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Public Policy Analysis Of The Implementation Of Constitutional Court Ruling Number 90/PUU-XXI/2023 In The 2024 Election

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Abstract. *This research is a form of analysis regarding the Constitutional Court Decision Number 90/PUU-XXI/2023 and its implementation as public policy within the framework of the 2024 Election. This analysis is important because Constitutional Court Decision Number 90/PUU-XXI/2023 is seen as a critical decision that is extremely controversial and exceeds the authority of the Constitutional Court itself. This research emphasizes the use of normative legal research, conceptual approaches, and qualitative analysis methods. The results of this research indicate that Constitutional Court Decision Number 90/PUU-XXI/2023 must be constructed separately from the controversy that accompanies it and must be institutionalized constructively. The advice conveyed in this paper is the importance of assuming socialization first regarding the implementation of the new norms settled in Constitutional Court Decision Number 90/PUU-XXI/2023.*

Keywords: *Constitutional Court Decision Number 90/PUU-XXI/2023, Public Policy, 2024 Election.*

Abstrak. Penelitian ini merupakan bentuk analisis terhadap Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 dan implementasinya sebagai kebijakan publik dalam rangka Pemilu 2024. Analisis ini penting karena Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 dipandang sebagai putusan kritis yang sangat kontroversial dan melampaui kewenangan Mahkamah Konstitusi itu sendiri. Penelitian ini menekankan pada penggunaan penelitian hukum normatif, pendekatan konseptual, dan metode analisis kualitatif. Hasil penelitian ini menunjukkan bahwa Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 harus dikonstruksi terpisah dari kontroversi yang menyertainya dan harus dilembagakan secara konstruktif. Saran yang disampaikan dalam tulisan ini adalah perlunya sosialisasi terlebih dahulu mengenai implementasi norma baru yang tertuang dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023.

Kata Kunci: Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023, Kebijakan Publik, Pemilu 2024.

A. Introduction

Analysis of public policy in Constitutional Court Decision Number 90/PUU-XXI/2023 is a process that can be used as an effort to construct how the 2024 General Election can be implemented optimally. Maximizing the implementation of the Constitutional Court Decision Number 90/PUU-XXI/2023 is a framework to emphasize the position of the Constitutional Court as the guardian of constitutional rights and also the interpreter of the Constitution. Apart from that, the analysis in this research is also used as a form of confirmation that the controversy contained in the Constitutional Court Decision Number 90/PUU-XXI/2023 must be cleared up first. Cleaning up such controversies, in this case, is an effort to maintain the existence of the Constitutional Court Decision. However, the Constitutional Court in this case must be constructed independently in line with the essence of the judicial institution itself.

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However, what is more urgent to implement immediately is not just focusing on how to maintain the independence of the Constitutional Court institutionally. Rather, it is about how the Constitutional Court, in its Constitutional Court Decision Number 90/PUU-XXI/2023, can ensure that the address will implement the decision on the proposed a quo article. So, the Constitutional Court Decision Number 90/PUU-XXI/2023 is not only a documentary record of how the Constitutional Court constructs itself as a protector of the constitutional rights of citizens but also an interpreter of the Constitution. However, the Constitutional Court Decision Number 90/PUU-XXI/2023 should be used as the most fundamental basis for guidance regarding changes to the quo legal norms that are proposed for review.

B. Research Methodology

This research is normative legal research, which substantially attempts to construct law by emphasizing human logic. The approach used in this research is conceptual. The conceptual approach used in this research is concretely an attempt to present the views of experts regarding their views on research problems. The legal materials used in this research are primary legal materials and secondary legal materials. Primary legal materials in this case are legal materials that are based on legal materials officially issued by the state, and secondary legal materials are supporting legal materials taken from various books, journals, or other scientific papers which contain research substance.

The research analysis model used, in this case, is qualitative analysis. Qualitative analysis is an analysis that focuses on calculating human logic. Apart from that, qualitative analysis also does not use any mathematical calculation-based approach.

C. Discussion

1. History of the Institution of the Constitutional Court in Indonesia

As one of the state institutions that operates in the field of justice, the Constitutional Court, in historical review, has a long record which is then correlated with the needs in the protection and safeguarding system as well as national law enforcement. The Constitutional Court, in its institutional aspect, certainly cannot be separated from the aspect of the extent of the need for the implementation of constitutionality testing or judicial review between laws and the Constitution. The concept relating to constitutional review of laws, from a historical perspective, was conceived long before Indonesia proclaimed independence on 17 August 1945. The concept of reviewing the constitutionality of laws was first proposed

by Muhammad Yamin on 15 July 1945 at the BPUPKI session, emphasizing the term " Comparing Laws" and seeking to compare customary law, Islamic law (Shari'ah), and the Constitution.[1] However, this concept was later rejected by Mr. Soepomo by emphasizing that Indonesia does not adhere to the ideology of trias politica, and sociologically, Indonesia is a new country that does not yet have many legal graduates and has never had experience in practicing judicial review.[2]

The concept put forward by Yamin continues to be one part of the development of a democratic rule of law state in Indonesia. The concept of judicial review put forward by Yamin was implemented on a limited basis during the constitution of the United Republic of Indonesia (RIS). The implementation of this judicial review is confirmed in Articles 156 to 158 of the Constitution of the Republic of Indonesia (RIS), and this case is carried out by the Supreme Court in the form of reviewing state laws against the constitution.[3] The amendment to the Constitution of the Republic of the United States of Indonesia (RIS) into the Provisional Constitution (UUDS) of 1950 again abolished the judicial review mechanism because it implemented the concept of popular sovereignty which was implemented by the Government together with the People's Representative Council (DPR).[4] The concept of judicial review emerged again during the New Order government when the Ad Hoc Committee II of the Temporary People's Consultative Assembly (MPRS) proposed granting the Supreme Court the right to material review of laws. However, this concept was again rejected, because Indonesia at that time adhered to parliamentary supremacy. [5]

So that the Consultative Assembly is handed a right to guide the constitution.[6] This reality is then supported by the fact that the Indonesian state constitution before the amendment placed the MPR or People's Consultative Assembly as the highest state institution and the Supreme Court or Supreme Court as the sole judicial authority at that time under the People's Representative Council (MPR).[7] The position of the Supreme

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[1] Jimly Asshiddiqie, "Mahkamah Konstitusi dan Pengujian Undang-Undang", *Jurnal Hukum Ius Quia Iustum Vol. 11 No. 27* (2004): 2-3.

[2] Muhammad Yamin, *Naskah Persiapan Undang-Undang Dasar 1945*, (Jakarta: Yayasan Prapanca, 1959), hlm. 341-342.

[3] Benny K. Harman, *Mempertimbangkan Mahkamah Konstitusi: Sejarah Pemikiran Pengujian UU Terhadap UUD*, (Jakarta: Gramedia, 2013), hlm. 35.

[4] Sri Soemantri, *Hak Menguji Material di Indonesia*, (Bandung: Alumni, 1986), hlm. 25.

[5] Jimly Asshiddiqie, *op.cit*.

[6] Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2020), hlm. 5.

[7] Machmud Aziz, "Pengujian Peraturan Perundang-Undangan Dalam Sistem Peraturan Perundang-Undangan di Indonesia", *Jurnal Konstitusi Vol. 7 No. 5* (2010): 142.

Court, of course, does not provide wide opportunities to open up space for constitutional review of laws against the 1945 Constitution of the Republic of Indonesia. However, this then changed drastically, when the People's Representative Council - Gotong Royong (DPR GR) at that time succeeded in passing Law Number 14 of 1970 concerning Basic Provisions of Judicial Power. This law is an assertion of the authority of the Supreme Court to review statutory regulations under the Law.

This law is also proof that the dominant political power in the People's Representative Council - Mutual Cooperation (DPR GR), succeeded in forcing Oemar Seno Adji as Minister of Justice to accept the reality that the Supreme Court is only given the authority to carry out reviews of statutory regulations under the Law, and does not have the authority to review the constitutionality of laws against the 1945 Constitution of the Republic of Indonesia.[8] The Court's authority is confirmed in Article 26 paragraph (1) of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power. Article 26 paragraph (1) confirms that the Supreme Court has the authority to declare invalid all regulations at a lower level than the Law because they conflict with higher laws and regulations. However, the exercise of this authority is not immediately carried out freely and independently. Because Article 26 paragraph (2) of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power, confirms that decisions regarding the declaration of invalidity of statutory regulations can be taken in connection with an examination at the cassation level.

Prof. Mahfud MD in his book emphasized that the authority of the Supreme Court which is limited to examinations at the cassation level is certainly impossible to implement.[9] Such limitations on the authority of the Supreme Court were then reaffirmed in the Decree of the People's Consultative Assembly (TAP MPR) Number VI/MPR/1973 concerning the Position and Relationship of Institutional Work Procedures and the Decree of the People's Consultative Assembly (TAP MPR) Number III/MPR/1978 concerning Position and the relationship between the work procedures of the highest state institutions with/or between high state institutions. The problem regarding the concept of review re-emerged in 1992 when Lieutenant General TNI (Ret.) Ali Said, S.H., who at that time served as chairman of the Supreme Court, emphasized that the Supreme Court was one of the pillars of democracy which should be given the right to review laws and grant. This

[8] Banny K. Harman, *Mempertimbangkan Mahkamah Konstitusi: Sejarah Pemikiran Pengujian UU Terhadap UUD*, (Jakarta: Gramedia, 2013), hlm. 6.

[9] Moh. Mahfud MD., *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, (Jakarta: LP3ES, 2007), hlm. 96.

right is in line with the principle of checks and balances which is one of the fundamental principles in a democratic country.[10] Apart from that, understanding the granting of clear authority to the Supreme Court in a comprehensive study is also an effort to minimize and even eliminate arbitrary practices (abuse of power) carried out by the New Order government regime. However, this concept was never truly realized, at least until the New Order regime collapsed and was marked by Soeharto's resignation from the position of President of the Republic of Indonesia.

After the collapse of the New Order regime under the leadership of Soeharto, Indonesia at that time immediately experienced various uncertain situations that required the implementation of various kinds of changes in all aspects of citizens' lives. One of the changes that occurred, in this case, was the implementation of the 1999 General Election which resulted in a new composition within the framework of the People's Consultative Assembly. The new People's Consultative Assembly at that time then took a firm decision that changes to the 1945 Constitution of the Republic of Indonesia would be implemented using an amendment mechanism.[11] The fundamental change that occurred at that time was the idea of expanding the authority of the judiciary to carry out reviews of the constitutionality of laws regarding the 1945 Constitution of the Republic of Indonesia. However, in the end, the debate that occurred only resulted in the decision that the Supreme Court had the authority to carry out reviews regarding legal regulations under the Law and the People's Consultative Assembly (MPR), in this case, the institution that has the authority to review the constitutionality of laws against the 1945 Constitution of the Republic of Indonesia.

This authority is confirmed in the Decree (TAP) of the People's Consultative Assembly (MPR) Number III/MPR/2000 concerning Legal Sources and the Sequence of Legislative Regulations. The authority of the People's Consultative Assembly (MPR) in carrying out a constitutionality review is confirmed in Article 5 paragraph (1) which reads "The People's Consultative Assembly has the authority to review laws against the 1945 Constitution and Decrees of the People's Consultative Assembly".[12] Meanwhile, the

[10] Moh. Mahfud MD., *Hukum dan Pilar-Pilar Demokrasi,* (Yogyakarta: Gama Media, 1999), hlm. 331.
[11] Banny K. Harman, *op.cit,* hlm. 7.
[12] Landasan hukum ini merupakan bentuk keberlanjutan dari Ketetapan Majelis Permusyawaratan Rakyat Sementara (MPRS) Republik Indonesia Nomor XIX/MPRS/1966 Tentang Peninjauan Kembali Produk-produk Legislatif Negara di luar Produk Majelis Permusyawaratan Rakyat Sementara yang Tidak Sesuai Dengan UUD 1945. Dimana TAP MPRS itu menjadi salah satu landasan atas diberlakukannya *legislative review* yang paling awal, dalam sistem pengujian normatif di Indonesia (Padmo Wahjono, *Indonesia Negara Berdasarkan Atas Hukum,* (Jakarta: Ghalia Indonesia, 1986), hlm. 15).

authority of the Supreme Court is explained in Article 5 subsection (2) of the Decree of the People's Consultative Assembly (MPR) Number III/MPR/2000 concerning Legal Sources and the Sequence of Legislative Regulations. Even though there are strict arrangements regarding the mechanism for reviewing the constitutionality of laws against the Constitution there is not a single process for reviewing the constitutionality of laws against the Constitution that has been implemented. Decree (TAP) of the People's Consultative Assembly (MPR) Number III/MPR/2000 Concerning Sources of Law and Sequence of Legislative Regulations, was then revoked in 2001 in line with the implementation of the third amendment to the 1945 Constitution of the Republic of Indonesia.[13]

The third amendment to the 1945 Constitution of the Republic of Indonesia specifically brought significant changes to the Indonesian constitutional system. As for the changes that occurred in the third amendment to the 1945 Constitution of the Republic of Indonesia and its correlation with the review of the Law against the Constitution, in this case, the addition of Articles in Article 24. Article 24 of the Law is against the Constitution of The Republic of Indonesia in 1945, initially only contained the following 2 verses:

a. Article 24 paragraph (1) which reads "Judicial power is exercised by a Supreme Court and other judicial bodies according to law.
b. The composition and powers of judicial bodies are regulated by law.

Article 24 of the 1945 Constitution of the Republic of Indonesia was later added to Articles 24, 24A, 24B, and 24C. These changes are specifically related to the addition of institutions, changes in the governance of judicial power, and the authority over the institutions themselves. In the third change, Indonesia officially established the Constitutional Court and the Judicial Commission as two new state institutions and included them in the scope of power. Apart from changing judicial power by adding two new institutions, the third amendment to the 1945 Constitution of the Republic of Indonesia also changed Indonesia's state administration. According to the results of the third amendment, the People's Consultative Assembly in this case is no longer the highest state institution.

[13] Sidang Tahunan Majelis Permusyawaratan Rakyat (MPR) yang dilaksanakan pada 9 November 2001, merupakan sarana dilaksanakannya amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 yang ketiga. Salah satu alasan dibalik dilaksanakannnya amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 yang ketiga, dalam hal ini adalah kembali mengemukanya pembentukan konsep peradilan konstitusional (Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis,* (Jakarta: PT. Bhuana Ilmu Populer Kelompok Gramedia, 2009), hlm. 304-305).

The role of the People's Consultative Assembly (MPR) as the highest state institution was officially revoked because the implementation of sovereignty in Section 1 subsection (2) was emphasized to be carried out based on the Constitution. The revocation of authority has implications for changes that occur in the Indonesian constitutional system, of course, also has wider implications for changes that occur in the system of reviewing the Constitution. As explained in Article 24C as a result of the third amendment to the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has the authority to adjudicate at the first and last level, reviewing laws against the Constitution. Such changes to the constitutional system are certainly an important reality that brings back to life the essence of law in society because a good law is a statute that lives in society.[14]

The establishment of the Constitutional Court in the Indonesian constitutional system, in this case, is a form of realization of the Yamin concept which has always been rejected and never implemented. More than that, the formation of the Constitutional Court by Indonesia is certainly in line with the essence of the debate regarding the regulation of reviewing the constitutionality of laws against the Constitution. History records that the process of establishing the Constitutional Court cannot be separated from the development of the judicial review paradigm[1516]. Indonesia itself is the 78th country in the world in terms of establishing a Constitutional Court, that is separate from the Supreme Court institution.[17] Even though the Constitutional Court has been explicitly stated in the 1945 Constitution of the Republic of Indonesia, its formation will only be implemented with a maximum deadline of August 17, 2003. As explained in Article III of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia, which states that the formation of the Constitutional Court will be carried out no later than August 17th, 2003, and all its duties will be carried out by the Supreme Court until the Constitutional Court is legally formed.[18]

The Constitutional Court itself was finally legally established on August 13, 2003, through Law Number 24 of 2003 regarding the Constitutional Court was documented in

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[14] Nazaruddin Lathif, "Teori Hukum Sebagai Sarana atau Alat Untuk Memperbaharui atau Merekayasa Masyarakat *Jurnal Pakuan Law Review Vol. 3 No. 1* (2017): 83.

[15] Jimly Asshiddiqie, *Model-Model Pengujian Konstitusional di Berbagai Negara*, (Jakarta: Konpress, 2005), hlm. 6-9.

[16] Dalam konteks perkembangan paradigm *judicial review* di Amerika Serikat, telah terjadi selama 250 tahun lamanya dan menjadi suatu kondisi yang berkaitan dengan kepentingan umum (Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, (Jakarta: Sinar Grafika, 2011), hlm. 3).

[17] Machmud Aziz, *op.cit*, hlm. 128.

[18] Selama tugasnya dijalankan oleh Mahkamah Agung, setidaknya ada 14 (empat belas) pendaftaran permohonan pengujian Undang-Undang Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Mahkamah Konstitusi, *Mahkamah Konstitusi: Pendidikan Hak Konstitusional Warga Negara*, (Jakarta: Pusat Pendidikan Pancasila dan Konstitusi Mahkamah Konstitusi, 2016), hlm. 18-19).

State Gazette Number 98 and Supplement to State Gazette Number 4316. The inauguration of the Constitutional Court judges itself was carried out on August 15, 2003.[19] The names of the Constitutional Court judges who were first appointed by the President at that time included:[20]

a. Prof. Dr. Jimly Asshiddiqie, S. H. (proposal by the House of Representatives)
b. I Dewa Gede Palguna (proposed by the House of Representatives)
c. Lt. Gen. TNI (Ret.) Achmad Roestandi, S. H. (suggestion by the House of Representatives)
d. Prof. Abdul Mukhtie Fadjar, S. H., M. S. (President's proposal)
e. Prof. H. A. S. Natabaya, S. H., LLM. (President's proposal)
f. Dr. H. Harjono, S. H., MCL., S. H., M. H. (President's proposal)
g. Prof. Dr. H. M. Laica Marzuki, S. H. (Supreme Court proposal)
h. Maruarar Siahaan, S. H. (Supreme Court proposal)
i. Sudarsono, S. H. (Supreme Court proposal)

2. Constitutional Court Decision and Its Consequences for the National Legal System

After the application for reviewing the constitutionality of the Law is submitted and a series of examination processes have been carried out, the final process is the decision of the Constitutional Court judge regarding the submission of the application for reviewing the constitutionality of the proposed Law. The first aspect that will be discussed is the definition of the decision itself. Prof. Sudikno Mertokusumo explained that what is called a decision is a statement issued by a judge, as an authorized official in a trial and is used to resolve problems regarding a dispute or case submitted.[21] This arrangement applies in general to all aspects of the judiciary, the conclusion of which is getting the judge's verdict.[22] The judge's decision will be a bright spot regarding the existence of legal certainty and the upholding of justice related to the problems faced.[23]

[19] Muhammad Dafa Khairulloh, "Sejarah dan Perkembangan Mahkamah Konstitusi Selaku Pemegang Kekuasaan Kehakiman di Indonesia", *Souvereignty: Jurnal Demokrasi dan Ketahanan Nasional Vol. 2 No. 1* (2023): 127.

[20] Mahkamah Konstitusi Republik Indonesia, "Sejarah dan Perkembangan", Mahkamah Konstitusi Republik Indonesia, https://www.mkri.id/index.php?page=web.ProfilMK&id=1 (diakses pada 9 November 2023).

[21] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2002), hlm. 138.

[22] M. Nur Rasaid, *Hukum Acara Perdata*, (Jakarta: Sinar Grafika Offset, 2003), hlm. 48.

[23] Moh. Taufik Makarao, *Pokok-Pokok Hukum Acara perdata Cetakan I*, (Jakarta: Rineka Cipta, 2004), hlm. 124.

Judge or court decisions in this case are classified into declaratory, constitutive, and condemnatory decisions.[24] However, what applies specifically to the Constitutional Court's decision regarding the submission of a request for review of the constitutionality of a law against the 1945 Constitution of the Republic of Indonesia, in this case, is the constitutive decision and the declaratory decision.[25] The distinction between these types of decisions is based on an analysis of the differences in decisions issued by the Constitutional Court. The decision of the Constitutional Court is considered to be constitutive when the decision states that a law is unconstitutional and has implications for the creation of new norms or conditions that eliminate old legal norms.[26] This condition is, of course, in line with the reality that occurs in the national legal system, because if a law is declared unconstitutional then its validity is suspended until a new law is formed or the old law is re-enacted.[27]

As a decision that presents a new legal norm, the constitutive decision in this case will have implications for the occurrence of a judicial order. A judicial order itself is a legal order given by the Constitutional Court to force the construction of new ordinances and regulations, to implement the Court's decisions more concretely.[28] The decision of the Constitutional Court is understood as a declaratory judgment, when the Constitutional Court judge, in this case, considers that a law is valid and does not conflict with the constitution. A declaratory judgment is generally understood as a decision issued when the judge only states what is the decree, and does not impose a sentence.[29] A declaratory decision in the context of the Constitutional Court is a decision that will never create new legal norms.[30]

Regarding the nature of the decision regarding whether or not the Constitutional Court is allowed to issue an *ultra petita* decision, in this case, it is divided into two different views and is based on the same strong concept. Prof. Mahfud MD emphasized that the Constitutional Court should not issue *ultra petita* decisions, because it would violate the

[24] Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan MKRI, 2010), hlm. 55.

[25] Ibid.

[26] Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori dan Praktek,* (Bandung: Mandar Maju, 2009), hlm. 109.

[27] Abdul Latif, *Fungsi Mahkamah Konstitusi Dalam Upaya Mewujudkan Negara Hukum Demokrasi,* (Yogyakarta: Kreasi Total Media, 2007), hlm. 211.

[28] Siti Partiah, *Judicial Order Oleh Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap UUD NRI Tahun 1945,* (Surabaya: Tesis Pascasarjana UIN Sunan Ampel Surabaya, 2020), hlm. 95.

[29] Denny Indrayana dan Zainal Arifin Mochtar, "Komparasi Sifat Mengikat Putusan *Judicial Review* Mahkamah Konstitusi dan Pengadilan Tata Usaha Negara", *Mimbar Hukum Vol. 19 No. 3* (2007): 439.

[30] Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia,* (Jakarta: Konstitusi Press, 2005), hlm. 197-199.

laws and regulations relating to the Constitutional Court itself.[31] Prof. Jimly Asshiddiqie emphasized a different view by emphasizing that the Constitutional Court has the authority to issue *ultra petita* decisions and that the *ultra petita* prohibition only applies in civil courts.[32] Prof. Bagir Manan added that the Constitutional Court has the authority to issue *ultra petita* decisions provided that the petition submitted includes the phrase et aequo et bono or the judge must make the fairest decision possible.[33] However, currently, the Constitutional Court is expressly prohibited from issuing *ultra petita* decisions, while still emphasizing the need for judges to be fair and wise in deciding a case.

As with decisions in general, Constitutional judges also have the authority to make decisions or express different views. The delivery of a different decision or view, in procedural law, is called a dissenting opinion. Dissenting opinion itself is a condition when one or several Constitutional judges emphasize a different view in a decision.[34] It should be understood that if differences in views of one or several Constitutional judges within the framework of a dissenting opinion are conveyed when the decision has not yet been delivered, then the decision must be temporarily suspended for its material review or perhaps even annulled.[35] This policy was adopted because dissenting opinion is part of the realization of the judge's freedom of opinion and is an integrated part of the judge's authority framework in carrying out legal findings to decide a case. The implementation of dissenting opinions in Constitutional Court decisions must of course be carried out based on the principle of freedom contained in Pancasila, which essentially emphasizes social awareness and responsibility by accommodating all views in deliberations and emphasizing the importance of taking core views by prioritizing Godly values.[36]

3. Implementation of Constitutional Court Decision Number 90/PUU-XXI/2023 in the Public Policy Perspective of the 2024 Election

As explained in the previous discussion, the Constitutional Court Decision Number 90/PUU-XXI/2023 is a decision that expands the meaning of Article 169 letter q of Law Number 7 of 2017. The expansion of meaning, in this case, indirectly contributes to forming norms new regulation becomes a legal social reality that must be constructed very

[31] Tim Penyusun Hukum Acara Mahkamah Konstitusi, *op.cit*, hlm. 72.
[32] Ibid.
[33] Ibid.
[34] Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang,* (Jakarta: Sinar Grafika, 2012), hlm. 199.
[35] H. F. Abraham Amos, *Legal Opinion: Aktualisasi Teoritis dan Empirisme,* (Jakarta: PT. Raja Grafindo Persada, 2004), hlm. 1.
[36] Peter Mahmud Marzuki, *Penelitian Hukum,* (Jakarta: Kencana Prenada Media, 2009), hlm. 132.

carefully.[37] The caution required in the implementation aspect of Constitutional Court Decision Number 90/PUU-XXI/2023, is a sociological conceptual review which in this case seeks to place the protection and improvement of constitutional rights above the renewal of national law. Even though the issue of open legal policy is still a generally debated aspect in legal construction, the Constitutional Court has issued a concrete decision regarding the extent to which the Constitutional Court can act on matters given as part of its authority.[38] Because even now, the construction of the Constitutional Court in Indonesia has not yet found a clear light.

Such theoretical conceptual ambiguity exists because of the presence of two different Court paradigms. The Constitutional Court can act as a judicial order or judicial restraint. The fundamental differences between these two concepts, of course, also influence the extent to which the Constitutional Court's actions are implemented. Because in the aspect of judicial orders, the Constitutional Court is given a much wider space. The Constitutional Court is conceptually juridical, not only determining whether a law is constitutional or unconstitutional regarding the Constitution.[39]

So in simple terms, the Constitutional Court in this case can form new norms. Even though it can form new norms, the Constitutional Court remains within the judicial framework. So, the creation of new norms implemented by the Constitutional Court becomes an inseparable part of the framework of the Constitutional Court's decisions when carrying out judicial reviews. So, the formation of new norms implemented by the Constitutional Court, in this case, is certainly part of the effort to construct constitutional protection for citizens. By presenting the concept of judicial order which gives space to the Constitutional Court to form new norms, the Constitutional Court has supplied a solution for *adresat* to adjust the legal product that was formed and force it to present these norms in the improvements that have been implemented.[40]

However, different conceptions will be very visible when the Constitutional Court is constructed in terms of judicial restraint. Because within the framework of judicial restraint, the Constitutional Court no longer only positions itself as implementing checks and

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[37] Tanto Lailam, "Membangun *Constitutional Morality* Hakim Konstitusi di Indonesia", *Jurnal Penelitian Hukum De Jure Vol. 20 No. 4* (2020): 515.

[38] Muhammad Addil Fauzani dan Fandi Nur Rohman, "Urgensi Rekonstruksi Mahkamah Konstitusi Dalam Memberikan Pertimbangan Kebijakan Hukum Terbuka (*Open Legal Policy*)", *Justitia et Pax Vol. 35 No. 2* (2019): 6.

[39] Intan Permata Sari dan Mohammad Mahrus Ali, "Karakteristik *Judicial Order* Dalam Putusan Mahkamah Konstitusi Dengan Amar Tidak Dapat Diterima", *Jurnal Konstitusi Vol. 16 No. 4* (2019): 5.

[40] Maruarar Siahaan, "Peran Mahkamah Konstitusi Dalam Penegakan Hukum Konstitusi", *Jurnal Ius Quia Iustum Vol. 16 No. 3* (2009): 3.

balances. Such conditions can be understood as a form of narrowing of the duties and functions of the Constitutional Court. Such an argument means that it does not provide an opportunity for the Constitutional Court to form new norms in reviewing the constitutionality of laws against the Constitution.[41] Because the tribunal creates new norms, it will greatly disrupt the existence of legislative and executive institutions that have the authority to form legal products in a country.

The ambiguity that occurs in the construction of the position of the Constitutional Court in the national legal system, in the aspect of public policy, of course also produces negative consequences. The negative consequences that occur, in this case, are of course because many people will find it very difficult to understand what is the controversy in the Constitutional Court Decision Number 90/PUU-XXI/2023. If analyzed by emphasizing public policy as the review model, the Constitutional Court in its decision is viewed as only giving privilege to certain parties. This condition was then made worse, with many people rejecting it and stating that the Constitutional Court's decision was synonymous with a conflict of interest. So it is at this point that it is important for the Constitutional Court's decision to be implemented carefully, by prioritizing the principle of safeguarding the interests of citizens at large.[42]

Moreover, this Constitutional Court Decision will become an inseparable part of the 2024 political constellation. As the legal basis that will be implemented in the 2024 Election, the Constitutional Court Decision Number 90/PUU-XXI/2023 should first be clarified from the various kinds of controversies contained in it. Due to the lack of clarity between Constitutional Court Decision Number 90/PUU-XXI/2023 and the controversy contained therein, it has the potential to obscure the existence and even the substance of what is regulated therein. The presence of the controversial side in the Constitutional Court Decision Number 90/PUU-XXI/2023, will also really encourage many parties to continue to delegitimize the existence of the Constitutional Court Decision Number 90/PUU-XXI/2023 which is final and binding.[43]

[41] Wicaksana Dramanda, "Menggagas Penerapan *Judicial Restraint* di Mahkamah Konstitusi", *Jurnal Konstitusi Vol. 11 No. 4* (2014): 6.

[42] Francois Geny Ritonga, "Keberadaan Mahkamah Konstitusi di Indonesia Dalam Perannya Menjaga Hak Asasi Manusia dan Hak Konstitusional Warga Negara (Suatu Perwujudan Nyata)", *Honeste Vivere Vol. 33 No. 2* (2023): 95.

[43] M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final dan Mengikat Mahkamah Konstitusi", *Jurnal Konstitusi Vol. 16 No. 2* (2019): 343.

D. Closing

Based on the discussions carried out, it can be understood that the Constitutional Court's decision is a decision of a judicial institution that has very far-reaching consequences. The extent of the impact that occurs as a result of the implementation of the Constitutional Court Decision, in the context of public policy analysis, is a reality that is very relevant if in this case it is analyzed using an essential approach. Because the Constitutional Court's decision in any framework, actually only contains two aspects. These two aspects are a statement that a paragraph, article, or a quo law that is proposed for review is in conflict with the Indonesian national constitution and also regarding the improvement or protection of the *a quo* applicant's constitutional rights which have been or may be violated by the implementation of the a quo legal product. Even though essentially it can only be classified into two forms of consequences the Constitutional Court's decision has a broad impact on the life of the nation and state which will be closely related to the overall aspects of Indonesia's democratic rule of law.

If correlated with the conditions and situations that occurred in the Constitutional Court Decision Number 90/PUU-XXI/2023, then such a decision comprehensively has a broad influence on the life of the Indonesian nation and state. Such broad influence in concrete terms, in the most fundamental aspect, is of course related to aspects of the implementation of the upcoming 2024 General Election. With the Constitutional Court expanding the meaning of Article 169 clause (q) of Law Number 7 of 2017 concerning Elections, the concept that will occur in this case is the opening of wider space for young candidates to enter the contest for Presidential and Vice-Presidential candidates. More than that, the Constitutional Court's decision has had a big impact on national political stability because some people reject the expansion of the meaning of *a quo* article. However, what is certain is that the Constitutional Court's decision is final and binding, and its validity cannot be revoked.

The suggestions that can be given in this research include:

1. The importance of carrying out outreach regarding the 2024 Election mechanism following the issuance of Constitutional Court Decision Number 90/PUU-XXI/2023.
2. The importance of clearing the substance and essence of the Constitutional Court Decision Number 90/PUU-XXI/2023 from the various controversies that accompany it.

3. It is important to disseminate an understanding that all parties involved in the 2024 General Election have a neutral position and have no conflict of interest.

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