

## **Position Of The Supreme Court Decision Number 23 P/HUM/2024 After The Constitutional Court Decision Number 70/PUU-XXII/2024**

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### **ABSTRACT**

*Supreme Court Decision Number 23 P/HUM/2024 and Constitutional Court Decision Number 70/PUU-XXII/2024 are two decisions related to the age requirements for regional head candidates which were initially followed up by the House of Representatives and ultimately the House of Representatives chose to follow Constitutional Court Decision Number 70/PUU XXII/2024. The purpose of this research is to find out how the authority of the Supreme Court and the Constitutional Court in testing laws and regulations related to the Regional Elections and what is the position of the Supreme Court Decision Number 23 P/HUM/2024 after the Constitutional Court Decision Number 70/PUU-XXII/2024. This research method is a normative legal research using a statutory approach and a conceptual approach. The results of the study show that the authority of the Supreme Court and the Constitutional Court in testing statutory regulations related to regional head elections has different scopes of authority. The Supreme Court has limited authority to test statutory regulations under the law against the law, one of which is the General Election Commission Regulation as a derivative regulation of the Regional Head Election Law and does not have the authority to test the Regional Head Election Law, while the Constitutional Court has the authority to test laws against the 1945 Constitution of the Republic of Indonesia, one of which is in testing the Regional Head Election Law. Meanwhile, Supreme Court Decision Number 23 P/HUM/2024 regarding the testing of age requirements for regional head candidates has a lower position when it is used as a basis for the formation of laws and regulations and when used as jurisprudence. Therefore, as a practical contribution, the Supreme Court and the Supreme Court should strengthen their understanding of the limits of authority possessed in testing laws and regulations. Although the authority of the Supreme Court and the Constitutional Court is different, coordination between these two institutions is still necessary to create consistency in the application of the law. Therefore, there needs to be a more intensive dialogue between these institutions related to intersecting issues, such as testing laws and regulations related to the Regional Elections.*

**Keywords:** *Supreme Court; Constitutional Court; Decision.*

### **INTRODUCTION**

In Indonesia, *judicial review* is carried out by the Constitutional Court and the Supreme Court. Although both are authorized to conduct *judicial review*, these two

institutions have different scopes of authority.<sup>1</sup> In Indonesia, the right to material test against the law is regulated in the 1945 Constitution of the Republic of Indonesia (amendment) Article 24C Paragraph (1) The Constitutional Court is authorized to adjudicate at the first and last level whose decision is final to test the law against the Constitution<sup>2</sup> while the Supreme Court is authorized to conduct *judicial review* of laws and regulations under the law against the law as stated in Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.<sup>3</sup>

Currently, there is a latest case related to Supreme Court Decision No. 23 P/HUM/2024 issued on Wednesday, May 29, 2024 in the testing of Article 4 Paragraph (1) letter d of PKPU Number 9 of 2020 concerning the Fourth Amendment to PKPU Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor stating that:

- (1) Indonesian citizens can become Candidates for Governor and Deputy Governor, Regent and Deputy Regent, or Mayor and Deputy Mayor by fulfilling the following requirements:
  - d. at least 30 (thirty) years old for Governor and Deputy Governor Candidates and 25 (twenty-five) years old for Regent and Deputy Regent Candidates or Mayor and Deputy Mayor Candidates from the date of the determination of the Candidate Pair.

The article was tested by the Chairman of the Indonesian Change Guard Party (Garuda) Ahmad Ridha Sabana and friends, the KPU Regulation which is hierarchically under the law which is then submitted to the Supreme Court to be tested with reasons and objections that are contrary to the above regulations.

Interestingly, through the Supreme Court's decision, it has interpreted a new understanding for Article 7 Paragraph (2) letter e of Law No. 10 of 2016 which was initially "calculated from the determination of candidate pairs" as contained in Article 4 Paragraph (1) letter d of PKPU No. 9 of 2020 to "from the inauguration of the selected candidate pair". Furthermore, to implement Supreme Court Decision Number 23 P/HUM/2024, the KPU together with the House of Representatives have revised PKPU and have issued KPU Regulation No. 8 of 2024 and made changes to the Regional Election Law by making an Election Bill to act on the Supreme Court's

<sup>1</sup> Erizka Permatasari, "The Difference Between *Judicial Review* and the Right to Material Test", downloaded on September 18, 2024 from <https://www.hukumonline.com/klinik/a/bedanya-ijudicial-review-i-dengan-hak-uji-materiil-cl4257/>

<sup>2</sup> Ardilafiza (et al), *Constitutional Law Teaching Materials*, Bengkulu: Faculty of Law, University of Bengkulu, 2019, p. 43.

<sup>3</sup> Inna Junaenah, "Constitutional Interpretation of Regulatory Testing Under the Law", *Constitutional Journal*, Volume 13, Number 3, 2016, p. 513.

decision which then resulted in chaos throughout Indonesian society and demonstrations occurred everywhere led by student alliances.<sup>4</sup>

After 83 days, the Constitutional Court Decision No. 70/PUU-XXII/2024 was issued on Tuesday, August 20, 2024 in the examination of Article 7 Paragraph (2) letter e of Law No. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law which states that:

(2) Candidates for Governor and Deputy Governor Candidates, Candidates for Regents and Candidates for Deputy Regents, as well as Candidates for Mayor and Candidates for Deputy Mayors as intended in paragraph (1) must meet the following requirements:

e. At least 30 (thirty) years old for Governor and Deputy Governor candidates and 25 (twenty-five) for Regent Candidates and Deputy Regent Candidates, as well as Mayor and Deputy Mayor Candidates.

However, through the Constitutional Court's Decision Number 70/PUU-XXII/2024, it states expressly that the age requirement for regional head candidates must be calculated at the time of determining the candidate pairs and through the Constitutional Court's decision, the House of Representatives canceled the ratification of the Election Bill after the plenary meeting of the House of Representatives for the ratification of the revision of the Election Law was postponed, because the number of legislative members present did not meet the minimum limit or quorum.<sup>5</sup> So that PKPU No. 8 of 2024 which follows up on the Supreme Court's Decision has been changed to KPU Regulation No. 10 of 2024 which follows up on the Constitutional Court's Decision and the ratification of the Regional Election Bill is canceled and the Constitutional Court's Decision on the Regional Elections will take effect.

This then attracted the attention of the author how to see the Verdict Supreme Court No. 23 P/HUM/2024 and Constitutional Court Decision No. 70/PUU-XXII/2024 which were initially both followed up.<sup>6</sup> However, then in the end the

<sup>4</sup> Ady Thea DA, "Expert: Supreme Court Decision on the Age Requirement of Regional Heads Is Very Unreasonable", downloaded on September 20, 2024 from <https://www.hukumonline.com/berita/a/pakar--putusan-ma-soal-syarat-usia-kepala-daerah-sangat-tidak-wajar-lt6661addbdd0ab/>

<sup>5</sup> Nicholas Ryan Aditya and Ardito Ramadhan, "Not Meeting the Quorum, the Plenary Meeting of the Regional Election Law was only attended by 89 people", downloaded on September 19, 2024 from <https://nasional.kompas.com/read/2024/08/22/10524261/tak-penuhi-kuorum-rapat-paripurna-uu-pilkada-hanya-dihadiri-89-orang>

<sup>6</sup> Fitri Novia Heriani, "Ignoring the Constitutional Court's Decision Regarding the Age Limit, the House of Representatives and the President Are Considered to Violate the Constitution", downloaded on September 21, 2024 from

House of Representatives chose to follow the Constitutional Court's Decision rather than the Supreme Court's Decision, while the task of each judicial power is appropriate, namely the Supreme Court examines laws and regulations under the Law, one of which is PKPU and the Constitutional Court tests the Law against the 1945 Constitution of the Republic of Indonesia, one of which is the Election Law. Did the House of Representatives then choose to follow the Constitutional Court's decision because of the mass encouragement that held demonstrations everywhere throughout Indonesia to refuse to follow the Supreme Court's decision? Meanwhile, these two state institutions are at the same level and are both independent.

Based on the search for the results of the research that has been carried out, namely searching literature both from the Faculty of Law, University of Bengkulu and other universities through the internet, the author did not find the overall similarity of research in several previous researches well in terms of research, namely discussing the "Position of the Supreme Court Decision Number 23 P/HUM/2024 After the Constitutional Court Decision Number 70/PUU-XXII/2024". However, there are previous studies that are close to the studies discussed by the author.

The thesis research written by Jumadil entitled "*Analysis of the Constitutional Court Decision No. 58/PUU-XVII/2019 concerning the Age Requirements of Regional Head Candidates Reviewed Based on Fiqh Siyasah*" and Yue Sevin Eva Yolanda entitled "*Review of Fiqh Siyasah Against the Decision of the Constitutional Court Number 58/PUU-XVII/2019 concerning the Age Requirements of Regional Head Candidates*". The results of the study show that the Constitutional Court's decision No. 58/PUU-XVII/2019 regarding the age requirements for regional head candidates according to Article 7 Paragraph (2) letter e of Law No. 10 of 2016 concerning Regional Elections does not contradict the 1945 Constitution of the Republic of Indonesia and has binding legal force and this is a legal *policy* in determining age requirements as long as there is no element of discrimination. Meanwhile, the Constitutional Court's decision leaves the determination of the age limit to lawmakers to regulate it in line with *the siyasah dusturiyah* related to state laws and regulations. The condition for becoming a leader must be *puberty* because it shows a person's maturity.<sup>7</sup>

Based on the description above, it is known that there is a clear difference between some of the existing studies and the research that the author will research. The author raises a research that focuses on the authority of the Supreme Court (MA) and the Constitutional Court (MK) in testing laws and regulations related to the election of regional heads and how the position of the Supreme Court (MA) Decision Number 23 P/HUM/2024 after the Constitutional Court (MK) Decision Number 70/PUU-XXII/2024.

<https://www.hukumonline.com/berita/a/abaikan-putusan-mk-terkait-batas-usia--dpr-dan-presiden-dinilai-langgar-konstitusi-lt66c6644f46160/>

<sup>7</sup> Mulkanasir, "Revealing Leadership in an Islamic Perspective," *Journal of Da'wah Management*, Volume 9, Number 2, 2021, p. 306.

Based on this, there are two focus issues that will be examined, namely how the authority of the Supreme Court and the Constitutional Court in testing laws and regulations related to the Regional Elections and the position of the Supreme Court Decision Number 23 P/HUM/2024 after the Constitutional Court Decision Number 70/PUU-XXII/2024.

## **RESEARCH METHOD**

The research method used by the author is normative legal research whose study includes norm systems as the object, such as ideal legal values, legal theories, legal principles, legal principles, legal teachings, court decisions, legal policies and laws and regulations.<sup>8</sup> This approach also emphasizes the *Statute approach* and the *Conceptual Approach*. In connection with this type of research, it is normative research, the data used is secondary data consisting of primary legal materials in the form of laws and regulations and decisions, secondary legal materials in the form of law books, legal journals and related writings sourced from the internet related to the issues raised, and tertiary legal materials in the form of legal websites and encyclopedias such as the Great Dictionary of the Indonesian Language (KBBI) and dictionaries law. The procedure for collecting legal materials is carried out offline and online by means of literature studies and study analysis using qualitative analysis and by means of deductive thinking that is logical and prescriptive-normative.

## **RESULTS AND DISCUSSION**

### **The Authority of the Supreme Court and the Constitutional Court in Testing Laws and Regulations Related to the Regional Elections**

#### **1. History of Regional Head Elections in Indonesia**

Elections in Indonesia were first held in 1955 to elect members of the House of Representatives and the House of Representatives which were attended by 118 political parties, organizations, groups and individuals. Then in the new order era, elections were held in 1971, 1977, 1982, 1987, 1992 and 1999 to elect members of the House of Representatives and the House of Representatives. It is the people's representatives who then elect the president, governor, regent and mayor, which is known as representative democracy.<sup>9</sup> Then since the reform era, elections were held in 2004, 2008 and 2014 to elect members of the DPR, DPD, DPRD Province, City/Regency DPRD. The mechanism for electing regional heads at the provincial, district and city levels

<sup>8</sup> Irwansyah, *Legal Research: Choice of Methods & Practices for Article Writing (Revised Edition)*, Yogyakarta: Mirra Buana Media, 2020, pp. 99-100.

<sup>9</sup> Fitriyah, *Theory and Practice of General Elections in Indonesia*, Yogyakarta: Deepublish, 2012, p. 35.



is regulated in Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, stating that:

Governors, Regents, and Mayors respectively as the heads of provincial, district, and city governments are democratically elected.

In general, the selection knows 2 systems, direct and indirect. These two systems/models became Indonesia's experience in the election of regional heads after the 1998 reform. Before the birth of Law No. 32 of 2004, regional heads were elected indirectly or elected through a representative mechanism by legislative members in the DPRD, after the law was born, regional heads were elected directly in a democratic party in the form of regional elections until now.<sup>10</sup>

The change in the system from indirect to direct in a fairly short time is not without cause. Because there are two reasons, the first is that there are still traumatic remnants of the quasi-representative election system that occurred during the New Order period and second, the direction of changing the understanding of the meaning of democracy and people's sovereignty to be applied as closely as possible to the people's sovereignty "the voice of the people, the voice of God".<sup>11</sup>

Currently, the regulation of the minimum age requirements for regional head candidates has been regulated in Article 7 Paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law which states that:

(2) Candidates for Governor and Deputy Governor Candidates, Candidates for Regents and Candidates for Deputy Regents, as well as Candidates for Mayor and Candidates for Deputy Mayors as intended in paragraph (1) must meet the following requirements:

e. At least 30 (thirty) years old for Governor and Deputy Governor candidates and 25 (twenty-five) for Regent Candidates and Deputy Regent Candidates, as well as Mayor and Deputy Mayor Candidates.

## **2. Judicial Review**

The third amendment to the 1945 Constitution of the Republic of Indonesia, the regulation regarding the testing of laws and regulations by judicial institutions or popularly known as *judicial review*. Apart from the establishment of a new institution whose authority is to test the constitutionality of the law against the 1945 Constitution of the Republic of

<sup>10</sup> Farkhani, "Indirect Election of Regional Heads in the Perspective of Election Activists and Implementers", *Jurnal Imiah Hukum*, Volume 5, Number 2, 2019, p. 114.

<sup>11</sup> *Ibid.*

Indonesia, this will eliminate the concentration of power in a branch of state power, namely the president or executive.<sup>12</sup> *Judicial review* is the supervision of judicial power over legislative and executive power. According to Brewer-Carrias, *judicial review* is seen as an inherent duty of the courts to guarantee legislative and executive legal action with the highest law.<sup>13</sup>

In Indonesia, *judicial review* is carried out by the Constitutional Court (MK) and the Supreme Court (MA). Although both are authorized to conduct *judicial review*, these two institutions have different scopes of authority.<sup>14</sup> In Indonesia, the right to a material test of the law is regulated in the 1945 Constitution of the Republic of Indonesia (amendment) Article 24C Paragraph (1) The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to test the law against the Constitution<sup>15</sup> while the Supreme Court has the authority to conduct *judicial review* of laws and regulations under the law against the law as stated in Article 24A Paragraph (1) of the State Constitution Republic of Indonesia in 1945.<sup>16</sup>

The right to material test is the authority to investigate and assess, the content of a law regulation is contrary to a higher regulation, and a certain power has the right to issue a certain regulation.<sup>17</sup> The main purpose is so that the laws and regulations under the Constitution do not conflict with the Constitution.<sup>18</sup>

Theoretically, there is a distinction between *judicial review* and the right to material test. *Judicial review* is a test for the law, while the right to material test is a test for the laws and regulations under the law.<sup>19</sup> Although the testing function carried out by the Constitutional Court and the Supreme Court is actually the same *judicial review*, technically the testing of the law against the Constitution by the Constitutional Court is usually also called *constitutional review*, while the testing of laws and regulations under the Law on higher laws and regulations by the Supreme Court is usually called *judicial review* but both

<sup>12</sup> Safi'i, *History and the position of the Judicial Review Arrangement in Indonesia: A Historical and Political Study*. Surabaya: Scopindo, 2021, p. 1

<sup>13</sup> Ala R. Brewer-Carrias, *Judicial Review in Comperation Law*, quoted from Irfan Fachrudin, *Administrative Supervision of Government Actions*, Bandung: Alumni, 2004, p. 175.

<sup>14</sup> Erizka permatasari, *loc.cit.*

<sup>15</sup> Ardilafiza, (et al), *Op.Cit.*, hlm. 43.

<sup>16</sup> Inna Junaenah, *Op.Cit.*, 513.

<sup>17</sup> Yodika Sputra, "The Right to Examine Material Explanations in the Law", Article, Surabaya: Faculty of Law, University of August 17, 1945 Surabaya, p. 28.

<sup>18</sup> Machmud Aziz, "Testing Laws and Regulations in the Indonesian Laws and Regulations System", *Constitutional Journal*, Volume 7, Number 5, 2010, p. 147.

<sup>19</sup> Moh. Mahfud MD, *Legal Politics in Indonesia*, Jakarta: PT. Raja Grafindo Persada, 2012, p. 348.

are generally called *judicial review*. *Judicial review* in the sense of testing carried out by judicial institutions.<sup>20</sup>

### 3. Judicial Review At The Supreme Court

After the Amendment of the 1945 Constitution of the Republic of Indonesia, the authority of the right to a material examination by the Supreme Court was affirmed in Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia that "The Supreme Court has the authority to adjudicate at the cassation level, test laws and regulations under the Law against the Law...". Based on this article, the constitution affirms:

- a. The Supreme Court has the authority to adjudicate at the cassation level;
- b. The Supreme Court has the authority to test laws and regulations under the law.<sup>21</sup>

The current limit of authority on the right of material review by the Supreme Court is based on Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia jo. Article 31 Paragraph (1) of Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1985 concerning the Supreme Court, no different from Article 26 Paragraph (1) of Law No. 14 of 1970 concerning the Principal Provisions of Judicial Power and Article 1 Paragraph (1) of the Supreme Court Regulation No. 1 of 2011 concerning the Right of Material Examination. According to this provision, the right of test granted to the Supreme Court is limited only to the extent that it concerns laws and regulations that are lower in rank under the law. It does not cover the right to test the law against the 1945 Constitution of the Republic of Indonesia.

It can be seen that the Supreme Court's authority in conducting *judicial review* is only limited to testing laws and regulations under the law, one of which is in the testing of Article 4 Paragraph (1) letter d of PKPU Number 9 of 2020 concerning the Fourth Amendment to PKPU Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor related to the age limit of regional head candidates. The Supreme Court does not have the authority to test laws, one of which is the Election Law related to the age of regional head candidates, so the Supreme Court's decision cannot change or cancel a law because the law is the Supreme Court's touchstone to conduct *judicial review*.

<sup>20</sup> Moh. Mahfud MD, *Constitution and Law in Controversy Issues*, Jakarta: PT. Raja Grafindo Persada, 2012, p. 64.

<sup>21</sup> Nasrullah Nawawi (*et al*), *Testing Laws and Regulations in Indonesia: A Review from Various Perspectives*, Banyumas: Amerta Media, 2021, p. 76.



However, if the Supreme Court's decision is based on a law that is later declared unconstitutional by the Constitutional Court, then the legal basis of the Supreme Court's decision will be invalid. Automatically, the Supreme Court's decision related to regulations based on the law will lose its legal basis.<sup>22</sup> In this case, although there is no formal annulment, the Constitutional Court's decision outperforms the Supreme Court's decision in practice, because the law tested by the Constitutional Court is the cornerstone of the regulation tested by the Supreme Court. For example, if the Supreme Court decides that a government regulation (PP) is valid, but the Constitutional Court then decides that the law on which the PP is based is unconstitutional, then the Constitutional Court's decision will affect the validity of the government regulation, and automatically, the Supreme Court's decision declaring the PP valid becomes irrelevant. So, it can be seen that the Constitutional Court's decision does not directly invalidate the Supreme Court's decision, but can override the legal basis of the Supreme Court's decision if the law on which it is based is removed or declared unconstitutional by the Constitutional Court.

#### **4. Judicial Review at the Constitutional Court**

The amendment to the 1945 Constitution of the Republic of Indonesia, brought a new era in the Indonesian constitutional system, the change brought Indonesia to no longer adhere to the division of power but a system of separation of powers with a *check and balance mechanism*.<sup>23</sup> In addition, Indonesia has abandoned parliamentary supremacy by entering constitutional supremacy.<sup>24</sup> The supremacy of the constitution requires that every legislation produced does not contradict the constitution, therefore to maintain the constitution as the law that is placed highest in the hierarchy of laws and regulations, a mechanism is needed to control it.<sup>25</sup>

In the third amendment to the 1945 Constitution of the Republic of Indonesia Article 24C Paragraph (1), the Constitutional Court has 4 (four) powers, namely:

The Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to test the law against the Constitution,

<sup>22</sup> Sri Soemantri, *The Right to Test Material in Indonesia*, Bandung: Alumni, 1986, p. 6.

<sup>23</sup> Abdul Rasyid Thalib, *The Authority of the Constitutional Court and Its Implications in the Constitutional System of the Republic of Indonesia*, Jakarta: Citra Aditya Bakti, 2006, p. 207.

<sup>24</sup> Rosjidi Ranggawidjaja and Indra Perwira, *The Development of the Right to Examine Materials in Indonesia*, Cits Bhakti Akademika, Bandung, 1996, p. 5.

<sup>25</sup> Nety Hermawaty, Ananda Ganda Pratama, Nabila D.N and Tulus P., "The Position of Judicial Review as Legal Development in Indonesia", *Journal of Constitutional Law*, Volume 1, Number 1, 2021, p. 16.

to decide disputes over the authority of state institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide disputes about the results of general elections.

In addition to this authority, based on Article 24C Paragraph (2) of the 1945 NR Constitution Jo. Article 7B Paragraph (1) of the 1945 NRI Constitution, the Constitutional Court is also obliged to examine, adjudicate, and decide on the opinion of the House of Representatives that the President or Vice President has committed a violation of the law in the form of treason against the state, corruption, bribery, other criminal acts, other serious acts, or reprehensible acts, and or the opinion of the President and/or Vice President is no longer qualified as President/or Vice President.<sup>26</sup>

Based on the description above, we can see that the limit of the Constitutional

Court's authority in conducting *judicial review* is to test the Law against the 1945 Constitution of the Republic of Indonesia so that all laws do not contradict the 1945 Constitution of the Republic of Indonesia. Included in the testing of Article 7 Paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors becomes a law related to the age limit for regional head candidates because the position of this Regional Election Law is located under the 1945 Constitution of the Republic of Indonesia which is the touchstone of the Constitutional Court in carrying out *judicial review* is the 1945 Constitution of the Republic of Indonesia. Therefore, the Constitutional Court has the right to amend or annul a Law in accordance with its authority given by the 1945 Constitution of the Republic of Indonesia whose decision is final and binding directly on the law and all state institutions.<sup>27</sup>

### **Position of the Supreme Court Decision Number 23 P/HUM/2024 After the Constitutional Court Decision Number 70/PUU-XXII/2024**

#### **1. Case of the Position of the Supreme Court Decision Number 23 P/HUM/2024**

On Tuesday, April 23, 2024, the Garuda Party's application entered the Supreme Court and was only distributed to the panel of judges (Yulius as chairman, Ceraf Bangun and Yodi Martono Wahyunadi) on Saturday, May 27, 2024 against case Number 23 P/HUM/2024. While the Respondent is the

<sup>26</sup> Article 7B paragraph (1) of the Constitution of the Republic of Indonesia in 1945.

<sup>27</sup> Jimly Asshiddiqie, *Procedural Law of Testing the Law*, Jakarta: Constitution Press, 2006, p. 321.

General Election Commission as the organizer of the general election, in this case the Respondent has the authority to attribute, namely issuing PKPU to implement the General Election Law and Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law.<sup>28</sup>

The applicant submits a test of Article 4 Paragraph (1) letter d of PKPU Number 9 of 2020 concerning the Fourth Amendment to PKPU Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor it is stated that:

- (1) Indonesian citizens can become Candidates for Governor and Deputy Governor, Regent and Deputy Regent, or Mayor and Deputy Mayor by fulfilling the following requirements:
  - d. at least 30 (thirty) years old for Governor and Deputy Governor Candidates and 25 (twenty-five) years old for Regent and Deputy Regent Candidates or Mayor and Deputy Mayor Candidates from the date of the determination of the Candidate Pair.

Contrary to Article 7 Paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors becomes a Law which states that:

- (2) Candidates for Governor and Deputy Governor Candidates, Candidates for Regents and Candidates for Deputy Regents, as well as Candidates for Mayor and Candidates for Deputy Mayors as intended in paragraph (1) must meet the following requirements:
  - e. At least 30 (thirty) years old for Governor and Deputy Governor candidates and 25 (twenty-five) for Regent Candidates and Deputy Regent Candidates, as well as Mayor and Deputy Mayor Candidates.

On the other hand, the provisions of Article 4 Paragraph (1) letter d of KPU Regulation Number 9 of 2020 which requires Candidates for Governor and Deputy Governor Candidates to be 30 (thirty) years old from the determination of the Candidate Pair, resulting in the Applicant experiencing both actual and potential losses in the form of being hampered/unable to carry the pair of Governor Candidates and Deputy Governor Candidates because the candidates carried by the Applicant are subject to the age requirements calculated from the determination of the Candidate Pair, so that the age of the candidate carried by the Applicant is not enough 30 (thirty) years because it is too early to calculate since the determination of the Candidate Pair.

<sup>28</sup> See Supreme Court Decision Number 23 P/HUM/2024 for a complete position case.

Thus, in *expressive terms*, the Applicant is harmed by the provisions of Article 4 Paragraph (1) letter d of KPU Regulation Number 9 of 2020 where the norm in question has caused injustice to the Applicant. In fact, the nomination process includes not only from the determination of the candidate pair, but also to the stage of ratification of the appointment/inauguration of the selected candidate and is contrary to the principle of "equal treatment before the law", the principle of "equal opportunity in government", the principle of "guarantee protection against discriminatory treatment" and "fair legal certainty". The applicant requested that the age requirement for regional head candidates be calculated from the inauguration of the selected candidate pair, not calculated from the determination of the candidate pair.

## **2. Constitutional Court Decision Position Case Number 70/PUU-XXII/2024**

On Tuesday, June 11, 2024, the Applicant A. Fahrur Rozi and Anthony Lee, who are students of Constitutional Law at UIN Syarif Hidayatullah Jakarta and a student of Podomoro University, and together with their legal representatives, have submitted an application to the Constitutional Court which was received at the Constitutional Court Clerkship on June 11, 2024 based on the Deed of Submission of the Applicant's Application Number 69/PUU/PAN.MK/AP3/06/2024 and has been recorded in the Electronic Constitutional Case Registration Book (e-BRPK) with Number 69/PUU/PAN.MK/AP3/06/2024 and has been recorded in the Electronic Constitutional Case Registration Book (e-BRPK) with Number 70/PUU-XXII/2024 on July 4, 2024, which has been corrected and received at the Court Clerk on July 25, 2024.<sup>29</sup>

The Applicant submitted an application for examination of the constitutionality of Article 7 Paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law which states that:

- (2) Candidates for Governor and Deputy Governor Candidates, Candidates for Regents and Candidates for Deputy Regents, as well as Candidates for Mayor and Candidates for Deputy Mayors as intended in paragraph (1) must meet the following requirements:
  - e. At least 30 (thirty) years old for Governor and Deputy Governor candidates and 25 (twenty-five) for Regent Candidates and Deputy Regent Candidates, as well as Mayor and Deputy Mayor Candidates.

<sup>29</sup> See Constitutional Court Decision Number 70/PUU-XXII/2024 for a complete position case.

The Basis for Testing the 1945 Constitution of the Republic of Indonesia

- a) Article 1 Paragraph (3), states: "The State of Indonesia is a state of law".
- b) Article 18 Paragraph (4), states: "The Governor, Regent, and Mayor respectively as the head of the local government of the provinces, districts, and cities democratically elected".
- c) Article 28D Paragraph (1), states: "Everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law".

The provisions of Article 7 Paragraph (2) letter e of Law 10 of 2016 have been translated with a new interpretation and have undergone a shift in interpretation which was initially "calculated from the determination of the candidate pair" as contained in Article 4 Paragraph (1) letter d of PKPU 9/2020 to "from the inauguration of the selected candidate pair" through the Supreme Court's decision Number 23 P/HUM/2024.

It is not true if the age calculation mechanism in the *a quo* norm is calculated "since the inauguration of the elected spouse" because between candidacy and inauguration are two phrases in the law that contain different provisions and their arrangement separately. In formal logic reasoning, the candidacy requirement, *in casu* age requirement, is the premise that forms a unity in the candidacy provisions. In this context, it would be incorrect if the premise in its interpretation is based on provisions outside the context of its regulation, namely by laying down in the provisions or by laying down at the inauguration stage.

Furthermore, in order to obtain legal certainty for the norm so as not to cause multiple interpretations, the Court requests that the Court declare Article 7 Paragraph (2) letter e of Law 10 of 2016 contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "at least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor from determination of Candidate Pairs".

### **3. Position of Supreme Court Decision Number 23 P/HUM/2024**

The Supreme Court's final decision was issued on Wednesday, May 29, 2024 which essentially states that Article 4 Paragraph (1) letter d of PKPU No. 9 of 2020 concerning the Fourth Amendment to PKPU No. 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor, is contrary to higher laws and regulations, namely Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning Perpu No. 1 of 2014 concerning the Election



of Governors, Regents, and Mayors becomes law,<sup>30</sup> and does not have binding legal force as long as it is not interpreted as "at least 30 (thirty) years old for Governor and Deputy Governor Candidates and 25 (twenty-five) years old for Regent and Deputy Regent Candidates or Mayoral and Deputy Mayor Candidates from the inauguration of the elected Candidate pair", so that Article 4 Paragraph (1) letter d must read:

At least 30 (thirty) years old for Candidates for Governor and Supreme Court of the Republic of Indonesia Deputy Governor and 25 (twenty-five) years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor from the inauguration of the selected Candidate pair.<sup>31</sup>

This Supreme Court decision has such a big impact on democracy in Indonesia that it requires the broad participation of various elements of society, which also includes the younger generation who often bring new and innovative perspectives. However, the age limit set in this decision can be considered an obstacle to the participation of the younger generation in high-level politics. However, the MA seems to emphasize that the quality of experience and maturity are more important than just broad participation.

This shows that in the view of the Supreme Court, the effectiveness and stability of the government must be prioritized in the arrangement of the election of candidates for state leaders with the implementation of the minimum age applied at the time of inauguration as a "middle way" for the fulfillment of the principle of "equal treatment before the law", the principle of "equal opportunities in government", the principle of "guarantee protection against discriminatory treatment" and at the same time realizing "fair legal certainty".

The implications of this ruling on political dynamics in Indonesia are also worth considering with the existence of a minimum age limit, political parties must adjust their candidacy strategies and be more selective in choosing candidates, in this case, the Supreme Court's decision reflects adaptation to the dynamics of national law.<sup>32</sup> This can reduce the space for the emergence of

<sup>30</sup> Wanda Putri Dzakia Mangara Maidlando Gultom, "Ryan Adhitya, Rijali Mahmud Dwi Satria, "Juridical Analysis Related to the Determination of Age Requirements for Regional Head Candidates and Deputy Regional Head Candidates: A Case Study on the Supreme Court Decision Number 23P/HUM/2024", *Journal de Jure*, Volume 16, Number 2, 2024, p. 75.

<sup>31</sup> Supreme Court Decision Number 23 P/HUM/2024.

<sup>32</sup> Aan Afandi, Beni Ahmad Saebani and Nas Nasrudin, "Siyasah Qadhaiyyah Review of the Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding Additional Provisions for Experience in Serving as Regional Heads and Minimum Age Requirements for

young candidates who may be popular but not experienced enough. On the other hand, this decision can also encourage political parties to focus more on developing cadres who have a strong *track record* and proven leadership skills. As a result, competition in regional head elections can become tighter and based on quality rather than mere popularity.

Through the Supreme Court's decision, Article 7 Paragraph (2) letter e of Law 10 of 2016 has been translated with a new interpretation. The article has undergone a shift in interpretation which was initially "calculated from the determination of the candidate pair" as contained in Article 4 Paragraph (1) letter d of PKPU 9/2020 to "from the inauguration of the selected candidate pair". To implement the Supreme Court's Decision Number 23 P/HUM/2024, the KPU has issued a new PKPU, namely PKPU No. 8 of 2024, which then the House of Representatives also revised the Election Law and has succeeded in making an Election Bill to act on the Supreme Court's decision and at that time there were also demonstrations throughout Indonesia which were driven by an alliance of students who protested the Supreme Court's decision and the attitude of the House of Representatives in acting against the Supreme Court's decision which is considered to develop dynastic politics.

Meanwhile, the authority of judicial *review* of the Supreme Court is only limited to examining laws and regulations under the law.<sup>33</sup> Indeed, in the hierarchy of laws and regulations based on Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, the location of PKPU Number 9 of 2020 is located under the Regional Election Law. Therefore, the Supreme Court actually does not have the authority to amend or cancel a law, one of which is the Election Law, let alone to amend Article 7 Paragraph (2) letter e of Law No. 10 of 2016 by translating it into a new interpretation and has undergone a shift in interpretation which was initially "calculated from the determination of candidate pairs" as contained in Article 4 Paragraph (1) letter d of PKPU 9/2020 to "from the inauguration of the selected candidate pair".

Because it seems that Law No. 10 of 2016 concerning Regional Elections is in accordance with PKPU No. 8 of 2024 which has acted on the Supreme Court's decision, so that this has also violated the *principle of lex superior derogat legi inferiori*, meaning that lower regulations must not conflict with

Presidential Candidates and Vice Presidential Candidates", *Unes Law Review Journal*, Volume 7, Number 1, 2024, p. 299.

<sup>33</sup> Aliefya Dini Azzahra Soebagiyo and Khalid, "Analysis of Supreme Court Decision No. 23 P/HUM/2024 on the Age Limit of Regional Head Candidates from the Siyasaq Qadhaiyah Perspective, *Lex Generalis Law Journal*, Volume 6, Number 2, 2025, pp. 8-9.

higher regulations.<sup>34</sup> Thus, higher regulations will override lower regulations. However, in reality, the Supreme Court's touchstone in testing Article 4 Paragraph (1) letter d of PKPU 9/2020, namely Law No. 10 of 2016, even one of the articles in the Law was amended and translated with a new interpretation by the Supreme Court. Moreover, historically, Article 4 Paragraph (1) letter d of PKPU 9/2020 does not contradict Article 7 Paragraph (2) letter e of Law No. 10 of 2016 which is evidenced by several times the Regional Elections held in Indonesia still use these conditions and there are no problems that have previously occurred related to the article being tested.

Based on this, actually the Supreme Court's Decision Number 23 P/HUM/2024 related to the testing of the age requirements for regional head candidates has a lower position when it is intended to be used as the basis for the formation of laws and regulations and when it is used as jurisprudence and actually does not need to be followed up by the House of Representatives because considering that the Supreme Court does not have the authority to amend or cancel a law because the one who has the authority for it is the Constitutional Court so that actually the Supreme Court's decision was set aside. In addition, the phrase "from the determination of the Candidate Pair"<sup>35</sup> in the regulation, is actually needed to implement and/or implement Law Number 10 of 2016, so that the main idea, objectives, and can be implemented effectively and efficiently Law Number 10 of 2016. The phrase does not contradict the principle of "equal treatment before the law", the principle of "equal opportunity in government", and the principle of "guarantee protection against discriminatory treatment".

In addition, the inauguration of the Regional Head is not the domain (domain)

of the KPU, because the inauguration is carried out by the president for the inauguration of the Governor and Deputy Governor and the schedule and procedures for the inauguration are regulated by Presidential Regulation.

Then, the stages of holding the Regional Elections have been clearly regulated in Article 5 Paragraph (3) of Law No. 8 of 2015. Thus, the age requirement for candidacy that is part of the stage of holding the Regional Elections is not appropriate if the calculation mechanism is based on the inauguration that is outside the stage of holding the Regional Elections itself. If that happens, then the conditions for holding the Regional Elections will be incomplete and no longer autonomous because they are conditionally

<sup>34</sup> Fakhry Amin, (*et al*), *Legal Science*, Banten: Sada Kurnia Pustaka, 2023, p. 42.

<sup>35</sup> Irwansyah Satria Bambang Gempita, "Analysis of the Supreme Court Decision No.23 P/HUM/2024 on PKPU No. 9 of 2020 concerning the Minimum Age Requirements for Regional Head Candidates in the Perspective of Fiqh Siyasah", *Jurnal Reslaj*, Volume 7, Number 2, 2025, p. 751.

determined by the implementation of the inauguration which is outside the implementation stage.

In addition, the applicant's *legal standing* is not a party aggrieved by the enactment of the age requirement for the regional head candidate, because the application for *judicial review* at the Supreme Court can only be made by parties who consider their rights to be harmed by the enactment of laws and regulations under the law, while the Applicant is not necessarily a political party that can carry a pair of Governor Candidates and Deputy Governor Candidates. which means that the Petitioners are not parties who will suffer losses with Article 4 Paragraph (1) letter d of KPU Regulation Number 9 of 2020.

#### **4. Position of the Constitutional Court Decision Number 70/PUU-XXII/2024**

The Constitutional Court's final decision was issued on Tuesday, August 20, 2024 which essentially states that Article 7 Paragraph (2) letter e of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors becomes law does not contradict Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, and Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the age limit of regional head candidates is still calculated from the determination of the candidate pair and there is no need to add the phrase in Article 7 Paragraph (2) letter e of Law Number 10 of 2016 because it does not give rise to multiple interpretations because the norm is very clear, so that it cannot and does not need to be given or added another or different meaning.

This final decision of the Constitutional Court also had such a big impact in the political world in Indonesia in the midst of dynastic political turmoil through Supreme Court Decision No. 23 P/HUM/2024, the Constitutional Court remained consistent with the previous decision which also tested the age requirement for regional head candidates in Decision Number 58/PUU-XVII/2019 which at that time the applicant's application was unreasonable according to the law because regarding the age limit there were no constitutional issues because, According to the Court, judging from the several times the regional head elections were held, everything went smoothly without any problems for the calculation of the age requirements for regional head candidates.

In fact, the Court has also emphasized that even if the age limit is not regulated in the law but is left to the laws and regulations under the law to regulate it, it is not contrary to the 1945 Constitution. In relation to the Application, the question then is whether there is a need for the Court to change its position. In this case, the Court is of the opinion that there is no fundamental

reason in the development of the constitution that causes the Court to inevitably have to change its position.<sup>36</sup>

Indeed, the provisions of Article 7 Paragraph (2) letter e of Law Number 10 of 2016 do not regulate in detail and detail the age limit of 25 (twenty-five) years for Regent Candidates and Deputy Regent Candidates, so that KPU Regulation Number 9 of 2020 as the implementing regulation of Law Number 10 of 2016 needs to regulate in detail and rigidly regarding the minimum age calculation limit of 30 (thirty) years for Governor and Deputy Governor Candidates to avoid multiple interpretations and legal uncertainty, where in the provisions of Article 4 Paragraph (1) letter d of KPU Regulation Number 9 of 2020 basically regulates the calculation of age 30 (thirty) years for Candidates for Governor and Deputy Governor since the determination of the Candidate Pair.

The norm of Article 7 Paragraph (2) letter e of Law Number 10 of 2016 also does not regulate the calculation of the age limit at the time of the inauguration of the Selected Candidate Pair, so that the provisions of Article 7 Paragraph (2) letter e of Law Number 10 of 2016 are an open legal policy of the KPU<sup>37</sup> to determine when the age requirements for Regional Head candidates must be met. Based on this, norms were established in the implementing regulations of Law Number 10 of 2016, namely the KPU Regulation which regulates the minimum age calculation limit for Regional Head Candidates and Deputy Regional Head Candidates, which is calculated from the determination of the Candidate Pair.

Because if you look at the historical approach, the minimum age requirement

for regional head candidates has been regulated in four laws and one government regulation in lieu of law (Perppu) in the provisions of these laws and regulations, there has never been a change in the minimum age requirement to become a candidate for Governor and a candidate for deputy governor. In addition, all norms that require the minimum age limit stipulated in the four laws and the Perppu have never explicitly or explicitly regulated the phrase "from the determination of the candidate pair" in determining the limit to calculate the minimum age in question. Four laws and one government regulation in lieu of law (perppu) are Article 13 Paragraph (1) letter e of Law Number 22 of 2014 concerning the Election of Governors, Regents, and Mayors, Article 7 letter e Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors, Article 7 letter e

<sup>36</sup> Constitutional Court Decision Number 58/PUU-XVII/2019.

<sup>37</sup> Muhammad Safaat Gunawan and Nurul Mujahidah, "The Dynamics of Regional Head Elections: Looking at the Decision of the Supreme Court, the Constitutional Court and the Regulations of the KPU RI", *Journal of Islamic and Community Sciences*, Volume 6, Number 2, 2024, p. 374.



Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors Become Law, Article 7 letter e Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, Article 7 Paragraph (2) letter e of Law 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law.

Furthermore, in terms of the systematic approach of the four laws and one Perpu, the minimum age limit requirements are always regulated or placed in a group of chapters that regulate the requirements of candidates, not in other chapters and in the stages of organizing the election of regional heads and deputy regional heads as stated in Article 5 Paragraph (3) of Law No. 10 of 2016 there is a sequence of series or stages of activities that are in one circle, namely the stages of registration, research on candidate requirements, and the determination of candidates for regional heads and deputy regional heads. Because it is in one area, everything related to the requirements must be met before the determination of candidates.<sup>38</sup>

This means that within the limits of reasonable reasoning, research on the fulfillment of these requirements must be carried out before the stage of determining candidate pairs. In this case, all conditions as stipulated in Article 7 of Law 10 of 2016 must be ensured to be met before the organizer, the KPU determines the candidates for regional heads and deputy regional heads. This means that the next stages, such as voting; vote counting and recapitulation of vote counting results; and the determination of the elected candidate is not a stage that can be used as a point or limit to assess and determine the fulfillment of the requirements as candidates for regional heads and deputy regional heads.

The Constitutional Court (MK) Decision Number 70/PUU-XXII/2024 remains consistent with the decisions that were previously tested related to the drinking age limit for regional heads. In accordance with the authority of the Constitutional Court in conducting *judicial review*, namely testing the law against the 1945 Constitution of the Republic of Indonesia, it is appropriate in accordance with its authority given by the 1945 Constitution of the Republic of Indonesia, so that the Constitutional Court here has the right to cancel or amend a law if it is contrary to the 1945 Constitution of the Republic of Indonesia.

<sup>38</sup> Lahmuddin Zuhri, Hanuring Ayu, and Ardani Atta, "Candidate Requirements for Regions in the 2024 Regional Elections, Pulling Back Supreme Court Decision with Constitutional Court Decision", *Journal of Research and Development of Central Java Province*, Volume 22, Number 2, 2024, p. 154.

If we take a position related to the Supreme Court's Decision Number 23 P/HUM/2024 and the Constitutional Court's Decision Number 70/PUU-XXII/2024 which both test related to the minimum age of regional head candidates, but the laws and regulations that are tested are different at different levels because the Constitutional Court tests the law against the 1945 Constitution of the Republic of Indonesia, one of which is the Regional Election Law which has a higher position than the PKPU which is tested by the Supreme Court in the Supreme Court Decision Number 23 P/HUM/2024 because the position of PKPU is under the Law Elections.

If there is a discrepancy between the Supreme Court's decision and the Constitutional Court's decision, then the Constitutional Court's decision Number 70/PUU-XXII/2024 is in a higher position when it is intended to be used as the basis for the formation of laws and regulations and when it is used as jurisprudence and in the case of a material test of the laws and regulations of the Constitutional Court Decision that will be followed as a more legitimate source of law. This does not mean that the Supreme Court's Decision No. 23 P/HUM/2024 is not important, but in the context of a material test of laws and regulations, because the Constitutional Court tests laws against the 1945 Constitution of the Republic of Indonesia while the Supreme Court tests laws and regulations under the law against laws, one of which is PKPU as a derivative of the Election Law so that the Constitutional Court's decision has a stronger and binding authority.

Furthermore, if you look at the nature of the Constitutional Court and Supreme Court decisions, which are both final and binding, they must be implemented immediately as well as the law.<sup>39</sup> However, with the incompatibility between the Supreme Court and the Constitutional Court's Decisions, the action that must be taken when there is a conflict between the Constitutional Court's decision and the Supreme Court's decision, is based on an analysis of the doctrine of validity or the applicability of norms, so that a rationalization of which decision must be implemented is found.<sup>40</sup>

Analysis using the doctrine of norm validity and norm hierarchy can be explained that a regulation is actually in the form of a hierarchy and regulations with a higher level must be the source and basis for the formation of regulations that are lower levels and must not contradict.<sup>41</sup> If there is a conflict between the Supreme Court's decision and the Constitutional Court's decision, then the

<sup>39</sup> Suparto, "The Problem of Testing Laws and Regulations in the Supreme Court (Study of the Supreme Court Decision No. 65 P/HUM/2018)", *SASI Journal*, Volume 27, Number 1, 2021, p. 66.

<sup>40</sup> *Ibid.*, p. 68.

<sup>41</sup> Saldi Isra, (et al), *The Development of Legislative Testing in the Constitutional Court (From Textual Legal Thinking to Progressive Law)*, MKRI in collaboration with the Center for Constitutional Studies FH, Andalas University, Padang, 2010, p. 7.

decision with the basis of the test and the object of the test in the higher hierarchy of testing of laws and regulations, in this case, the Constitutional Court's decision has a higher validity or legal applicability than the Supreme Court's decision.<sup>42</sup>

Meanwhile, in Article 55 of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, it is stated that:

The testing of laws and regulations under the law that is being carried out by the Supreme Court must be stopped if the law on which the regulation is tested is in the process of being tested by the Constitutional Court until there is a decision of the Constitutional Court.

Regarding this, it is proven that the process of finalizing PHUM is influenced by the process of completing the testing of the constitutionality of a law at the Constitutional Court, as long as there is a relationship between the norms tested in the Constitutional Court and in the Supreme Court. This shows that the Constitutional Court's Decision must be followed by the Supreme Court when there is a test of interrelated norms, because Article 55 of the Constitutional Court Law is not only interpreted to temporarily stop the process of testing laws and regulations under the Law as the basis for the test being tested by the Constitutional Court, but the word "stopped" can be interpreted to make a final decision in the form of an unacceptable application if the Constitutional Court states that the norm being tested is not contrary to the 1945 Constitution of the Republic of Indonesia.<sup>43</sup>

It is also proven by the application of the principle of *lex superior derogat legi inferiori*, which means that lower regulations must not conflict with higher regulations.<sup>44</sup> Thus, higher laws and regulations (*lex superior*) override lower laws and regulations (*lex inferior*), this principle applies if the two regulations are not hierarchically equivalent and contradict each other. It can be seen that PKPU No. 8 of 2024 which acts on the Supreme Court's decision is contrary to Law No. 10 of 2016 concerning Regional Elections as the object of material test of the Constitutional Court's Decision, because Law No. 10 of 2016 concerning Regional Elections has a higher position in the hierarchy of laws and regulations compared to PKPU No. 8 of 2024. Because judging from the historical approach, the regulation of the minimum age requirements for

<sup>42</sup> Muhammad Ishar Helmi, "One-Stop Settlement of *Judicial Review Cases* at the Constitutional Court" *Sar-i Journal of Social and Cultural Studies*, Volume 6, Number 1, 2019, p. 110.

<sup>43</sup> Jimly Asshiddiqie, *Procedural Law of Testing the Law*, Jakarta: Constitution Press, 2006, p. 321.

<sup>44</sup> Maria Farida Indrati S., *Jurisprudence*, Yogyakarta: Kanisius, 2020, p. 213.

regional head candidates has been regulated in four laws and one government regulation in lieu of law in the provisions of these laws and regulations, there has never been a change in the minimum age requirement to become a candidate for governor and deputy governor candidate and also the Constitutional Court's decision is newer than the Supreme Court's Decision that preceded the Constitutional Court's decision.

This statement was emphasized by Moh. Mahfud MD stated that the Constitutional Court functions as the guardian of the constitution and has the authority to provide constitutional interpretations whose decisions are *final and binding* because the Constitutional Court has a higher position in terms of material testing of laws and regulations.<sup>45</sup> Considering that the Constitutional Court is an institution that has the authority to test laws and regulations that are contrary to the 1945 Constitution.<sup>46</sup>

## CONCLUSION

That the authority of the Supreme Court and the Constitutional Court in testing laws and regulations related to the Regional Elections has a different scope of authority. The Supreme Court has the limits of *judicial review* authority to test laws and regulations under the law, one of which is PKPU as a derivative rule of the Regional Election Law and does not have the authority to test laws, one of which is the Election Law related to the age of regional head candidates. Meanwhile, the limit of the Constitutional Court's authority in conducting *judicial review* is to test the Law on the 1945 Constitution of the Republic of Indonesia, one of which is in testing the Election Law. Therefore, the Constitutional Court has the right to amend or cancel a law in accordance with its authority given by the 1945 Constitution of the Republic of Indonesia, whose decision is final and binding in general.

That the position of the Supreme Court Decision Number 23 P/HUM/2024 after the Constitutional Court Decision Number 70/PUU-XXII/2024 related to the testing of the age requirements of regional head candidates has a lower position when it is to be used as a basis for the formation of laws and regulations and when it is used as jurisprudence and actually the Supreme Court Decision is set aside and does not need to be followed up by the House of Representatives because of the Constitutional Court Decision Number 70/PUU-XXII/2024 has a higher position in terms of material testing and when it is intended to be used as the basis for the formation of laws and regulations and jurisprudence. As well as considering Supreme Court Decision Number 23 P/HUM/2024 which states that the age requirement for regional head

<sup>45</sup> Moh. Mahfud MD, *building legal politics, enforcing the constitution, enforcing the constitution*. Depok: PT. Raja Grafindo, 2012, p. 138.

<sup>46</sup> Bachtiar, *Problems of Implementation of Constitutional Court Decisions in the Testing of the Law on the Constitution*, Jakarta: Achieving Hope of Success, 2019, p. 102.

candidates is calculated from the inauguration of the selected candidate pair, while the Constitutional Court Decision Number 70/PUU-XXII/2024 states that the age requirement for regional head candidates is calculated from the determination of the selected candidate pair, these two decisions contradict each other. Based on that, if there is a discrepancy between the Supreme Court's decision and the Constitutional Court's decision, then the Constitutional Court Decision Number 70/PUU-XXII/2024 is in a higher position in terms of material testing of laws and regulations that will be followed as a more legitimate source of law. This does not mean that the Supreme Court is not important, but in the context of a material test of laws and regulations, because the Constitutional Court tests laws against the 1945 Constitution of the Republic of Indonesia while the Supreme Court tests laws and regulations under the law against laws, one of which is PKPU as a derivative of the Election Law so that the Constitutional Court's decision has stronger and binding authority.

## REFERENCES

- Aan Afandi, Beni Ahmad Saebani and Nas Nasrudin, 2024, "Siyasah Qadhaiyyah Review of the Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding Additional Provisions for Experience in Serving Regional Heads and Minimum Age Requirements for Presidential Candidates and Vice Presidential Candidates", *Unes Law Review Journal*, Volume 7, Number 1, 2024.
- Abdul Rasyid Thalib, 2006, *The Authority of the Constitutional Court and Its Implications in the Constitutional System of the Republic of Indonesia*, Jakarta: Citra Aditya Bakti.
- Ady Thea DA, "Expert: Supreme Court Decision on the Age Requirement of Regional Heads Is Very Unreasonable", downloaded on September 20, 2024 from <https://www.hukumonline.com/berita/a/pakar--putusan-ma-soal-syarat-usia-kepala-daerah-sangat-tidak-wajar-lt6661adbbdd0ab/>
- Ala R. Brewer-Carrias, 2004, *Judicial Review in Comperation Law*, quoted from Irfan Fachrudin, *Administrative Supervision of Government Actions*, Bandung: Alumni.
- Aliefya Dini Azzahra Soebagiyo and Khalid, 2025, "Analysis of Supreme Court Decision No. 23 P/Hum/2024 on the Age Limit of Regional Head Candidates from the Perspective of Siyasah Qadhaiyah, *Lex Generalis Law Journal*, Volume 6, Number 2.
- Ardilafiza (et al), (2019), *Constitutional Law Teaching Materials*, Bengkulu: Faculty of Law, University of Bengkulu.



Bachtiar, (2019), *Problems of Implementation of Constitutional Court Decisions in Testing the Law on the Constitution*, Jakarta: Achieving Hope of Success.

Erizka Permatasari, 2024. The Difference Between *Judicial Review* and the Right to Material Test, downloaded on September 18, 2024 from <https://www.hukumonline.com/klinik/a/bedanya-ijudicial-review-i-dengan-hak-uji-materiil-cl4257/>

Fitriyah, 2012, *Theory and Practice of General Elections in Indonesia*, Yogyakarta: Deepublish.

Fitri Novia Heriani, 2024, "Ignoring the Constitutional Court's Decision Regarding the Age Limit, the House of Representatives and the President Are Considered to Violate the Constitution", downloaded on September 21, 2024 from <https://www.hukumonline.com/berita/a/abaikan-putusan-mk-terkait-batas-usia--dpr-dan-presiden-dinilai-langgar-konstitusi-lt66c6644f46160/>

Farkhani, 2019, "Indirect Election of Regional Heads in the Perspective of Election Activists and Implementers", *Journal of Imiah Hukum*, Volume 5, Number 2.

Fakhry Amin, (et al), 2023, *Legal Science*, Banten: Sada Kurnia Pustaka.

Inna Junaenah, 2016, "Constitutional Interpretation of Regulatory Testing Under the Law. *Constitutional Journal*", Volume 13, Number 3.

Irwansyah, 2020, *Legal Research: Choice of Methods & Practices for Article Writing (Revised Edition)*, Yogyakarta: Mirra Buana Media.

Irwansyah Satria Bambang Gempita, 2025, "Analysis of the Supreme Court's Decision No.23 P/HUM/2024 on PKPU No. 9 of 2020 concerning the Minimum Age Requirements for Regional Head Candidates in the Perspective of Fiqh Siyasah", *Reslaj Journal*, Volume 7, Number 2.

Jimly Asshiddiqie, 2006, *Procedural Law of Testing Law*, Jakarta: Constitution Press.

Lahmuddin Zuhri, Hanuring Ayu, and Ardani Atta, 2024, "Candidate Requirements for Regions in the 2024 Regional Elections, Pulling Back Supreme Court Decision with Constitutional Court Decision", *Journal of Research and Development of Central Java Province*, Volume 22, Number 2.

Machmud Aziz, 2010, "Testing Laws and Regulations in the Indonesian Laws and Regulations System", *Constitutional Journal*, Volume 7, Number 5.

Maria Farida Indrati S., 2020, *Legal Science*, Yogyakarta: Kanisius.

Moh. Mahfud MD, 2012, *Constitution and Law in Controversy Issues*, Jakarta: PT. Raja Grafindo Persada.

\_\_\_\_\_, 2012, *Building Legal Politics, Enforcing the Constitution*, Depok: PT. King Grafindo.

\_\_\_\_\_, 2012, *Legal Politics in Indonesia*, Jakarta: PT. Raja Grafindo Persada.

Muhammad Ishar Helmi, 2019, "One-Stop Settlement of *Judicial Review Cases* in the Constitutional Court," *Sar-i Journal of Social and Cultural Studies*, Volume 6, Number 1.

Muhammad Safaat Gunawan and Nurul Mujahidah, 2024, "The Dynamics of Regional Head Elections: Looking at the Decision of the Supreme Court, the Constitutional Court and the Regulations of the KPU RI", *Journal of Islamic and Community Sciences*, Volume 6, Number 2.

Mulkanasir, 2021, "Revealing Leadership in an Islamic Perspective, *Journal of Da'wah Management*, Volume 9, Number 2, 2021.

Nasrullah Nawawi (*et al*), 2021, *Testing Laws and Regulations in Indonesia: A Review from Various Perspectives*, Banyumas: Amerta Media.

Nety Hermawaty, Ananda Ganda Pratama, Nabila D.N and Tulus P., 2021. "The Position of Judicial Review as Legal Development in Indonesia," *Journal of Constitutional Law*, Volume 1, Number 1.

Nicholas Ryan Aditya and Ardito Ramadhan. 2024. Not Meeting the Quorum, the Plenary Meeting of the Regional Election Law was only attended by 89 people, downloaded on September 19, 2024 from <https://nasional.kompas.com/read/2024/08/22/10524261/tak-penuhi-kuorum-rapat-paripurna-uu-pilkada-hanya-dihadiri-89-orang>

General Election Commission Regulation Number 9 of 2020 concerning the Fourth Amendment to PKPU Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor.

Supreme Court Decision Number 23 P/HUM/2024.

Constitutional Court Decision Number 70/PUU-XXII/2024.

Rosjidi Ranggawidjaja and Indra Perwira, 1996, *The Development of the Right to Examine Materials in Indonesia*, Cits Bhakti Akademika, Bandung.

Safi'i, 2021, *History and Position of Judicial Review Arrangements in Indonesia: Historical and Political Studies*, Surabaya: Scopindo.

Saldi Isra, (et al), 2010, *The Development of Legislative Testing in the Constitutional Court (From Textual Legal Thinking to Progressive Law)*, MKRI in collaboration with the Center for Constitutional Studies, Faculty of Law of Andalas University, Padang.

Sri Soemantri, 1986, *The Right to Test Material in Indonesia*, Bandung: Alumni.

Suparto, 2021, "Problems of Testing Laws and Regulations in the Supreme Court (Study of Supreme Court Decision No. 65 P/HUM/2018)," *SASI Journal*, Volume 27, Number 1.

Constitution of the Republic of Indonesia in 1945.

Law Number 48 of 2009 concerning Judicial Power.

Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.

Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Perpu Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law.

Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court.

Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

Wanda Putri Dzakia Mangara Maidlando Gultom, Ryan Adhitya, Rijali Mahmud Dwi Satria, 2024. "Juridical Analysis Related to the Determination of Age Requirements for Regional Head Candidates and Deputy Regional Head Candidates: A Case Study of the Supreme Court Decision Number 23P/HUM/2024", *Jurnal de Jure*, Volume 16, Number 2.

Yodika Sputra, "The Right to Examine Material Explanations in the Law", Article, Surabaya: Faculty of Law, University of August 17, 1945 Surabaya.