

Dissension in Court Decisions Concerning Minimum Age Requirement for Regional Head Candidacy (A Study of Political Configuration Influences on Judicial Power)

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Abstract. This research examines two conflicting judicial decisions in Indonesia concerning the minimum age requirement for regional head candidacy: Supreme Court Decision No. 23 P/HUM/2024 and Constitutional Court Decision No. 70/PUU-XXII/2024. The divergence between these decisions reveals a significant political configuration concerning judicial independence and the interaction between judicial institutions and political interests. Employing a prescriptive legal approach, this research qualitatively analyzes the two decisions through a socio-political framework and legal argumentation scheme. The findings indicate that the prevailing political configuration influences the character of judicial decision-making. The Supreme Court's decision reflects an orthodox and elitist judicial orientation, whereas the Constitutional Court's decision demonstrates a more responsive and populist approach, potentially functioning as an instrument for legitimizing political power. These contrasting judicial approaches raise fundamental questions regarding the independence and impartiality of judicial institutions in a democratic constitutional state. This research emphasizes that judicial independence is essential to safeguarding constitutional rights, preventing the instrumentalization of judicial power, strengthening democratic governance, and upholding the rule of law in Indonesia.

Keywords: constitutional democracy; judicial independence; judicial power; political configuration; regional head candidacy

1. Introduction

In a constitutional democracy, judicial power holds a central position as the guardian of the Constitution and the pursuit of justice. However, political dynamics and power configuration often present challenges that may impede the application of independent judicial power. This issue is evident in two conflicting judicial decisions Constitutional Court Decision No. 70/PUU-XXII/2024 (MK No. 70) and Supreme Court Decision No. 23 P/HUM/2024 (MA No. 23) regarding the minimum age limit that enables candidates to apply for regional head candidacy. The MK No. 70 asserts that the minimum age requirement applies when a candidate pair is assigned to the candidacy. On the contrary, the MA No. 23 confirms that the minimum age requirement applies at the time of inauguration. These differing judicial views signify the strong political implications of judicial bodies, representing the complexity of Indonesia's legal systems, particularly when judicial power is caught between competing political interests.

This reality was exacerbated by the steps taken by the DPR RI (the House of Representatives

of the Republic of Indonesia) via the legislative body immediately applying to revise the Law concerning Regional Head Elections a day after the issuance of the Constitutional Court Decision on 20 August 2024 to annul the substance of the decision and align it with that of the Supreme Court. This fact shows that court decisions sometimes do not stand alone, but rather are influenced by two or more competing political interests. Moreover, it also indicates that judicial power tends to be a dependent variable rather than an independent variable within the ruling political configuration, as Mahfud M.D. once stated.

In this context, law no longer serves as an autonomous and normative guideline, but more as an instrument to legitimate power. When a judicial decision is used to support certain political interests or to ease oligarchical power, substantive justice often suffers. The influence of the political configuration on the substance and course of judicial decisions is not a mere theoretical assumption; it represents a practical reality that demands critical study.

Therefore, it is essential to view these two dissenting judicial decisions as both legal products and representations of political power that run in the background. This study aims to investigate how the political configuration influences and affects the substance and nature of court decisions within the Indonesian legal system. This approach is expected to provide a more comprehensive understanding of the nexus between judicial power and political configuration, as well as its impact on justice, legal certainty, and the protection of citizens' constitutional rights.

2. Method

This research employs legal science, characterized by a prescriptive nature, to provide recommendations and solutions to particular legal problems. This approach is neither normative nor empirical; instead, it integrates both. This research examined the two judicial decisions MA No. 23 and MK No. 70 to reveal the nature and course of these decisions within the current political configuration. Data were collected through library research, including primary legal documents, such as statutory laws and judicial decisions. The secondary data were obtained from scientific journals, experts' notions, and other relevant information sources. The analysis is qualitative, focusing more on the interpretation of law, the logical construction of court decisions, and the nexus between political dynamics and the independence of judicial power.

3. Result and Discussion

The Conception of a Political Configuration and Court Decision

The study on the conception of the political configuration and its relation to judicial power reveals that both the Constitutional Court and the Supreme Court, as judicial institutions, function as legal institutions to interpret and enforce the Constitution, as well as political actor that affect, organize, and distribute state power. The decisions delivered by these two judicial institutions often carry significant political impacts in safeguarding constitutional supremacy, rectifying political practices that tend to deviate, or legitimating power transfer. This matter asserts that judicial power is always present in a certain political configuration, never free from intervention, and often interacts with power dynamics that surround it.

The nature of such a decision, emerging from the condition above, reflects normative, transformational, precedent-setting, and political dimensions. The normative nuance is evident when a judicial decision declares that the constitutional position must be regarded as the highest law, serving as the basis for every policy made in the state. The transformational nature, on the other hand, is evident when the decision extends beyond dispute resolution-related matters and stimulates transformation in power governance, reinforces checks and balances mechanisms, and supports

institutional reform. A binding court decision, referred to as a precedent, serves as a reference, particularly when it fosters constitutionalism. Meanwhile, a political nature is inevitable because a decision may directly affect the legitimacy of power, the course of democracy, and the distribution of power between state institutions. In other words, judicial decisions should be seen as a dialectic between legal norms and socio-political dynamics.

In practice, a democratic political configuration widely allows judges to demonstrate their independence and courage in safeguarding human rights, enforcing constitutional principles, and protecting human interests. Nevertheless, in authoritarian and pragmatic political configurations, court decisions are often misused to legitimize power, thereby leaving their accountability to the public in question. An accountable court decision must be evaluated not only by the strength of the reasoning behind it, but also by how far this judgment can fulfill the demand of justice expected by the people.

Judicial products, therefore, can be linked to the following three primary expressions: first, in terms of juridical expression, a court decision emphasizes the authority of law by setting the normative principle and legal reasoning as priority. Second, in terms of political expression, a court decision has direct implications for power distribution, strengthening or weakening government legitimacy, and even affecting the course of public policy. Third, in terms of social expression, a court decision serves to maintain public trust in judicial institutions while emphasizing judicial functions as the guardian of justice. These three expressions assert that the nature of court judgements is not singular, but multidimensional, often closely linked to a political configuration that works in the background.

Political configuration is a power structure and dynamic that plays a vital role in forming, implementing, and interpreting the laws that govern society. Within this scope, the perspectives from Philippe Nonet and Philip Selznick could be used as references to help understand the nexus between law and politics. In their views, they argue that political configuration and its legal nature are inextricable. The three legal characters formulated indicate the shape of the state that raises these characters: repressive in an authoritarian state, autonomous law in transition, and responsive law, which characterizes a democratic state. They see law as something with its own independent power capable of stimulating political transformation. In other words, law functions as a variable to direct the course of political structure toward something more democratic or the other way around.

On the contrary, Mahfud MD has a different perspective; he sees political configuration as an independent variable that has the power to build legal characters. When a political configuration is set within a democratic nuance, the legal product produced may be responsive and pro-people. On the other hand, in an authoritarian configuration, legal products are often rigid, elitist, and overlook social justice. Such a difference indicates that Nonet and Selznick view law as a game changer in politics, to be compared with Mahfud MD's perspective, which positions politics as an instrument that determines the course of law. These two different views offer distinct descriptions of the law and politics necessary for the formation of state policies.

Another notion comes from Satjipto Rahardjo, who sees political domination that controls the law from a sociological perspective. He believes that the law is often weakened by more dominant political power. Politics, with its extensive resources and capabilities, can turn law into an instrument that legitimates power. In most cases, the law has lost its autonomy, rendering it a mere instrument controlled by politics. Satjipto, therefore, offers a paradigm of progressive law to encourage the law to be more responsive to societal needs and more substantive, justice-oriented, without relying heavily on formal and procedural texts.

The progress of legal approaches in the constitutional practices in Indonesia indicates the

relevance of the three views above. The Constitutional Study Centre (PUSAKO) of the Law Faculty at Universitas Andalas once reported a shift from a legal reasoning approach, often relying on legal texts, to a more progressive approach in practices observed in the Constitutional Court. In this approach, the Constitutional Court considers constitutional merits, legal objectives, and wider socio-political contexts. This change represents the impacts of dynamic political configuration and the awareness of treating law as a dynamic and living instrument of justice.

On a global scale, political configurations often carry ambiguities. Some countries declare themselves as democratic states, but they exercise their power in an authoritarian manner. Similarly, some authoritarian countries claim their state systems to be democratic on the basis that all the welfare is meant for all citizens. For instance, Great Britain, France, and the US expanded their democracies through bourgeois revolutions, which further led to the development of capitalism and parliamentary systems. On the contrary, Germany and Japan, at the outset of World War II, developed their democratic systems through revolution, which ultimately led to fascism. Communist countries like the Soviet Union and China also call their systems democratic despite their centralized and repressive governance. These examples represent varied tendencies and directions, depending on the political narration that those with power echo.

In Indonesia, the concept of democracy has also evolved in response to shifting political dynamics. Since the era of liberal democracy, guided democracy, and Pancasila democracy, the concept of democracy in this country has changed both meaning and practice. In most cases, the term "democracy" has been used by those with power as a mere instrument for legitimizing their power. M. Amien Rais a reform activist highlighted the importance of running democracy without hidden intent, pure democracy independent from any attempts of manipulation for the sake of political power. Such a democracy should represent the participation and interests of the people.

The concept of political configuration and the characteristics of court decisions as judicial products under judicial power are inextricable. Political configuration serves as a set of frameworks that both restrict and allow judicial independence, while judicial decisions in this context demonstrate how judges navigate and balance legal norms, political interests, and the demand for social justice. The judicial decision given may serve as an instrument strengthening this state of law, democracy, and the protection of the rights of all citizens, unless judges fail to fully adhere to independence and constitutional principles. On the contrary, when judicial decisions are directed solely to political interests, they function only to legitimize power, thereby losing their capacity to achieve true justice. That is, political configuration and judicial products are a single unit to determine the quality of law, the course of democracy, and the legitimacy of power within a state.

Political Configuration Approaching the 2024 Regional Head Election

The political configuration set for the 2024 Regional Head Election (hereinafter referred to as Pilkada), taking place on 27 November 2024, cannot be separated from the dynamics and the general election results on 14 February 2024. This election not only elected legislative members at the central and local levels of government, but it also elected the President and Vice President. The election results then mapped the national political power essential to the election contests to elect regional heads in all regions.

The results collected by the General Election Commission (hereinafter referred to as KPU) indicate that PDIP had the highest number of votes in the parliament, accounting for 16.72%, followed by Golkar (15.29%) and Gerindra (13.22%). However, the President and Vice President representing PDIP, Ganjar Pranowo and Mahfud MD, only collected 16.47% of votes, representing the lowest number of votes in the presidential election. On the contrary, Prabowo Subianto and Gibran Rakabuming Raka from Koalisi Indonesia Maju (KIM), consisting of Gerindra, Golkar, PAN,

Partai Demokrat, and some other political parties, gained the highest votes, reaching 58.59%, while the candidate pair Anies Baswedan and Muhaimin Iskandar from PKB, PKS, and NasDem only gained 24.95%.

The political constellation above reflects dyssynchronization between legislative and executive power. Although PDIP maintains its strong position in parliament, this party remains outside the elected government. On the contrary, the supporting coalition of the government winning the presidential election did not have major dominance in the parliament. This condition is prone to dynamics and issues that spoil national policymaking, affecting the patterns of political strategies to elect regional heads.

The victory of Prabowo and Gibran also stemmed from significant political support from President Joko Widodo. This influence grew stronger with Gibran's role as the candidate for Vice President and Kaesang Pangarep, Jokowi's youngest son, as the General Head of Partai Solidaritas Indonesia (PSI). Gibran's involvement in this national political contest began after the issuance of Constitutional Court Decision No. 90/PUU-XXI/2023, which amended the minimum age limit for Presidential and Vice-Presidential Candidacy. This rectification also enabled Kaesang to participate in the candidacy for regional head, as asserted under MA No. 23, which allows a candidate within the minimum age requirement to participate in the candidacy, weakening the higher minimum age set out in the previous regulation.

In the 2024 regional elections that took place concurrently, "one way" or "national front" ideas began to surface. This discourse highlights the essence of shared political views between regional leaders and a state leader, allowing for more organized coordination and effective governance. This idea was initiated by several political figures arguing that regional power should be present in the national domain to support the central government. This idea marked a new direction in local political configuration, which tends to uniform powers in compliance with the national political alliance.

However, political uniformity across government levels poses a serious risk to the democratic principle and decentralization. Political uniformity is likely to eliminate pluralism and weaken space for opposition. If all regional heads are directed to support the central government, the local political dynamics will lose their diversity, opposition will no longer have a base in regional areas, and regional autonomy will turn into a mere formality. This condition indicates the shift to centralized power, where the central government expands its control to the regional level through political, legal, and administrative channels. In the long run, elite dominance will grow stronger, the political structure is getting homogenous, and electoral competition will remain procedural with the absence of a true democratic soul.

This phenomenon is similar to what took place in Turkey under the government of the Justice and Development Party (AKP). In its early years, the AKP promoted decentralization as a symbol of democratic reform and a means of aligning with European Union standards. The local governments were granted wider autonomous rights to govern local affairs. However, following the fruition of consolidating power, the policy changed course, reviving central government control. In this context, the state head no longer represents regional interests but serves more as the extension of the central government. The mechanisms of law, fiscal management, and political co-option are utilized to ensure the adherence of local elites to the central government. In such a condition, political pluralism in Turkey weakens, opposition is overlooked, and the space for democracy becomes increasingly constricted. The decentralization process initially fostered, now turns into a recentralizing instrument that shapes a more authoritarian government.

What happened in Turkey is a lesson for Indonesia regarding the 2024 Pilkada. Political

diversity may expedite coordination and improve the effectiveness of the government, but the consequences that come with it may be detrimental to democracy. When the space for opposition is closed in regional areas, non-government parties lose their bases, which are required to establish political alternatives. Local autonomy will fail to retain its substance simply because local heads tend to follow the central government, leaving pluralism as the marker of democracy eroded. In this context, the political configuration in Indonesia prior to Pilkada appeared to exhibit symptoms similar to those in Turkey, characterized by elite dominance, centralized power, and the suppression of open opposition, with a tendency to lean toward authoritarianism through the manipulation of law and politics.

Geographically, this dynamic will be more pronounced in strategic regions, including Jakarta, Central Java, Solo, Bogor, Semarang, and North Sumatra. In these areas, there is a strong likelihood of direct political contests between Koalisi Indonesia Maju (KIM), as the winner of the presidential election, and PDIP, as the party with significant legislative strength. This contest also illustrates that regional politics do not fully mirror central power, as coalition compositions at the regional level tend to be more heterogeneous.

The political configuration prior to the 2024 Pilkada suggests that general elections for regional heads involve more than just local contestation. They reflect another episode of national political contestation. The influences of national elites, the modification of law through judicial judgements, and the narration echoing uniformity of power have been the primary elements contributing to the political nuances prior to Pilkada. Therefore, the 2024 Pilkada determined leadership in regional areas and served as a vital indicator of the future course of democracy, particularly whether this democracy will become more inclusive, decentralized, or centralized, with a greater concentration of political power.

Characteristic of Supreme Court and Constitutional Court Decisions (MA No. 23 and MK No. 70)

To investigate the impact of political configuration on judicial power, this research examined the nature of MA No. 23 and MK No. 70 by analyzing *ratio decidendi* within the political context of court decision. *Ratio decidendi* features the basic judicial consideration, mirroring the independence from or submissive behavior to external and political pressures. In a democratic political configuration, the judicial decision made will tend to be more independent and transparent, prioritizing the protection of constitutional rights. On the other hand, in a more authoritarian political system, legal consideration could favor power and limit civil independence. Therefore, studying the substance and legal reasoning behind these two differing judicial decisions, as well as considering the political situation at the time the decisions were made, could reveal to what extent the political configuration has affected the independence and characteristics of judicial power.

The Characteristics of MA No. 23

The judicial decision of MA No. 23, which reviewed Article 4, paragraph (1), letter d of the General Election Commission Regulation (hereinafter referred to as PKPU) No. 9 of 2020, concerning the Fourth Amendment to PKPU No. 3 of 2017 regarding Regional Head Candidacy, sparked a wide public debate. In this court decision, the Supreme Court amended the minimum age limit for candidacy for regional head at the time of assigning candidates, contrary to the previous regulation that determined this minimum age at the time of the inauguration of elected candidates. This shift left significant impacts on political contestation in 2024, particularly because the elections took place concurrently in all regions.

From a juridical perspective, this change leads to varied interpretations because Article 7, paragraph (2), letter e of Law No. 10 of 2016 fails to explicitly elucidate whether the minimum age

limit applies at the time of assigning candidates or at the time of inauguration. Historically, neither the academic draft nor the minutes of sessions in the DPR have provided normative interpretation regarding when this minimum age limit should apply. Specifically, Laws No. 18 of 1965 to No. 10 of 2016 have not addressed this matter, indicating that it contains vagueness that requires constitutional interpretation by the Constitutional Court, rather than the Supreme Court. In this case, the Supreme Court is only authorized to test the legality of the norm in any regulations positioned lower than statutory laws, not to provide any constitutional interpretation of the statutory norm.

However, in this court decision, the Supreme Court, according to constitutional law, seemed to act *ultra vires* by constitutionally interpreting the statutory norm as above. This matter should be viewed as an issue, considering that it may establish another legal perspective that regards the Supreme Court as having the authority to set a new definition in statutory norms, whereas such authority should be vested in the executive power of the Constitutional Court, as the single institution authorized to provide constitutional interpretation.

In a political context, such a court decision is closely tied to specific interests. For instance, such an interpretation enabled Kaesang Pangarep, Joko Widodo's son, to secure the seat for regional head candidacy despite his age not yet reaching the minimum age requirement of 30 at the time of applying for candidacy. However, he would reach 30 at the time of inauguration. Such a provision has led the public to believe that this consideration was made to favor particular political and elite interests. Similarly, his elder brother, Gibran Rakabuming Raka, also gained access to the presidential candidacy through Constitutional Court Decision No. 90/PUU-XXI/2023, despite not meeting the minimum age requirement. The Constitutional Court Decision was then proven problematic because it involved a serious violation of the code of ethics in the Constitutional Court by Judge Anwar Usman, Gibran's uncle.

The family ties that involved other parties benefiting from the judge's decision, as mentioned above, as well as other actors potentially involved in the judicial institution, suggest that the political configuration approaching concurrent Pilkada 2024 seemed to provide an arena for both law and certain interests with power. The law, which should favor justice for all, has become a mere instrument to legitimize political interests. Mahfud MD once said that law was a dependent variable that was contingent upon the constellation of political power. Within an oligarchical and authoritarian political configuration, law will tend to lean more toward the stability and sustainability of certain powers.

Public responses to the Constitutional Court Decision also reflect the tension between law and people's democratic aspirations. A legal expert in constitutional law, Zainal Arifin Mochtar, argues that this decision fails to represent the principle of justice or legal certainty, but rather provides "quick services" for certain interests. He saw it as an oddity when such judicial review only took three days. On the contrary, setting the minimum age requirement justly and certainly to be applied during the inauguration will lead to uncertainty when the date of the inauguration is changed.

The demonstration involving university students and other civilians also indicates that this decision has injured substantive justice. The revision made in the Regional Head Election Law, previously intended to accommodate the Supreme Court Decision, was cancelled following public pressure and the absence of a quorum in the parliamentary enactment session. The decision of the DPR to annul the revision and the agreement of the General Election Commission, the General Election Supervisory Agency, and the government to adjust PKPU to MK No. 70 demonstrate that public voice still retains the power to influence the course of legal policy.

The MA No. 23, in this context, serves not only as a juridical document but also represents the possibility of law piracy for the sake of political interests. This problem has positioned the law as an

elitist and orthodox entity that goes in the opposite direction of the principle of progressive law, as introduced by Satjipto Rahardjo. From both legal and sociological perspectives, law should be part of a dynamic society; it should not be an instrument of legitimacy for certain interests, but rather an instrument that facilitates social change to achieve substantive justice and the continuity of democracy.

In other words, the MA No. 23 indicates distortion between law and power intertwined in a political configuration prior to the 2024 Pilkada. The law should serve as a balancing tool of power, not as a protector for elites. The persistence of such unfairness will erode substantive democracy, allowing law to lose its moral authority as the guardian of social justice.

The Characteristics of MK No. 70

The MK No. 70 represents a significant moment in the dynamics of the relationship between law and politics in Indonesia during the 2024 election year. The decision concerned a petition for judicial review of Article 7, paragraph (2), letter e of the Regional Election Law regarding the minimum age requirement for candidates for regional head and deputy regional head. In its ruling, the Court firmly rejected all the applicants' petitions and declared that the minimum age should be calculated at the time of assigning candidates.

This decision was delivered on August 20, 2024, exactly one week before the registration period for regional head candidate pairs began, which ran from August 27 to 29, 2024. This temporal context cannot be separated from the national situation at that time, when, for the first time in Indonesia's democratic history, national elections (for the President, DPR, and DPD) and regional elections were held in the same year. This situation underscored a national political configuration heavily laden with vested interests, elite polarization, and pressures from both the dominant coalition and the opposition forces.

One aspect that cannot be overlooked in this ruling is the exclusion of Constitutional Justice Anwar Usman from the judicial review and decision-delivering process. This was done due to a potential conflict of interest arising from his family ties with Kaesang Pangarep, a figure indirectly affected by the outcome of the ruling. The Constitutional Court's stance reflects an effort to uphold the principle of natural justice, namely *nemo iudex in causa sua*, which means that no one may serve as a judge in a case in which they have a personal interest.

This decision also stands as an antithesis to Constitutional Court Decision No. 90/PUU-XXI/2023, which paved the way for Gibran Rakabuming Raka, the eldest son of President Joko Widodo and elder brother of Kaesang Pangarep, to become a vice-presidential candidate. In that ruling, Anwar Usman was still involved in the court ruling process and was later found to have committed a serious ethical violation, as stated in the decision of the Constitutional Court's Ethics Council (MKMK) No. 02/MKMK/L/11/2023. Therefore, Anwar Usman's absence in MK No. 70 represents a corrective measure in response to the ethical crisis that had previously occurred.

Nevertheless, political configuration still plays a role in shaping the character of this decision. In the context of an intense election year, the Court faced pressure to demonstrate integrity and neutrality amidst sharp polarization, particularly between the Koalisi Indonesia Maju (KIM Plus) as the winner of the presidential election and the main opposition party, PDIP. The rivalry between these two blocs unfolded across many strategic regions, including Jakarta, Central Java, and North Sumatra, making the Court's decision in this case a crucial point in shaping the narrative of law and justice.

The character of this ruling may be categorized as responsive-populist. It is responsive because it takes into account public aspirations and concerns regarding the potential manipulation of law for the benefit of political dynasties. It is populist because it reflects society's desire to see the judiciary

as a bastion of substantive justice that is not subjugated to the intervention of power. In this regard, the Court appears intent on demonstrating that the law should not serve as a tool to legitimate oligarchy, but rather as an instrument for protecting the constitutional rights of citizens.

Using Gustav Radbruch's legal values approach, this ruling demonstrates a balance between the values of justice, utility, and legal certainty. The Court chose not to amend or extensively reinterpret the age requirement provision, but instead emphasized a clear and measurable procedural aspect, namely that age is calculated at the time of assigning the candidate. This reflects a commitment to legal certainty. However, in the broader socio-political context, the decision also embodies the value of justice by preventing the potential abuse of power to opportunistically boost the electability of certain figures.

Furthermore, when viewed through Ronald Dworkin's framework of thought, the judges in this case did not merely apply the law literally, but also took into account moral principles and substantive justice. The decision not to allow another new interpretation that political elites could exploit reflects a siding with the broader public interest rather than with dominant actors within the power system.

From a political perspective, the establishment of the Constitutional Court since the early reform era was intended to balance the legislative and executive powers, which are prone to the tyranny of the majority. In practice, judicial review has served as a corrective instrument against legislative products born out of compromise and political bargaining in DPR RI. Yet in reality, the Court has not been immune to pressure and intervention, both internally and externally. Hence, the character of MK No. 70 becomes an indicator of the extent to which this institution can endure as an independent body within the constitutional democracy system.

Accordingly, MK No. 70 reflects the complex relationship between law and politics in Indonesia. On the one hand, the Court seeks to uphold judicial integrity by distancing itself from conflicts of interest and direct political pressure. On the other hand, the highly competitive national political configuration continues to influence the substance and direction of its rulings, albeit in subtler and less explicit ways. This decision demonstrates that even in a politically dominant climate, the judiciary can still fulfill its role as the guardian of constitutional justice, albeit while navigating a terrain fraught with challenges and ambiguities.

Judicial Power

Indonesia, as a state governed by law, is explicitly affirmed in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution), which declares that "Indonesia is a state based on law". The direct implication of this provision is that the law stands as the highest authority within the Indonesian system of government. In other words, power in the state is not exercised by individuals, but by law itself, which places law above all forms of personal authority. Consequently, in a state governed by law, the true leader is the Constitution, not the president, monarch, or any political figure. This embodies the principle of the *rechtsstaat*, or rule of law, which stands in opposition to the concept of the *machtsstaat*, or state of power.

Within the framework of a state based on law, the principle of separation of powers, as formulated by Montesquieu, serves as a fundamental basis for regulating state authority. State power is divided into three branches: the legislative, the executive, and the judiciary. These three branches must oversee and balance one another within a system of checks and balances. As explained by Peter L. Strauss, the theory of checks and balances aims to prevent the abuse of power by any branch of government, while ensuring a balanced distribution of power in the state's functioning.

The judicial power forms part of this system and plays a vital role in upholding the law and justice. The Constitution, through Articles 24A and 24C of the 1945 Constitution, grants a clear

mandate to judicial institutions, namely the Supreme Court and the Constitutional Court, to review laws and regulations. The Supreme Court is vested with the authority to review lower regulations against statutory laws, while the Constitutional Court is empowered to review statutory laws against the 1945 Constitution. Both institutions exercise the function of judicial review within the framework prescribed by the Constitution.

In practice, judicial power sometimes confronts the interpretation and enforcement of the Constitution. For instance, in the case regarding the minimum age requirement for regional head candidates, two judicial decisions, the MA No. 23 and MK No. 70, ruled on similar cases but reached different outcomes. This divergence reflects the inherent complexity in the exercise of judicial power, particularly when it involves reviewing regulations with both political and constitutional dimensions.

David M. O'Brien, in his work *Constitutional Law and Politics*, argues that concrete constitutional review arises from disputes brought before general courts when judges doubt the constitutionality of a legal norm. In such situations, judges do not have the final authority to determine the constitutionality of the norm but may submit constitutional questions to the Constitutional Court. From this view, two key points emerge. First, the general courts serve as the initial arena for concrete review, yet they lack the authority to decide on the constitutionality of a norm. Second, judges in modern legal systems are not merely bound by the text of statutory laws but also bear an inherent responsibility to ensure that all legal processes remain consistent with the Constitution.

Therefore, the division of authority for judicial review between the Supreme Court and the Constitutional Court, as stipulated in Article 24, paragraph (2) of the 1945 Constitution, should be situated within a comprehensive constitutional framework. Within this framework, the Constitution serves as the supreme guideline, providing a benchmark for assessing the constitutionality of legal norms. From this perspective, a discourse arises suggesting that it would be more effective if the function of constitutional review were centralized in a single institution, namely the Constitutional Court, to achieve consistency and legal certainty.

Thus, the judicial power holds a vital role in ensuring that the supremacy of the Constitution remains upheld amidst the tug-of-war of interests between the branches of state power. In carrying out its duties, the judiciary must preserve its independence and objectivity while upholding the principles of substantive justice that go beyond mere formal legalism. Only by adhering to these principles can the judicial power serve as a main pillar in realizing a democratic and just state governed by law.

4. Conclusion

The influence of political configuration on the character of judicial decisions is dynamic and shaped by the surrounding power relations. Although derived from the same legal system, the character of judicial decisions may vary depending on the political context in which they arise. This is reflected in the differences between MA No. 23 and MK No. 70, both of which reviewed the provision on the minimum age requirement for regional head candidates, yet produced court decisions with different characteristics. This situation illustrates that specific political configurations can influence the nature and outcome of judicial decisions, underscoring the importance for the judicial power to maintain consistency, independence, and the supremacy of the Constitution.

To ensure a unified interpretation of the Constitution and to prevent dualism in judicial review decisions, it is necessary to simplify and centralize the authority of constitutional review in a single institution that is constitutionally mandated to preserve the purity of the 1945 Constitution, namely

the Constitutional Court. This centralization of authority aims to create legal certainty, strengthen the framework of a democratic state governed by law, and avoid potential jurisdictional conflicts between the Supreme Court and the Constitutional Court. In addition, it requires strengthening institutional ethics, transparency, and accountability in the ruling process so that the judicial power continues to serve as a pillar of justice that does not submit to political pressures.

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