



Structuralism in the Process and Events Toward the Constitutional Court Decision No.90/PUU-XXI/2023: The Relevance of Islamic Siyasah

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Abstract. The Constitutional Court granted that the age limit for presidential and vice presidential candidates is 40 years old, unless they have experience as regional heads. This is stated in Constitutional Court Decision Number 90/PUU-XXI/2023. Constitutional change is one of the applications of the basic structure theory of structuralism to the field of law. State administration is the meaning of siyasah or politics in Islam. By definition, Islamic Siyasah is creating benefits for the people by guiding them to the path of salvation. Therefore, this research will discuss, how is the theory of structuralism in the birth of Constitutional Court decision No. 90/PUU-XXI/2023? And how is the view of Islamic Siyasah against structuralism in the birth of the decision? This research is a library research that uses Munir Fuady's book entitled Theories in Legal Sociology and the journal Between Justice and Political Ethics: The Constitutional Court and the Age Limit for Presidential Candidates in Axiological Perspective by Viedini et al as the primary data source. Related references as secondary data sources. The data collected will then be presented using the descriptive analysis method. The results of this study show that structuralism is an understanding that states that humans are bound by structure. In issuing this decision, the Constitutional Court is bound by the legal language structure of Article 6 paragraph 2 of the 1945 Constitution. The Constitutional Court's efforts to realize dynamism and provide benefits in its decisions are in accordance with two Islamic siyasah rules. In Islamic siyasah as well, the interpretation of general texts or texts that require legal interpretation is the authority of the sulthah qadha'iyah.

Keywords: Structuralism; Constitutional Court; Siyasah Islam; Islamic Studies

1. Introduction

Many changes in the state of a country's government have been brought about by advances in the field of law. The role of the judiciary, especially the Constitutional Court (MK), is one of the major changes that many Indonesians have highlighted during the 2024 election period. One of them is the Constitutional Court's decision on the age limit for vice presidential candidacy, which has recently become a public concern. (Perdana & Imam, 2023) Initially, Article 169 letter q of Law Number 7/2017 on Elections set an age limit of 40 years for presidential and vice presidential candidates. (Utomo, 2024) But later, the Constitutional Court ruled that the age limit for presidential and vice presidential candidates is 40 years old, unless they have had at least one year's experience as a regional head. This is contained in Constitutional Court Decision Number 90/PUU-XXI/2023, where this decision has caused a lot of controversy. (Adji & Dkk, 2024)

As an institution established to resolve political disputes, the Constitutional Court has the authority to review the Constitution. The decision given by the Constitutional Court is final and binding, so there is no appeal that can be made by all parties. The focus of the

current discussion is the Decision of the Constitutional Court (MK) Number 90/PUU-XXI/2023 which has caused controversy regarding the age of presidential and vice presidential candidates. (Aziz, 2024)

Constitutional interpretation is one of the applications of the basic structure of society from structuralism to the field of law, (Fuady, 2011, p. 117) The method used in analyzing the Constitutional Court Decision Number 90/PUU-XXI/2023 in this study is to use structuralist understanding. In sociology, anthropology, and linguistics, structuralism is the teaching that elements of human culture must be understood in relation to a larger relationship, namely an overall or general system known as structure. As philosopher Simon Blackburn summarized, structuralism is the belief that the phenomena of human life cannot be understood except through their interrelationships. (Maijar & Dkk, 2021)

Islam's mission is to improve and perfect all aspects of human life, whether religious, social or legal. (Sulistiani, 2020, pp. xiv-xvi) As a universal religion, Islam also regulates politics, government or making policies known as *siyasah*. It is not wrong if *siyasah* in Islam is defined as the organization of government and state. *Siyasah* in Islam according to Ibn Akil is a practical action that brings people to benefit and avoids harm, even though it is not stipulated or determined directly by Allah and the Messenger in the Al-Quran and hadith. So, it can be interpreted that the state administration desired by Islam or Islamic *siyasah* is to make benefits for humans by controlling society to the path that saves. (Harahap, 2022)

Constitutional Court Decision Number 90/PUU-XXI/2023. This indicates that the Constitutional Court has set an age limit for presidential and vice-presidential candidates. Although the minimum age requirement to become president is forty years old. However, this provision is exempted by the qualification "and/or is currently holding an office elected through general elections, including regional head elections." In other words, a person under the age of 40 is eligible to run for president and vice president if each candidate has already been elected through general elections, including regional head elections. This is due to the word "and/or" which in the legal system is considered a word that means alternative or choice. Based on the explanation above, this research will discuss two focus problems, namely, how does structuralism understand the considerations until the birth of Constitutional Court Decision No. 90/PUU-XXI/2023? And what is the view of the rules of Islamic *Siyasah* towards structuralism in the decision? So this research will explain the analysis of structuralism theory in the sociology of law on the birth of the Constitutional Court Decision Number 90/PUU-XXI/2023. Then studied from the perspective of Islamic *siyasah* (Wahyudi et al., 2023).

2. Methods

This research is a library research that exploits sources in a special field related to this research, so the primary data source of this research is a book by Munir Fuady entitled *Theories in Legal Sociology*. Meanwhile, related books and journals as well as books discussing methodology include secondary sources, including writings related to this research. The data collected will then be presented using the descriptive analysis method, namely research data clearly on each theme discussed. (Winarta, 2006, p. 155)

3. Results and Discussion

3.1. *Strukturalisme*

Structuralism is a modern sociological theory that emerged as a reaction to French humanism, especially to Jean Paul Sartre's existentialism. Where Sartre centered his thoughts on individual freedom, that what people do is determined by themselves not by social laws

and social structures. Structuralism focuses its attention on structure. If functional structuralism focuses on the structure of society, then structuralism theory discusses more about linguistic structure (language structure). (Ritzer & J. Goodman, 2004, pp. 602–603) In the dialog between literature and linguistics, many linguists believe that linguistics serves as an intermediary in general scientific methodology. Linguistics is a discipline that requires precision of thought, techniques of argumentation, and rules of expression. (Manshur, 2019) However, in its development, structuralism also extended the analysis of the structure of language to the analysis of the structure of society. However, structuralism as a theory views social structure as having priority over social action. This notion existed in the 1960s when existentialism began to fade. (Fuady, 2011)

Although there are many contradictions between structuralism and existentialism, they are also complementary. When a human being is born, he already exists in a structure, he has a role, however, he is able to choose or create his own structure, even though he is again trapped in the structure. The word structure, which is the basis for structuralist thought, can be traced by understanding semiotics developed by Saussure to study language signs. Saussure proclaimed that language signs are built through a structure of relations between language signs that show differences. (Umnailo, 2016, pp. 98–99)

Existentialism emphasizes the role of the individual, especially individual freedom. On the other hand, structuralism teaches that individuals are not free, but are influenced and confined by structures that enter their subconscious minds. Thus, the characteristics of structuralism are anti-subjectivism and anti-humanism. It is incorporated into various disciplines such as social anthropology, literary criticism, linguistics, and psychoanalysis (Marni et al., 2023).

Many problems will arise when one attempts to study Structuralism. This is because the terms “structure” and “structuralism” are often used in scientific fields, although they are not always used in the same sense. Mathematics, logic, physics, biology, psychology, sociology, linguistics, and other fields where the term is used. It can also generally be said that structuralism is a school in linguistics, philosophy, psychiatry, phenomenology of religion, economics, and politics. In this sense, structuralism investigates patterns in literature, religion, and economic and political systems. Humans are seen as components working within various unconscious structures, including political, social, and economic structures. Humans are not positioned as subjects, but as objects. Humans are no longer regarded as “creators” of structures, but as “products” of structures (Liza et al., 2023).

The application of the underlying structure of society to the field of law, resulted in several conclusions that can be categorized as follows: in the areas of law reform, law enforcement, legal grouping, legal culture, natural law conception, positivism conception, constitution making or amendment, and constitutional interpretation. Thus, according to structuralism, what appears on the surface as something solid, normal, or natural is the end result of a process of various forms of influencing or underlying structures, not just a social reality. (Munir, 2015, pp. 117–141)

Structuralism changes the notion that humans are individuals who can choose to act freely. Where humans are influenced by the concepts underlying a structure or influenced by the role played by a group. So according to this theory, in contrast to conventional theories in law, humans are not only the subject of law but also the object of legal regulation. Where humans (who were previously only considered subjects) must submit, obey the prevailing structure. (Umnailo, 2016).

3.2. Structuralism Analysis of the Constitutional Court Decision Number 90/PUU-XXI/2023 and its Relevance in Islamic Siyasa Rules

In a democracy, the electoral process serves as an important milestone that determines state policy. Article 169 letter q of Law Number 7/2017 on General Elections states that presidential and vice presidential candidates must be at least 40 years old is one of the crucial aspects discussed. Where the age requirement is very important for the election of the president and vice president. (Viedini & Dkk, 2024)

An astonishing political dynamic was demonstrated by the Constitutional Court's examination of the minimum age limit for presidential and vice-presidential candidates during the registration process in October. It began with the filing of applications by the Indonesian Solidarity Party (PSI), Garuda Party, and a number of individual Indonesian citizens (Anthony Winza Probowo, Danik Eka Rahمانingtyas, Dedek Prayudi, and Mikhail Gorbachev). Registration was also carried out by a number of regional heads under the age of 40, such as Erman Safar (Mayor of Bukittinggi for the 2021-2024 period), Pandu Kesuma Dewangsa (Deputy Regent of South Lampung), Emil Elestiano Dardak (Deputy Governor of East Java), Ahmad Mudhor (Regent of Sidoarjo), and Muh. Albarraa (Deputy Regent of Mojokerto).

A minimum age of 40 is required to run for president and vice president, according to this petition. Currently, the petitioner is 35 years old. This means that the minimum age for presidential and vice presidential candidates can be lowered to 35 years old, assuming that young leaders have had sufficient experience to run for president and vice president. As stated in Article 28D paragraph (3) of the 1945 Constitution, which reads, "Everyone has the right to freedom of association, assembly, and expression", this rule is considered contrary to ethics and rationality (Hizbullah et al., 2023).

However, on October 16, 2023, the Constitutional Court decided to reject the lawsuit regarding the age of presidential and vice presidential candidates. The Constitutional Court argued that the lawsuit to lower the minimum age limit for presidential and vice presidential candidates is an offense that will cause dynamics and lose the flexibility of the institution. The Court referred to the original meaning of Article 6 Paragraph (2) of the 1945 Constitution, as well as previous decisions regarding age limits for public office. All of these decisions indicate that the legislator or open legal policy is responsible for setting such regulations. (Viedini & Dkk, 2024) Seeing the reason for the Court's rejection, which refers to the original meaning of Article 6 of the 1945 Constitution, this shows that the Constitutional Court has been bound by the structure of the legal language of the 1945 Constitution. It can be said that there has been structuralism in the Constitutional Court's consideration of the lawsuit to change the age of the presidential and vice presidential candidates that have been submitted to it.

On the other hand, Almas Tsaqib Birru, an undergraduate graduate of the Faculty of Law at the University of Surakarta (UNSA), decided to file a lawsuit with the Constitutional Court on September 26, 2023. In addition, the petitioner's reasoning stated that the petitioner was an admirer of the Mayor of Surakarta for 2020-2025, Gibran Rakabuming Raka, who at the time this petition was heard did not meet the requirements of Article 169 letter (q). (Mudatsir & Samsuri, 2023) The lawsuit demanded that the age of presidential and vice presidential candidates must be below 40 years old or at least 35 years old and must have held positions elected through general elections, including regional head elections, to be able to run as presidential and vice presidential candidates. However, Almas Tsaqibirru's lawsuit was withdrawn on September 29, 2023 due to misinformation. After that, the corrected application file was accepted again by the Constitutional Court on September 30, 2023. (Viedini & Dkk, 2024)

On Monday, October 16, 2023, Anwar Usman, chairman of the Constitutional Court, granted a lawsuit regarding the age limit for vice presidential candidates. According to the Court, the minimum age limit of forty years for presidential and vice presidential candidates is contrary to the 1945 Constitution. However, as long as a person is or has been holding a state position elected through elections, including regional heads, a person under 40 years old can participate in the presidential and vice presidential elections. The Constitutional Court issued this decision in the case of a lawsuit against Article 169 letter q of Law 7/2017 on Elections filed by Sebelas Maret State University student Almas Tsaqibbirru. (Perdana & Imam, 2023)

The reason the Constitutional Court granted the presidential and vice presidential requirements lies in the lawsuit requested by Almas. Where presidential and vice presidential candidates must be forty years old or have experience as regional heads. In other words, those under the age of forty can still register as presidential or vice presidential candidates as long as they have experience or served as regional heads. (newspaper general pulpit 1) This decision was granted by the Constitutional Court in response to the petition for judicial review of Article 169 letter q of Law (UU) Number 7 of 2017 concerning Elections which regulates the minimum age limit for presidential candidates (presidential candidates) and vice presidential candidates (vice presidential candidates). According to MK Decision Number 90/PUU-XXI/2023, "The requirements to become a presidential and vice presidential candidate are: at least 40 (forty) years old or have / are currently holding positions elected through general elections including regional head elections." in interpreting Article 169 letter q of Law No.7 of 2017.(Adji & Dkk, 2024)

This decision is useful to give the younger generation or millennial generation the widest opportunity to participate in the election competition to be nominated as president or vice president, therefore, the Constitutional Court states that the minimum age restriction of 40 years for presidential and vice presidential candidates is disproportionate treatment and leads to the emergence of unacceptable injustice. Intolerable injustice is intended because such a restriction not only harms and even eliminates opportunities for figures or figures of the younger generation who have proven to have been elected in elections. On August 3, 2023, the Constitutional Court accepted this petition. On September 5, the preliminary examination hearing began. Almas was present with his attorney via online at the time. ("Akhirnya, Gibran Berpeluang Jadi Cawapres," 2023)

Against this, the Constitutional Court gave reasons in its legal considerations that, the Constitutional Court partially granted the petition that tested the strength of Article 169 letter q of Law Number 7 of 2017 concerning General Elections. So that this decision changes the age requirements for presidential and vice presidential candidates. In essence, the purpose of the establishment of the Constitutional Court (Mahkamah Konstitusi) is to carry out the task of maintaining the constitution so that it is carried out consistently (constitutional guardian) and interpreting the constitution or the Constitution (constitutional interpreter). (Utomo, 2024)

The Constitutional Court did not apply the age limit for the vice president as requested in the previous petition, and this is in accordance with the language of the Constitution which wants the dynamism of the Constitutional language in line with the times. According to the Court, judge Saldi Isra stated that the age requirement would still cause problems even if the requirement was lowered to 35 years old. The Court cannot set a minimum age limit because it allows for changes in the future. If the Constitutional Court sets an age limit for presidential and vice-presidential candidates, the flexibility will be lost and could lead to many requests related to the minimum age limit for public officials.(Mudatsir & Samsuri, 2023)

Structuralism teaches that individuals are not free but are influenced and confined by a structure that enters their subconscious mind.(Fuady, 2011) In the process leading up to the issuance of Decision No. 90/PUU-XXI/2023, it is very clear that the Constitutional Court is bound by the language of Article 6 paragraph 2 of the 1945 Constitution. Where according to Article 6 paragraph 2 of the 1945 Constitution, "The conditions for becoming President and Vice President shall be further regulated by law." This is because if formulated by the Constitution, it will not be dynamic and cannot be easily changed in accordance with the times. Therefore, the framers of the 1945 Constitution expressly stipulated that the matter of the age of presidential and vice presidential candidates is the responsibility of positive legislation, namely the President and the DPR.

So that the Constitutional Court rejected the lawsuit requesting to minimize the age of presidential and vice presidential candidates to 35 years and granted the request of Almas Tsaqib Birru, who requested a change in the age of presidential and vice presidential candidates to 40 years or had been a regional head. If you look at Article 169 letter q of Law Number 7 of 2017 concerning General Elections which minimizes the age of presidential and vice presidential candidates to 40 years, of course this is contrary to Article 28D paragraph (3) of the 1945 Constitution, which reads, "Everyone has the right to freedom of association, assembly, and expression" as argued by the petitioners. However, the Constitutional Court did not grant the first lawsuit which asked to minimize the age of presidential and vice presidential candidates to 35 years old, citing the language of Article 6 paragraph 2 of the 1945 Constitution, "The requirements to become President and Vice President shall be further regulated by law." The Constitutional Court saw that the framers of the 1945 Constitution explicitly stipulated that the age of presidential and vice presidential candidates was the responsibility of positive legislation, namely the President and the DPR. Therefore, the norm is clearly not a matter of constitutionality which is the authority of the Constitutional Court. Rather, it is a matter for the legislators.

The Constitutional Court granted Almas Tsaqib Birru's lawsuit because the Constitutional Court saw the application as an interpretation of the test of the strength of the Law with the 1945 Constitution, besides that the Constitutional Court granted it because it maintained the dynamism desired by the 1945 Constitution and did not take away the positive authority of legislation because the Constitutional Court did not change the law but the Constitutional Court interpreted the age of presidential and vice presidential candidates of 40 years in Article 169 letter q of Law Number 7 of 2017 to be the age limit for presidential and vice presidential candidates is 40 years, unless they have experience as regional heads, this is stated in the Constitutional Court Decision Number 90/PUU-XXI/2023. This interpretation was carried out after the Constitutional Court examined the Law with the 1945 Constitution.

This is as the authority of the Constitutional Court in Indonesia is to test laws against the Constitution, decide disputes between state institutions, decide disputes over election results, and decide on the dissolution of political parties. While the obligation of the Constitutional Court is to decide the charges of the DPR that the President / Vice President has violated certain things in the 1945 Constitution or no longer qualifies as president / vice president. In relation to testing or judicial review of the Constitution, the Constitutional Court may only interpret the contents of the Constitution in accordance with the original content made through debate by the Institution authorized to determine it. (MD, 2009)

Basically, there are five rules in Islamic siyasah, two of which can be used in understanding the will of the Constitutional Court in determining Decision Number 90/PUU-XXI/2023 regarding changes in the age of presidential and vice presidential candidates.

والامكنة اللازمة غير بد حسب ت غير احكام (changes in laws due to changes in times, places, situations, habits, and goals). With this rule, the ruler can review decisions and policies if it is assessed and felt that there has been a change in the situation and conditions that cause the previous legal policy is no longer relevant so that it requires revision of a law and review of a policy. (Zaenudin, 2019, p. 63)

All decisions or policies of the ruler in Islamic siyasah must be based on benefit. So in all its authority, both for sulthah tanfiziyyah, sulthah tasyri'iyyah, and sulthah qadhaiyyah are bound to the interests, all of which are taken from the verses of the Qur'an and the Hadith of the Prophet. It can be said that the legal structure and legal language for a policy in Islam is benefit. As in the rule *بِالْمَصْلَحَةِ مَنْوُطُ الرَّأْيَةِ عَلَى الْإِمَامِ تَصَرَّفُ*, (the ruler's policy towards the people is based on the benefit) (Zaenudin, 2019, p. 60).

The policy made by the formulators of the 1945 Constitution in this case can be said to be trying to benefit the people of Indonesia and realize the dynamism of the law as desired by the two rules of Islamic siyasah above. As in the language of Article 6 of the 1945 Constitution which requires the dynamism of the age of presidential and vice presidential candidates according to the needs of the times, and also Article 28D paragraph (3) of the 1945 Constitution, which reads, "Everyone has the right to freedom of association, assembly, and expression" which requires benefits for the rights of the Indonesian people. So that with the Constitutional Court Decision Number 90 / PUU-XXI / 2023, the Constitutional Court is trying to realize the will of Article 6 of the 1945 Constitution which wants the dynamism of the age of presidential and vice presidential candidates according to the needs of the time and does not take the authority of other institutions. Likewise, with the will of Article 28D of the 1945 Constitution, with this decision the Constitutional Court tries to open up opportunities for the younger generation or millennial generation to have the opportunity to compete in elections to be nominated as president or vice president. Where this is an effort to benefit the younger generation who have the competence to do so.

Based on the explanation above, it can be seen that in deciding the application to change the age of presidential and vice presidential candidates, the Constitutional Court is very much bound by the legal language structure of Article 6 paragraph 2 of the 1945 Constitution. In the study of sociology, this is one of the theories that states that humans are naturally constrained by a structure that binds them. So it can be proven that according to structuralism, what appears on the surface as something solid, normal, or natural is the end result of a process of various forms of influencing or underlying structures, not just a social reality. (Fuady, 2011)

The history of Islamic state administration shows the existence of three bodies of state power, namely sulthah tanfiziyyah or executive power, sulthah tasyri'iyyah or legislative power, and sulthah qadha'iyyah or judicial power. At the time of the Prophet, the three bodies of state power were not yet separated, in other words, they were still under one government authority, all under the authority of the Prophet. But in the following period, judicial power has been exercised by several institutions. In accordance with the three sulthahs above, judges have the freedom to interpret texts that are still 'am and mutlaq or texts that require legal interpretation. The caliph has no right to limit the judge's freedom of thought and no fuqaha or mujtahid can prohibit a judge from exercising ijtihad or giving a fatwa on a legal event submitted to him. If there is a different opinion, it is returned to Allah and the Messenger, not returned to Ulil Amri, as mentioned in the word of Allah in Q.S. An-Nisa verse 59. (Zaelani, 2019, p. 30) Seeing this, it can be concluded that in Islamic siyasah, interpreting nash that is still general or nash that requires legal interpretation becomes the authority of

sulthah qadha'iyah or judicial power, which has no right to be limited by sulthah tasyri'iyah and sulthah tanfiziyyah. (Sultan, 2013)

4. Conclusions

Structuralism theory in sociology is an understanding of social aspects that starts from the approach to the structure of the society. Humans are bound by a structure. Where humans must submit, obey the applicable legal structure. In the process before and leading up to Decision Number 90/PUU-XXI/2023, the Constitutional Court used structuralism theory. Where the Constitutional Court is bound by the structure of the legal language of Article 6 paragraph 2 of the 1945 Constitution which causes the Constitutional Court to reject one petition and grant another petition, even though it is in the same lawsuit theme. The Constitutional Court's will by looking at the meaning of Article 6 paragraph 2 of the 1945 Constitution which requires the dynamism of the age of the presidential and vice presidential candidates to be adjusted to the needs of the times and Article 28D of the 1945 Constitution which requires the fulfillment of the interests of the rights of the Indonesian people which is the consideration for the granting of decision No.90 / PUU-XXI / 2023, is in accordance with the two rules of Islamic Siyasah which also requires legal changes to be adjusted to the demands of the times, but it is bound to the interests desired by the Qur'an and Hadith. The authority to interpret the nash or law in Islam is also within the authority of the judiciary.

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