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The Application Of The Principles Of Independence And Impartiality Of Judges In The Decision Of The Constitutional Court Number 90/PUU-XXI/2023 Concerning The Age Limit Requirements For Nominating Presidents And Vice Presidents

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Abstract:

Recently, the public has been shocked by a controversial constitutional court decision, especially in the constitutional court decision number 90/PUU-XXI/2023. This is because in the decision, the chairman of the constitutional court participated in the trial and decided the case. Whereas in the decision there are interests of his nephew who participated in the political contestation of the general election of the President and Vice President. If there is a potential interest, the judge concerned should resign from the case related to the interests of his family. The purpose of this study is to determine the application of the principles of independence and impartiality of constitutional judges in decision number 90/PUU-XXI/2023. This legal research uses a normative approach. One of them is to identify whether the law regulates a matter and how the rules are applied. The source of this research is secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials in this research are laws and regulations and the decision of the constitutional court number 90/PUU-XXI/2023. Secondary legal materials consist of literature, legal journals, and articles related to the principles of independence and impartiality. This research shows that the decision of the constitutional court number 90/PUU-XXI/2023 is ethically and morally flawed. This is because the judge did not apply the principles of independence and impartiality in the decision, so that the decision benefited one of the parties, where the party was the nephew of the chairman of the constitutional court. The author's recommendation is that a judge must be able to distinguish between his official attitude as a state official tasked with upholding justice, and the attitude of daily life as part of the family and society. If this is applied by judges, then the author believes that judges in carrying out their duties can apply the principles of independence and impartiality in deciding a case.

Keywords: *Independent; Impartial; Constitutional Court Decision.*

I. Introduction

Indonesia as a state of law should respect and uphold the principles of the rule of law. One

of the principles that must be recognized and upheld is the existence of a free and impartial judiciary. The level of success in the application of this principle can be assessed

from the extent to which the judiciary carries out its duties and authority independently in upholding law and justice as well as from statutory provisions that juridically guarantee the independence of judicial power.

In its implementation, judicial power is realized through state judicial institutions. The main function of these judicial institutions is to examine, hear, decide and resolve cases submitted by people seeking justice. In Indonesia, regulations on judicial power are set out in Chapter IX Articles 24, 24A, 24B, 24C and 25 of the 1945 Constitution of the Republic of Indonesia. Specifically, it has also been regulated in Law Number 48 of 2009 concerning Judicial Power. For this reason, Law No. 48 of 2009 is a law whose substance is an explanation of the direct implementation of the 1945 Constitution of the Republic of Indonesia, as well as the foundation and general framework that establishes the principles, foundations and guidelines for the entire judicial system in Indonesia.

The judiciary, which symbolizes the rule of law and is the last bastion of justice, should be neutral and able to provide fair legal treatment as it is the expectation of all people. Judges who act as the executor and spearhead of the judiciary and interact with the public, are expected to have high professionalism in considering and making legal decisions in a case. In this case, the code of ethics and code of conduct for judges are very important. Therefore, an understanding of this is a must for every judge.¹ The judicial institutions that have existed in Indonesia after independence can be said to be a continuation

of the institutions that existed in the Dutch East Indies era before Indonesia's independence. Indonesia inherited and continued the pre-existing judicial structure.² A judiciary that is independent, impartial, competent, transparent, accountable and authoritative is considered capable of upholding the law and providing legal certainty. This is a real requirement for a country based on law.³ One of these judicial institutions is the Constitutional Court. The purpose of the establishment of this institution is an effort to realize a democratic rule of law in accordance with the 1945 Constitution, while from a political point of view, the Constitutional Court is understood as an effort to realize the mechanism of checks and balances between state institutions.⁴ Article 24C paragraph (1) of the 1945 Constitution states that the Constitutional Court has the authority to hear cases at the first and last instance whose decisions are final to test laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide disputes over the results of general elections.

According to Jimly Asshiddiqie, the Constitutional Court functions as a guardian of the constitution and has five functions in carrying out its duties, including controlling decisions made under the democratic system, being the highest interpreter of the constitution, defending the constitutional rights of citizens, and defending human

¹ Wildan Sayuthi Mustofa, *Kode Etik Hakim*, Jakarta: Kencana, 2013, p. 1.

² Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi*, Jakarta: Sinar Grafika, 2014, p. 6.

³ H. Sudirman L. et. al., "Implementasi Kode Etik dan Pedoman Perilaku Hakim di PTUN Makassar", *Jurnal*

Hukum Samudra Keadilan, Vol. 14, No. 2, 2019, p. 181.

⁴ Novitalia et. al., "Kredibilitas Mahkamah Konstitusi Pasca Putusan MK Nomor: 90/PUU-XXI/2023", *Jurnal Solusi*, Vol. 22, No. 1, 2024, p. 25.

rights.⁵ The Constitutional Court as an institution that interprets the constitution as its duties and functions have been regulated in the 1945 Constitution, it is fitting that every decision of the Constitutional Court must be obeyed and implemented by the parties.

In the judicial process of the Constitutional Court there are principles that are both general for all courts and specific to the characteristics of the Constitutional Court judiciary, some of which are the principle of independence and the principle of impartiality, namely in examining and adjudicating a case must be carried out objectively and deciding fairly. Judges and institutions must be independent in the sense that they cannot be intervened by any institution and interest, and are impartial to one of the litigants or impartial. Independence and impartiality have three dimensions: functional, structural and personal. The functional dimension implies a prohibition on other state institutions and all parties to influence or intervene in the process of examining, adjudicating and deciding a case. The functional dimension must be supported by the independence and impartiality of the structural and personal dimensions of judges. Structurally, judicial institutions must also be independent and impartial to the extent necessary so that in carrying out the judiciary they cannot be influenced or intervened and are impartial. Meanwhile, from the personal side, judges have freedom on the basis of their expertise, accountability, and adherence to the code of

ethics and code of conduct.⁶ In order for this principle of independence and impartiality to be implemented properly, the Constitutional Court declared a principle that was outlined in the form of Constitutional Court Regulation (PMK) Number 09 / PMK / 2006 concerning the Enforcement of the Declaration of the Code of Ethics and Behavior of Constitutional Judges. The principle of independence in PMK Number 09/PMK/2006 states that:⁷

“The independence of constitutional judges is a basic prerequisite for the realization of the ideals of the rule of law, and is a guarantee for the establishment of law and justice. This principle is deeply embedded and must be reflected in the process of examination and decision making on each case, and is closely related to the independence of the Court as an authoritative, dignified and trusted judicial institution. The independence of constitutional judges and courts is manifested in the independence and freedom of constitutional judges, both individually and as an institution from various influences, which come from outside the judges in the form of interventions that directly or indirectly influence in the form of persuasion, pressure, coercion, threats, or retaliation due to certain political, or economic interests from the government or the ruling political power, certain groups or groups, in exchange for or promises of compensation in the form of official

⁵ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, sebagaimana dikutip oleh Hanif Hardianto et. al., “Masalah Batas Usia Calon Presiden Dan Calon Wakil Presiden: Studi Open Legal Policy Dalam Putusan Mk No. 90 90/PUU-XXI/2023”, *Jurnal Supremasi*, Vol. 14, No. 1, 2024, p. 16.

⁶ Rio Subandri, “Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden”, *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, Vol. 2, No. 1, 2024, p. 136.

⁷

benefits, economic benefits, or other forms”

The application of the principle of independence can be done by:

1. Constitutional judges must carry out their judicial functions independently on the basis of an assessment of the facts, rejecting outside influences in the form of inducements, lures, pressures, threats or interference, either directly or indirectly, from anyone or for any reason, in accordance with their careful mastery of the law.
2. Constitutional judges must be independent from pressure from the public, mass media, and the parties to a dispute that they must adjudicate.
3. Constitutional judges must maintain independence from the influence of the executive, legislative and other state institutions.
4. In carrying out judicial duties, constitutional judges must be independent from the influence of peers in making decisions.
5. Constitutional judges must encourage, uphold and improve guarantees of independence in the implementation of judicial duties both individually and institutionally.
6. Constitutional judges must maintain and demonstrate an independent image and promote high standards of behavior in order to strengthen public confidence in the Court.

The next principle that must be applied by Constitutional Judges in carrying out their duties is the principle of impartiality. This principle states that:⁸

“Impartiality is a principle inherent in the nature of the function of constitutional judges as parties who are expected to provide solutions to every case submitted to the Court. Impartiality includes a neutral attitude, accompanied by a deep appreciation of the importance of balance between interests related to the case. This principle is inherent and must be reflected in the stages of the case examination process up to the decision-making stage, so that the Court's decision can be truly accepted as a fair legal solution for all litigants and by the wider community in general.”

The implementation of the principle of impartiality can be done by:

1. Constitutional judges must carry out the duties of the Court without prejudice, bias, and not favoring one of the parties.
2. Constitutional judges must display behavior, both inside and outside the court, to maintain and increase the trust of the public, the legal profession, and the litigants in the impartiality of constitutional judges and the Court.
3. Constitutional judges must strive to minimize matters that may result in constitutional judges being unqualified to examine a case and make a decision on a case.
4. Constitutional judges are prohibited from giving public comments on cases that will be, are being examined, or have been decided, either by the judge concerned or another constitutional judge, except in certain cases and only intended to clarify the decision.
5. A constitutional judge - unless it results in the failure of a quorum to conduct a hearing - must recuse himself/herself from

hearing a case if he/she cannot or is deemed unable to be impartial for any of the following reasons:

- a. The constitutional judge is manifestly prejudiced against one of the parties; and/or
- b. The constitutional judge or a member of his/her family has a direct interest in the verdict

The next principle is the principle of integrity, which relates to the professionalism of constitutional judges in carrying out their duties. This principle states that:⁹

“Integrity is an inner attitude that reflects the integrity and balance of the personality of each constitutional judge as a person and as a state official in carrying out the duties of his/her position. The integrity of personality includes honesty, loyalty, and sincerity in carrying out professional duties, accompanied by inner resilience to ward off and reject all persuasions, temptations of position, wealth, popularity, or other temptations. Meanwhile, personality balance includes the balance of spirituality and physicality, or mental and physical, as well as the balance between spiritual intelligence, emotional intelligence, and intellectual intelligence in carrying out their duties.”

The application of this principle of integrity can be done by:

1. Constitutional judges shall ensure that their behavior is beyond reproach from the point of view of proper observation.
2. The conduct and behavior of constitutional judges must strengthen public confidence in the image and authority of the Court. Justice is not only

implemented but must also appear to be implemented.

3. Constitutional judges are prohibited from soliciting or accepting and must ensure that their family members do not solicit or accept gifts, grants, loans, or benefits or promises to accept gifts, grants, loans, or benefits from litigants or other parties who have a direct or indirect interest in the case to be or being examined that may influence the judge in carrying out his/her duties.
4. Constitutional judges shall not knowingly permit any employee of the Court or any other party under his/her influence, direction or authority to solicit or accept any gift, grant, loan or benefit in connection with any matter done or to be done or not to be done by a constitutional judge in relation to the performance of the duties of the Court.

With the application of these principles, it is expected that constitutional judges can carry out their duties properly. However, in practice sometimes not all constitutional judges can apply these principles properly as they should. This can be seen in the decision of the Constitutional Court Number 90/PUU-XXI/2023 concerning the Age Limit Requirements for the Nomination of the President and Vice President which caused pros and cons in the community.

In the application in case No. 90/PUU-XXI/2023, the Constitutional Court decided to partially grant the application regarding the age limit of presidential and vice presidential candidates with the condition of experience as state officials elected through general elections including regional head elections (pilkada) on the grounds that the President and the DPR had fully submitted

the determination of the age limit in Article 169 letter q of the Election Law to the Constitutional Court. However, in several other petitions for judicial review that have the same arguments, such as a petition for judicial review with case No. 29/PUUXXI/2023 submitted by the Indonesian Solidarity Party, a petition for judicial review with case No. 51/PUU-XXI/2023 submitted by the Gelora Party, then a petition for judicial review with case No. 55/PUU-XXI/2023. 55/PUU-XXI/2023 filed by the Mayor of Bukittinggi Erman Safar, Deputy Regent of South Lampung Pandu Kesuma Dewangsa, all of these requests were rejected by the Constitutional Court on the grounds that age restrictions for presidential and vice presidential candidates are the domain of the legislators (open legal policy).

After the decision of the Constitutional Court on case Number 90/PUU-XXI/2023, there were many pros and cons and debates in the community, where the position of the chairman of the Constitutional Court, Anwar Usman, was considered irrelevant to the Election Law and was associated with the professional code of ethics of judges for handling this case considering that Anwar Usman is the uncle of the Vice Presidential Candidate, Gibran Raka Bumiraka as a nephew. This is considered to have violated the code of ethics as a judge and the principles of constitutional judges including the principle of impartiality because it is not allowed for a judge to judge someone whose position is still related to the judge. There is a principle that applies universally to a judge, namely the principle of *nemo iudex in causa sua*, which can be interpreted as a prohibition on being a judge for his family. With the principle of *nemo iudex in causa sua* and the principle of impartiality, the

chairman of the Constitutional Court should not participate in deciding case Number 90/PUU-XXI/2023 because it is feared that there will be a conflict of interest so that the resulting decision is doubtful to fulfill aspects of justice.

From the explanation described above, the author is interested in further examining the application of the principles of independence and impartiality of constitutional judges in deciding a case, especially in case number 90/PUU-XXI/2023.

II. Legal Materials and Methods

This legal research uses a normative approach. One of them is to identify whether the law regulates a matter and how the rules are applied. The source of this research is secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials in this research are laws and regulations and the decision of the constitutional court number 90/PUU-XXI/2023. Secondary legal materials consist of literature, legal journals, and articles related to the principles of independence and impartiality. While tertiary legal materials are materials that provide an explanation of primary and secondary materials consisting of dictionaries, legal dictionaries, and encyclopedias. dictionaries, legal dictionaries, and so on. The analysis technique used in this research uses a normative approach, used to determine the application of the principles of independence and impartiality based on applicable legal provisions and implementation practices.

III. Result and Discussion

The 1945 Constitution, especially Article 1 paragraph (3), states that Indonesia is a state of law. The definition of a state of law actually implies that a state adheres to the teachings and principles of the rule of law, where the law is upheld as a guide and determinant of policy direction in carrying out the principles of the life of the nation and state.¹⁰ To realize the goals of the state as a state of law, a judicial institution was established that has the duty and authority to uphold the law. The power of judicial bodies is one of the characteristics of a state of law (rule of law).

The International Commission of Jurists in its congress in Bangkok in 1965 explained the elements of the rule of law, namely:¹¹ (1) constitutional protection; (2) free and impartial courts; (3) free elections; (4) freedom of expression and association; (5) opposition duties; and (6) civic education.

In line with the above thoughts, Jimly Asshiddiqie in his book entitled "Towards a Democratic State of Law" expands the elements of the rule of law by mentioning 12 (twelve) as a means of supporting the realization of the rule of law, namely:¹²

1. supremacy of law;
2. equality before the law;
3. the principle of legality (due process of law);
4. limitation of power;
5. independent supporting organs

6. free and impartial judiciary;
7. state administrative court;
8. constitutional court;
9. protection of human rights;
10. democratic in nature (demokratische rechtsstaat);
11. function as a means of realizing the purpose of the state (welfare rechtsstaat).
12. Transparency and social control.

The existence of an independent and impartial judiciary is an absolute must in every state of law. The judiciary as one of the state institutions is always required to uphold the law as fair as possible, for the sake of certainty and legal order for the community. To realize the aspired law enforcement, judges in examining, adjudicating and deciding a case are protected and given independent and free power by the state from various interventions from any party and in any form, as a guarantee of impartiality of judges except for law and justice for the implementation of the rule of law of the Republic of Indonesia.¹³

The United Nations has adopted several important principles relating to an independent judiciary under the Basic Principles on the Independence of the Judiciary at its 7th Congress in 1985.¹⁴ Although the independence of the judiciary is essentially a requirement or essential principle evident in many just legal systems, the precise definition of the principle itself may be difficult to apply in countries with different cultures and legal systems.¹⁵

¹⁰ Darmoko Yuti Witanto dan Arya Putra Negara Kutawaringin. *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana*, Bandung: Alfabeta, 2013, p. 1.

¹¹ I Dewa Gede Atmadja et. al., *Teori Konstitusi Dan Konsep Negara Hukum*, Malang: Setara Press, 2015, p. 144.

¹² Jimly Asshiddiqie, *Menuju Negara Hukum Yang Demokratis*, sebagaimana dikutip oleh *Ibid.*, p. 145-146.

¹³ Fahmiron, "Independensi Dan Akuntabilitas Hakim Dalam Penegakan Hukum Sebagai Wujud Independensi Dan Akuntabilitas Kekuasaan Kehakiman", *Jurnal Litigasi*, Vol. 17, No. 2, 2016, p. 3468-3469.

¹⁴ Nuria Siswa Enggarani, "Independensi Peradilan dan Negara Hukum", *Jurnal Law & Justice*, Vol. 3, No. 2, 2018, p. 85.

¹⁵ *Ibid.*

Basically, the independence of a judicial body always refers to the ability of judges to decide a case free from any pressure or incitement. As such, the judiciary as a whole must also be independent by being separate from the government and other centers of power. The primary role of an independent judiciary is to enhance the implementation of the rule of law and to ensure or guarantee the rule of law. If a judiciary is to be truly impartial and independent in the exercise of its adjudicative function, it must have specific powers that keep it "separate" from other governmental institutions, political organizations, and non-governmental organization influences, and free from other outside influences.¹⁶

A Dutch jurist named Franken stated that the independence of the judicial power can be divided into four forms, namely:¹⁷

- 1) Constitutional independence
- 2) Functional independence
- 3) Personal independence of judges
- 4) Real practical independence

Constitutional independence is independence that is linked to the doctrine of Trias Politika with the system of division of powers according to Montesquieu. The judiciary must be independent in the sense that its institutional position must be free from political influence.

Functional independence relates to the work performed by judges when facing a dispute and having to give a decision. The independence of judges means that each judge may exercise his or her freedom to interpret the law if the law does not provide a

clear understanding. After all, judges have the freedom to apply the content of the law to the current case or dispute. Substantial independence can also be seen as a limitation, where a judge may not decide a case without a legal basis. Substantial independence also means that under certain conditions, a judge or judicial authority can revoke a statutory provision that is deemed contrary to justice or the constitution.

Personal independence of judges is about the freedom of individual judges when dealing with a dispute. Brenninkmeijer said: "Functional independence must be seen as an outcome of the judge's personal independence. I am of the opinion that one could speak in the opposite direction, seeing personal independence as having a direct relationship with constitutionally prescribed duties".

Real practical independence is the independence of judges to be impartial. The judge must keep abreast of developments in public knowledge that can be read or witnessed from the media. The judge must not be influenced by the news and then simply take the words of the media without consideration. The judge must also be able to filter the urges in society to be considered and critically tested with existing legal provisions. Judges must know the extent to which they can apply social norms to society.

The provision that judges are independent and free does not mean that judges can act arbitrarily, their obligation is to interpret the law and the fundamental principles and assumptions related to it based on their sense of justice and conscience.¹⁸ if the independence of judges is then interpreted

¹⁶ *Ibid.*

¹⁷ J. Djohansjah, *Reformasi Mahkamah Agung Menuju Independensi Kekuasaan Kehakiman*, sebagaimana dikutip oleh Fahmiro, *Op.Cit.*, p. 3480-3482.

¹⁸ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, sebagaimana dikutip oleh *Ibid.*, p. 3482.

into absolute freedom, arbitrary power can occur, which will ultimately return to the atmosphere that led to the birth of the principle of freedom of judicial power.

Frank Cross argues that there are at least 5 (five) bases for the independence of judicial power and the freedom of judges, namely¹⁹ First, Montesquieu's Trias Politica. Montesquieu wrote: there is no liberty, if judiciary power is not separated from the legislative and executive. In a different formulation, a similar expression was expressed by George Hamilton: there is no liberty, if the power of judging be not separated from the legislative and executive. Secondly, it has become commonplace and has been accepted scientifically and practically that an independent judicial power and the independence of judges is one of the elements of the rule of law. Thirdly, the influence and public opinion that judges solely decide cases according to the law. Judges are not only obliged to protect the public interest, but also to protect individuals and minorities. Fourth, avoiding pressure from plaintiffs or prosecutors. To ensure fairness, impartiality, justice and due process of law, an independent judiciary and free judges are required. Fifth, the constraints of law are a double-edged sword. On the one hand, law is a means of control to prevent arbitrary action, but on the other hand, existing laws can be shackling if they are arbitrary.

According to Paulus Effendi Lotulung, independent judicial power is not free without any absolute limits, but rather the judicial power is mainly bound and limited

by signs according to the rules of law itself, not violating the law and acting arbitrarily; furthermore, the freedom of judicial power is also bound by responsibility or accountability, moral and ethical integrity, transparency, supervision (control), professionalism and impartiality.²⁰

With these principles of judicial power, judges are expected to be able to carry out the duties and functions of judicial power that support law and justice without interference from the authorities or other components that are not in accordance with the goals of law and justice. Therefore, judges are expected to always conduct investigations, monitor social dynamics, and understand legal standards and people's sense of justice.²¹

Judges and constitutional judges must be independent, have high morality and justice, be honest, and have extensive knowledge in their fields. They must adhere to the code of ethics and judges' code of conduct as a requirement to perform their duties as independent judges who prioritize the rule of law and justice through the judicial system. Their duty is to act professionally and in accordance with the law in carrying out their duties. Safeguarding law and justice relies heavily on the independence of the judiciary, including its judges. It is only way that the guarantee of the implementation of law and justice cannot be achieved without the independence of the judiciary.²²

In addition, a document called the Bangalore Principles sets out the principles of independence and impartiality of judges. The Bangalore Principles contain six important

¹⁹ Priandita Koswara dan Megawati, "Analisis Prinsip Independensi Hakim Konstitusi di Indonesia", *Ahmad Dahlan Legal Perspective*, Vol. 3, No. 1, 2023, p. 51.

²⁰ Paulus Effendi Lotulung, *Kebebasan Hakim dalam Sistem Penegakan Hukum*, sebagaimana dikutip oleh *Ibid.*, p. 3483.

²¹ Adinda Thalia Zahra et. al., "Problematika Independensi Hakim Sebagai Pelaksana Kekuasaan Kehakiman", *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, Vol. 3, No. 2, 2023, p. 2016.

²² *Ibid.*

principles that became the code of ethics and behavior of judges in the world that were produced at an international conference in Bangalore in 2001. The six agreed principles are independence, impartiality, integrity, propriety, equality, competence and diligence.²³

The implementation of independence and impartiality of judges according to the Bangalore Principles is as follows:²⁴

- a. Judges must carry out their judicial functions independently on the basis of an assessment of the facts, rejecting external influences in the form of inducements, lures, pressures, threats or interference, whether direct or indirect, from anyone or for any reason, in accordance with their careful mastery of the law.
- b. Judges must be independent from pressure from the public, mass media and parties, in a dispute that they must adjudicate.
- c. Judges must maintain independence from the influence of the executive, legislative and other institutions.
- d. In carrying out judicial duties, judges must be independent from the influence of peers in decision making.
- e. Judges must encourage, uphold and improve the guarantee of independence, in the implementation of judicial duties both individually and institutionally.
- f. Judges shall maintain and demonstrate an independent image, and promote high standards of behavior in order to strengthen public confidence in the judiciary.

The impartiality of judges must be seen in the idea that judges will base their decisions on the law and the facts in the trial, not on the basis of association with one of the litigants, nor become the decision maker of the case itself. The impartiality of the judicial process can only be done if judges can disassociate themselves from conflicts of interest or collegiality with litigants, therefore judges must withdraw from the trial process if they see the potential for non-impartiality. In the context of the Indonesian legal system, a judge must resign if he or she is related by blood or consanguinity to one of the litigants or parties being examined in a court proceeding. Therefore, the judge must recuse himself from the proceedings if he sees the potential for non-impartiality.²⁵

The principle of impartiality requires judges to be neutral, not taking sides with any of the litigants, plaintiffs or defendants in civil cases, defendants or legal counsel and prosecutors in criminal cases. This principle of impartiality requires judges not to allow family, social, political or other relationships to influence their behavior in court or in making decisions on cases they are handling.²⁶

“A judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor should a judge convey or permit others subject to the judge’s direction and control to convey the impression that they are in a special position to influence the judge”

²³ I Made Sukanda, “Hakikat Prinsip Parsialitas Dalam Sistem Peradilan Pidana”, *Disertasi*, Fakultas Hukum Universitas Hasanuddin Makassar, 2021, p. 30.

²⁴ *Ibid.*, p. 30-31.

²⁵ Abdul Malik, “Perspektif Fungsi Pengawasan Komisi Yudisial Pasca Putusan MK No.005/PUU-IV/2006”, sebagaimana dikutip oleh *Ibid.*, p. 32.

²⁶ Ridarson Galingging, “Peran Komisi Yudisial Dalam Membangun Peradilan Yang Bersih Dan Berwibawa”, sebagaimana dikutip oleh *Ibid.*, p. 33.

A judge must be independent and not take sides with anyone even if it is his family, if it is already in the trial then everything is treated equally. Judges must adhere to the Tri Parasetya of Indonesian Judges. Judges must be able to distinguish between their official attitude as a state official tasked with upholding justice, and their daily life as part of their family and society.²⁷

From the explanation that the author has explained above, if we link the principles of independence and impartiality to the Constitutional Court Decision Number 90/PUU-XXI/2023, it is clear that this decision has created controversy in the community. Several expert opinions regarding the decision of the Constitutional Court as stated by Zainal Arifin Mochtar as a UGM legal expert said that the legal decision of the Constitutional Court this time had a major impact on the good name of the Constitutional Court and Indonesian law.²⁸ In addition, Constitutional Law Expert Denny Indrayana considers that the Constitutional Court's decision to grant the age lawsuit of presidential and vice presidential candidates is invalid. The invalidity of case number 90/PUU-XXI/2023 is considered because it is full of fundamental constitutional defects.²⁹ Another opinion is that of Muchamad Ali Safa'at, Professor of Constitutional Law at the Faculty of Law, Brawijaya University, who considers that there are a number of irregularities in several decisions of the Constitutional Court that test the constitutionality of Article 169 letter q of the General Election Law.³⁰ The irregularity

is that the Constitutional Court has added a new norm so that this is not in accordance with the initial concept of the existence of the Constitutional Court whose function is to test existing norms, whether the norm is constitutional or unconstitutional? If what is being tested is the 40-year age requirement, then the 40-year age must be decided whether it is in accordance with the constitution or not. According to him, the addition of "or has / is currently occupying an office elected through general elections, including regional head elections" is an irregularity in the Constitutional Court's decision.

The decision of the Constitutional Court regarding the minimum age limit for nomination of the President and Vice President shows indications of favoritism and conflict of interest by the chairman of the Constitutional Court, regarding the potential nomination of his nephew who is hindered by the age limit in the Election Law. From some of the opinions of the experts above, it would appear that the chairman of the Constitutional Court has violated the principles related to independence and impartiality. This is because the nephew of the Chief Justice of the Constitutional Court participated in the political contestation of the President and Vice President elections. Indirectly, the result of the decision will have an impact on one of the candidate pairs, which is certainly not in line with the principles that must be applied by judges, especially the principle of impartiality. Such actions by judges have undermined the values of justice. If indeed the judge saw the potential for partiality in

²⁷ *Ibid.*

²⁸ Tasya, "Pandangan Pakar UGM Terkait Putusan MK Soal Batas Usia Capres Cawapres", sebagaimana dikutip oleh Agung Bayu Adji et. al., "Konstitusionalitas Perubahan Usia Calon Presiden dan Calon Wakil Presiden Dalam Negara Hukum Demokrasi", *Sentri: Jurnal Riset Ilmiah*, Vol. 3, No. 1, 2024, p. 19.

²⁹ Achmad Nasrudin Yahya, "Denny Indrayana Sebut Putusan MK soal Batas Usia Capres-Cawapres Tidak Sah", sebagaimana dikutip oleh *Ibid.*

³⁰ Endrianto Bayu Setiawan, "Guru Besar Hukum Tata Negara FH UB Jelaskan Kejanggalan Putusan Mahkamah Konstitusi Soal Batas Usia Capres/Cawapres", sebagaimana dikutip oleh *Ibid.*

the case, then the judge should have resigned from the trial. But the fact is that the chairman of the Constitutional Court still participated in the hearing and decided the case. This, according to the author, is

IV. Conclusion and Suggestion

Based on the explanation above, it can be concluded that in the Constitutional Court Decision Number 90/PUU-XXI/2023, the principles of independence and impartiality were not applied by the judges. This is because in this decision, the chairman of the Constitutional Court has an indirect relationship with the results of his decision. Where the nephew of the chairman of the Constitutional Court also participated in the political contestation of the general elections for President and Vice President, so that the decision could help his nephew to participate in political contestation, who initially could not participate in political contestation because he was hindered by the age limit requirement, but with the decision, his nephew passed the age limit requirement. According to the author, this decision does not reflect the principle of impartiality.

The author's recommendation is that a judge must be able to distinguish between his official attitude as a state official tasked with upholding justice, and the attitude of daily life as part of the family and society. If this is applied by judges, then the author believes that judges in carrying out their duties can apply the principles of independence and impartiality in deciding a case.

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contrary to the principle of impartiality, so that for the author, the decision of the Constitutional Court Number 90/PUU-XXI/2023 is ethically and morally flawed.

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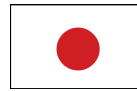
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