



## Human Rights Review on Age Limitation of Candidates for Regional Heads (Constitutional Court Decision No. 70/PUU-XXII/2024)<sup>1</sup>

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### ABSTRACT

Constitutional Court Decision Number 70/PUU-XXII/2024 is the result of a judicial review of Law Number 10/2016 on the Second Amendment to Law Number 1/2015 regulating the minimum age limit for regional head candidates. The regulation is discriminatory because it limits the political participation of younger individuals. This article seeks to critically answer how human rights studies view the age limit in Constitutional Court Decision Number 70/PUU-XXII/2024. The method used in this research is a normative legal research method with an analytical-critical approach and case studies that prioritize human rights aspects. The Constitutional Court explained that although age restrictions can be justified, this policy must be evaluated periodically to ensure its relevance and suitability with the evolving social and political dynamics. The Constitutional Court also emphasized the importance of flexibility in this arrangement, in order to avoid age discrimination that could harm certain groups, especially the potential younger generation. Public policies must be responsive to demographic and social changes, including in terms of political participation. This policy should be aligned with the principles of equality and human rights, and should take into account the ability and integrity of candidates without being hampered by rigid age limits. Therefore, recommend a policy that is more flexible and responsive to social dynamics.

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### 1. Introduction

The application of age limits for regional head candidates in Indonesia has become a central issue recently. The application of the age limit has entered into various discourses, including human rights studies. The age limit policy is intended to ensure that regional head candidates running in the 2024 elections have a sufficient level of maturity and experience.<sup>5</sup> However,

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<sup>5</sup> Imam Jalaluddin Al-Mahalli and Jalaluddin As-Suyuthi in tafsir Jalalain mention that the beginning of thinking maturity and emotional maturity of a person occurs at the age of 30 or 33 years. See in Al-Mahalli, J., & As-Suyuthi, J. (2018). *Terjemahan Tafsir Jalalain Jilid I*, Jakarta: Senja Media Utama, p. 201. Meanwhile, the peak of human maturity falls at the age of 40. The age of 30 is considered to be the beginning of the perfection of a person's strength, logic, and perspective.

on the other hand, this age limit policy also raises serious questions regarding potential human rights violations, especially regarding the right to be elected and participate in government without discrimination.<sup>6</sup>

Constitutional Court Decision No. 70/PUU-XXII/2024 is the result of a judicial review of Law No. 10 of 2016 on the Second Amendment to Law No. 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors into Law. Which in the law regulates the minimum age limit for regional head candidates. The petition for judicial review was filed by a group of students and activists who argued that the age limit violated their constitutional rights,<sup>7</sup> especially the right to be elected in general elections. The petitioners argued that the regulation was discriminatory because it limited the political participation of younger individuals, who may have competent qualifications and vision to lead, but were hindered by the age restriction.

The Constitutional Court in this decision considers that the provisions of Article 7 paragraph (2) letter e of Law No. 10 of 2016 which regulates the minimum age limit of 30 years for candidates for Governor and Deputy Governor and 25 years for candidates for Regent, Deputy Regent, Mayor and Deputy Mayor need to be tested constitutionally. The Constitutional Court considers whether these restrictions are in accordance with the principles of human rights guaranteed by the 1945 Constitution of the Republic of Indonesia, in particular Article 28D paragraph 1 which regulates the right of every person to obtain recognition, guarantees, protection and certainty of a just law and equal treatment before the law.

In assessing the constitutionality of the age limit, the Constitutional Court referred to the principles of non-discrimination and equality set out in various international human rights instruments,<sup>8</sup> such as the International Covenant on Civil and Political Rights (ICCPR).<sup>9</sup> The ICCPR has clearly affirmed that every citizen should have the right to participate in public affairs, including the right to be elected in elections, without unwarranted discrimination and tendency.<sup>10</sup> Several contemporary studies support the view that age restrictions in political participation can be considered a form of discrimination that is incompatible with the principle of equality.

This research<sup>11,12,13</sup> shows that age restrictions tend to ignore the potential and abilities of younger individuals and emphasize age stereotypes, which can hinder the active

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Then it will all reach its peak at the age of 40. See in Jalaluddin al-Mahaly, A., & Jalaluddin as-Suyuthi. (1998). *Tafsir al-Qur'an al-Karim*. Beirut: Daar al Fikr, p. 98.

<sup>6</sup> Sanger, B. G. (2019). Perlindungan Hak Politik Perempuan sebagai Hak Asasi Manusia dan Pengaturannya dalam Konvensi Internasional. *Lex Et Societatis*, 7(3), 163-171. <https://doi.org/10.35796/les.v7i3.24689>

<sup>7</sup> Suyanto, B. (ed.). (2024). *Mahasiswa Gugat Penetapan Syarat Usia Calon Kepala Daerah ke MK*. Available online from: <https://www.antaraneews.com/berita/4195503/mahasiswa-gugat-penetapan-syarat-usia-calon-kepala-daerah-ke-mk> . [Accessed on August 4, 2024].

<sup>8</sup> Utomo, N. A. (2016). Mengurai Kerangka Legislasi sebagai Instrumen Perwujudan Hak Asasi Manusia. *Jurnal Konstitusi*, 13(4), 886-910. <https://doi.org/10.31078/jk13410>

<sup>9</sup> Joseph, S. (2019). Extending the right to life under the International Covenant on Civil and Political Rights: General Comment 36. *Human Rights Law Review*, 19(2), 347-368. <https://doi.org/10.1093/hrlr/ngz003>

<sup>10</sup> Gemalmaz, H. B. (2018). Democracy, Free Elections and Independent Candidates: Critical Remarks on The Jurisprudence of The European Court of Human Rights. *Journal of Istanbul University Law Faculty*, 76(1), 9-63. <https://dergipark.org.tr/en/pub/iiuhfm/issue/39991/465155>

<sup>11</sup> Sanmas, R. (2024). Kajian Hukum Konstitusi terhadap Putusan Mahkamah Konsitusi Terkini: Usia Calon Presiden dan Calon Kepala Daerah. *Birokrasi: Jurnal Ilmu Hukum dan Tata Negara*, 2(4), 23-34. <https://doi.org/10.55606/birokrasi.v2i4.1508>

<sup>12</sup> Razak, A. (2023). Reformulasi Pemimpin Usia Muda sebagai Calon Presiden dan Wakil Presiden: Tinjauan Ius Constituendum. *Risalah Hukum*, 19(2), 61-75. <https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/1339>

<sup>13</sup> Peramesti, N. P. D. Y., & Kusmana, D. (2018). Kepemimpinan Ideal pada Era Generasi Milenial. *Transformasi: Jurnal Manajemen Pemerintahan*, 10(1), 73-84. <https://doi.org/10.33701/jt.v10i1.413>

participation of young people in politics. Their research highlighted that age restrictions are often based on inaccurate assumptions about the capacity of young individuals to lead. They found that age limit rules are more often rooted in stereotypes than objective assessments of real ability and potential. For example, there is a common view that young individuals lack the maturity or experience necessary to lead. When younger generations are more involved in the political process, especially in leadership positions, there is a tendency for policies to be more innovative and responsive to social change. Younger generations tend to be more adaptive to new technologies and more aware of emerging environmental and social issues, which makes them more capable of producing policies that are sustainable and relevant to the context of the times. Young people offer great potential for positive change. Greater youth participation in local politics can strengthen democracy and encourage the adoption of more inclusive and sustainable policies at the local level. However, the judge's ruling on age limits and discrimination in politics for regional head candidacy not only limits young people's political participation, but also reinforces negative stereotypes about young people's abilities. This makes young people in Indonesia often feel marginalized in the political process. Age restrictions prevent them from taking leadership roles in politics.

Age limits for political participation, especially in local government candidacies, are often a controversial topic. In general, these rules are intended to ensure that candidates have a sufficient level of maturity and experience to lead. However, this view is challenged from a human rights perspective, especially in terms of the principles of equality and non-discrimination. Therefore, this article seeks to critically answer how human rights studies view the age limit, which by providing an age limit for political participation in the nomination of regional heads is a form of fulfillment of human rights that cannot be reduced under any circumstances (non-derogable rights).

## **2. Method**

The method used in this research is normative legal research method<sup>14</sup> with an analytical-critical approach and case studies that prioritize human rights aspects as a study. Normative legal research focuses on studies to understand how norms are applied and their impact on individual rights and obligations. A normative approach was chosen in this research because the main objective is to examine the case of Constitutional Court Decision No. 70/PUU-XXII/2024 from a human rights perspective.<sup>15</sup> The regulations studied include Law No. 10 of 2016 on the Election of Governors, Regents, and Mayors, as well as decisions of the Constitutional Court related to the issue of Constitutional Court Decision No. 70/PUU-XXII/2024.

## **3. Human Rights Review on Age Limitation of Candidates for Regional Heads**

The results of the analysis show that the application of age limits for regional head candidates can be considered as a form of discrimination that is contrary to the principles of human rights. This discussion is based on a normative analysis of existing laws and regulations, decisions of the Constitutional Court, and a review of relevant literature.

The age limit stipulated in the law prevents individuals who have fulfilled other requirements from participating in government.<sup>16</sup> This can be seen as a violation of the

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<sup>14</sup> Purwanda, S., & Wulandari, A. S. R. (2023). Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia. *Al-'Adl*, 16(2), 152-163. <http://dx.doi.org/10.31332/aladl.v16i2.6129>

<sup>15</sup> Purwanda, S. (2020). The Existence of the Right to Books for Frontier, Outermost and Disadvantaged Regions as Part of the Right to Enjoy Education. *JL Pol'y & Globalization*, 95, 42. <https://doi.org/10.7176/JLPG/95-07>

<sup>16</sup> Gusman, D. G., Nazmi, D. N., & Syofyan, Y. S. (2022). Pemenuhan Hak Memperoleh Pekerjaan bagi Penyandang Disabilitas berdasarkan Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas. *Riau Law Journal*, 6(2), 231-245. <http://dx.doi.org/10.30652/rj.v6i2.7963>

constitutional right to vote, which should be guaranteed to all citizens without age discrimination. According to Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights, every citizen has the right to participate in government and has an equal opportunity to be elected in general elections,<sup>17</sup> without discrimination based on age or other criteria irrelevant to the ability to lead.

The decision of the Constitutional Court of the Republic of Indonesia No. 70/PUU-XXII/2024 underlines the importance of human rights principles in determining the age limit policy for regional head candidates. In its decision, the Constitutional Court emphasized that although age restrictions are acceptable in certain contexts, the policy must be in line with the principles of inclusiveness and fairness.<sup>18</sup> The Constitutional Court stated that age limits should not be used to restrict the constitutional rights of individuals who fulfill other requirements to participate in elections.<sup>19</sup>

The Constitutional Court's decision regarding the age limit for regional head candidates must be seen in the context of human rights protection. The Constitutional Court in its decision emphasized that although there is an age limit, this must be done with great care and must be in accordance with the principles of inclusiveness that underlie democracy.<sup>20</sup> The Constitutional Court emphasized that the right to vote is an integral part of political rights that must be respected and protected by the state.<sup>21</sup> Therefore, the Court encourages the revision of more inclusive policies to ensure that there is no unlawful discrimination in the regional head nomination process.

In decision No. 70/PUU-XXII/2024, the Constitutional Court stated that age limits set by law can be maintained as long as their main purpose is to ensure that candidates have the necessary maturity to carry out governmental duties. However, the Constitutional Court also recognized that this restriction must be applied proportionally<sup>22</sup> and must not impede the constitutional right to vote.

The Constitutional Court explained that although age restrictions can be justified, this policy must be evaluated periodically to ensure its relevance and suitability to the evolving social and political dynamics. The Constitutional Court also emphasized the importance of flexibility in this arrangement, in order to avoid age discrimination that could harm certain groups, especially the potential younger generation. Public policies must be responsive to demographic and social changes,<sup>23</sup> including in terms of political participation. It should be proposed that a more flexible minimum age, adapted to social developments, can increase political participation and the quality of democracy.

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<sup>17</sup> Dasyah, F., & Desiandri, Y. S. (2023). Integrasi Nilai Hak Asasi Manusia dalam Proses Pemilihan Umum di Indonesia. *Jurnal Pendidikan Tambusai*, 7(3), 29156-29161. <https://doi.org/10.31004/jptam.v7i3.11663>

<sup>18</sup> Rohmah, E. I. (2024). Dinamika Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 tentang Persyaratan Usia Calon Presiden dan Wakil Presiden. *Progresif: Jurnal Hukum*, 18(1), 100-131. <https://doi.org/10.33019/progresif.v18i1.4636>

<sup>19</sup> Hidayat, A., Haykel, M., Alhaddi, R. U., Selviana, S., & Delvina, S. (2024). Analisis Yuridis terhadap Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dikaitkan dengan Mahkamah Konstitusi sebagai Positif Legislator. *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora*, 1(3), 79-95. <https://doi.org/10.62383/humif.v1i3.292>

<sup>20</sup> Rohmah, E. I. (2024). *Op.Cit.*

<sup>21</sup> Prasetio, D. E. (2022). Rekonstruksi Subjectum Litis Pembubaran Partai Politik sebagai Perlindungan Hak Politik Warga Negara. *Sol Justicia*, 5(1), 18-37. <https://doi.org/10.54816/sj.v5i1.474>

<sup>22</sup> Salim, H., & Rowa, I. R. (2024). Pembatasan Hak Asasi Manusia dalam Putusan Mahkamah Konstitusi. *Jurnal Ilmiah Multidisiplin Unika*, 1(1), 16-27. <https://journal.fsei.unikamamuju.ac.id/index.php/AL-ILMU/article/view/3>

<sup>23</sup> Giyandri, T. F., & Sinaga, J. B. B. (2024). Tantangan dan Dinamika Penerapan Teori Politik Kontemporer di Indonesia. *Jurnal Ilmu Hukum, Humaniora dan Politik*, 4(3), 371-378. <https://doi.org/10.38035/jihhp.v4i3.1919>

The Constitutional Court's decision highlights that the right to vote is a constitutional right that must be respected and protected.<sup>24</sup> Disproportionate age restrictions can be considered a form of discrimination that violates human rights principles. Age restrictions in regional head candidacy need to be reviewed from a human rights perspective to ensure all citizens have equal opportunities without discrimination. The Constitutional Court underlined that age restrictions should be evaluated periodically and should not be a barrier to constitutional rights. Evaluation of age restriction policies is important to ensure that they remain relevant to social and political developments.

Age restrictions in regional head candidacy can be considered discriminatory if not implemented properly. The age restriction policy on political participation in Indonesia shows that too strict restrictions can reduce political participation and inhibit the potential of young candidates who may have ability and integrity.<sup>25</sup> Inflexible policies can create age discrimination and hinder the development of a more equitable and representative political<sup>26</sup> system. Policy reforms to ensure that age limits are not a barrier to potential candidates, and that policies should be responsive to changing social and political dynamics.

From the analysis, it is clear that the existing policy needs to be revised to ensure that there is no age discrimination in the regional head election process. This recommendation is in line with human rights principles that emphasize equality and non-discrimination.<sup>27</sup> Policy revisions should include more flexible mechanisms to accommodate individuals with capacity and integrity, regardless of their age. By providing equal opportunities to all individuals, the political and governance system in Indonesia can become more inclusive, representative and fair.<sup>28</sup> A revision of the age limit policy in regional head candidacy is urgently needed to address potential age discrimination.

This policy should be aligned with the principles of equality and human rights, and should take into account the ability and integrity of candidates without being hampered by rigid age limits. Rigid age limits can be a barrier to individuals with capacity and integrity, especially for young people with potential. Therefore, recommend a policy that is more flexible and responsive to social dynamics. Revising the age limit policy can increase political participation and the quality of democracy. By providing greater opportunities to individuals of all ages, the political system will become more dynamic and representative, reflecting the diversity and capacities that exist in society.

#### **4. Closing**

In conclusion, this research highlights the need for a critical reassessment of age restrictions for political candidates in Indonesia. The current legal framework not only raises concerns regarding discrimination but also undermines the principles of inclusivity and fairness in democratic governance. By addressing these limitations, the study suggests that policymakers should consider revising the age criteria to facilitate greater participation from younger demographics, who often bring fresh perspectives and innovative solutions to contemporary governance challenges. Implementing more flexible age policies could enhance political engagement, ensuring that the electoral process reflects the diversity of society. This study

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<sup>24</sup> Anggreni, D., Fuadi, A., Fitriyani, F., & Al-Kautsar, M. I. (2024). Peran Mahkamah Konstitusi dalam Menjamin Kedaulatan Hukum di Indonesia. *Hutanasyah: Jurnal Hukum Tata Negara*, 3(1), 11-26. <https://doi.org/10.37092/hutanasyah.v3i1.868>

<sup>25</sup> Razak, A. (2023). *Op.Cit.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Purwanda, S. (2020). *Op.Cit.*

<sup>28</sup> Purwanda, S., Ambarwati, A., Darmawati, D., & Prayudi, P. (2024). Haluan Kesejahteraan Sosial dalam Diskursus Teori-Teori Keadilan. *Dinamika Hukum*, 25(1), 152-161. <https://doi.org/10.35315/dh.v25i1.9819>

underscores the importance of aligning electoral regulations with human rights standards, promoting a more equitable political landscape.

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**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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