

The Experience of Political Office as a Reason for Proficiency

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Abstract. *President or Vice President and under the age of 40, they must have experience in serving as an elected official through elections, such as members of the DPR, DPD members, DPRD members, Governors, Regents, or Mayors. However, this rule does not apply to directly appointed officials, such as acting or acting officials. Candidates who fall under the category of appointed officials can run for President or Vice President after reaching the age of 40. The existing secondary data collected was also analyzed using the inductive method. Subtilitas intellegendi or the accuracy of understanding and accuracy of explanation of the problem (subtilitas explicandi) of the problem is very relevant to resolving legal issues in this study. In running for a regional head position, it is important to demonstrate maturity and integrity. Focus on experience, a deep understanding of local issues, and concrete plans to move the region forward. Avoid provocative rhetoric and ensure your communications reflect professionalism and responsibility. Capacity to act and authority to act both relate to the event of taking legal action. Legal action is an everyday event, in social life establishing relationships with other members of society. Because legal actions are everyday actions carried out by humans, it is necessary to regulate the capacity and authority to act.*

Keywords: *Capable; Constitutional Court Decision; Political Office Experience.*

1. INTRODUCTION

Reforms in various areas of Indonesia's public administration have become an inescapable necessity. This includes changes in the political realm and even changes in the country's basic laws, so that they become principles accepted by the general public. Reforms have also provided an opportunity for all parties involved in government to implement an Indonesian state administration system that is in accordance with the principles of democracy and the constitution.

The reform period that has taken place has led to various main changes in the Indonesian state administration system. One significant change is the affirmation of commitment to the principle of the rule of law (*rechtstaat*), as described in Article 1 paragraph (3) of the 1945 Constitution, which states that "Indonesia is a state based on law". The desired conception of the rule of law is a state that bases sovereignty on the participation of the people, namely a democratic state that is subject to the principles of law.¹

This is in line with Article 1 paragraph 2 of the Constitution of the Republic of Indonesia which states that "The sovereignty of the people", this article emphasizes that the supreme power in a country is in the hands of the people, which is exercised in accordance with the Constitution. In the context of democracy, the people are considered the owners and main executors of state power."²

As was the case prior to the changes to the 1945 Constitution, where one supreme entity in the state, the People's Consultative Assembly (MPR), was in full control of power. With the enactment of the changes, it is evident that new government institutions have emerged and some have been abolished. One example is the establishment of the Constitutional Court of the Republic of Indonesia (*mahkamah konstitusi*) as a result of the constitutional amendment.

In the constitutional mandate as stated in Article 24C paragraphs (1) and (2) of the 1945 Constitution, the Constitutional Court has the following powers:

¹ Mariyadi Faqih, (2016), Nilai-Nilai Filosofi Putusan Mahkamah Konstitusi Yang Final Dan Mengikat, *Jurnal Konstitusi*. Vol. 7, no. 3: 097.

² I Gede Yusa Dewa Putu Wahyu Jati Pradnyana and Astariyani Ni Luh Gede, (2018), Analisa Hukum Ambang Batas Pencalonan Presiden (Presidential Threshold) Dalam Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 Tentang Pemilihan Umum, *Kertha Negara*: 2.

(1) The Constitutional Court has the right to hear cases at the first and last instance with a final decision, to review laws against the Constitution, to decide disputes over the authority of state institutions granted authority by the Constitution, to make decisions regarding the dissolution of political parties, and to resolve disputes over election results. (2) The Constitutional Court is required to give a decision on the opinion of the House of Representatives regarding alleged violations of the President and/or Vice President in accordance with the Constitution.

In addition, the authority of the Constitutional Court is also regulated in more detail in Article 10 of Law Number 24 of 2003 which has been amended into Law Number 8 of 2011 concerning the Constitutional Court, which states that the Constitutional Court has the authority to hear cases at the first and final levels with a final and binding decision.

Thus, as the executor of judicial power in accordance with the mandate of the Constitution, the Constitutional Court is authorized to hear cases at the first and last instance, with final and binding decisions, to test 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 resolve disputes over the results of general elections.

The final decision of the Constitutional Court means that there is no other legal process that can be taken by the parties involved. Therefore, the decision has general binding force, and all parties are obliged to obey and implement the decision.³

On Monday, October 16, 2023 the public was shocked by the decision of a petition regarding the age limit of presidential and vicepresidential candidates (presidential and vicepresidential candidates) submitted by a Surakarta University student Almas Tsaqibbirru in case number 90/PUU-XXI/2023. This decision states that presidential and vicepresidential candidates who have been elected by the people through elections, such as having experience as a member of the DPR / DPD, Mayor or Governor, can run for office even though they are not yet 40 years old.

UGM Law Expert Zainal Arifin Muchtar said that the Constitutional Court's decision this time would have a considerable impact on the Indonesian state, more clearly he conveyed that it was more risky if the Constitutional Court changed because of an interest, rather than considering the validity

³ Johansyah, (2021), Putusan Mahkamah Konstitusi Bersifat Final Dan Mengikat (Binding), *Solusi* 19, no. 2: 165–182.

of their decisions. The Constitutional Court is supposed to be an institution that addresses political issues through the legal process, but it now appears that the Constitutional Court may be more influenced by political factors.⁴

This controversy has also been highlighted by Dr. King Faisal Sulaiman, a Constitutional Law expert from Universitas Muhammadiyah Yogyakarta (UMY). He considers that this decision is full of political flavor because it is related to the 2024 presidential election and has the potential to trigger conflicts of interest. He explained that the decision of the Constitutional Court (MK) became a topic of discussion because first, it was taken when the political situation ahead of the 2024 Presidential Election was intense. Second, there is an alleged connection with the interests of the president's family, especially Mas Gibran. Third, interestingly, the chairman of the Constitutional Court, Anwar Usman, is Mas Gibran's uncle.

During the trial, King Faisal Sulaiman noted that the judges seemed to lack clear and logical legal reasoning in their decisions. Their arguments seemed more like expressions of emotion than strong legal arguments, leading to controversy.⁵

On the other hand, former Constitutional Judge I Dewa Gede Palguna argued that the decision regarding the age requirement for presidential and vice-presidential candidates is an open legal policy from the authority of the legislator, not the authority of the Constitutional Court (MK). As a former constitutional judge, he mentioned that the actual change of stance in a decision was first explained in a special paragraph, for example, what was the basis of the Court's reasoning in the previous case and why then in the decision being examined the attitude of the Constitutional Court changed.

He added that he does not mind if the Constitutional Court changes its view, but the problem is that the reason for the change is not clear in the *ratio decidendi*, so that the verdict looks strange, not composed of reasonable reasoning.⁶

⁴ Satria Ardhi, N. (2023). <https://ugm.ac.id/id/berita/pandangan-pakar-ugm-terkait-putusan-mk-soal-batas-usia-capres-cawapres/> accessed on November 02, 2023 at 22:24 WIB.

⁵ <https://www.umi.ac.id/terkait-putusan-mk-soal-batas-usia-capres-cawapres-ini-pandangan-pakar-umi> Accessed on November 02, 2023 at 23:21 WIB.

⁶ Ady Thea, DA. (2023). <https://www.hukumonline.com/berita/a/mantan-hakim-konstitusi-sebut-mk-keliru-rumuskan-amar-putusan-usia-capres-cawapres-1t653bf5f5239b4/> Accessed on November 02, 2023 at 23:47 WIB.

The Constitutional Court's decision can also be linked to the principle of *contrarius actus* which states that whoever issues a regulation, then he also has the authority to revoke the regulation, this principle explains that a regulation or letter issued by a government body or official can cancel the regulation that has been issued.⁷ In accordance with the description above, this research discusses how the experience of political office as a condition for nominating candidates for president and vice president in 2024 and how the skills of a presidential and vice presidential candidate in facing the 2024 elections.

Basically, humans have rights since they were born, but not all humans have the authority and ability to perform legal acts (Legal Capacity). Legal actions are actions whose consequences are regulated by law, both those carried out by one party only (one-sided) and those carried out by two parties (two-sided). The thing that must be considered in the event that is said to be a legal act is the result, because the result can be considered as the will of the maker (*sipelaku*).

If the result is not intended by the perpetrator, then the act is not a legal act. So the existence of the will in order to be said to be a legal act, it is necessary to pay attention to its essential elements which are the essence of the legal act.

Legal pluralism related to the minimum age of adulthood for children is currently regulated in various laws and regulations, resulting in differences in the minimum age of adulthood in Indonesia. This legal pluralism results in the absence of a reference that can be used as a basis for determining the maturity limit of children. Although in principle the law generally mentions the limits of a child's maturity, the limits of maturity are not the same between one law and another. The regulation of the minimum age limit of a child is considered an adult is important considering that every legal act performed by a legal subject can be accounted for if it is legally capable or has reached adulthood.

The non-uniformity of the minimum age of adulthood in Indonesia results in legal uncertainty and guarantees for citizens. Indonesia as a state of law in accordance with Article 1 paragraph (3) of the 1945 Constitution, everything related to the law should have legal certainty and guarantees for its citizens, but until now there is no unified age of adulthood limit that applies in this Republic, thus confusing the public. The pluralism of the age of majority can create confusion in determining when a person is

⁷ Andrew Amanah and Carnegie Hasibuan, (2023), The Principle of *Contrarius Actus* in the Dispute Over the Appointment of the Acting Regent of Padang Lawas Regency, *Jurnal Akta* 10, no. 2: 114.

declared an adult and capable of performing legal acts. Because legal acts always require that a person must be declared capable of performing legal acts.

2. RESEARCH METHODS

This research is doctrinal research or normative legal research, which places the law as a building system of norms.⁸ In this case, research on principles, laws and regulations and court decisions.⁹ Then to describe the problems in the research, it is organized descriptively analytically. Literature study and document study are techniques used in data collection, with the main data source used being secondary data. The data analysis method is carried out qualitatively normative.

The data source in this research is secondary data (library materials), which consists of primary and secondary legal materials. Primary legal materials come from the 1945 Constitution of the Republic of Indonesia, Laws, Ministerial Decrees, Court Decisions, while secondary legal materials come from related literature such as books, research results or opinions of legal experts. The existing secondary data collected is also analyzed using the inductive method. Subtilitas intellegendi or accuracy of understanding and accuracy of explanation of the problem (subtilitas explicandi) of the problem is very relevant to resolving legal issues in this study.

3. RESULT AND DISCUSSION

3.1 Political Experience as a Candidate for President and Vice President

As quoted from the page <https://www.mkri.id/> that the Judge of the Constitutional Court of the Republic of Indonesia, Guntur Hamza revealed that if someone has not reached the age of 40 but has experience as a state official elected through elections (such as DPR members, DPD members, DPRD members, Governors, Regents, and Mayors), it does not automatically make them a candidate for President or Vice President. The reason is that there are still two constitutional requirements that must be met, namely the requirement to be proposed by a political party or

⁸ Zainal Asikin, Amiruddin. (2004), *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada.

⁹ Fajar Mukti and Achmad Yulianto, (2013), *Dualisme Penelitian Hukum Normatif Dan Empiris*, Yogyakarta, Pustaka Pelajar.

coalition of political parties and the requirement to be directly elected by the people.

Therefore, even though someone has had experience as a state official, if they are not supported or proposed by a political party or coalition of political parties participating in the general election, then they will not be able to become a candidate for President or Vice President. Furthermore, if someone is supported or proposed by a political party or coalition of political parties participating in the general election, they still have to fulfill the next constitutional requirement, namely Article 6A paragraph (1) of the 1945 Constitution, which states that the President and Vice President are elected directly by the people in one pair. Therefore, candidates for President and Vice President who are at least 40 years old can still be proposed to become candidates for President and Vice President.

Meanwhile, for individuals who want to run for President or Vice President and are under 40 years old, they must have experience in serving as an elected official through elections, such as members of the DPR, DPD members, DPRD members, Governors, Regents, or Mayors. However, this rule does not apply to directly appointed officials, such as acting officials. Candidates who fall under the category of appointed officials can run for President or Vice President after reaching the age of 40.¹⁰

3.2. Capable/Adult in Candidacy for Regional Head Position

In running for a local office, it is important to demonstrate maturity and integrity. Focus on experience, a deep understanding of local issues, and concrete plans to move the area forward. Avoid provocative rhetoric and ensure your communications reflect professionalism and responsibility. Capacity to act and authority to act both relate to the event of performing a legal act. A legal action is an everyday event, in which members of society enter into relationships with other members of society. Because legal actions are daily actions carried out by humans, it is necessary to regulate the capacity and authority to act.

Article 1329 BW states that in principle every person is capable of making an agreement, unless the law determines otherwise. Because making agreements is the most common action taken by members of the community, it follows from this provision that all people are basically capable of acting, unless the law determines otherwise.

¹⁰ Humas MKRI. (2023) <https://www.mkri.id/index.php?page=web.Berita&id=19660&menu=2> Accessed on November 03, 2023 at 01:24 WIB.

The person referred to in the ability to act as a legal subject, namely everything that according to the law has rights and obligations so that it has the authority to act. The validity of man as a bearer of rights (subject of law) starts from the moment he is born and ends when he dies. A baby who is still in his mother's womb can be considered to have been born when the interests of the child require it, for example to become an heir.

If the child dies during birth then he is considered never to have existed based on Article 2 of the Civil Code. However, according to the law, every person is considered capable of acting as a legal subject, unless declared incapable by law under Article 1329 of the Civil Code.

A competent person is one who is an adult (21 years old) and of sound mind, while an incompetent person is a minor and a person placed under guardianship, which occurs due to mental disorders, drunkards or spendthrifts. A person's capacity to act in law or to perform legal acts is determined by whether or not the person has reached legal adulthood. A person's maturity is a benchmark in determining whether a person can or cannot be said to be capable of acting to perform a legal act. A person's maturity refers to a state of being or not a person according to the law to be able to act in law which is determined by age limits. So that maturity in law is a requirement so that a person can and may be declared as capable of acting in carrying out all legal actions.

Civil law in Indonesia applies a variety of adult age benchmarks for each group of the population. The law determines that not all people as supporters of the law (*recht*) are capable (*bekwaan*) is a general criterion related to the state of a person, while authorized (*bevoegd*) is a specific criterion related to a particular act or action. Someone who is capable is not necessarily authorized but someone who is authorized is definitely capable.

The law determines that to be able to act in law, a person must be capable and authorized. A person can be said to be capable and authorized, must meet the conditions specified by the Law, namely being an adult, having a sound mind (not under guardianship) and not being married to a woman.

Capacity to act is the general authority to perform legal acts. After humans are declared to have legal authority, they are then given the authority to carry out their rights and obligations, therefore they are given the ability to act. Related to rights is the authority to receive, while related to obligations is the authority to act (also called the authority to act). Legal authority is owned by all humans as legal subjects, while the

authority to act can be influenced by several factors, such as age, status (married or not), status as an heir, and others.

The House of Representatives stated that in local government political dynasties have increased in several regions (Constitutional Court Decision number 33/PUU-XIII/2015). The analysis of political dynasties can develop because, first, the regeneration of political parties does not run properly and democratically in determining candidates for regional heads. Political pragmatism is a reality that thrives in political party organizations in Indonesia. Political parties in Indonesia have not yet become modern political parties. Political parties should have a political school that can determine a person's eligibility to sit in the regional leadership council, provincial region, center and even sit as regional head.

Recommendations cannot be given for regional heads who are not members of the political party. This is a logical consequence of a rule for candidates nominated by political parties. Political accountability becomes clear and clear that the candidate is a candidate who processes in the party. This is a real form of people's democracy. The people know openly the origin and background of the party of the regional head candidates who will lead them.

Second, the empirical reality in the community in terms of determining regional head candidates who come from the incumbent's family. This may occur when there are not many choices of candidates. The existence of a deliberately closed democratic space is the reason that gives rise to the absence of alternative candidates other than incumbents or relatives of incumbents. The essence of democracy is the essence of the rule of law in a democratic context that creates openness.¹¹

The modern era of democracy should give rise to many qualified candidates in the regional head election process. The limited number of candidates indicates the blockage of the democratic channel in ensuring the availability of candidates for regional heads conducted by political parties.

However, in reality, the legislators have made restrictions that close the space for a candidate who has ties to an incumbent to be nominated as a regional head. Whereas restrictions can only be made with strict considerations in the context of a democratic state. However, restrictions must not close the space or create discrimination among every citizen.

¹¹ Widodo Ekatjahjana, (2008), *Lembaga Kepresidenan Dalam Sistem Ketatanegaraan Indonesia*, Jakarta: Pustaka Sutra.

Restriction of voting rights can only be done with a court decision that has permanent legal force. The reasons based on the reasons of being underage or incapable of acting in law, under guardianship for psychological reasons and the existence of impossibility (impossibility). The restriction must also be directed at individuals and not collectively.

Citizens born into incumbent families are not electable nor does it reduce the freedom of other citizens to be nominated as regional heads. It is also not contrary to the cultural value system prevailing in the community so that restrictions made through legislation are acts of discrimination. Such actions are of course contrary to the 1945 Constitution of the Republic of Indonesia.

4. CONCLUSION

A person who wishes to run for President or Vice President must meet the constitutional requirements, including a minimum age of 40. Experience as an elected official through elections is also a criterion, but this rule does not apply to directly appointed officials. In addition, support from a political party or coalition of political parties is also required to run for office, as well as being directly elected by the people. That in skills, maturity, integrity and understanding of local issues are important. Maturity and authority to act in law are related to age and status, and there are specific criteria for authority. Political dynasties can develop due to less democratic regeneration, and restrictions on regional head candidates from incumbent families are considered to have the potential to create discrimination and contradict cultural values and the 1945 Constitution of the Republic of Indonesia.

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