

Age Limit for Regional Head Candidates and Legal Considerations from the Supreme Court Decision No. 23 P/HUM/2024 and Constitutional Court Decision No. 70/PUU-XXII/2024

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ABSTRACT

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Purpose of the Study: This research aims to analyze the legal consideration that influence differences in a Supreme Court Decision and a Constitutional Court Decision in the Regional Head Election process in 2024, and these decisions' implications on the age limit for regional head candidates in the 2024 regional general election in creating checks and balances in the government.

Final Revision:	<p>Methodology: This research utilizes the normative legal research method with the jurisprudential approach, statute approach, conceptual approach, and analytical approach. The data were descriptively analyzed to obtain the research results on the interpretation of age limits for regional head candidates in the 2024 regional general election in the two decisions, namely the Decision of the Supreme Court No. 23P/HUM/2024 and the Decision of the Constitutional Court No. 70/PUU-XXII/2024. These differences led to a lack of legal certainty and a misalignment with the general principle of good governance that is in line with the checks and balances principle in the government.</p>
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Corresponding Author: Sarjiyati & sarjiyati@unmer-madiun.ac.id	<p>Results: The Decision of the Supreme Court No. 23P/HUM/2024 determines that the age limit for regional head candidates is calculated since the inauguration, while the Decision of the Constitutional Court No. 70/PUU-XXII/2024 regulates that it is calculated since the determination of candidate pairs. Such differences led to a lack of legal certainty, which impacts the implementation of the 2024 Regional Head Election. The legal implications are that these differences may potentially disturb the democratic and political participation processes, especially for the younger generation. The 2024 Regional Head Election applied the Decision of the Constitutional Court No. 70/PUU-XXII/2024, which regulates that the minimum age of regional head candidates is 30 years old for candidate governors and candidate vice governors, and a minimum of 25 years old for candidate regents, candidate vice regents, candidate mayors, and candidate vice mayors. This is calculated since the determination of candidate pairs, as they have passed the stages of the 2024 Regional Head Election.</p> <p>Applications of this Study: The state institution and the government are expected to be more careful when issuing interpretations through decisions that equally have final, binding, and <i>erga omnes</i> characteristics to prevent the occurrence of a lack of legal certainty. There should be efforts to align regulations to prevent legal dualism, which may lead to conflicts and issues in society.</p> <p>Novelty/Originality of this Study: It provides an analysis of the Decision of the Supreme Court No. 23P/HUM/2024 and the Decision of the Constitutional Court No. 70/PUU-XXII/2024 on the age limit for regional head candidates and the implications of these decisions in creating governmental checks and balances.</p> <p>Keywords: <i>Decision, age limit, regional head election, checks and balances.</i></p> <p>ABSTRAK</p> <p>Tujuan Penelitian: <i>Penelitian ini bertujuan untuk mengetahui perbandingan pertimbangan hukum yang mempengaruhi perbedaan</i></p>

dalam putusan Mahkamah Agung dan Mahkamah Konstitusi dalam proses Pemilihan Kepala Daerah tahun 2024 dan implikasi putusan Mahkamah Agung dan Mahkamah Konstitusi dalam ambang batas usia calon kepala daerah pada Pemilihan Kepala Daerah tahun 2024 dalam menciptakan checks and balances di pemerintahan.

Metode: Penelitian ini menggunakan metode penelitian hukum normatif dengan menggunakan pendekatan yurisprudensi, pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan analisis. Data dianalisis secara deskriptif hingga diperoleh hasil penelitian bahwa perbedaan pada kedua putusan, baik Putusan Mahkamah Agung Nomor 23P/HUM/2024 dan Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024, dalam penafsiran ambang batas usia calon kepala daerah tahun 2024 berakibat pada ketidakpastian hukum dan ketidaksesuaian dengan asas umum pemerintahan yang baik yang sejalan dengan prinsip checks and balances pemerintahan.

Hasil penelitian: Putusan Mahkamah Agung Nomor 23 P/HUM/2024 menetapkan bahwa usia calon kepala daerah dihitung sejak pelantikan, sedangkan Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024 menyatakan bahwa usia dihitung sejak penetapan pasangan calon. Perbedaan ini menciptakan ketidakpastian hukum yang berdampak pada pelaksanaan Pilkada 2024. Kedua lembaga memiliki argumen hukum dan ada implikasi dari putusan tersebut terhadap sistem checks and balances dalam pemerintahan. Perbedaan pandangan antara Mahkamah Agung dan Mahkamah Konstitusi tidak hanya mencerminkan ketidakpastian hukum, tetapi juga berpotensi mengganggu proses demokrasi dan partisipasi politik, terutama bagi generasi muda. Pelaksanaan Pilkada tahun 2024 menggunakan Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024, yang mengatur bahwa usia calon kepala daerah yaitu paling rendah 30 tahun untuk calon gubernur dan wakil gubernur, dan usia paling rendah 25 tahun untuk calon bupati dan wakil bupati serta calon walikota dan wakil walikota, yang dalam hal ini dihitung sejak penetapan pasangan calon karena telah melewati tahapan-tahapan Pilkada 2024.

Penerapan Penelitian: Lembaga Negara dan Pemerintah diharapkan lebih teliti dalam menerbitkan penafsiran melalui putusan yang sama-sama bersifat final, mengikat, dan erga omnes, sehingga tidak terjadi adanya ketidakpastian hukum. Diharapkan adanya upaya harmonisasi peraturan untuk mencegah adanya dualism hukum, yang dapat menimbulkan konflik dan merugikan masyarakat.

Kebaruan/Orisinalitas: Penelitian ini menelaah Putusan Mahkamah Agung Nomor 23P/HUM/2024 dan Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024 terkait ambang batas usia calon kepala daerah dan implikasi dari Putusan Mahkamah Agung Nomor

23P/HUM/2024 dan Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024 dalam menciptakan checks and balances di pemerintahan.

Kata Kunci: *Putusan, ambang batas usia, pemilihan kepala daerah, checks and balances.*

INTRODUCTION

The formation of a deliberation institution and a representative institution is crucial to achieve the idea of people's sovereignty, as they allow the formation of policies that are discussed through the deliberation and representation methods (Rohmah, 2023). These institutions' members must be appointed through a general election that is organized in a democratic and transparent manner to ensure that the principle of people's sovereignty is applied according to the spirit of constitutional democracy. The creation of people's sovereignty in its practice through democracy happens in the state of Indonesia, a state that applies the Constitutional Democracy system (Antara & Wulandari, 2024). Democracy is a governmental system where political power is in the hands of the people who have the right to participate in the making of political decisions, either directly or through the chosen representatives (Ulfiyyati, Muhamad, Barri, & Akbari, 2023).

The Regional Head Election is a manifestation of the people's sovereignty principle that is hoped to reflect the development and maturity of a state's democratic system. It serves as a crucial instrument in democracy, as it becomes one of the direct manifestations of people's sovereignty, where the people have the right to elect and be elected in a political process (Sanmas, 2024).

The Regional Head Election process acts as a platform for the implementation of human rights, especially the right to elect and be elected, which is regulated in Article 43 of Law No. 39 of 1999 on Human Rights. This law states that every citizen has the right to elect and be elected in the general election based on the equality of rights through a voting system which is direct, general, free, confidential, honest, and just according to the stipulations of legal regulations. This is in line with Article 18 clause (4) of the Republic of Indonesia's 1945 Constitution, which regulates that as heads of regional governments at the provincial, regency, and city levels, governors, regents, and mayors must be elected through a democratic method.

The Supreme Court and the Constitutional Court show differences in how they interpret the age limit for regional head candidates in the 2024 regional general election, which is a

serious issue. In the development of Indonesia's democracy, especially before the simultaneous Regional General Election of 2024, there was a legal debate on the age limit for regional head candidates (Ruhenda, Heldi, Mustapa, & Septiadi, 2020). This was shown by the decisions of the two highest justice institutions in Indonesia, which had different interpretations, namely the Decision of the Supreme Court No. 23P/HUM/2024 issued May 29th, 2024, and the Decision of the Constitutional Court No. 70/PUU-XXII/2024 issued August 20th, 2024.

This was strengthened with the existence of the "Emergency Warning" phenomenon, which went viral in social media in 2024, increasing public awareness on the importance of the Constitutional Court's decisions in the political realm. According to the data which were collected through users' observation over social media sites, such as Instagram, Twitter (X), Facebook, it was seen that users consistently used the symbol of a blue Garuda (a mythical eagle, the national animal of Indonesia) and the hashtag "Emergency Warning" to express their concerns over the possibility of deviations in the implementation of Constitutional Court's decisions.

This was because on August 21st, 2024, the Legislative House initiated the agreement of a Regional General Election Bill, which was in line with the Decision of the Supreme Court No. 23P/HUM/2024, violating the content of the Decision of the Constitutional Court No. 70/PUU-XXII/2024 in less than 24 (twenty-four) hours. The support for this movement came from the general public as well as public figures, activists, and academicians who actively participated in the campaign. The spirit of nationalism can clearly be seen in the "Emergency Warning of the Blue Garuda" movement involving various elements from society, including university students, activists, and public figures.

The phenomenon of this decision dualism leads to the emergence of a basic question on the legal harmonization and legal certainty in Indonesia's state administrative system (Wijaya, 2023). The principle of legal certainty is one of the main pillars in a legal state whose fulfillment must be guaranteed. The Indonesian state's perspective on the separation of power system was based on Montesquieu's *trias politica* concept (Asshiddiqie, 2006). Thus, in terms of its governmental definition, the Indonesian state must have a structural separation. The original objective of the separation of powers system was to create harmony between institutions through the checks and balances system. The 1945 Constitution has explained the mechanism and authority of each institution both vertically and horizontally (Ursipuny, 2024). The checks and balances mechanism is an important prerequisite in a democratic state to prevent the misuse

of power and guarantee the implementation of the people's sovereignty principle (Andiraharja, 2021).

The checks and balances principle is a principle of state administration which desires that the legislative, executive, and judicative powers have the same degree in controlling one another (Asshidique, 2021). Thus, the constitutional law concept, according to Mahfud MD, reflects the balance between the principles of democracy and justice, with special attention to the protection of citizen rights and the strengthening of state institutions (Romadhon, 2024). As judicative institutions, the Constitutional Court and the Supreme Court have different authorities. The Constitutional Court has the authority to review laws against the Constitution, while the Supreme Court focuses on laws under the Constitution. Both of these institutions balance each other in preventing arbitrary interpretation that may lead to a lack of legal certainty, which becomes a challenge in the government's checks and balances principle, as well as society's beliefs in the application of the good governance system in the governmental system.

In making decisions, judges must consider the general principles of good governance, which is regulated in Article 10 of Law No. 30 of 2014 on the Governmental Administration, especially the principle of non-partiality and the principle of public interest. The principle of non-partiality states that every decision and actions carried out by the government must be conducted without siding with a certain interest, including the interest of individuals and groups. Meanwhile, the public interest principle states that to reach the goal of a clean government without partiality, there is a need for the public interest principle. With the public interest principle, all decisions will prioritize society's interest before other interests (Zaidan, Nugraha, & Gusthomi, 2024). By comparing these decisions, one can find the differences, similarities, and needs for improvement to increase the legal effectiveness in handling different interpretations that lead to a lack of legal certainty. Therefore, legal certainty creates transparency in the governmental process, guaranteeing that the actions the government carries out can be seen and understood by the government (Febriant, Diyanti, & Absor, 2024).

Some previous research papers were relevant to this research. The first was written by Maryadi, Irwansyah, Putri, and Saputra, (2024), entitled, "*Analisis Framing Pada Pemberitaan Putusan MA Nomor 23 P/HUM/2024 Tentang Batas Usia Calon Kepala Daerah di Media Online Detik.com* (A Framing Analysis of News Reports Regarding the Supreme Court Decision No. 23 P/HUM/2024 on the Age Limit of Candidate Regional Heads in Detik.com Online Media)". It concluded that Detik.com presented neutral and factual information on the

Supreme Court Decision, and the framing did not show a significant bias which corners a certain party (Maryadi, Irwansyah, Putri, & Saputra, 2024). This reflects that Detik.com gives accurate and complete information to the public (Aryanti, Haryono, & Genua, 2022).

Research from Azhumatkhan and Firmansyah (2024), entitled “*Reflections on Supreme Court Decision No. 23 P/HUM/2024: The Escalation of Political Judicialization and Judicial Politicization in Norm Testing*”, which concludes that the Supreme Court Decision indicates the existence of an issue, where the legal considerations that the Supreme Court used are deemed inadequate. It is even deemed to be beyond its authority. This makes the legal review divided between the Supreme Court and the Constitutional Court, which may potentially lead to a lack of sustainable legal certainty. Thus, it integrates the review process of the legal regulation through an institution of judicial power, namely the *grundgesetz* Constitutional Court (Azhumatkhan & Firmansyah, 2024).

Another previous research was written by Kurniawan (2024), with the title “*Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 70/PUU-XXII/2024 Tentang Syarat Usia Calon Kepala Daerah* (A Juridical Analysis of the Constitutional Court Decision No. 70/PUU-XXII/2024 on the Age Limit of Candidate Regional Heads)”. It concludes that the Decision Order of the Constitutional Court No. 70/PUU-XXII/2024 judges the rejection of the Plaintiffs’ provision application. In this case, the decision of the Constitutional Court has constitutional characteristics. As is commonly known, the constitutional characteristic is *die geschriben verfassung* in a written form and is in essence *rechtsverfassung* as *grundgesetz* (Kurniawan, 2024).

This research has conceptual and methodological advancements compared to previous research articles, which discuss the age limit requirement of candidate regional heads and only analyze from the perspective of one decision, either the Constitutional Court Decision or the Supreme Court Decision, without comparing the decisions of both institutions. Meanwhile, this research is the first study that simultaneously compares the Decision of the Supreme Court No. 23P/HUM/2024 and the Decision of the Constitutional Court No. 70/PUU-XXII/2024.

Based on the background above, the authors formulate the following research problems: (1) What is the comparison of legal considerations that influence the differences between the age limit in the Supreme Court Decision and the Constitutional Court Decision in the 2024 Regional Head Election process? (2) What are the legal consequences of the Supreme Court Decision

and the Constitutional Court Decision on the age limit of Regional Head candidates in the 2024 Regional Head Election in creating checks and balances in the government?

RESEARCH METHOD

This was normative legal research, which was a process to find legal regulations, legal principles, and legal doctrines to answer the legal issues being faced. The approaches used were the jurisprudential approach, the statute approach, the conceptual approach, and the analytical approach (Marzuki, 2018).

The jurisprudential approach was used to emphasize that judicial decisions, court decisions, as well as the law enforcement practices, as interpreted by judicial institutions, have a crucial role as a source and material of analysis in this research. With this approach, researchers not only analyzed written norms, but also analyzed how these norms were applied, interpreted, and formed in court decisions as well as how these decisions then became a footstep in the formation of laws (*rechtsvinding*) (Nahrowi & Ali, 2024).

Next, the statute approach emphasizes an analysis of written norms (laws, governmental regulations, regional regulations, and hierarchies of legal regulations) as the main materials of legal research. In normative research, researchers analyze the normative consistency, hierarchy, and harmony, as well as the implementation of legal stipulations (Rohman, Mu'minin, Masuwd, & Elihami, 2024).

The conceptual approach was used to discover and analyze legal concepts, doctrines, principles, and theories that become the basis for legal practices and norms. This approach has theoretical and abstract characteristics, focusing attention on the definition of terms, *ratio legis*, ontology of norms, and conceptual argumentation in legal studies (Smradhana, 2024). With this approach, researchers often analyze the relevant perspectives of experts, legal doctrines, normative logics, and theoretical framework to build the argumentation or conceptual model that become the basis to resolve legal issues (Hanifah & Adil, 2025).

The analytical approach refers to strategies in conducting a comprehensive analysis of legal materials (including norms, concepts, doctrines, or decisions), by using analytical logic. This approach can be deemed as a stage that completes the conceptual and statute approaches, where, after the researchers collected the data and theoretical framework, they analyzed them in a critical, systematic, and structural manner to yield research results (Rizkia & Fardiansyah, 2025).

To collect legal materials in normative legal research, the authors conducted literary studies on primary, secondary, and tertiary materials (Nugroho, Haryani, & Farkhani, 2020). They were analyzed based on judicial decisions in this research, namely Decision of the Supreme Court No. 23P/HUM/2024 and Decision of the Constitutional Court No. 70/PUU-XXII/2024 and their impacts on society (Diantha, 2016).

RESULTS & DISCUSSION

The Comparison of Legal Considerations that Influence the Differences Between the Age Limit in the Supreme Court Decision and the Constitutional Court Decision in the 2024 Regional Head Election Process

Legal bases allow the good manifestation of a country's involvement. Legal basis encompasses a series of regulations that have been determined to achieve a goal that is written in the constitution. This constitution regulates political systems from the results of the formation of a country's government, which is inserted in the law as a written document that contains regulations and principles of political and legal entities (Novianti & Munawaroh, 2025). The internal relationship between the legal state and democracy happens because the legal state desires the democratic mechanism, which allows the application of rational and objective legal regulations through the public deliberation process (Huda, 2007).

Differences in the scope of reviewing authority between the Supreme Court and the Constitutional Court lead to significant legal complexities in society. This happens when legal regulations do not directly conflict with regulations at the same level, but conflict with those of a higher hierarchy. With the existence of procedural violations and biases in the justice system, this decision leads to serious concerns about the conflict of interest in the Constitutional Court (Rizky, Yuhermasyah, & Umur, 2024).

The comparison between the two decisions, i.e., Decision of the Supreme Court No. 23P/HUM/2024 and Decision of the Constitutional Court No. 70/PUU-XXII/2024, shows the existence of an issue regarding differences in interpreting the age limit for regional head candidates in the regional general election in 2024. It can be described as follows:

1. Decision of the Supreme Court No. 23P/HUM/2024

This plea was filed by Ahmad Ridha Sabana as the General Chairperson and Yohanna Murtika as the Secretary General, who represented *Partai Garda Republik Indonesia/Partai Garuda* (The Party of the Republic of Indonesia's Vanguard/The

Garuda Party), which gave power to M. Malik Ibrohim, S.H., M.H., of Indonesian citizenship, an advocate from the Malik Iskandar & Co Legal Office, which is located in Central Jakarta, based on the Special Power of Attorney dated April 19th, 2024, hereinafter called the Petitioner. The Defendant was the General Election Commission.

The issue in this decision was that the Petitioner, with his application letter issued on April 22nd, 2024, which was accepted by the Committee of the Supreme Court on April 22nd, 2024 and registered with the Number 23 P/HUM/2024, has filed an objection request for judicial review of the General Election Commission Regulation No. 9 of 2020 on the Fourth Amendment of the General Election Commission Regulation No. 3 of 2017 on the Candidate Nomination for the Election of Governors and Vice Governors, Regents and Vice Regents, and/or Mayors and Vice Mayors (General Election Commission Regulation No. 9 of 2020).

The authority to conduct material review over legal regulations under the law has been regulated in Article 1 number 1 of the Regulation of the Republic of Indonesia's Supreme Court No. 1 of 2011 on the Rights to Material Review, stating that Rights to Material Review are in the hands of the Supreme Court. The Supreme Court has the authority to assess the material content of legal regulations under the law against legal regulations of a higher hierarchy.

The material review application, which was submitted in this plea, was the review of the General Election Commission Regulation No. 9 of 2020 due to reasons and objections over the stipulations contained in General Election Commission Regulation No. 9 of 2020 which in *a quo* conflicts with regulations of a higher status, i.e., Law No. 10 of 2016 on the Second Amendment of Law No. 1 of 2015 on the Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors in Becoming Law.

Article 4 clause (1) of the General Election Commission Regulation No. 9 of 2020 stipulates:

“Indonesian citizens can become Governors and Vice Governors, Regents and Vice Regents, and/or Mayors and Vice Mayors by fulfilling the age limit of at least 30 (thirty) years for Candidate Governors and Vice Governors and 25 (twenty-five) for Regents and Vice Regents or Mayors and Vice Mayors, calculated since the determination of candidate pairs.”

Meanwhile, Article 7 clause (2) letter e of Law No. 10 of 2016 on the Second Amendment of Law No. 1 of 2015 on the Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors in Becoming Law states:

“Governors and Vice Governors, Regents and Vice Regents, and/or Mayors and Vice Mayors must fulfill the requirement of having the age of at least 30 (thirty) years for Candidate Governors and Vice Governors and 25 (twenty-five) for Regents and Vice Regents or Mayors and Vice Mayors.”

This decision provides no explanations, and there is no mention of “calculated since the determination of candidate pairs.” This can be understood, considering that there are stages in establishing the election of regional heads. In other words, the requirement of minimum age is not calculated since the determination of candidate pairs. There is no information on when or at what stage the age limit for Governors and Vice Governors, as well as Regents and Vice Regents, and/or Mayors and Vice Mayors must be fulfilled, opening room in giving a clear definition on when that age must be fulfilled by Candidate Regional Heads. That Supreme Court Decision No. 23 P/HUM/2024 also regulates:

“The age limit should be determined during the inauguration as elected candidate pairs. The determination of the age limit during the inauguration is relevant and simultaneously eliminates antinomies and conflicts of norms. The application of minimum age limits during the inauguration provides a better guarantee of legal certainty and justice. Apart from that, the determination of minimum age limits during the inauguration provides a better guarantee of the fulfilment of benefits for Applicants, other political parties, and society in general.”

The Supreme Court Decision No. 23 P/HUM/2024 explains that the Supreme Court opines that the age limit is calculated since the inauguration of the chosen candidate pairs. The application of the age limit during the inauguration is a middle ground to fulfill the principle of equal treatment in the face of law, the principle of the same opportunities in the government, the principle of a guarantee of protection against discriminative actions, as well as manifesting a just legal certainty.

2. Constitutional Court Decision No. 70/PUU-XXII/2024

This application was submitted by Fahrur Rozi as Petitioner I and Anthony Lee as Petitioner II, based on the Special Power of Attorney dated June 10th, 2024, which gave power to Abdul Hakim, S.H., M.H., Abdul Hamid, S.H., M.H., Sipghotulloh Mujaddidi, S.H., M.H., Muhammad Zainul Arifin, S.H., M.H., Muhammad Abdul Kholiq Suhri,

S.H., M.H., Bionda Anggara, S.E., S.H., M.H., Medioni Anggari, S.H., M.M, and Moh. Qusyairi, S.H., M.H., as advocates and legal consultants in the LAW OFFICE FIRMA ANH, where both, namely Petitioner I and Petitioner II are collectively called the Petitioners.

The case in the Constitutional Court Decision was that the Petitioners have filed an application dated June 11th, 2024, which was accepted by the Constitutional Court Committee dated June 11th, 2024 based on the Petitioners' Application Submission Deed No. 69/PUU/PAN.MK/AP3/06/2024 and has been recorded in the Electronic Constitutional Case Registration Book (*Buku Registrasi Perkara Konstitusi Elektronik/e-BRPK*) No. 70/PUU-XXII/2024 dated July 4th, 2024, which has been corrected and accepted in the Court Clerk's Office on July 25th, 2024.

This decision contains differences in the application of the stipulations of norms in Article 7 clause (2) e of Law No. 10 of 2016, which has clearly led to a lack of democratic characteristics in the organization process of the 2024 Regional Head Election. Therefore, the constitutionality rights of the Petitioners to obtain a democratic organization of the Regional Head Election with legal certainty as guaranteed in Article 18 clause (4) and Article 28D clause (1) of the 1945 Constitution has been factually violated. This is because the norms in the examined *a quo* article did not clearly regulate the "calculation mechanism" on the minimum age limit of regional heads, leading to the different application of norms on prospective contestants.

Based on the main argument of the petition in the Constitutional Court Decision No. 70/PUU-XXII/2024, it is stated that:

"Regarding the lack of legal certainty which exists in the *a quo* article, it has actually been translated by the General Election Commission into "since the determination of candidate pairs" (vide Article 4 clause (1) letter d of the General Election Commission Regulation No. 9 of 2020). However, regarding the emergence of a lawsuit against Article 4 clause (1) letter d of the General Election Commission Regulation No. 9 of 2020, which was filed by the Garuda Party, the Supreme Court then provided a new definition to that reviewed article in Decision No. 23 P/HUM/2023. In essence, it states that the stipulations of minimum age for regional head candidates, which exist in the *a quo* article is calculated since the inauguration, rather than before the determination of regional head candidates. Even so, the Petitioners suggested that the Supreme Court Decision still failed to resolve the issue of legal uncertainty which exists in the *a quo* article, which may harm the rights of Petitioners as voters in the 2024 Regional Head Election."

Legal considerations of the *a quo* Constitutional Court Decision state that the aforementioned requirement must be fulfilled in the nomination process, which culminates in the candidate determination. In legal consideration (3.16.4), the Constitutional Court states as follows:

“Regarding the legal consideration as described in sub-paragraphs [3.16.1], [3.16.2], and [3.16.3] above, as organizers, the General Election Commission determines the minimum age limit of Regional Head and Vice Regional Head Candidates according to the minimum age limit regulated in the law. Regarding this, it is important for the court to emphasize that the point or limit in determining the aforementioned age limit is carried out during the candidacy process, which culminates on the determination of Regional Head and and Vice Regional Head Candidates. Regarding this, in its position as organizers, if the General Election Commission requires technical regulations to establish materials in the norms of Article 7 clause (2) letter e of Law No. 10 of 2016, the aforementioned technical regulations were made according to the materials in the *a quo* norms. Not only that, according to the *erga omnes* principle, legal considerations and the Court’s definition of Article 7 clause (2) letter e of Law No. 10 of 2016 binds all organizers, election contestants, and all citizens. Therefore, if organizers fail to follow the considerations in the *a quo* decision of the Court as the judicial power with the authority to resolve disputes on election results, Regional Head and Vice Regional Head Candidates who fail to fulfill the aforementioned requirements and conditions may potentially be deemed invalid by the Court.”

This Constitutional Court decision is based on the opinion that the age limit applies since the determination of candidate pairs. This is because it is necessary to firstly explain the stipulations of Article 7 clause (1) of Law No. 10 of 2016, which in essence regulates the rights to obtain the opportunity to nominate oneself or to be nominated in the regional head election contestation. In this case, the Petitioners wished to give a special emphasis on the phrase “to nominate oneself or to be nominated, which means that the process to become a candidate or to be determined as a regional head candidate is interpreted to be calculated since the determination of candidates. This is because it is still within the same stage framework, namely the nomination stage.

The difference in the perspectives of the Constitutional Court and Supreme Court in making a decision regarding the age limit requirement of pairs of regional head candidates have led to a dualism in legal norms that leads to a lack of legal certainty.

Therefore, the Supreme Court opines that the age calculation for government officers or state administrators, including regional head candidates, must be calculated since the inauguration date or immediately after their status as candidates ends. This includes candidates who register as regional heads, regional head candidate pairs, as well as elected regional head candidates, especially in accommodating the opportunity for the youth to participate in building the nation and the state (Sugitanata, 2023).

This is different from the perspective of the Constitutional Court, which determines that the calculation of the minimum age for regional head candidate pairs is “calculated since the determination of candidate pairs.” This is because in its current practice, at least since the direct election of regional heads and vice regional heads by the people, the limit for the fulfillment of the requirement is determined at the stage of determining the pairs of regional heads and vice regional heads (Adji, Mau, & Candra, 2024). Empirical facts show that the determination of the requirement fulfillment is calculated/determined during that stage and can be analyzed from the series of implementation stages that have been carried out by the regional head election organizers so far. The decisions of both the Constitutional Court and the Supreme Court are court decisions which have the *final*, *binding*, and *erga omnes* characteristics that must be complied with by the *addresat* of the Decision. Thus, the different perspectives between the Constitutional Court Decision and the Supreme Court Decision leads to legal uncertainty and directly impacts legal politics on the determination of candidate regional heads’ minimum age limit. In terms of its hierarchy in legal regulations, the Constitutional Court Decision must be applied as the Constitutional Court has the authority to review the law against the 1945 Constitution (Fiqih, Widodo, & Firdaus, 2024).

Legal Consequences of the Supreme Court Decision and the Constitutional Court Decision on the Age Limit of Candidate Regional Heads in the 2024 Regional Head Election in Creating Checks and Balances in the Government

As a legal state, Indonesia embraces the principle of people’s sovereignty that is guaranteed by the constitution. This has two essences: (1) the rule of law concept, which states that the authority of law overcomes the state power and controls politics rather than vice versa, and (2) the concept of guaranteeing citizens’ civil rights by the constitution, and is protected by the state and the government. Apart from that, the power of state administrators is limited by the constitution (Lina & Aji, 2024). This decision brings significant implications towards the

selection process of presidential and vice-presidential candidates and the democracy in Indonesia. The application of this law actually has the goal of giving the younger generation the chance to participate in politics (Agatha & Frangky, 2024).

Decision of the Supreme Court No. 23P/HUM/2024 and Decision of the Constitutional Court No. 70/PUU-XXII/2024 bring significant implications on the age limit of regional head candidates in the 2024 Regional General Election. This is supported by the actions of the Republic of Indonesia's Legislative House, which rejects the Decision of the Constitutional Court No. 70/PUU-XXII/2024, which determines that the age limit requirement of regional head candidates is calculated since the determination of candidate pairs, rather than during the inauguration. This rejection is deemed as an effect of neglecting the principles of justice and integrity in the regional head election, which may potentially disturb the effectiveness of the regional government (Febriant et al., 2024). This Supreme Court Decision not only revoked the phrase "calculated since the determination of candidate pairs" in the related General Election Commission Regulation, but also created a new legal norm with the phrase "calculated since the inauguration of candidate pairs". This happens even though, in the context of open legal policies, stipulations on the age limit requirement of regional head candidate pairs should become the authority of lawmakers. Meanwhile, Decision of the Constitutional Court No. 70/PUU-XXII/2024 rejects the application of the Petitioners. Thus, the phrase "since the determination of candidate pairs" stays.

Further regulations are stipulated in Article 5 clause (3) of Law No. 8 of 2015 on the Amendment of Law No. 1 of 2015 on the Determination of the Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors in Becoming Law, which determines the stages in organizing regional head and vice regional head elections as follows:

- a. An announcement of the registration of governor and vice governor candidate pairs, regent and vice regent candidate pairs, as well as mayor and vice mayor candidate pairs;
- b. The registration of governor and vice governor candidate pairs, regent and vice regent candidate pairs, as well as mayor and vice mayor candidate pairs;
- c. Research on the requirements for governor and vice governor candidate pairs, regent and vice regent candidate pairs, as well as mayor and vice mayor candidate pairs;
- d. Determination of governor and vice governor candidate pairs, regent and vice regent candidate pairs, as well as mayor and vice mayor candidate pairs;
- e. Campaign implementation;
- f. Voting implementation;

- g. Vote counting and recapitulation of vote counting results;
- h. Determination of chosen candidates;
- i. The resolution of violations and disputes on election results; and
- j. Proposal for the ratification of the chosen candidates' election.

The determination of the Open Legal Policy in the Constitutional Court often declares that some legal norms are open legal policies, meaning that lawmakers have discretion in formulating these policies. Thus, these two decisions influence the creation of the checks and balances system in the government, especially in the process of electing and monitoring regional head candidates. These three branches of power have a highly central role. Thus, the checks and balances concept is hoped to become a filter in the government. This concept also allows that the power is not concentrated in a certain institution. This principle creates a balance in the three branches of power, namely the legislative, executive, and judicative institutions (Ernawan, Utomo, & Hannaningdyah, 2024).

The application of the checks and balances system is key to creating a just government. It also plays a crucial role in protecting human rights. By applying this function, it is hoped that the interests of all societal members may be protected and there is no discriminations that happen against certain groups (Andiraharja, 2021). In the context of the regional head election, legal politics encompasses legal aspects that are related to the regulations on the election and the requirements of candidates. In the case of the democratic system, this regulation must reflect the principles of justice and equality. However, the law is often influenced by political interests and power that may influence its implementation and enforcement.

In essence, the principle of the form of government demands the existence of citizen or community participation in arranging the actions of the state (Febriansah, 2024). In this case, the state administration system must pay attention to the principles of good governance. From the perspective of good governance, these decisions must be perceived as part of the efforts in increasing the quality of the regional governments' administration. The correct regulation on the age limit may encourage the formation of a leadership that is more accountable, transparent, and responsive towards society's needs (Prayoga, 2024). The checks and balances system guarantees that the three branches of power, namely the legislative, executive, and judicial powers, stand equally and monitor one another. This is to prevent the occurrence of the misuse of power (Herlinanur, Pangestoeti, & Putra, 2024).

Even though this may create uncertainty in the short term, it guarantees that regulations are still consistent with constitutional principles and citizens' human rights. Different

perspectives regarding the norms on the calculation of the minimum age limit between the Decision of the Supreme Court No. 23P/HUM/2024 and the Decision of the Constitutional Court No. 70/PUU-XXII/2024 have created legal uncertainty. Legal uncertainty impacts the implementation of the decision execution by the Petitioners. This decision leads to debates and additional interpretations on the binding power and compliance with court decisions. This is not a method to resolve debates and interpretations on the minimum age of regional head candidate pairs (Maulidi, 2017). However, there is a need for a better legal harmonization on different legal regulations on the requirements of regional head candidates, so that the Regional Head Election in 2024 may run in smoothly and safely. According to Maria Farida Indrati, an expert in the sector of legal regulation formulation, it is stated that the regulation harmonization process is crucial to maintain consistency in the legal system (Tanthowi, Herlindah, & Abioso, 2024).

The vertical and horizontal harmonization must be carried out to make sure that the lower-level regulations are according to those of a higher hierarchy. It is also to make sure that there are no conflicts between regulations of the same level. There is an emphasis on the importance of ministerial regulations that comply with laws and governmental regulations that became the legal basis. In this case, in line with legal regulations which explain that “hierarchy”, i.e., the level of each legal regulation that is based on the *lex superior derogat legi inferiori* principle. It means that laws (legal norms/regulations) of a higher level annul the validity of laws (legal norms/regulations) of a lower level (Irfani, 2020). Thus, it is a principle that lower-level laws cannot violate higher-level laws.

This principle was adopted from the theory of Hans Kelsen on the level of legal norms (*Stufen Theory*), which was then developed by his student, Hans Nawiasky (*Theory van Stufenaufbau der Rechtsordnung*) (Natabaya, 2008). Thus, according to the theory of the hierarchy of norms (*stufen theory*), lower-level norms cannot violate higher-level norms or *lex superiori derogat legi inferiori*. In the end, the implementation of the 2024 Regional Head Election utilizes the Decision of the Constitutional Court No. 70/PUU-XXII/2024, which regulates that the age limit is at least 30 (thirty) years for Governor and Vice Governor candidates and 25 (twenty-five) for Regent and Vice Regent candidates or Mayor and Vice Mayor candidates, which is calculated since the determination of candidate pairs, as they have passed the stages of the 2024 Regional Head Election.

CONCLUSION

Based on the results and discussion of the research as described above, it can be concluded that the differences in the interpretation between the Supreme Court and the Constitutional Court in calculating the minimum age limit for regional head candidates in the 2024 Regional Head Election have led to legal dualism. Through Decision No. 23 P/HUM/2024, the Supreme Court has determined the age limit, calculated from the inauguration, with the consideration of the equality of law and opportunities for the youth. Meanwhile, the Constitutional Court, through Decision No. 70/PUU-XXII/2024, has determined that the calculation is carried out since the determination of candidate pairs based on the empirical practices of the Regional Head Election so far.

This research offers a scientific contribution, such as a theoretical contribution, that maps the interpretative relationship between the authority to test regulations by the Supreme Court and the Constitutional Court. It also provides a doctrinal contribution, such as a comparative analysis between the legal considerations of the Supreme Court and the Constitutional Court in the legal sector of general elections. Moreover, it contributes to policies by recommending the formulation of concrete norms to prevent a conflict of interpretation between the Supreme Court and the Constitutional Court in making decisions, especially in the sector of general elections to create a checks and balance system in the government.

Concerning the legal impacts of the Supreme Court and the Constitutional Court Decisions on the age limit of regional head candidates in the 2024 Regional Head Election in creating a checks and balances system in the government, the Decision of the Supreme Court No. 23P/HUM/2024 and the Decision of the Constitutional Court No. 70/PUU-XXII/2024 on the minimum age limit for regional head candidates bring significant implications to the checks and balances system in the government. Even though these two decisions bring legal uncertainty in the short-term, they actually make sure that the regulations stay consistent with the principles of constitutionality and human rights of citizens. To maintain legal certainty and the smooth organization of the 2024 Regional Head Election, there is a need for better legal harmonization between legal regulations. According to the theory of the hierarchy of norms, in the end, the implementation of the 2024 Regional Head Election utilizes the Decision of the Constitutional Court No. 70/PUU-XXII/2024, which regulates that the age limit is at least 30 (thirty) years for Governor and Vice Governor candidates and 25 (twenty-five) for Regent and Vice Regent

candidates or Mayor and Vice Mayor candidates, which is calculated since the determination of candidate pairs, as they have passed the stages of the 2024 Regional Head Election.

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