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Constructive Analysis Of The Existence Of Constitutional Court Decisions In The National Legal System (Analytical Study Of Constitutional Court Decision Number 90/PUU-XXI/2023 In The Perspective Of Protection Of Citizens' Rights)

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ABSTRACT. *Protection of citizens' human rights is one aspect that is highly emphasized in the construction of a democratic rule of law and is one of the reasons for the institutionalization of the Constitutional Court. As one of the aspects that is an essential form of the rule of law, the protection of human rights is a very interesting study to analyze, especially in aspects of the implementation of the 2024 General Election. This research uses normative legal research methods with a case approach and qualitative analysis methods. The results of this research are about the importance of protecting citizens' human rights, especially in the context of elections as a means of achieving national democracy. Meanwhile, the advice given in this research is that the law must provide wide space for the institutionalization of Constitutional Court decisions and as a form of confirmation that the Constitutional Court's decisions are binding on the entire community and become a form of public policy that begins with reviewing laws against laws. Constitution of the Republic of Indonesia.*

Keywords: *Protection Of Citizens' Constitutional Rights, 2024 Election, Existence Of Constitutional Court Decisions*

ABSTRAK. Perlindungan terhadap hak asasi warga negara, merupakan salah satu aspek yang sangat ditekankan dalam konstruksi negara hukum demokratis dan menjadi salah satu alasan atas diberlakukannya pelembagaan atas Mahkamah Konstitusi. Sebagai salah satu aspek yang menjadi bentuk esensial dari negara hukum, maka perlindungan hak asasi manusia menjadi kajian yang sangat menarik untuk dianalisis terutama dalam aspek pelaksanaan Pemilu Tahun 2024. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan kasus (*case approach*) dan metode analisis kualitatif. Hasil dari penelitian ini adalah tentang pentingnya perlindungan hak asasi warga negara, terutama dalam konteks Pemilu sebagai sarana pencapaian demokrasi bangsa. Sedangkan saran yang diberikan dalam penelitian ini, adalah Undang-Undang harus memberikan ruang gerak yang luas terhadap pelembagaan Putusan Mahkamah Konstitusi dan sebagai bentuk penegasan bahwa putusan Mahkamah Konstitusi mengikat bagi seluruh masyarakat dan menjadi bentuk kebijakan publik yang berawal dari pengujian Undang-Undang terhadap Undang-Undang Dasar Negara Republik Indonesia.

Kata Kunci: Perlindungan hak konstitusional warga negara, Pemilu 2024, Eksistensi Putusan Mahkamah Konstitusi

A. INTRODUCTION

The review of Article 169 letter q of Law Number 7 of 2017 concerning Elections is one of the most widely criticized tests of the constitutionality of the Law. Such conditions, in this case certainly cannot be separated from the aspect of constitutional rights being violated. Even though it is a constitutional decision that protects the rights of citizens, this decision is

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seen as a product of constitutional justice which is closely related to conflicts of interest. Regardless of the controversy, the Constitutional Court's decision which is stipulated in this way concretely and constitutionally applies as a regulation in the implementation of the 2024 General Election. As a rule that applies in the 2024 General Election, the Constitutional Court Decision Number 90/PUU-XXI/2023 carries out a review quo and certainly has fulfilled the final and binding requirements mandated in the existence of the Constitutional Court decision.

However, the final and binding existence of the Constitutional Court Decision Number 90/PUU-XXI/2023 was criticized and then annulled by the Honorary Council of the Constitutional Court. This is of course based on the fact that several Constitutional Court judges have been conclusively proven to have violated the code of ethics. Even though they failed to prove that the Constitutional Court Decision Number 90/PUU-XXI/2023 was declared unconstitutional, many people then proposed canceling the decision. It is in this aspect that this research was carried out, to analyze the extent to which the Constitutional Court enforces its decisions on the national legal system.

B. RESEARCH METHOD

Normative research methods are the legal review mechanism used in this paper. Normative legal studies can be understood with normative legal research (English), normative juridish onderzoek (Dutch), and dogmatic legal research[1]. Terminologically, experts define normative legal research from various perspectives. Saefullah Wiradipradja believes that this type of legal research is research that is used as material to analyze, maintain, and develop a positive legal construction based on the human mind.[2] Meanwhile, Soetandyo Wignjosoebroto defines this research as legal research carried out based on doctrine or teachings believed by the researcher himself[3]. Based on the definition of normative legal research from an etymological perspective, it means that normative legal research is research carried out by examining legal regulations, principles, or legal doctrines that are believed by researchers and aim to produce new views or theories in resolving a problem.

This type of research is one of the most widely used research because it is considered as one of the theoretical assessment steps which plays an important role in developing a legal

[1] Salim H.S. dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, (Jakarta: Raja Grafindo Persada, 2014), hal. 18.

[2] E. Saefullah Wiradipradja, *Penuntun Praktis Metode Penelitian dan Penulisan Karya Ilmiah Hukum*, (Bandung: Keni Media, 2015), hal. 5.

[3] Soetandjo Wignjosoebroto, *Hukum Paradigma, Metode, dan Dinamika Masalahnya*, (Jakarta: Huma, 2002), hal. 149.

argument. More than that, this type of research will also be able to find what needs to be corrected and/or even eliminated, because it is considered irrelevant or even contrary to existing theoretical and juridical matters. Conflicts in the implementation of legal development, of course, are an urgency that must be able to be avoided, because contradictions that exist in theory and statutory regulations, from a mathematical-sociological perspective, can be taken into account as a potential failure in the implementation of the law. In other words, juridical and sociological theories can be studied through this research method.

As a form of normative legal research, the method for searching for materials is document analysis. Literature study (library research) is a method for studying law, using literature material that is relevant to a law, doctrine, concept, or legal thought presented by an expert, as well as related documents that are relevant to the research being done[4]. The understanding then makes library research also known as documentary study[5]. As normative legal research, the assessment process uses qualitative methods as the method of analysis. The qualitative method is a research mechanism that produces conclusions in the form of written or verbal explanations from the data sources observed and researched[6].

This means that this research does not use formulas or mathematical calculations. This research prioritizes the calculation of clauses in words that contain theory and argumentation, which are combined with a general legal basis or theory. Because it does not use mathematical calculations, this research does not use the concept of tables or curve drawings to explain arguments and theories.

C. DISCUSSION

1. *Judicial Review Conception*

A concrete discussion regarding the theory of legislative review, in this aspect of course cannot be separated from the nature of the constitution that exists in a country. The constitution, which concretely contains the basic concepts and principles of a country, is a fundamental basis that cannot be contradicted by other norms that are subordinate to it. So, all forms of legislation must provide a way for the Constitution to realize its norms.[7] The legal review of the 1945 Constitution of the Unitary State of the Republic of Indonesia, in a more concrete study, is a policy that negates the concept of the rule of law in the Indonesian government and state

[4] Salim H.S. dan Erlies Septiana Nurbani, *op.cit.*, hal. 19.
[5] Peter Mahmud Marzuki, *Penelitian Hukum.*, (Jakarta: Prenada Group, 2010), hal. 35.
[6] Lexy J. Moleong. *Metodologi Penelitian Kualitatif*, (Bandung: Rosdakarya, 2000), hal. 3.
[7] Jimly Asshiddiqie, *op.cit*, hlm. 18.

system. The concept of the rule of law adopted by Indonesia must present juridical legality through judicial institutions that are free, independent, and oriented towards the recognition and protection of human rights (HAM).[8]

Testing of laws against the Constitution, in general, is also intended to provide concrete space in maximizing the role of law as a concrete limiting mechanism for state power.[9] Legal review of the 1945 Constitution of the Republic of Indonesia, in a comprehensive study, is also closely related to the basic values of the theory of constitutionalism which have been explained in the previous discussion. Law, based on the perspective of social institutions, is a social institution that functions to maintain security and order and control social phenomena in society.[10] Review of legislation in general is classified into the following two forms:[11]

a. Judicial review is a method of testing laws that have been passed by the state.
b. Judicial preview is a method of experimenting with statutory regulations that have not yet been ratified. Testing of legislation in general is classified into the following two forms:

Legislative review in Sri Soemantri's view is classified into the following two forms:[12]

a. Formal testing is a method of testing laws that have been established by applicable laws and regulations and is a method of testing the process in the formation of laws and regulations.
b. Material testing is a method of testing statutory regulations by providing an assessment of the substance contained therein and the authority to form these statutory regulations.

2. Legal Standing in the Constitutional Court Judicial System

Like the trial process in general, the judicial process carried out at the Constitutional Court also recognizes the term legal standing of the applicant. Black's Law Dictionary defines a petitioner's legal standing, as a right to file a lawsuit or seek justice, to protect his or her constitutional rights that have the potential to be harmed through laws and regulations issued by the government[13]. In a more comprehensive understanding, Harjono notes that the

[8] Suteki, Desain Hukum di Ruang Sosial, (Yogyakarta; Thafa Media, 2013), hlm. 182-183.
[9] Muhammad Erwin, Filsafat Hukum: Refleksi Kritis Terhadap Hukum, (Jakarta: Rajawali, 2013), hlm. 119.
[10] Bambang Arumanadi dan Sunarto, Konsepsi Negara Hukum Menurut UUD 1945, (Semarang: IKIP Semarang Press, 1990), hlm. 3.
[11] Alex Stone Sweet, Governing With Judges: Constitutional Politics in Europe, (New York: Oxford University, 2000), hlm. 45.
[12] Sri Soemantri, Hak Uji Material di Indonesia, (Bandung: Alumni, 1997), hlm. 6.
[13] Bryan A. Garner (Ed), Black's Law Dictionary, (ST. Paul: Thomson Reuters, 2009), hal. 1536.

applicant's legal position or legal standing is the condition of a person or party who has fulfilled the requirements to exercise their rights in submitting efforts to resolve a dispute before the Constitutional Court[14]. In other words, applications submitted by applicants who do not have legal standing will be rejected or N.O (niet ontvankelijk) by the Constitutional Court[15]. In a broader understanding, the applicant's legal position or legal standing can also be understood as a legal subject.

Legal subjects themselves can be interpreted as anything that has the right and obligation to proceed before the law[16]. Apart from that, legal subjects are also seen as something that has legitimacy, authority, and the ability to exercise legal rights and obligations [17]. What is meant by authority is a condition where something can exercise rights and obligations [18]. Prof. Sudikno Mertokusumo views legal subjects as something that is equated with humans through the granting of rights and obligations[19]. Discussions relating to legal subjects must of course be adjusted to the perspective of the emergence of law in life.

In other words, law is a regulatory system that functions to regulate the concept of human life. So, it can be formulated, that humans are legal subjects who have rights and obligations as well as legal authority (rechtsbevoegdheidz)*[20]*. About legal subjects or those who have the authority to propose settlement of a case in the Constitutional Court, this has been specifically explained in Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court. This article explains that the subjects of law in the Constitutional Court's law are individual Indonesian citizens, customary law community units that are still alive and developing public or private legal entities, and state institutions[21]. The explanation is as follows:

[14] Harjono, Konstitusi Sebagai Rumah Bangsa, Pemikiran Hukum Dr. Harjono S.H., M.C.L., Wakil Ketua MK, (Jakarta: Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), hal. 176.

[15] Ibid.

[16] Suryaningsi, *Pengantar Ilmu Hukum,* (Samarinda: Mulawarman University Press, 2018), hal. 202.

[17] Abdullah Sulaiman, *Pengantar Ilmu Hukum,* (Jakarta: UIN Jakarta bersama Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia (YPPSDM) Jakarta, 2019), hal. 143.

[18] L. J. Van Apelddorn, *Pengantar Ilmu Hukum,* (Terj. Oetarid Sadino), (Jakarta: Noordhoff-Kolff, 1958), hal. 160-161.

[19] Yati Nurhayati, *Buku Ajar Pengantar Ilmu Hukum,* (Bandung: Penerbit Nusa Media, 2020), hal. 23.

[20] Haumiati Natadimaja, *Hukum Perdata Mengenai Hukum Orang dan Hukum Benda,* (Yogyakarta: Graha Ilmu, 2009), hal. 7.

[21] Prof. Jimly Ashiddiqie menyatakam bahwa keempat subjek hukum tersebut harus mampu untuk membuktikan identitasnya. Setelah itu, seluruh subjek hukum harus mampu untuk membuktikan bahwa dirinya memiliki hak atau kewenangan tertentu yang dijamin secara konstitusional dan hak atau kewenangan tersebut telah dirugikan atas berlakunya suatu Undang-Undang (Jimly Ashiddiqie, Hukum Acara Pengujian Undang-Undang, (Jakarta: Sekretariat Jenderal Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006), hal. 103-104.

a. Human

In Dutch legal terms, humans are also called natuurlijke persons. The position of humans in the context of the legal subject, of course, cannot be separated from the understanding of the legal subject itself. The understanding of legal subjects which states that legal subjects have rights and obligations in regulation, is in line with the essence of humans who also have rights and obligations in carrying out their lives and carrying out all activities related to the law. In simpler language, what makes humans support rights and obligations in the legal aspect is none other than the law itself[22]. When viewed from a linguistic perspective, the position of humans as legal subjects is closely related to the term person used by Western law to refer to everything related to rights[23]. In broader linguistic terminology, the term person can also be interpreted as a human being, and in a narrower understanding it makes humans a legal subject [24][25].

Human status as a legal subject actually applies from birth until death [26]. In a more comprehensive theory, human legitimacy as a legal subject begins when the person is still in their mother's womb[27]. As written in Article 2 of Book I of the Civil Code (KUHPer), "a child who is still in the womb is considered born if the interests relating to the child so require and if the child has died before birth, then he or she is deemed not ever existed". Even though humans have been recognized as legal subjects since they were still in the womb human beings are only considered legally competent when they are adults with an age limit of 18 years, do not have mental disorders, and are not under guardianship[28]. Such arguments are aligned with those explained in Article 1330 Book III of the Civil Code (KUHPer), which states that a person who is not yet an adult is under guardianship, a

[22] Satjipto Rahardjo, *Ilmu Hukum,* (Bandung: Citra Aditya Bakti, 1991), hal. 107.

[23] Istilah *person* yang digunakan untuk menyebut pendukung hak dalam hukum barat, ditafsirkan berbeda-beda dalam berbagai bahasa. Seperti misalnya dalam Bahasa Latin *(persona),* Prancis *(Personne),* Inggris *(person),* Jerman *(person),* dan Belanda *(persoon)* (Rachmadi Usman, *Aspek-Aspek Hukum Perorangan dan Kekeluargaan di Indonesia,* (Jakarta: Sinar Grafika, 2006), hal. 72).

[24] Beni Ahmad Saebani, *Perbandingan Hukum Perdata,* (Bandung: CV. Pustaka Setia, 2016), hal. 105.

[25] Dalam konteks hukum acara Mahkamah Konstitusi, maka orang yang dimaksud dalam Pasal 51 ayat (1) huruf (a) juga meliputi kelompok orang yang memiliki kepentingan sama. Sebagaimana yang dijelaskan dalam Pasal 51 ayat (1) huruf (1) Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi.

[26] Lukman Santoso Az dan Yahyanto, *Pengantar Ilmu Hukum: Sejarah, Pengertian, Konsep Hukum, Aliran Hukum, dan Penafsiran Hukum,* (Malang: Setara Press, 2016), hal. 72.

[27] Namun dalam konteks hukum acara peradilan Mahkamah Konstitusi, subjek hukum orang perorangan baru diakui ketika yang bersangkutan adalah Warga Negara Indonesia (WNI) dan memenuhi syarat administratif sebagai seseorang yang memiliki hak tertentu yang dilindungi konstitusi. Hal ini didasarkan pada Keputusan Mahkamah Konstitusi Republik Indonesia Nomor 058-059-060-063/PUU-II/2004 dan Nomor 008/PUU-III/2005 Tentang Pengujian Undang-Undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air, yang menyatakan gugatan itu di N.O (*niet ontvankelijkverklaard)* atau ditolak karena diajukan oleh Warga Negara Asing.

[28] Zainuddin Ali, *Filsafat Hukum,* (Jakarta: Sinar Grafika, 2008), hal. 33.

married woman in several aspects that have been determined by law and other people who is prohibited by law from agreeing is deemed to be incompetent in making an agreement[29].

Based on this legal basis, it can be understood that the conditions for being recognized as a legally competent legal subject are:[30]

1) Have a minimum age of 17 years
2) If you are not yet 17 years old, at least you are and/or have been married
3) Do not have mental disorders, which impact clarity of thinking

The next discussion that is important to explain, of course, is about someone who is deemed legally incompetent and wants to take legal action. The most relevant argument to reply to this concern, of course, is to appoint someone to represent the person concerned and this appointment must be made by the court[31]. In legal terms, this is known as a pardon. Forgiveness (*curatele*) is basically the antithesis of the concept of maturation (*handlichting*). It needs to be understood that those in custody are not only those who are still immature.

Since there are several adults (*minderjarig*) who are also in custody and because they have mental or physical illnesses. It is these mental and psychological disorders that cause them to remain in custody and have the same legal status as small children (*minderjarig*)[32]. Apart from physical and psychological imperfections, adult forgiveness can be caused by the revocation of authority to act independently under the law[33]. However, it needs to be apprehended that the revocation of authority which has implications for the status of being under pardon must come from a judge's decision and based on a request for pardon that has been submitted previously[34]. Several parties have the authority to apply for the revocation of authority to obtain a pardon permit, including:[35]

1) Family or blood relatives, for dopey blood relatives, have memory problems or problems, and/or dark eyes. The juridical basis for this argument is Article 433 paragraph (1) of the Civil Code
2) Families who are related in a straight line and/or related families in a deviated line (up to the fourth degree), whose siblings are unable to manage finances well. As explained in Article 434 paragraph (2) of the Civil Code.

[29] Mereka yang termasuk dalam golongan tidak cakap hukum, disebut dengan *personae miserabile* (Rachmadi Usman, *op.cit,* hal. 83).

[30] Ibid, hal. 54.

[31] C. S. T. Kansil, *Modul Hukum Perdata,* (Jakarta: Pradnya Paramita, 1995), hal. 87.

[32] Soetojo Prawirohamidjojo dan Marthalena Pohan, *Hukum Orang dan Keluarga (Personen en Familie-recht),* (Surabaya: Airlangga University, 1991), hal. 237.

[33] J. Satrio, *Hukum Pribadi Bagian I,* (Bandung: Citra Aditya Bakti, 1999), hal. 74.

[34] Komariah, *Hukum Perdata,* (Malang: UMM Press, 2004), hal. 29.

[35] Simanjuntak, *Hukum Perdata Indonesia,* (Jakarta: Prenada Media, 2015), hal. 24.

3) Husband and wife have the same rights in submitting a letter requesting a pardon for their partner. As explained in Article 434 paragraph (3) of the Civil Code.
4) Individuals can also submit a request for pardon if they feel they cannot carry out their interests independently. As explained in Article 434 paragraph (4) of the Civil Code.
5) The prosecutor's office also has the authority to submit a letter of pardon for someone who asks for pardon, but the person concerned has vision problems and does not receive attention to ask for pardon from relatives or other relatives. The prosecutor's office is also obliged to submit a request for pardon for someone who is mentally retarded and has no known family, as explained in Article 435 of the Civil Code.

b. Customary Law Community

In English, society is equated with the word "society" and is an absorption of the word "socius" which means colleagues for a very long time or living together[36]. Soekanto explained that society is a concept of living together for a long duration and presenting a shared culture[37]. Hazairin then stated that society is a legal and environmental accord that lives together based on shared rights[38]. Meanwhile, in Arabic, custom is understood as a habit that is carried out and has become a cultural norm[39].

Thus, it can be understood that indigenous peoples are a group of people who live together for a long time and carry out certain interactions or activities repeatedly. In the broad literature, indigenous communities are also often referred to as customary law communities. The term customary law community itself is a term that comes from the word *rechtsgemeenchappen* in the book by B. Ter Haar Bzn[40]. Dr. Saafroedin Bahar defines customary law communities as anthropological entity that develops naturally and is composed of various small primordial entities and has blood relations or ties[41].

[36] Heri Kusmanto, "Partisipasi Masyarakat dalam Demokrasi Politik", *Jurnal Ilmu Pemerintahan dan Sosial Politik Vol. 2 No. 1* (2014): 85.
[37] Soerjono Soekanto, Hukum Adat Indonesia, (Jakarta: PT. Raja Grafindo Persada, 2001), hal. 91.
[38] Hazairin, Demokrasi Pancasila, (Jakarta: Tintamas, 1970), hal. 44.
[39] Totok Jumantoro, Kamus Ilmu Ushul Fiqh, (Jakarta: Hamzah, 2005), hal. 1.
[40] B. Ter Haar Bzn, Asas-Asas dan Susunan Hukum Adat (Beginselen en Stesel van Hat Adat Recht), Terj. K. Ng. Soebakti Posponoto), (Jakarta: PT. Pradnya Paramita, 1987), hal. 6.
[41] Saafroedin Bahar, "Kebijakan Negara Dalam Rangka Pengakuan, Penghormatan, dan Perlindungan Masyarakat Hukum Di Indonesia", (Makalah disampaikan dalam Workshop Hasil Penelitian Di Tiga Wilayah "Mendorong Pengakuan, Penghormatan, & Perlindungan Hak Masyarakat Adat di Indonesia, Lombok 21-23 Oktober 2008) : 2.

c. Legal Entity *(Recht Persoon)*

Social humans often interact with other humans. The pattern of interaction that is continuously established, along the way, presents a concept of institutional relations. At this point, humans then form socialization groups that are permanent and ultimately become permanent into a form of cooperation. From the perspective of legal science, cooperation carried out by several people within an institutional scope creates a legal entity or recht person.

Recht person or legal entity can be interpreted as a group of people formed by law[42]. In another perspective, a legal entity (*recht person*) is understood as an association or institution with a specific purpose created by law[43]. As a form of institutional cooperation established by law, *rechtsoons* or legal entities certainly have rights and obligations that are substantially the same as humans (*persoon*)[44]. In other words, legal entities are also given the opportunity to sue before the court[45]. However, it needs to be understood that legal entities (*recht persons*) and humans (persons) have separate legal rights and obligations [46].

The separation of rights and obligations between legal entities (*recht persoon*) and humans (person) as their members, in this case, is implemented in the case of the legal entity's inability to enter into a marriage, the legal entity also cannot be punished, but can be dissolved[47]. Thus, it can be understood that the definition of a legal entity consists of the ensuing components:[48]

1) As a human association, membership of a legal entity must include at least two people.
2) Even though a legal entity (*recht person*) is formed by humans (person), the rights and obligations of the two are different.
3) Legal entities have the authority to take legal action (*rechtshandeling*) in the form of lawsuits in carrying out legal cooperation (*rechtsbetrekking*) in the court.

[42] *Ibid,* hal. 25.
[43] Suryaningsi, *op.cit,* hal. 203.
[44] Yati Nurhayati, *op.cit,* hal. 33.
[45] Chidir Ali, *Badan Hukum,* (Bandung: Penerbit PT. Alumni, 2005), hal. 20.
[46] Pemisahan hak dan kewajiban antara badan hukum *(recht persoon)* dengan anggotanya, merupakan pemahaman penting yang harus dipahami terutama dalam bidang ekonomi dan perdagangan (Chidir Ali, *ibid,* hal. 18).
[47] Muhammad Sadi Is, *Pengantar Ilmu Hukum,* (Jakarta: Prenadamedia Group, 2015), hal. 95.
[48] Chidir Ali, *op.cit,* hal. 19-21.

It should be understood that legal entities that are legal subjects or that have legal standing are divided into two in the judicial procedural law of the Constitutional Court. Based on Article 51 paragraph (1) letter c of Law Number 24 of 2003 concerning the Constitutional Court, legal entities are then classified into civil legal entities (private recht persoon) and public legal entities (*publiekrechterlijke rechtspersonen*). A civil legal entity (private recht persoon) is an institutional collaboration formed to achieve certain goals in the form of profit or other benefits and is related to individuals within the legal entity in line with civil law[4950]. Surojo Wignjodipuro, then divided private legal entities (private recht persoon) into the following three forms:[51]

1) Private legal entities that operate in the social and charitable sector, which of course, are not oriented towards profit or gain.
2) Private legal entities whose aim is to seek profit.
3) Private legal entity used to meet members' needs

d. State Institution

The legal subject status of humans also has implications for the legal subject status of the Constitutional Court. The legal subject status of state institutions is a status that correlates with Logemann's view which states that positions or officials are subjects of state law[52]. State institutions have the rights, obligations, and authority to act or carry out legal acts like other legal subjects. Juridically, this is explained in Article 61 paragraphs (1) and (2) of Law Number 24 of 2003 concerning the Constitutional Court. In this article, it is explained that state institutions that submit authority disputes must have authority granted directly by the Constitution. Republic of Indonesia of 1945. In this case, the state institution must also explain the direct interests regarding the disputed authority and state the state institution that is the respondent party.

Based on this article, an understanding can be drawn that state institutions have characteristics that are subject to law. The legal subject status of state institutions is in line with Utrecht's view in Moh. Saleh Djindang stated that authority is a supporter of authority.

[49] H. Ishaq, *Dasar-Dasar Ilmu Hukum,* (Jakarta: Sinar Grafika, 2018), hal. 61.

[50] Secara sederhana Van Der Griten kemudian menjelaskan, bahwa yang dimaksud dengan badan hukum perdata (privaatrechterlijke rechtspersonen) adalah badan hukum yang secara organisasional dan struktural dikuasai oleh hukum perdata (Abdul Mukthie Fajar, *Hukum Konstitusi dan Mahkamah Konstitusi,* (Yogyakarta: Citra Media, 2006), hal. 176).

[51] Surojo Wignjodipuro, *Himpunan Pengantar Ilmu Hukum,* (Bandung: Alumni, 1971), hal. 49.

[52] Purnadi Purbacaraka dan Soerjono Soekanto, *Sendi-sendi Ilmu Hukum dan Tata Hukum,* (Bandung: Alumni, 1985), hal. 51.

S. F. Marbun emphasized that authority is the ability to act through applicable laws in carrying out certain legal relations. In simple terms, the authority possessed by state institutions in Article 60 paragraphs (1) and (2) of Law Number 24 of 2003 about the Constitutional Court is the authority that has relevance to the nature of legal subjects in the Constitutional Court judiciary.

3. Analysis of the Impact of Constitutional Court Decision Number 90/PUU-XXI/2023 on the Protection of the Supremacy of Citizens' Human Rights

Analysis of the Constitutional Court Decision Number 90/PUU-XXI/2023 in concrete terms is very interconnected to the extent to which the Constitutional Court institutionalizes the concept of citizens' human rights in its constitutional decisions. The Constitutional Court's Decision Number 90/PUU-XXI/2023 cannot be seen as a form of exceeding its authority, because the Constitutional Court in issuing its decision must of course begin with the submission of a request for judicial review. So, the Court's decision to issue an expansion of norms regarding age restrictions is of course a consequence of the filing of the petition. However, the main problem of this research is the concept of constitutional protection which intersects directly with open legal policy which is the prerogative authority of the House of Representatives (DPR) as the lawmaker.

However, it needs to be understood that what is the focus point of this research is the existence of citizens' constitutional rights and not the open legal policy aspect. So arguments that only emphasize the importance of institutionalizing open legal policies, concretely ignore the issue of citizens' constitutional rights. Based on this analysis, the aspect that needs to be implemented in this case is that the Constitutional Court in its decision must provide a concrete explanation of the background to which the decision was accepted because the public will only look directly at the decision issued by the Constitutional Court.

D. CLOSING

Based on such a decision, it can be understood that whatever happens, the Constitutional Court Decision Number 90/PUU-XXI/2023 remains final and binding. Although the Honorary Council of the Constitutional Court has issued a decision regarding several alleged violations of the code of ethics, this does not necessarily cancel the decision of the Constitutional Court Number 90/PUU-XXI/2023. Because the Honorary Council of the Constitutional Court failed to find the fact that the Constitutional Court Judges to issue Constitutional Court Decision Number 90/PUU-XXI/2023 committed unconstitutional actions. More than that, the

Constitutional Court's decision Number 90/PUU-XXI/2023 is a form of protection for the existence of citizens' human rights who have been injured due to the age restrictions in the quo article. So, that there are no efforts that exceed the limits or even conflict with the constitution. The suggestions that can be given in this research include:

1. It is important to emphasize values, that the Indonesian judicial system and the judicial system in general place greater emphasis on efforts to convey the judge's confidence. Although the negative *Wetterlijk* theory paradigm only applies in criminal law, this concept also substantially applies to almost all courts in Indonesia as a legal state.
2. It is important to emphasize the legal principle of het *vermoedhen* van *rechtmatigheid* or that government policy must be considered correct and remain valid until there is evidence that explains otherwise. This concept will concretely strengthen the existence of the people's legitimacy towards the Government, which will have consequences for the existence of a harmonious Government without excessive political instability.
3. The importance of maintaining neutrality of power, even in the form of familial relationships. The neutrality of power will give confidence to the people so that the people will not carry out excessive criticism.

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