

Reviewing the Ruling of the Constitutional Court Number 90/PUU-XXI/2023 Concerning the Requirements for President and Vice President Candidates in the Perspective of Progressive Law

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Abstract:

Indonesia is both a legal state and a democratic state, characterized by sovereignty being in the hands of the people. One form of democracy is the election of the president and vice president who are directly elected by the people. Approaching the 2024 general election, there is a phenomenon that is really attracting the attention of the Indonesian people, namely regarding the judicial review of one of the requirements for presidential and vice presidential candidates as regulated in Article 169 letter q of the Election Law. In this article, the author will analyze whether the Constitutional Court has the authority to examine, decide and change the requirements for presidential and vice presidential candidates? Apart from that, what is the decision of the Constitutional Court's number 90/PUU-XXI/2023 when viewed from a progressive legal perspective? This article uses a normative juridical method, namely by examining approaches to theories, concepts, and reviewing related laws and regulations. The results of the discussion concluded that the Constitutional Court had the authority to try this case. As a result, one of the requirements for a presidential or vice presidential candidate is to be "at least 40 years old or have/are currently holding positions elected through general elections, including regional elections". From a progressive legal point of view, the decision of the Constitutional Court's number 90/PUU-XXI/2023 is a form of rule breaking and social conditions also require that presidential candidates and/or vice presidential candidates do not have to be at least 40 years old, but must also pay attention to experience factors. Therefore, this is a new form of law and it must be useful for achieving justice, well-being and human happiness.

Keywords: Progressive Law, Election, Judicial Review, Constitutional Court.

1. Introduction

Indonesia is a country of law as well as a democratic country. As a rule of law, this means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all legislative products and their derivatives that apply in the territory of the Republic of Indonesia.^[1] One of the characteristics of a democratic country is that sovereignty is in the hands of the people. This statement is contained in the Preamble to the 1945 Constitution, in the 4th paragraph which reads "...then the Indonesian National Independence was formulated in a Constitution of the State of Indonesia, which was formed in the structure of the Republic of Indonesia which is the sovereignty of the people...". In this case, people have freedom in various aspects of life, including political activities. In essence, the power of a democratic country is in the hands of the people for the common good. In Indonesia, the implementation of democracy is based on the fourth principle of Pancasila which reads "the people are led by wisdom in deliberation/representation". The affirmation of Indonesia as a democratic country is also written in Article 1 paragraph (2) of the 1945 Constitution which states that sovereignty is in the hands of the people and is implemented according to the Constitution. Indonesia as a rule of law country means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all legislative products and derivatives that apply in the territory of the Republic of Indonesia, as written in Article 1

paragraph (3) of the 1945 Constitution. Indonesia must be able to enforce laws that apply fairly and equally to all its citizens.

One form of democracy is the election of the president and vice president who are elected directly by the people as written in Article 6A paragraph (1) of the 1945 Constitution. General elections are held directly, publicly, freely, secretly, honestly and fairly every five years. Article 6 paragraph (2) of the 1945 Constitution states that the requirements for becoming president and vice president are further regulated by law. As an embodiment of a democratic constitutional system with integrity to ensure consistency and legal certainty as well as effective and efficient elections, Law Number 7 of 2017 concerning General Elections (Election Law) was created.

A phenomenon that has really attracted the attention of the Indonesian people recently is regarding one of the requirements for presidential and vice presidential candidates. The minimum age requirements for presidential and vice presidential candidates are regulated in Article 169 letter q of the Election Law which states that the requirement to become a presidential and vice presidential candidate is to be at least 40 years old. However, in August 2023 there was a request for review of Article 169 letter q of the Election Law against Article 28D of the 1945 Constitution to the Constitutional Court which was submitted by a student named Almas Tsaqibbiru Re A through his attorney with registration number 90/PUU-XXI/2023. In the ruling, it is stated: so that Article 169 letter q of the General Election Law reads in full: “be at least 40 years old or have/are currently holding positions elected through general elections, including regional head elections”.

Previously, there was a request for review of Article 169 letter q of the Election Law against Article 28D of the 1945 Constitution to the Constitutional Court with number 29/PUU-XXI/2023 submitted by the Indonesian Solidarity Party (Partai Solidaritas Indonesia). In its consideration, the Constitutional Court is of the opinion that the norms of Article 169 letter q of the Election Law as long as it is not interpreted as “at least 35 (thirty five) years old” have apparently not violated the right to equal standing in law and government, the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law, as well as the right to obtain equal opportunities in government as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution. Thus, the applicant’s argument is groundless according to law in its entirety.

This change in the requirements for becoming a presidential and vice presidential candidate is a legal development that keeps pace with the times. Even though the Constitutional Court’s decision number 90/PUU-XXI/2023 is considered controversial, we should be obliged to comply with the Constitutional Court’s decision which is final and binding. Judges in Indonesia are also increasingly developing in interpreting and discovering new laws. This is often referred to as the concept of progressive law. The term progressive law emerged around 2002 with the initiator Satjipto Rahardjo. Progressive law was born because so far the teachings of positive legal science (analytical jurisprudence) which have been practiced in empirical reality in Indonesia have been unsatisfactory. The idea of progressive law emerged out of concern for the quality of law enforcement in Indonesia, especially since the reformation took place in mid-1997. According to Satjipto Rahardjo, progressive law is that which depends on human ability to reason and understand and human conscience to make legal interpretations that prioritize the moral value of justice in society.^[2] Progressive law is a legal concept that is not limited to the concept of legal text alone, but also pays attention to the sense of justice that lives in society.^[3] Based on the description above, the author will analyze whether the Constitutional Court has the authority to examine, decide and change the requirements for presidential and vice-presidential candidates? Apart from that, what is the Constitutional Court’s decision number 90/PUU-XXI/2023 like when viewed from a progressive legal perspective?

2. Research Method

The method used in this research is normative juridical, which means the approach is taken by examining theoretical approaches, concepts, and reviewing statutory regulations related to this research or statutory approach. Normative juridical research is legal research that places law as a building system of norms. The norm system in question is about principles, norms, rules of laws and regulations, agreements and doctrines (teachings). This normative research is research on legal systematics, or in other words research whose main aim is to identify meanings or bases in law.^[4]

3. Result and Discussion

3.1 Requirements to Become a Presidential Candidate and Vice Presidential Candidate

Article 6 paragraph (2) of the 1945 Constitution states that the requirements for becoming President and Vice President are further regulated by law. Based on this mandate, the Election Law was created. Article 169 of the Election Law regulates the requirements for becoming a presidential and vice presidential candidate as follows:

- a. have faith in God Almighty;
- b. Indonesian citizen since birth and has never accepted another citizenship of his own free will;
- c. The husband or wife of the presidential candidate and the husband or wife of the vice presidential candidate are Indonesian citizens;
- d. Never betrayed the country and never committed a crime of corruption or other serious crimes;
- e. Able spiritually and physically to carry out duties and obligations as president and vice president and free from narcotics abuse;
- f. Residing in the territory of the Unitary State of the Republic of Indonesia;
- g. Has reported his assets to the agency authorized to examine state administrators' wealth reports;
- h. Not currently having individual and/or legal entity debt obligations which are his or her responsibility which are detrimental to state finances;
- i. Not being declared bankrupt based on a court decision;
- j. Never commit a disgraceful act;
- k. Not being nominated as a member of the DPR, DPD or DPRD;
- l. Registered as a voter;
- m. Have a taxpayer identification number and have carried out the obligation to pay taxes for the last 5 (five) years as proven by an annual individual taxpayer income tax notification letter;
- n. Have not served as president or vice president for 2 (two) terms in the same position;
- o. Loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika;
- p. Never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more;
- q. Minimum age of 40 (forty) years;
- r. Have at least completed high school, madrasah aliyah, vocational high school, vocational madrasah aliyah, or other equivalent school;
- s. Not a former member of the banned Indonesian Communist Party organization, including its mass organizations, or not someone directly involved in the G30S/PKI; and
- t. Has a vision, mission and program in implementing the government of the Republic of Indonesia.

In the Constitutional Court's decision number 29/PUU-XXI/2023, the Constitutional Court stated that there were no provisions regarding age requirements that could be equated or equated with the age requirements for presidential and vice-presidential candidates as regulated in the norms of Article 169 letter q of the Election Law. Regarding the minimum age limit for presidential and vice presidential candidates, which is adjusted to the dynamics of national and state life, it is entirely within the realm of the legislators to determine it, so the Constitutional Court rejected the petitioners request in its entirety.

In the application for judicial review number 90/PUU-XXI/2023, the applicant argued that:

1. The applicant is an admirer of Gibran Rakabuming Raka (Mayor of Surakarta for the 2020-2025 periods). During Gibran Rakabuming Raka's administration, economic growth in Surakarta increased by 6.25%, when he first served as Mayor, economic growth was -1.74%;
2. Economic growth in Surakarta exceeds 2 provincial capitals such as Yogyakarta and Semarang. Even Gibran Rakabuming Raka, who is still 35 years old, has been able to build and advance the city of Surakarta with honesty, moral integrity, and obediently serving the interests of the people and the state;
3. There is a good performance of young ministers, the constitution should not limit the constitutional rights of our young people to be able to nominate themselves as presidential and vice-presidential candidates using the age limit requirement;
4. By referring to data on the number of elected regional heads under 40 years old in the 2019 elections, accompanied by the performance of regional heads under 40 years old and the good performance of

young ministers, the constitution should not limit the constitutional rights of young people we can nominate ourselves as presidential and vice presidential candidates using the age limit requirement;

5. Young generation figures that have experience in elected official's positions should have the same opportunities in government regardless of the minimum age limit.

In its considerations, the Constitutional Court is of the opinion that even if the position of elected officials is stated expressly in the Constitutional Court's decision, apart from it cannot be said that the norm for the position of elected officials in question is unconstitutional, it also certainly does not harm the candidacy of presidential and vice-presidential candidates aged 40 years and over. In fact, the minimum age limit for presidential and vice presidential candidates is only 40 years (*an sich*), according to the Constitutional Court, is a form of disproportionate treatment that leads to the revelation of intolerable injustice. Intolerable injustice is meant because such restrictions not only harm and even eliminate opportunities for figures from the younger generation who are proven to have been elected in elections, meaning they are proven to have gained the public's trust in previous elections, such as in regional head elections. Regarding the applicant's request, the Constitutional Court decided as follows:

1. Grant the applicant's application in part;
2. Declare Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) which states, "at least 40 (forty) years of age" is contradictory with 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 of age or has/is currently holding a position elected through general elections including regional head elections". So that Article 169 letter q of Law Number 7 of 2017 concerning General Elections in full reads "be at least 40 (forty) years old or have/are currently holding positions elected through general elections including regional head elections";
3. Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

After the Constitutional Court's decision number 90/PUU-XXI/2023, the requirements for presidential and vice presidential candidates in Article 169 letter q of the Election Law are to be at least 40 years old or under that age as long as they have experience as state officials and/or regional heads through the general election process of regional head elections.

3.2 History and Authority of the Constitutional Court

Along with the momentum of changes to the 1945 Constitution during the reform period (1999-2004), the idea of establishing a Constitutional Court in Indonesia became increasingly stronger. The peak occurred in 2001 when the idea of establishing a Constitutional Court was adopted in the third amendment to the 1945 Constitution carried out by the People's Consultative Assembly (MPR), as formulated in Article 24 paragraph (2) and Article 24C of the 1945 Constitution in the third amendment.^[5] Article 24 paragraph (2) of the 1945 Constitution states that judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general justice environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court. Following up on the mandate of Article 24 paragraph (2) of the 1945 Constitution, the DPR and the Government then drafted a Law regarding the Constitutional Court. After going through in-depth discussions, the DPR and the Government jointly approved Law Number 24 of 2003 concerning the Constitutional Court (constitutional court law) on 13 August 2003. The Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding the results of general elections as regulated in Article 24C paragraph (1) 1945 Constitution.

The explanation of Article 10 paragraph (1) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (Amendments to the Constitutional Court Law) states that the Constitutional Court's decision is final, that is, the Constitutional Court's decision immediately obtains permanent legal force from the moment it is pronounced and no legal action can be taken. The final nature of the Constitutional Court's decision in this law also includes binding legal force (final and binding). Legal review of the constitution or better known as judicial review is generally understood as testing of statutory regulations carried out through the mechanisms of judicial institutions regarding the truth of a norm.^[6] The term judicial review developed rapidly in the United States and several

other Western European countries in the late 17th and early 18th centuries. Hundreds of books, articles, essays, statements, manifestos, and judicial opinions grapple with the issues of the right to judicial review, and how to justify the right to judicial review in a democratic society. In this discourse, a firm stance emerged that law enforcers (the Supreme Court) must be able to provide meaning to the state administration system, in particular upholding basic human rights, especially minority rights.^[7] So the essence of this discourse is to prevent “constitutional tyranny” of either the minority by the majority or the majority by the minority.^[8]

In Indonesia, the idea of judicial review was initiated at a large BPUPKI meeting by Muhammad Yamin, a humanist and legal expert, who argued for the need to implement a material review (*materieele toetsingsrecht*) of laws. However, this was denied by Supomo, a great lawyer at that time and an expert on customary law, who was actually too Indonesianist to develop democracy. The concept of judicial review is indeed a form of the Constitutional Court’s authority as a judicial body which aims to review legal products or legislation that are deemed inappropriate. Supporters of judicial review state that the main function of judicial review by the Constitutional Court is to act as a counter-balance or balance to the power held by other institutions in democracy. For the Constitutional Court, judicial review exists to provide an opportunity for the court to make corrections and adjudicate cases that are considered detrimental to society.^[9]

Judicial review is a process of *judicialization* of politics regarding legislative products. This is based on the assumption that laws are political products which often (if not always) prioritize the political interests of the majority vote and tend to ignore aspects of truth in the decision-making process, therefore this must be controlled. Based on the principles of the rule of law, the relevant control system is judicial control, not the control system of extra-judicial institutions as adopted by MPR Decree Number III/MPR/2000 Article 5 paragraph (1) which gives the MPR the authority to “judicial review” which in fact political institutions are not judicial institutions. The granting of judicial review authority to the Constitutional Court has encouraged a check and balances mechanism in the administration of state power.^[10] The existence of the Constitutional Court in the concept of a rule of law is important as an institution that functions as the “The Guardian of the Constitution” and implements the principle of checks and balances. Judicial review of the legal material of laws produced by various regimes of power shows that laws do not have perfection as their basic character distributes the values contained in the constitution such as human rights, justice, humanity and so on.^[11]

In connection with the authority of the Constitutional Court in decision number 90/PUU-XXI/2023, it is considered that based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Third Amendment to the Constitutional Court Law), and Article 29 paragraph (1) letter a of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law), the Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to review laws against the 1945 Constitution. Because the applicant’s application is an application to test the constitutionality of statutory norms, *in casu* Article 169 letter q of the Election Law against the 1945 Constitution, the Constitutional Court has the authority to hear the application.

Of the 9 constitutional judges who heard the application, there were 3 constitutional judges who granted part of the application, 2 constitutional judges Enny Nurbaningsih and Daniel Yusmic P. Foekh who granted the application for different reasons (concurring opinion), and 4 constitutional judges who had a dissenting opinion, namely:

- a. Wahiduddin Adams is of the opinion that if the Constitutional Court grants this application, either in whole or in part, then what will actually happen is that the Constitutional Court will carry out a practice commonly known as “legislating or governing from the bench” without being supported by sufficient constitutional reasons (sufficient reasons) in the limits of reasonable reasoning so that this makes the Constitutional Court go very far and very deeply into one of the most fundamental dimensions and areas for the implementation of good and constitutional legislative power, namely the function of parliamentary representation as one of the main reflections and implementations of the principle of “popular sovereignty” as regulated in Article 1 paragraph (2) of the 1945 Constitution. He is of the opinion that the Constitutional Court should reject the applicant’s application without being supported by sufficient constitutional reasons;
- b. Arief Hidayat was of the opinion that the applicant had apparently not been serious and sincere in submitting the petition and had played with the dignity of the judiciary. In fact, the actions of the

applicant's attorney reflect unprofessional conduct as a legal representative because they did not coordinate with the principal applicant. The Constitutional Court should have issued a decision granting the withdrawal of the petition on the grounds that the applicant was not serious and professional in submitting the petition and could be suspected of playing with the authority and dignity of the Constitutional Court. As a legal consequence of withdrawing a case, the applicant cannot cancel the withdrawal of the case and cases that have been revoked or withdrawn cannot be resubmitted;

- c. Saldi Isra argued against the Constitutional Court's decision number 90/PUU-XXI/2023 which gave a new meaning to the norms of Article 169 letter q of the Election Law. So, as in the Constitutional Court's decision number 29/PUU-XXI/2023, the Constitutional Court's decision number 51/PUU-XXI/2023, and the Constitutional Court's decision number 55/PUU-XXI/2023 (hereinafter written Constitutional Court's decision number 29-51 -55/PUU-XXI/2023), Saldi Isra rejected the petition, and the Constitutional Court should have rejected the application. The Constitutional Court often provides open legal policy considerations on issues that are not explicitly regulated in the constitution, so it is left entirely to the legislators to determine them, and not decided by the Constitutional Court itself. In this application, the Constitutional Court should also apply judicial restraint by refraining from entering into the authority of law makers in determining minimum age requirements for presidential and vice presidential candidates;
- d. Suhartoyo is of the opinion that the applicant does not have legal standing, on the grounds that the applicant is not a legal subject with a direct interest in running for president and vice president, so it is not relevant for the applicant to request to interpret the norms of Article 169 letter q of the Election Law for the interests of the parties other.

After the Constitutional Court's decision number 90/PUU-XXI/2023, Chief Justice of the Constitutional Court Anwar Usman was sanctioned by the Honorary Council of the Constitutional Court (MKMK) in decision number 2/MKMK/L/11/2023 as follows:

- a. The reported judge was proven to have committed a serious violation of the code of ethics and behavior of constitutional judges as stated in the Sapta Karsa Utama, the principle of impartiality, the principle of integrity, the principle of competence and equality, the principle of independence, and the principle of appropriateness and decency;
- b. Imposing the sanction of dismissal from the position of Chief Justice of the Constitutional Court to the reported Judge;
- c. Order the Deputy Chief Justice of the Constitutional Court to within 2x24 hours of this decision being pronounced, lead the election of new leadership in accordance with statutory regulations;
- d. The reported judge has no right to nominate or be nominated as head of the Constitutional Court until the reported judge's term of office as a constitutional judge ends;
- e. Reported judges are not permitted to be involved or involve themselves in examinations and decision-making in cases of dispute over the results of the election of president and vice president, election of members of the DPR, DPD and DPRD, as well as the election of governors, regents and mayors which have the potential for a conflict of interest.

Regarding the Constitutional Court's decision number 90/PUU-XXI/2023 which is considered controversial by the majority of the public because there are serious violations of the code of ethics and behavior of constitutional judges, the Constitutional Court expressed the following opinion:

- a. However, the Constitutional Court's decision number 90/PUU-XXI/2023 is legally valid (*de jure*). In this case, the Honorary Council must and will continue to uphold the principle of *res judicata pro veritate habetur* (what the judge decides must be considered correct and must be implemented) and may not comment or even assess the substance of the decision in question because the Constitutional Court's decision is final and binding, as written in the consideration of MKMK's decision number 2/MKMK/L/11/2023;
- b. It has been found that Article 169 letter q of the Election Law as interpreted by the Constitutional Court's decision number 90/PUU-XXI/2023 does not conflict with the principles of the rule of law and does not conflict with the protection of the right to fair legal certainty as stated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution as written in decision number 141/PUU-XXI/2023 and 148/PUU-XXI/2023;

- c. Even though there are MKMK's decisions numbers 2/MKMK/L/11/2023 to number 5/MKMK/L/11/2023, they cannot necessarily be used as a basis for assessing the validity or invalidity of Constitutional Court's decision number 90/PUU-XXI/2023. Every decision of the Constitutional Court is valid from the moment it is pronounced in a plenary session open to the public, even though in fact one of the constitutional judges who participated in deciding the case was proven to have violated ethics. Thus, there is no reason for the Constitutional Court to postpone the implementation of Constitutional Court decision number 90/PUU-XXI/2023. Thus, Article 169 letter q of the Election Law as interpreted by the Constitutional Court's decision number 90/PUU-XXI/2023 still has binding legal force as written in Constitutional Court's decision number 154/PUU-XXI/2023.

Based on the description of the discussion above, the Constitutional Court has the authority to carry out a judicial review of Article 169 letter q of the Election Law against the 1945 Constitution. So that one of the requirements to become a presidential or vice presidential candidate is to be at least 40 years old, which is contrary to the 1945 Constitution and has no binding legal force, as long as it is not interpreted as "at least 40 years old or has/is currently holding a position elected through general elections including regional head elections".

3.3 Development of Progressive Law

Philippe Nonet and Philipp Selznich explain that in America in the 1970s social problems emerged, crime, environmental degradation, mass protests, civil rights, poverty, riots in cities and abuse of power in the 1960s, The public feels how the law has failed to deal with these various social problems. The legal conditions in America gave rise to criticism from legal experts in America through the "Critical Legal Studies Movement". Then, with the writings of Philippe Nonet and Philip Selznich, based on social theory about law, they differentiate 3 types of law, namely repressive law, autonomous law and responsive law. As evolution continues to develop from a scientific perspective, the idea of strengthening the existence of legal science to become a true science also continues to develop. Law is not something that is final (finite scheme), but continues to move and is dynamic following changing times. The law must continue to be studied by conducting reviews through progressive efforts so that the essential truth can be achieved and present human freedom in achieving harmony, peace and order which ultimately creates just and civilized prosperity in accordance with the spirit of the values of Pancasila.

In Indonesia, Satjipto used the term progressive law for the first time in his article published in the daily Kompas on 15 June 2002 with the title "Indonesia Needs Progressive Law Enforcement".^[12] The word progressive comes from progress, which means progress. The progressive law coined by Satjipto Rahjardjo as an antithesis to modern law with a capitalist liberal model is assumed to have its own philosophical basis.^[13] So it is hoped that the law should be able to keep up with developments over time, be able to respond to changes in the times with all the basis therein, and be able to serve society by relying on aspects of morality and the human resources of law enforcers themselves.^[14] Progressive law was born because so far the teachings of positive legal science (analytical jurisprudence) which have been practiced in empirical reality in Indonesia have been unsatisfactory. The idea of progressive law emerged out of concern for the quality of law enforcement in Indonesia, especially since the reformation took place in mid-1997. If the function of law is intended to participate in solving social problems ideally, then what is experiencing and happening in Indonesia today is very contrary to this ideal.^[15] To find a solution to the failure to apply analytical jurisprudence, progressive law has a basic assumption of the relationship between law and humans. Progressivism starts from a humanitarian perspective, that humans are basically good, have the qualities of compassion and concern for others. Thus, the basic assumption of progressive law starts from the basic nature of law which is for humans. The law does not exist for itself as proposed by positive legal science, but the law exists for humans in order to achieve human welfare and happiness. This position conveys a predisposition that the law is always in the status of "law in the making" (law that is always in the process of becoming).

The progressive legal perspective or paradigm in enforcing the law is, first, the law makes people happy. The birth of modern law cannot be separated from the liberal aspects that initiated its birth. The modern legal system works by maintaining neutrality. It is done using a formal-rational format. That is, he tries not to interfere at all with processes in society, but tries to exist above them. In this context, the task of the law is only to ensure that individuals in society interact freely without any interference/intervention by anyone,

including the state, is prohibited. That is the essence of the work of the liberal legal type.^[16] Thus, the characteristics of progressive law are as follows:^[17]

- a. Law exists to serve humans;
- b. Progressive law will remain alive because law always has its status as law in the making and is never final, as long as humans exist, progressive law will continue to live in organizing people's lives;
- c. In progressive law, very strong human ethics and morality are always attached, which will provide a response to human development and needs and serve justice, welfare, prosperity and concern for humans in general.

In order for progressive law to achieve its objectives optimally in creating justice and happiness for society, conditions are needed that will deliver or make it easier for progressive law to achieve these objectives, namely:

- a. The availability of substantive law that contains the principles of justice and is pro-people;
- b. A justice system that supports justice-seeking people to obtain true justice in the courtroom;
- c. Law enforcers (investigators, prosecutors, judges, and advocates) who have the "ability" of reason, conscience, intellectuals and morals. Including legal and moral understanding of justice seekers;
- d. Adequate and competent facilities to create law enforcers who have the intellectual and moral abilities to provide genuine justice to justice seekers.

Progressive law is not like an ivory tower that sterilizes itself from other elements. However, progressive law must come down and blend with other related elements, such as sociology and anthropology, so as to give rise to figures who are able to treat even complicated and chronic legal diseases.^[18]

According to Suteki, the actual characteristics of progressive law lie in the "rule breaking". This character is important to contain the hope of a punish leap aimed at law enforcers to bring justice to the community (bringing justice to the people). The process of presenting justice, can be done through three main activities, namely: first, using spiritual intelligence to build from the slump of the law gives us an important role to dare to find new paths (rule breaking) and not allow ourselves to be confined and traditional which clearly hurt more a sense of justice. Second, the search for deeper meaning should be a new measure in carrying out the law and legal state. Each party involved in the law enforcement process is encouraged to always ask the conscience of the meaning of deeper law. Third, the law should be carried out not only according to the principle of logic, but with feelings, care and compassion to the weak group. In this 21st century, of course we need holistic thinking by law enforcement officials, all aspects of human life that are *meta-judicial* (outside the law), and do not use the paradigm of positivistic thinking as developed in the 19th century.^[19]

Moh. Mahfud MD (former chief justice of the Constitutional Court) is of the opinion that the Constitutional Court adheres to a view, namely progressive law, apart from that the Constitutional Court was built to balance democratic and legal activities. Furthermore, Moh. Mahfud MD believes that:^[20]

"Progressive law is a law based on upholding justice, not law to uphold the law. Law and justice are often equated, but we at the Constitutional Court make a distinction. Law is within the law, while justice is related to things outside the law. We are guided by the fact that as long as the law provides a sense of justice, then we obey that law. But when the law is deadlocked and does not provide a way out, we make a new law and it is confirmed by our legal experts. The judge's job is to create laws, if official laws are not available. That's what we call progressive law, and we apply that in our various decisions".

The search for truth and justice in the constitutional realm with progressive laws is very important today as part of the manifestation of the realm of national unity.

Talking about progressive law is not an easy thing because there is no measure of whether a court decision is progressive or not (in this case the Constitutional Court decision). For this reason, it is necessary to look at the progressive concept according to experts and one of them is Satjipto Raharjo, who understands law in the sociological concept of law, considering that: "the law is for humans, not the other way around, that is, humans are there for the law, and the law is not there for them". From this view, it can be seen that law is something that develops and can change and is created to meet human needs. According to Satjipto Raharjo, progressive law is law that is able to meet the needs of the nation and share the suffering of the nation.^[21]

This view departs from a perspective that does not only view law as a text or document. He states that the law in the text is silent and that it is only through human agency that it becomes "alive".^[22]

From a progressive legal perspective, is the minimum age requirement of 40 years for presidential and vice-presidential candidates no longer relevant to current societal conditions? So in the Constitutional Court's decision number 90/PUU-XXI/2023, the alternative requirement "or experience as a regional head at both

provincial and district/city levels” was added, the Constitutional Court provided the following legal considerations:

- a. The 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 getting the opportunity to hold public office, in case 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;
- b. In terms of age, to be proposed as candidates for President and Vice President is not only based on age restrictions in the sense of numerical/quantitative units (*an sich*), but must also be given space for qualitative age alternatives in the form of experience of having/currently held the position chosen through general elections;
- c. Filling public positions (President and Vice President) needs to involve the participation of qualified and experienced candidates, so the positions of President and Vice President according to reasonable reasoning are less relevant to be linked only to age requirements, the Court considers that experienced state officials as DPR members, DPD members, DPRD members, Governors, Regents and Mayors are actually eligible to participate in the national leadership contestation as Presidential and Vice Presidential candidates in the general election even though they are under 40 years old;
- d. The minimum age limit of 40 years old not only hampers or hinders the development and progress of the younger generation in the national leadership contest, but also has the potential to degrade the opportunities of millennial generation figures that are the dreams of the younger generation, all of the nation’s children who are of the millennial generation’s age;
- e. This means that those under 40 years of age who have previously held or are currently holding positions elected through elections (elected officials) should be able to participate in the contestation of candidates for President and Vice President.

The age limit for requirements for presidential candidacy in Indonesia is tied to the formal provisions of Article 169 letter q of the Election Law. On the other hand, the Constitutional Court’s decision number 90/PUU-XXI/2023 is an alternative for presidential candidates who are not yet 40 years old, they can nominate as long as they have experience or are currently serving as regional heads.^[23] Based on the legal considerations above, the requirements for presidential and vice presidential candidates based only on 40 years of age are no longer relevant today. Therefore, the Constitutional Court’s decision number 90/PUU-XXI/2023 must be interpreted as an interpretation of constitutional judges in the discovery of new laws or laws created by constitutional judges.

4. Conclusion and Suggestions

From the discussion carried out by the author, it can be concluded that the Constitutional Court has the authority to adjudicate (judicial review) Article 169 letter q of the Election Law against the 1945 Constitution. Regarding the results of the judicial review, one of the requirements for a presidential or vice presidential candidate is to be “at least 40 years or have/are currently holding positions elected through elections, including regional elections”. Meanwhile, changing the minimum age limits for presidential and vice-presidential candidates is in the realm of law makers to determine this. From a progressive legal perspective, the Constitutional Court’s decision number 90/PUU-XXI/2023 is a form of “rule breaking”, because in this day and age, the requirements for presidential candidates and vice presidential candidates are no longer associated if only associated with age conditions. Contextually, social conditions also require that leaders (presidential and/or vice-presidential candidates) do not have to be at least 40 years old, but must also pay attention to experience factors. Therefore, this is a new form of law and it must be useful for achieving justice, well-being and human happiness.

Based on the discussion above, the author provides the following suggestions: first, constitutional judges should adhere to the code of ethics and behavior of constitutional judges as stated in the Sapta Karsa Hutama. Second, the public should respect and be able to accept the Constitutional Court’s decision number 90/PUU-XXI/2023 because it is final and binding.

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