

LEGAL ACTION AGAINST THE DECISION OF THE CONSTITUTIONAL COURT

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Abstract

Legal remedies are measures provided by law to individuals or legal entities for specific purposes to challenge a court ruling as a means for parties dissatisfied with a court ruling deemed inconsistent with their wishes, failing to meet the standards of justice, as judges are also human beings who may make errors or omissions, thereby rendering an incorrect decision or favouring one party over another. Decisions of the Constitutional Court have a special characteristic, namely they are final and binding and apply in accordance with the principle of *erga omnes*, meaning they cannot be subject to any further legal action. Until now, if there are decisions of the Constitutional Court () that are deemed to violate regulations, the maximum action taken is to conduct an Ethics Code Review of the Constitutional Court Justices by the Constitutional Court's Ethics Council. However, even if the Constitutional Court Justices are found to have violated the Ethics Code, their decisions remain valid and must be enforced, leading to controversy and public unrest. Therefore, it is time for the Constitutional Court to establish a legal remedy institution called the Objection Institution. In this regard, a solution to establish this Objection Institution can be pursued by adopting or using the rules applied in the examination of Simple Lawsuits in District Courts as a comparison. This study employs a normative legal research method, as the research objective is the law or legal principles, specifically the rules governing Simple Lawsuits, as a basis for comparison regarding the establishment of a Legal Remedies Institution at the Constitutional Court. The analytical method used is qualitative, employing authentic, grammatical, and systematic interpretations.

Keywords: Legal Action, Constitutional Court Decision, Final and Binding, *Erga Omnes*, Simple Lawsuit.

INTRODUCTION

The Constitutional Court (MK) Decision No. 90/PUU-XXI/2023 regarding the age requirements for presidential candidates (presidential candidates) and vice-presidential candidates (vice-presidential candidates) has sparked controversy (<https://nasional.kompas.com>).

The Constitutional Court of the Republic of Indonesia (MKRI) on Monday, 16 October 2023, has ruled on the *judicial review* petition filed by Almas Tsaqibbirru regarding the age limit for presidential and vice-presidential candidates (presidential and vice-presidential candidates) as stipulated in Article 169(q) of the 2014 Constitution

of the Republic of Indonesia (). (q) of Law Number 7 of 2017 on General Elections, which states: “*The requirements to become a presidential candidate and vice-presidential candidate are: q. Being at least 40 (forty) years of age*” and the Constitutional Court has ruled and interpreted the provision as follows: “*Declaring Article 169 letter q of Law Number 7 of 2017 on General Elections (State Gazette of the Republic of Indonesia Year 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) which states, ‘At least 40 (forty) years of age’ is inconsistent with the-Constitution of the Republic of Indonesia of 1945 and has no legal binding force, to the extent that it is not interpreted as ‘at least 40 (forty) years of age or has held/is holding a position elected through general elections, including regional head elections.’”*

Thus, Article 169(q) of Law No. 7 of 2017 on General Elections now reads in full: “*At least 40 (forty) years of age or has held or is currently holding an elected position through general elections, including regional head elections*”, This decision not only amends the norm but also alters or creates new provisions within the content of the law being reviewed, thereby changing the norm of the law itself (<https://www.unas.ac.id/berita/tindak-lanjut-putusan-mahkamah-konstitusi-batas-usia-capres-dan-cawapres/>).

Meanwhile, the functions and roles of the Constitutional Court in Indonesia have been institutionalised in Article 24C paragraph (1) of the 1945 Constitution, which stipulates that the Constitutional Court has four constitutional powers (*constitutionally entrusted powers*) and one constitutional obligation (*constitutional obligation*). This provision is further clarified in Article 10(1)(a) to (d) of Law No. 24 of 2003 on the Constitutional Court.

The four powers of the Constitutional Court are: 1) To review laws against the 1945 Constitution; 2) To resolve disputes over the powers of state institutions whose powers are granted by the 1945 Constitution; 3) To decide on the dissolution of political parties; 4) To resolve disputes over election results. Meanwhile, pursuant to Article 7, paragraphs (1) to (5), and Article 24C, paragraph (2) of the 1945 Constitution, as reaffirmed in Article 10, paragraph (2) of Law No. 24 of 2003, the duty of the Constitutional Court is to render a decision on the opinion of the House of Representatives that the President and/or Vice President has committed a legal violation, or an act of misconduct, or does not meet the requirements as President and/or Vice President as referred to in the 1945 Constitution.

Further explanation of the Constitutional Court's authority to review laws against the 1945 Constitution is that the Constitutional Court was established with the function of ensuring that no legal products are issued outside the constitutional framework, thereby safeguarding the constitutional rights of citizens and ensuring the constitutionality of the Constitution itself. To determine whether a law is inconsistent with the Constitution, the agreed mechanism is *Judicial Review*, which falls within the authority of the Constitutional Court.

If a law or part of a law is found to be inconsistent with the constitution, the Constitutional Court will revoke it. Therefore, all laws must refer to and not contradict the constitution. Through this *judicial review* authority, the Constitutional Court fulfils its function of ensuring that no legal provisions deviate from the constitutional framework (Janedjri M. Gaffar, 2009).

Constitutional Law Expert from the University of Muslim Indonesia in Makassar, Fahri Bachmid , provided an analysis of the potential ruling by the Constitutional Court regarding the constitutional review of the Election Law concerning the age limit for presidential and vice-presidential candidates . He stated that, in principle, the Constitutional Court does not have the authority to establish norms regarding the age limit for presidential or vice-presidential candidates within the legal framework.

This is because the issue of determining age limits as a requirement for holding public office is based on various decisions of the Constitutional Court, which have established the principle of "*open legal policy*," which falls within the domain of the lawmakers who enact laws, namely the House of Representatives and the President (<https://m.jpnn.com/news/analisis-pakar-soal-putusan-mk-terkait-usia-capres-cawapres-ini-paling-mungkin>).

Indirectly, through Decision No. 90/PUU-XXI/2023, the Constitutional Court has assumed the role of the House of Representatives and the President, two institutions with legislative authority. Hendardi, Chairman of the National Council of SETARA Institute, stated that the granting of the request for a material review of Article 169(q) of the Election Law (HYPERLINK "<https://www.hukumonline.com/pusatdata/detail/v2/lt59ba5511ab93b/undang-undang-nomor-7-tahun-2017>") of Law No. 7 of 2017 on General Elections, which sets the minimum age for presidential candidates (Capres) and vice-presidential candidates (Cawapres) (Cawapres) at a minimum of 40 years of age or having experience as a regional head, has highlighted the inconsistency of the Constitutional Court in upholding the Constitution.

Indirectly, through Decision 90/PUU-XXI/2023, the Constitutional Court has assumed the role of the House of Representatives and the President, two institutions with legislative authority, as the decision to accept and amend the wording of Article 169(q) of Law No. 17 of 2017 signifies that the Constitutional Court is acting as a *Positive Legislator*. "Regardless of the reasons, the Constitutional Court has exceeded its authority," he stated in his remarks, Tuesday (17/10/2023) (<https://www.hukumonline.com/berita/a/buka-pintu-syarat-capres-cawapres-putusan-mk-dianggap-melampaui-batas-ewenangan>).

The authority of the Constitutional Court is regulated in Article 24C paragraph (1) of the 1945 Constitution, which states: "The Constitutional Court has the authority to adjudicate at the first and final instance, with its decisions being final, to review laws against the Constitution, to resolve disputes over the authority of state institutions as

granted by the Constitution, to dissolve political parties, and to resolve disputes regarding the results of general elections.” This provision is further regulated in the , Article 10(1) of the Constitutional Court Law, with the explanation of Article 10(1) stating: “The decisions of the Constitutional Court are final, meaning that the decisions of the Constitutional Court immediately acquire the force of law upon being pronounced and no further legal remedies may be sought.”

Article 47 of the Constitutional Court Law reinforces this final nature by stating that: "The decision of the Constitutional Court acquires the force of law upon its pronouncement in an open plenary session."

The Constitutional Court possesses several unique characteristics that distinguish it from the General Courts. These unique characteristics lie in the final and binding nature of the Constitutional Court's decisions, which are applicable in accordance with the principle of *erga omnes* (Soeroso, F. L. 2013).

Final means that the decision of the Constitutional Court acquires permanent legal force from the moment it is pronounced in a plenary session open to the public. This is a consequence of the final nature of the Constitutional Court's decisions as determined by the 1945 Constitution. Thus, the Constitutional Court is the first and final court whose decisions cannot be subject to further legal action (Safa'at, M. A., et al., 2011).

Binding means that the decision is enforceable ([https://www.neliti.com/id/publications/238230/problematika – hukum – implementas i-putusan-final-dan-mengikat mahkamah konstitusi-p](https://www.neliti.com/id/publications/238230/problematika-hukum-implementasi-putusan-final-dan-mengikat-mahkamah-konstitusi-p)).

The term "*erga omnes*" means that the Constitutional Court's decision is not only binding on the parties who brought the case before the Constitutional Court, but also on all citizens, just as a law is generally binding on all citizens (Soeroso, F. L. 2013).

Regarding the final and binding nature of the Constitutional Court's decisions, Moh. Mahfud MD stated that the risk of decisions containing errors or defects remains possible, but such final and binding decisions of the Constitutional Court cannot be challenged ((Soeroso, F. L. 2013).

It cannot be denied that within the normative provisions stating the final nature of Constitutional Court decisions, there are at least philosophical, legal, social, and political problems. When parties feel that a Constitutional Court decision is unjust, and there are no legal remedies available, there is nothing that can be done except to accept and implement the decision. This means that even though justice is constrained by the Constitutional Court's decision, there is no other option but to implement the decision (Soeroso, F. L. 2013).

That the consequences of the Constitutional Court Decision No. 90/PUU-XXI/2023 regarding the age requirements for Presidential Candidates (Capres) and Vice Presidential Candidates (Cawapres), which sparked the aforementioned controversy, those who are dissatisfied or believe the decision violates regulations have insisted on

requesting the Constitutional Court's Honour Council to declare the decision invalid and annul the Constitutional Court's Decision No. 90/PUU-XXI/2023, the Justices of the Constitutional Court who ruled on the case have been reported to the Constitutional Court's Ethics Council (MKMK) on allegations of ethical misconduct.

Of the 21 reports received by the Constitutional Court's Honorary Council, 16 reports were filed against the Chief Justice of the Constitutional Court, Anwar Usman, namely registered reports No. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, and 21/MKMK/L/ARLTP/X/2023. Of the 16 reports, the details are as follows: Report No. 7/MKMK/L/ARLTP/X/2023 reports Anwar Usman, Guntur Hamzah, and Manahan MP Sitompul; Report No. 12/MKMK/L/ARLTP/X/2023 reports Anwar Usman, Manahan M.P. Sitompul, Enny Nurbaningsih, Daniel Yusmic P. Foekh, and M. Guntur Hamzah. Report No. 18/MKMK/L/ARLTP/X/2023 reported all Constitutional Court Justices, while the remaining reports specifically targeted Constitutional Court Chief Justice Anwar Usman (<https://www.hukumonline.com/berita/a/menanti-putusan-majelis-kehormatan-mk-yang-lurus-lt654999aod4e41>).

One of the debates that has emerged is whether the decision of the Constitutional Court's Honour Council can declare Constitutional Court Decision No. 90/PUU-XXI/2023 invalid and null and void? Some argue, and even insist, that the Honour Council of the Constitutional Court should declare the Constitutional Court Decision No. 90/PUU-XXI/2023 invalid and nullify it. On the other hand, there are those who argue that the Constitutional Court's Honour Council lacks the authority to declare invalid and annul Constitutional Court Decision No. 90/PUU-XXI/2023.

Following the report, the Constitutional Court's Honour Council issued Decision No. 5/MKMK/L/11/2023, which essentially states: The reported judges were collectively found to have violated the Code of Ethics and Conduct for Constitutional Court Judges as set forth in the Sapta Karsa Utama, Principles of Decency, and Decorum.

The Decision No. 5/MKMK/L/11/2023 only ruled on the proven violation by the Respondents of the Code of Ethics and Conduct of Judges, and did not contain any provision declaring the annulment or invalidity of the Constitutional Court Decision No. 90/PUU-XXI/2023.

This means that although the Constitutional Court's Honour Council has declared that the judges who ruled on Case No. 90/PUU-XXI/2023 were found to have violated the Code of Ethics and Conduct for Judges, the Constitutional Court's Decision No. 90/PUU-XXI/2023 remains valid and continues to spark controversy.

The decision of the Honour Council of the Constitutional Court is in accordance with its duties and authorities as stipulated in Constitutional Court Regulation No. 1 of 2023 on the Honour Council of the Court, Article 1 paragraph (4), which states: The Honour Council of the Constitutional Court, hereinafter referred to as the Honour Council, is an institution established by the Court to uphold and enforce the honour, dignity, and integrity of Constitutional Court judges, as well as their Code of Ethics and

Conduct. In addition to the Constitutional Court Decision No. 90/PUU-XXI/2023, which is considered controversial, it turns out that there were several previous Constitutional Court decisions that also sparked public debate, such as (<https://katadata.co.id/agungjatmiko/berita/652/selain-syarat-cawapres-ini-beberapa-putusan-mk-yang-kontroversial?page=all>):

1. Judgment No. 21/PUU-XII/2014 on the Review of Law No. 8 of 1981 on the Criminal Procedure Code.

The decision states that the subject matter of pre-trial proceedings is not limited to what is specified in Article 77 of the Criminal Procedure Code, namely: “a) The legality or illegality of arrest, detention, termination of investigation, or termination of prosecution; and b) Compensation and/or rehabilitation for a person whose criminal case has been terminated at the investigation or prosecution stage.” But it also includes “the designation of a suspect, search, and seizure.” In this case, the Constitutional Court has expanded the scope of pre-trial proceedings, thereby establishing new legal norms. *Such norms should be established by the legislature*, which consists of the House of Representatives and the President.

2. Judgment No. 112/PUU-XX/2022 on Extending the Term of Office of the Leadership of the Corruption Eradication Commission (KPK).

The Constitutional Court reaffirmed that the term of office for the leadership of the KPK is five years, previously four years. The Constitutional Court established new provisions/norms in legislation, which should be the role of *the positive legislature*, namely the House of Representatives and the President.

3. Decision No. 24/PUU-XX/2022 on Rejecting the Request for Interfaith Marriage.

The Constitutional Court affirmed that the validity of marriage is the domain of religion through religious institutions or organisations that have the authority to provide religious interpretations. The registration of marriages by state institutions is for the purpose of providing certainty and order in population administration.

This decision has sparked controversy as many argue that marriage is a Human Right. However, the Constitutional Court ruled that Human Rights in Indonesia must align with the philosophical ideology rooted in Pancasila as the nation's identity.

4. Decision Number: 006/PUU-II/2004 on the Abolition of Criminal Penalties for Persons Claiming to be Advocates.

The Constitutional Court revoked Article 31 of the Advocates Law. This decision sparked controversy because Article 31 of the Advocates Law stipulated criminal sanctions for individuals who falsely claim to be advocates. The Indonesian Advocates Working Committee (KKAI) strongly reacted and condemned the

decision, arguing that it undermines the existing legal framework and makes it difficult to monitor and take action against those who claim to be advocates.

DISCUSSION

The legal basis for Simple Lawsuits is contained in Regulation of the Supreme Court of the Republic of Indonesia Number 14 of 2019 concerning Amendments to Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2015 concerning Procedures for the Settlement of Simple Lawsuits.

- Article 1(1) states: The resolution of a Simple Lawsuit is the procedure for hearing a civil lawsuit in court with a material claim value of up to Rp 500,000,000.00 (five hundred million rupiah), resolved through a simplified procedure and evidence.
- Article 2 states: Simple Lawsuits are examined and decided by the Court within the jurisdiction of the General Court.
- Article 4 paragraph (1) states: The parties in a Simple Lawsuit consist of the Plaintiff and the Defendant, each of whom may not be more than one, unless they have the same legal interest.
- Article 5(1) states: A Simple Lawsuit is heard and decided by a judge appointed by the President of the Court.
- Article 19 states:
 - (1) The judge shall read the decision in an open court session.
 - (2) The judge shall inform the parties of their right to file an objection.
- Article 21 states:
 - (1) The legal remedy against a decision in a Simple Lawsuit as referred to in Article 20 is to file an objection.
 - (2) Objections shall be submitted to the Chief Justice by signing a Statement of Objection in the presence of the Registrar, accompanied by the reasons for the objection.
- Article 22(2) states: An objection must be filed with the President of the Court by completing the Objection Form provided at the Court Clerk's Office.
- Article 23(2) states: A Counter-Objection Memorandum may be filed with the Presiding Judge by completing the form provided at the Clerk's Office.
- Article 25 states:
 - (1) The President of the Court shall appoint a Panel of Judges to examine and decide on the Objection, no later than 1 (one) day after the objection is deemed complete.
 - (2) The Appeal Hearing is conducted by a Panel of Judges chaired by a senior judge of the District Court () appointed by the President of the Court.
- Article 26(1) states: Immediately after the Panel of Judges is established, the Objection Hearing shall be conducted.
- Article 30 states: The Decision on the Objection is the final decision and is not subject

to further legal remedies such as appeal, cassation, or reconsideration.

From the above, it can be concluded that:

- That if a Simple Lawsuit Case at the District Court has been decided and one of the parties is dissatisfied, that party may pursue an Objection by filing it at the relevant District Court.
- The President of the District Court shall immediately appoint a panel of judges outside the panel that decided the Simple Lawsuit case.
- The Panel of Judges for the Objection Case then holds a hearing and renders its decision.
- The ruling on the objection to the Simple Lawsuit may accept, reject, or even overturn the Simple Lawsuit ruling, provided that the party filing the objection can prove their grounds for objection.

From the above explanation, the author has an idea or concept regarding the resolution of the problem of the absence of legal remedies against Constitutional Court decisions that cause controversy, unrest, or pros and cons that are considered unfair or violate applicable regulations. The solution is to adopt or apply the rules in the Simple Lawsuit as stipulated in the Regulation of the Supreme Court of the Republic of Indonesia No. 14 of 2019 amending the Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2015 on the Procedures for Resolving Simple Lawsuits, specifically regarding the submission of objections by parties dissatisfied with the Simple Lawsuit Decision.

The first step is to establish the legal basis first. In the case of a Simple Lawsuit, this is sufficient with the Supreme Court Regulation, and similarly, in the Constitutional Court, it is sufficient with the Constitutional Court Regulation.

The Constitutional Court has established a Constitutional Court Regulation governing the filing of objections to Constitutional Court decisions, from the registration stage to the implementation of the decision, as outlined in the aforementioned Simple Lawsuit Objection.

The issues that may arise as a result of filing an objection to a Constitutional Court decision include:

1. Whether the objection is consistent with the final and binding nature of Constitutional Court decisions?

The characteristics of a Constitutional Court decision are final and binding, as stipulated in Article 24C(1) of the 1945 Constitution, Article 10(1) of the Constitutional Court Law, and its Explanation, as well as Article 47 of the Constitutional Court Law (). Therefore, is it necessary to amend the 1945 Constitution and revise Article 10(1) of the Constitutional Court Law and its Explanation, as well as Article 47?

According to the author, such an amendment is not necessary, as the objection decision is also submitted to the Constitutional Court, and the objection decision is also a product of the Constitutional Court's decision on the same case. Therefore, the

objection decision also possesses the characteristics of finality, binding force, and *erga omnes*. This is also consistent with the objection ruling against the simple lawsuit decision, which cannot be subject to further legal action.

2. Cases submitted to the Constitutional Court are in the form of a petition.

In a simple lawsuit, the form is a lawsuit, so there are two parties, namely the plaintiff and the defendant, where the objection can be filed by the plaintiff or the defendant, whereas in a Constitutional Court case, the form is a petition, so there is only one party to the case, namely the petitioner;

Then, who is the party that will file an objection in a Constitutional Court decision? The author argues that in accordance with the characteristics of a Constitutional Court decision, which is *erga omnes*, binding on all levels of society, the party entitled to file an objection is the public or anyone of legal age who feels aggrieved and, of course, outside the Petitioner.

3. Number of Constitutional Court Justices.

As stipulated in the Constitutional Court of the Republic of Indonesia Regulation No. 03/PMK/2003 on the Rules of Procedure for Hearings at the Constitutional Court of the Republic of Indonesia, Article 1, point 4 states: The Plenary Session of the Constitutional Court is a session to examine, adjudicate, and decide on petitions attended by 9 (nine) Constitutional Court Justices, except in extraordinary circumstances where at least 7 (seven) Constitutional Court Justices are present, Therefore, all nine Constitutional Court judges participate in the hearing and are involved in the proceedings. Who, then, can the Chief Justice of the Constitutional Court appoint as the panel of judges to examine and adjudicate the objection case? Because the panel of judges that can adjudicate the objection case must be composed of judges outside those who examined the main case.

According to the author, since there are no more judges available, it is necessary to add at least three more Constitutional Court judges to be appointed as the Panel of Judges for the objection case. These judges could be *ad hoc* judges selected from prominent members of society who possess integrity and the ability to examine cases.

The Author's discussion above, although differing in purpose and intent, shares a common perspective on the existence of Article 24C(1) of the 1945 Constitution, as elaborated in Articles 10 and 47 of Law No. 24 of 2003 on the Finality of Constitutional Court Decisions, which is deemed ambiguous, legal certainty becomes uncertain, and it is often found that Constitutional Court decisions lead to horizontal conflicts and *ultra petita* decisions by the Constitutional Court.

CONCLUSION

1. The Constitutional Court has issued controversial decisions that have sparked public debate, one of which is Constitutional Court Decision No. 90/PUU-XXI/2023

regarding the age requirements for presidential candidates (Capres) and vice-presidential candidates (Cawapres), which was deemed by the Constitutional Court to have exceeded its authority and to have undermined the sense of justice among the public.

2. Constitutional Court rulings have several unique characteristics that distinguish them from general court rulings. These unique characteristics lie in the final and binding nature of Constitutional Court rulings, which apply the principle of *erga omnes*. As a result, no legal remedies can be sought against Constitutional Court rulings. Therefore, even if a ruling is deemed to violate legal provisions, it must still be enforced.
3. Therefore, the need for legal action against Constitutional Court rulings deemed to violate the law has become so urgent that it must be realised.
4. One way to establish a legal remedy institution within the Constitutional Court is by adopting rules on a simplified lawsuit, namely the objection procedure.

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