amended Article 169 letter q of the Election Law is also strengthened by the MKMK which states that there are 11 findings of alleged violations of judges' ethics: (1) judges who are considered to have a conflict of interest do not resign and decide the case; (2) the judge discusses the substance related to the material of the case being examined; (3) the dissenting opinion submitted is considered not substantive; (4) the public knows too much about the internal problems of the Constitutional Court; (5) violations of procedures, registration and trial allegedly on the order of the Chief Judge; (6) the slow process of forming the Honorary Assembly of the Constitutional Court, even though the mechanism has been stated in the Law; (7) management and decision-making mechanisms are considered procedurally flawed; (8) The Constitutional Court is considered to have been used as a political tool; (9) the existence of very detailed media coverage; (10) there were judges who lied about decision-making; and (11) there was neglect by eight other judges when Anwar Usman made a decision, even though Anwar Usman's position was full of conflicts of interest.<sup>17</sup>

After the Constitutional Court (MK) Decision number 90/PUU-XXI/2023, there were a number of tests carried out on article 169 letter (q) of the Election Law which has been reinterpreted by the decision. Here is a table related to the retest:

<sup>17</sup> KumparanNews, *MKMK Reveals 11 Points of Alleged Ethical Violations of Constitutional Court Judges*, [MKMK Reveals 11 Points of Alleged Ethical Violations of Constitutional Court Judges | kumparan.com](https://kumparan.com/mkkm-reveals-11-points-of-alleged-ethical-violations-of-constitutional-court-judges/) accessed on November 1, 2023

**Table. 2** Application for the Age Limit for Presidential and Vice Presidential Candidates Testing Article 169 letter (q) of Law Number 7 of 2017 as interpreted in the Constitutional Court Decision Number 90/PUU-XXI/2023

<b>It</b>	<b>Case Number</b>	<b>Applicant</b>	<b>Application Basics</b>	<b>Amar</b>
<b>1</b>	141/PUU-XXI/2023	Brahma Aryana	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	Applications are not accepted.
<b>2</b>	145/PUU-XXI/2023	Denny Indrayana; Zainal Arifin Mochtar	Formal Testing of Article 169 letter (q) which has been interpreted by the Constitutional Court Decision 90/PUU-XXI/2023	Granting the withdrawal of the Petitioners' application
<b>3</b>	146 PUU-XXI/2023	Ir. Heri Purwanto, Bambang Barata Aji	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	Retracted
<b>4</b>	147 /PUU-XXI/2023	Dr. H. Marion, S.H., M.H.	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	the Applicant's application is not accepted.
<b>5</b>	148/ PUU-XXI/2023	Fatikhatu Sakinah; Gunadi Rachmad Widodo, S.H.	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	Reject the Petitioners' application in its entirety.
<b>6</b>	150 /PUU-XXI/2023	Lamria Siagian, Ridwan Darmawan, RD. I Ilham Maulana Aulia, Ash-Syifa Nuril Jannah	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	Reject the Petitioners' application in its entirety.
<b>7</b>	151/PUU-XXI/2023	Sugeng Nugroho, Teguh Prihandoko, Azeem Marhendra Amedi, S.H.	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	Reject the Petitioners' application in its entirety.
<b>8</b>	160/PUU-XXI/2023	Saiful Salim, S.H.	Testing of Article 169 letter (q) which has been interpreted in the Constitutional Court Decision 90/PUU-XXI/2023	Withdrawn

Source : Processed researcher data



The process and problems related to the Constitutional Court Decision number 90/PUU-XXI/2023 have had a great influence on the political dynamics of judicial law in Indonesia. This decision caused controversy because it was considered to give a "red carpet" to one of the presidential candidates. Therefore, it is important to further understand the motives of the judges in deciding the case by examining the considerations used by them. *The legal ratio* submitted by the judges, or the legal reasons behind the decision, must be analyzed in depth. This includes an evaluation of the constitutional foundations and interpretations of the laws they use. Because whether the decision is influenced by certain political considerations, of course, can be seen from the legislative ratio given by the judge.

## Result and Discussion

### ***Legis Ratio* in Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding the Age Limit for Presidential and Vice Presidential Candidates based on the theory of Legal Interpretation**

The Constitutional Court's Decision Number 90/PUU-XXI/2023 concerning the provisions of the minimum age requirement for presidential and vice presidential candidates is an interesting decision to study more deeply the relationship between *the Decidendi Ratio* and Amar Decision. The relationship between *the decidendi ratio* and the verdict must be clear. If not, then the verdict cannot be considered ideal. On the other hand, if the relationship is clear, then the decision is worthy of being used as an example for other Judges. Juridically, this provision is enshrined in Article 53 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power in Indonesia.<sup>18</sup>

Stating that the determination and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct legal reasons and basis. The legal basis is a reference for the judge in making his or her consideration in making a decision.<sup>19</sup> Judges of the Constitutional Court in compiling an argument or legal reason, must pay attention to various factors, such as the applicable law, the sociological situation that occurs in society, the facts revealed in the trial, the principles of justice, and other considerations relevant to the case being decided.<sup>20</sup> Based on Article 53 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power in Indonesia and Article 45 number (3) of Law Number 24 of 2003 concerning the Constitutional Court.

Therefore, it is important for the judge to initiate a *Ratio decidendi* in the form of judge's consideration by containing arguments and reasons used by the judge as the basis for legal considerations in deciding a decision. Regarding the Constitutional Court Decision Number 90/PUU-XXI/2023 in examining article 169 letter (q) of Law Number 7 of 2017 which is considered to be contrary to Article 28D of the 1945 Constitution, it basically states: "Article 169 letter (q) of Law 7 of 2017 a quo has violated and contradicted the constitutional rights and interests of the Petitioner, namely in the form of the right to receive treatment and guarantees of protection of legal certainty" Constitutional Court Decision Number 90/PUU-XXI/2023 The Constitutional Court

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<sup>18</sup> Article 53 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power, Statute Book Number 13, Supplement to Statute Book Number 5076 of 2009

<sup>19</sup> Rizka Noor Hashela, *Legal Reasoning in Court Decisions*, Pelaihari, 2018

<sup>20</sup> Online Law, When Are the *Considerations of the Constitutional Court's Decision Said to be Binding and Non-Binding?*, accessed on March 11, 2019 <https://www.hukumonline.com/klinik/a/kapan-pertimbangan-putusan-mk-dikatakan-mengikat-dan-tidak-mengikat-lt5c860ff16a550/>



judge tried the case with a benchmark in issuing a verdict in order to provide justice. This benchmark is needed so that the verdict can be accounted *for juridically, sociologically and philosophically*.

The following is the *legislative ratio* or legal reasons behind the formation of Constitutional Court Decision Number 90/PUU-XXI/2023 submitted by Constitutional Court judges so that there is judicial legal politics.

*First*, this age limit is not expressly regulated in the 1945 Constitution, but by looking at the practice in various countries, it allows the president and vice president or head of state/government to be entrusted to figures/figures under the age of 40 years, and based on the experience of regulation both during the RIS administration (30 years) and during the reform period, in casu Law 48/2008 has set the minimum age limit for the president and vice president of 35 (thirty-five) years.

*Second*, Meanwhile, according to data from the Central Statistics Agency in 2022, there are around 21.974 million people in the age range of 30-34 years, and 21.046 million people in the age range of 35-39 years. This shows that the availability of candidates for leaders of the younger generation, regardless of the experience they have in the field of government administration, has great potential. This means that, in *a contrario*, the existence of a minimum requirement for the President and Vice President to be at least 40 years old has the potential to harm the constitutional rights of the younger generation. The importance of the young generation participating in national and state activities, including also getting the opportunity to occupy public positions, in casu President and/or Vice President is not only in line with the needs of today's society but is also a logical consequence of the demographic bonus that the Indonesian nation has.

At least, the existence of young generation resources is not hindered by the system that prevails in contesting towards general elections as a means of democracy to get national leaders. Figures of the younger generation who are experienced in elected officials deserve the same opportunity in government regardless of the minimum age limit.<sup>21</sup>

*Third*, even if the position of elected officials is expressly stated in the Constitutional Court Decision a quo, in addition to not being able to say that the norm of the elected *officials position* is unconstitutional, it is also of course not detrimental to candidates for President and Vice President candidates who are 40 years old and above. In fact, the minimum age limit for presidential and vice presidential candidates is 40 years old (an sich), according to the Court, is a form of disproportionate treatment that leads to the revelation of intolerable injustice.<sup>22</sup>

*Fourth*, intolerable injustice is meant because such restrictions are not only detrimental and even eliminate opportunities for young generation figures/figures who are proven to have been elected in elections, meaning proven to have gained public trust in elections that have been participated in before, such as in regional head elections. Age restrictions that are only placed at a certain age without opening equal alternative conditions are a form of injustice that is intolerable in the contest for the presidential and vice presidential elections. Therefore, regional heads (Governors, Regents, and Mayors) and elected officials in legislative elections (members of the House of Representatives, members of the DPD, and members of the House of Representatives) who have been/are

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<sup>21</sup> Constitutional Court Decision Number 90/PUU-XXI/2023

<sup>22</sup> Constitutional Court Decision Number 90/PUU-XXI/2023

in office should be seen as having the qualifications and capacity as candidates for national leaders.<sup>23</sup>

Based on the explanation of the Constitutional Court (MK) judge's consideration above, when analyzed using the theory of legal interpretation which includes several main indicators, namely textual, historical, systematic, sociological, and teleological interpretation. From the perspective of textual interpretation, the 1945 Constitution does not explicitly set a minimum age limit for presidential and vice presidential candidates, so the interpretation of the pure text does not provide clear limits. However, historical approaches show that the minimum age has fluctuated throughout Indonesia's history, with Law 48/2008 setting the age limit at 35 years and the RIS setting the age at 30 years, indicating that there is room for flexibility and adaptation to the context of the times. Systematic interpretation considers the relationship of age limit rules with other constitutional principles such as justice and equality of rights.

Teleological interpretation looks at the goals of the constitution that include creating a government that is democratic, fair, and reflects the will of the people. In this case, removing the age limit and replacing it with the condition of experience as elected officials can be considered an effort to achieve this goal by opening opportunities for young leadership candidates who have proven to have gained the trust of the public.

#### **Mandatory Decision of the Constitutional Court Decision Number 90/PUU-XXI/2023 Constitution Regarding the Age Limit for Presidential and Vice Presidential Candidates as affirmed in the Constitutional Court Decision Number 141/PUU-XXI/2023**

The decision of the Constitutional Court (MK) is not only valid and has binding legal force since it was read in a plenary session open to the public (*ius constitutum*),<sup>24</sup> but also often provides direction or mandatory to lawmakers regarding the direction of national legal development to be achieved in the future (*ius constituendum*). According to Muchamad Ali Safa'at, the implementation of the Constitutional Court's decision can be divided into 2, namely first, decisions that can be implemented directly without having to make new regulations or changes and second, decisions that require further arrangements first.<sup>25</sup>

The Constitutional Court's decision applies as a positive law (*ius constitutum*),<sup>26</sup> so that it can be immediately implemented (*self-executing*). However, there are Constitutional Court decisions that can be directly implemented (*self-implementing*) and those that cannot be implemented (*non-self-implementing*). In general, the Constitutional Court's decisions that can be directly implemented are decisions that contain certain constitutional conditions (*conditionally constitutional* and *conditionally unconstitutional*) as well as decisions that abolish norms. According to Arif Hidayat, the Constitutional

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<sup>23</sup> Constitutional Court Decision Number 90/PUU-XXI/2023

<sup>24</sup> The Constitutional Court website, *Constitutional Court Decisions Are Part of Judicial Legal Politics*, <https://www.mkri.id/index.php?page=web.Berita&id=17751&menu=2.Akses> accessed on November 21, 2021

<sup>25</sup> Online Law, *How to Implement the Constitutional Court's Decision that Cancels the Norm?* <https://www.hukumonline.com/klinik/a/bagaimana-pelaksanaan-putusan-mk-yang-membatalkan-norma-cl4222/> accessed on May 3, 2023

<sup>26</sup> Igam Arya Wada, *Ius Constituendum Authority of Judicial Preview at the Constitutional Court of the Republic of Indonesia*, *Journal of Constitutional Studies*, Volume 03 Issue 01 (2023), <https://jurnal.unej.ac.id/index.php/JKK/article/download/37917/13130>

Court Judge revealed that Court Decision Number 90/PUU-XXI/2023 is a *self-implementing* decision, because the a quo decision contains certain conditions, namely, "at least 40 (forty) years old or have/is currently occupying a position elected through general elections, including the election of regional heads".

According to Mahrus Ali, there are also rulings whose implementation requires further rules (*self-implementing*), namely rulings that cancel a certain norm that affects the existing norm system so that it requires further regulation.<sup>27</sup>

If referring back to the information of the lawmakers (DPR and the President) in Case Number 90/PUU-XXI/2023 which left it to the discretion of the Court to decide the issue of the constitutionality of the norms of Article 169 letter q of Law 7/2017, even though the lawmakers are aware that this is an open legal policy, then in Decision Number 141/PUU-XXI/2023, the Court affirmed that Decision Number 90/PUU-XXI/2023 has been final and binding and recommended and submitted Return to the lawmakers to further determine the norms of minimum age requirements for presidential and vice presidential candidates who are replaced by presidential and/or vice presidential candidates who are *public officials* or *elected officials*.<sup>28</sup> It is important to understand that the Constitutional Court Decision No. 90/PUU-XXI/2023 is a plurality decision (*plurality decision/fragmented decision/no-clear-majority decision*) because the majority of judges vote is divided. This is illustrated from the following table:

**Table 04** Composition of the Establishment of Constitutional Judges in Decision No. 90/PUU-XXI/2023

No.	Establishment	Constitutional Judge	Position
1	Judge Agrees	Anwar Usman; Guntur Hamzah; Manahan M.P. Sitompul	Granting applications as long as the age requirement of 40 years old is interpreted as having been/is currently occupying the position elected through general elections, including the election of regional heads
		Enny Nurbaningsih	Granting applications as long as the age requirement of 40 years old is interpreted as experienced as a governor whose requirements are determined by lawmakers
		Daniel Yusmic P. Foekh	Granting applications as long as the age requirement of 40 years is interpreted as having experience as a provincial regional head
2	Different Opinions	M. Suhartoyo	Declaring that the applicant has no legal standing
	Dissenting Opinion)	Wahiduddin Adams; Y.M. Saldi Isra	Reject an application
		.M. Arief Hidayat	Declaring the application to be dismissed

This table shows how the differences of opinion among judges regarding the age requirements for presidential and vice presidential candidates are both quantitative and

<sup>27</sup> Intan Permata Putri and Mohammad Mahrus Ali, *Characteristics of Judicial Order in the Constitutional Court's Decision with Unacceptable Amar*, Constitution Journal, Constitution Journal, Volume 16, Number 4, December 2019 <https://jurnalkonstitusi.mkri.id/index.php/jk/article/download/16410/pdf/3254>

qualitative, with the majority of judges supporting certain interpretations while some other judges reject or declare the application invalid.

**Table. Composition of Judges in the Majority Vote in Decision Number 90/PUU-XXI/2023**

NO	Judge on Majority Vote	Meaning of Article 169 letter (q) of Law Number 7 of 2017		
		Governor	Regent/Mayor	Members of the DPR, DPD and/or DPRD
1	Anwar Usman	✓	✓	✓
2	M. Guntur Hamzah	✓	✓	✓
3	Manahan M.P. Sitompul	✓	✓	✓
4	Enny Nurbaningsih	✓	-	-
5	Daniel Yusmic P. Foekh	✓	-	-
<b>Sum</b>		<b>5 Judges</b>	<b>3 Judges</b>	<b>3 Judges</b>

Source : Processed by Researcher

Based on the *Desidendi Ratio* contained in Decision Number 141/PUU-XXI/2023 paragraph [3.14.1.3] which states,<sup>29</sup> Even though there has been a new interpretation of the norm of Article 169 letter q of Law 7/2017, if necessary, lawmakers still have the authority to revise or further adjust related to *elected officials* to then be aligned or replaced with the minimum age limit to become a presidential candidate and vice presidential candidate.

The adjustment is natural so that the positions or positions of the president and vice president have a not so far equivalence with *the elected official* which will be aligned with the positions of president and vice president. Even though there has been a new interpretation of the norm of Article 169 letter q of Law Number 7 of 2017 regarding the requirements for presidential and vice presidential candidates, the lawmakers (DPR and President) still have the authority to make further revisions or adjustments.

This revision could include adjustments related to *elected official* positions that are aligned or replaced with a minimum age limit to become presidential and vice presidential candidates. The adjustment is considered reasonable to ensure that the positions or positions of the president and vice president have equality commensurate with the elected official positions. The offices of president and vice president should therefore not have too much difference in terms of requirements with other elected positions that are recognized as equal.

According to Dr. Irfan Nur Rahman, if you want to observe the political position of judicial law, then look at the legal considerations section of the Court where there is a sub-section on the subject matter of the application. If examined based on Decision Number 90/PUU-XXI/2023 and Decision Number 141/PUU-XXI/2023 above, the Court has interpreted Article 169 letter q of the Election Law by adding an alternative formulation of the requirement of "at least 40 (forty) years old", as follows: <sup>30</sup> (1) Have/are currently occupying positions elected through general elections, including regional head

<sup>29</sup> Decision Number 141/PUU-XXI/2023

<sup>30</sup> Irfan Nur Rachman, *Judicial Legal Politics as a Source of National Legal Development*, (Jakarta: Rajawali Pers, 2020), 32

elections; (2) has served as a governor whose requirements are determined by the lawmakers; Furthermore, the Court leaves it to the lawmakers to choose the alternative formulation.

The judge's consideration above is included in the first variant, namely the variant of recommendations or suggestions because the two alternative formulations above are the area of open legal *policy* for lawmakers whether to choose the first option or the second option. In addition, according to the author, in the decision there are characteristics and directions of signs in the development of laws that lead to the formation and renewal of legal materials in accordance with needs and do not contradict the constitution.

### **Siyasah Syariyyah Review of Judicial Legal Politics and Age Limits for Presidents and Vice Presidents in Constitutional Court Decision Number 90/PUU-XXI/2023.**

According to Muhammad Iqbal, *Siyasah syar'iyah* has Islamic value if it meets the following criteria: (1) In accordance with and not contrary to Islamic Sharia, namely conformity in Nash (*Mashadir al-Syariah al-Islamiyah*), (2) The rule affirms equality in the eyes of law and government The principle of "*al-Musawah* emphasizes that no one feels superior to the other and cannot impose his will on others. Do not give excessive burden during its implementation. (Principle '*adamul haraj*'), (4) Encouraging the creation of justice in society. (The principle of *al-is*), (5) Realizing benefits and avoiding losses. (Principle *al-Maslahah*). The following is the author's analysis of the Judicial Law Politics of the Age Limit of the Vice Presidential Candidate who is 40 (forty) years old or has served as a regional head as interpreted by the Constitutional Court based on the criteria of *Siyasah shariyyah* according to Muhammad Iqbal as follows:<sup>31</sup>

First, the implementation of *Mashadir as-Syariah al-Islamiah* related to the Age Limit for the President and Vice President after decision Number 90/PUU-XXI/2023. According to Imam al-Ghazali, one of the main requirements for a caliph or head of state is adulthood or puberty.<sup>32</sup> Meanwhile, Yusuf Musa explained the requirements of the imam according to various scholars such as Ibn Hasan Al-Juwaeni, Al-Kamal bin Abi Syarif, Al-Kamal bin Human, Al-Iji, Al-Baqillani, and Ibn Khaldun. They agreed that one of the requirements to become an imam (leader) is puberty/*mukallaf*, which means that they have reached adulthood and are able to carry out their responsibilities.<sup>33</sup>

The age of 40 in many traditions is considered the age of full maturity.<sup>34</sup> Many prophets, including the Prophet Muhammad (PBUH), received revelations at the age of about 40, which shows the significance of this age in attaining wisdom and maturity.

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<sup>31</sup> Muhammad Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, (Jakarta: Kencana, 2007), 7

<sup>32</sup> According to Imam al-Ghazali The requirements for a caliph or head of state are 1). Adulthood or puberty (2) Healthy brain; (3) Freedom and not slavery; (4) Men; (5) Descendants of Quraish; (6) Healthy hearing and vision; (7) Real power; (8) Hidayah; (9) Science; and (10) A clean life with the ability to control oneself, not to do forbidden and despicable things (*wara'*). According to al-Ghazali, the requirement to be able to perform *ijtihad* and give fatwas in the field of sharia is not one of the traits that a head of state must have., see, Samsudin, *Analysis of Al Ghazali's Opinion on the Criteria for Leaders in Islam*, Department of *Jinayah Siyasah*, Faculty of Sharia and Law, State Islamic University, Walisongo Semarang , 2016 <https://eprints.walisongo.ac.id/id/eprint/5699/1/092211035.pdf> , 7

<sup>33</sup> Ahmad Djazuli, *Fiqh Siyasah*, (Bandung, Sunan Gunung Jati Pers, 2013), 40

<sup>34</sup> NU Online, What's Wrong at the Age of 40? <https://nu.or.id/tasawuf-akhlak/ada-apa-di-usia-40-tahun-tfZMe>

Islam recognizes the existence of *ijtihad*, which is an attempt by scholars and judges to interpret the law based on the basic principles of sharia to deal with situations that are not directly regulated in the *nash* (text of the Quran and hadith).<sup>35</sup>

Based on QS. Annisa Verse 58 explains the importance of giving trust to its experts in this case to people who are entitled to receive it. The word expert in language can also be interpreted as a person who is competent in all matters in his field. Although there is no guarantee that a regional head is a competent person, but referring to the above postulate, it can be interpreted that the regional head has mature experience so that the postulate is included in the category of experts. In addition, the virtue of youth to be a young leader was mentioned in the Qur'an that We told you (Muhammad) this story correctly. Indeed, they are young men who believe in their Lord, and We have added them for guidance.<sup>36</sup>

Departing from this verse, Imam Ibn Kastir in his commentary emphasized that youth are always the vanguard in fighting for the truth and fighting against falsehood. Evidently, in addition to the seven young men of Ashabul Kahfi, the companions during the struggle for the Prophet's *da'wah* were also dominated by young people.<sup>37</sup> On the contrary, the opponents of the teachings of the Prophet Muhammad were dominated by the elders of the Quraish tribe.<sup>38</sup>

Related to the age of 40 years, according to the author's analysis, the norm is in accordance with the words of Allah SWT as follows : "O my Lord, give me guidance so that I can be grateful for Your blessings that You have bestowed on me and to my parents, to be able to do the righteous deeds that You have honored, and to give me righteousness to my children and grandchildren. Indeed, I repent to You and indeed I belong to the Muslims." According to Jalaluddin Al-Mahalli and Jalaluddin As-Suyuthi in their commentary, the beginning of a person's thinking maturity and emotional maturity occurs at the age of 30 or 33 years.

*Second*, the application of the *Al-Musawah* principle to the age limit of the President and Vice President after Decision Number 90/PUU-XXI/2023. In principle, the principle of *Al-Musawah* in Islam emphasizes equality and non-discrimination before the law and government. In the context of the age limit for presidential and vice presidential candidates, the determination of a certain age limit or other requirements that limit access to the highest office in the country must be carefully assessed so as not to contradict the principle of *Al-Musawah*. Equality means that every individual in society is equal, equal before the law, in rights, obligations, freedoms and responsibilities. Therefore there is no difference in this case all just because of differences in ethnicity, ancestry, language, skin color, beliefs (creed), high or low officials, all the same.<sup>39</sup>

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<sup>35</sup> Mukti Ali, *Ijtihad in the Views of Muhammad Abduh*, Ahmad Dakhlan and Muhammad Iqbal (Jakarta: PT Bulan Bintang, 1990), 92

<sup>36</sup> South Sulawesi Seconds, *Friday Sermon on the Youth Pledge, Awaken the Spirit of* <https://www.detik.com/sulsel/berita/d-7003082/5-khutbah-jumat-tentang-sumpah-pemuda-bangkitkan-jiwa-persatuan> Unity. Accessed October 26, 2023.

<sup>37</sup> NU Online, *The Role of Youth for the Nation According to Islam* <https://islam.nu.or.id/sirah-nabawiyah/peran-pemuda-bagi-bangsa-menurut-islam-y4sZr> accessed on August 16, 2022

<sup>38</sup> (Ibn Kathir, *Tafsir Al-Qur'anil 'Adzim*, [2000], volume IX, page 109).

<sup>39</sup> Muhammad Salim al-Awwa, *Fiy al-Nidzam al-Siyasah Li al-Daulah al-Islamiyah* (Cairo: Dar al-Syuruq, 1989 A.D. / 1310 A.D.), p.226



Setting a certain age limit as a condition to become a presidential or vice presidential candidate, or other requirements such as experience as a regional head, can be seen as a form of benefit for the people. This is because the principle of *Al-Musawah* emphasizes that all human beings have the same right to choose leaders and be elected as leaders, including in the government regardless of age, background, or social status. These requirements, such as the age limit of 40 years or experience as a regional head, can be seen as steps in accordance with Islamic principles that promote optimal leadership quality and the public good.

Setting certain age limits or experience requirements can be considered an effort to ensure that aspiring leaders have the maturity, understanding, and skills necessary to effectively manage the country. In this context, *the principle of Al-Musawah* does not contradict these restrictions, because each candidate is given an equal opportunity to meet the set criteria. Furthermore, age restrictions or experience requirements for regional heads can be seen as progressive measures designed to achieve specific goals, such as political stability, adequate experience in governance, and leadership maturity.<sup>40</sup>

*Third*, the application of the 'Adam Al-Haraj Principle to the Age Limit of the President and Vice President after decision number 90/PUU-XXI/2023. The principle of 'Adam Al-Haraj is a principle that in a matter should not cause difficulties. *Al-Haraj* itself has the meaning of *al-dhaiq/ al-dhīq* which means narrowness, distress, sadness, difficulty, or difficulty. if connotated in the President's age limit contest, that *the principle of al-Harraj* can be applied by giving opportunities to individuals who meet the age requirements to hold the position even though they are not yet 40 years old because the most important thing is in accordance with their abilities, experience, and qualifications. So, if there is a certain age limit, it must be in line with the principle of ability possessed by the individual. Al-Syatibi said that human ability is an absolute legal law in accepting the provisions of sharia law. Legal<sup>41</sup> provisions that are not within reach of human ability see this principle.<sup>42</sup>

If analyzed based on the rules that have been explained above, it raises a question whether the age limit requirement for presidential and vice presidential candidates to be 40 years old or experienced as regional heads has violated *the principle of adamul haraj*. According to Al-Syatibi, it is appropriate. The reason is because the ability to lead a country is a must because it brings convenience and there are existing sharia values, namely protecting the country. Likewise, by establishing the formulation of the requirements for the age limit of experience having served as a regional head, this has also been in accordance with the rules of fiqh *ma la yudraku kulluhu la yurakullu*. If the age requirement of 40 years is not met, at least there are other conditions that can be used. Of course, the goal to be achieved is to ensure that the prospective leader has enough experience, maturity, and ability to carry out such a difficult task as leading a country.

*Fourth*, the application of *the al-' principle* is within the Age Limit of the President and Vice President According to Islam, anything that is legally upright and in accordance with the law of Allah is just. The application of the al-'is (justice) principle in the Age Limit of the President and Vice President can be understood in the context of decision-making in accordance with the laws and provisions applicable in Islam. The concept of justice in Islam is not only limited to the fair enforcement of the law, but also

<sup>40</sup> Muhammad Ali Al-Hasyimi, *Muslim Society in the Perspective of the Qur'an and Sunnah*, 26

<sup>41</sup> Norcholis, *Sharia Principles in Resolving Sharia Economic Disputes in Religious Courts*, Company: Journal of Sharia Economic Cluster Volume 4 Number 1, June 2021 p-ISSN 2654-3923 e-ISSN 2621-6051 <https://journal.uir.ac.id/index.php/syariat/article/download/8471/3820/29242>

<sup>42</sup> <https://www.nu.or.id/nasional/di-mana-ada-kemaslahatan-di-situ-ada-syariat-islam-OogWh>



includes equality, wisdom, and truth in all aspects of life, including in the formation of rules that govern the leadership of the state. Justice does not only apply in the context of law enforcement, but also in policy-making and rule-making that applies in society. In this case, the determination of the Age Limit for the President and Vice President taken must be based on the principle of justice in accordance with Islamic values.

The concept of justice in Islam also emphasizes the importance of paying attention to the public good in decision-making. In the context of the Age Limit for the President and Vice President, the decisions taken must consider the abilities, qualifications, and potential of the prospective leaders, as well as their impact on the sustainability of the country and the welfare of the people. Thus, the application of *the al-'is* principle in the Age Limit of the President and Vice President can be interpreted as an effort to ensure that the determination is in accordance with the principles of justice set forth in Islam, as well as provide a guarantee for the sustainability and welfare of the country and its people.

Fourth, the application of the Al-Maslahah principle to the age limit of the President and Vice President after Decision Number 90/PUU-XXI/2023. The minimum age limit of 40 years or experience as a regional head is intended to ensure that prospective leaders have sufficient maturity, experience, and abilities, so that the basic needs for effective and wise leadership can be met. Second, in terms of the content of maslahah, this decision is included in the maslahah ammah or public interest. This age and experience provision is applied to all candidates for President and Vice President without exception despite the fact that today the beneficiary is Gibran Rakka Bumingraka but by nature the decision that the Constitutional Court is *erga omnes* meaning that it is binding for all parties.

Therefore, in order to ensure that all national leaders have adequate capacity and experience to lead the country. This is not for the benefit of a particular group, but for the benefit of the entire nation. Third, in terms of the existence of Maslahah, that this decision is included in the maslahah mursalah, namely because in the Quran and Hadith there is no *nash* that specifically mentions or prohibits it. However, this age limit and leadership experience are in line with Islamic principles that emphasize the importance of maturity and experience in leadership. Fourth, in terms of whether or not maslahah changes, that this policy is included in maslahah mutaghoyyarah, which is a benefit that can change along with the development of the times.

## Conclusion

Based on the description of the analysis that has been submitted by the author above, it can be concluded that the Constitutional Court Decision Number 90/PUU-XXI/2023 procedurally experienced problems in its formation, but in substance the Constitutional Court decision Number 90/PUU-XXI/2023 has a progressive ratio so that the age limit for presidential and vice presidential candidates is not only *a quantitative age* limit but also other options that are qualitative limitations are added. Judicial Law Politics related to this decision has the nature of *erga omnes* so that it applies to the public and binds all parties. The Constitutional Court's Decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates as affirmed in the Constitutional Court Decision Number 141/PUU-XXI/2023 is a mandate to lawmakers, as a recommendation of the Constitutional Court, this is in line with the principles of *Siyasah*

*Shariyyah*. The ruling does not contradict *al-Mashadir as-Syariah al-Islamiyah* (the source of Islamic law), applying the principle of *al-Musawa* (equality), applying the principles of *'adamul al-haraj* (ease and not complicating), *al-'lâ* (justice), and *al-Maslahah* (public benefit).

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