

# Analysis of the Age Limit for Regional Head Candidates in Supreme Court Decision Number 23P / HUM / 2024 Perspective of Gustav Radbruch's Legal Certainty Theory

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## Abstract

The Supreme Court through decision number 23P/HUM/2024 gave birth to a new provision regarding the age limit of regional head candidates calculated at the inauguration stage, not at the time of determining the candidate pair. This provision has caused polemics among the public because if it is calculated from the inauguration how the KPU and the organizers have difficulty verifying the qualifications of the minimum age limit of the regional head candidates and whether it fulfills the aspects of legal certainty when viewed from the ideas of Gustav Radbruch. This research uses normative research with a case approach model. Gustav Radbruch interpreted legal certainty with 4 indicators, namely (1) law is a positive thing (legislation); (2) law is based on facts; (3) legal facts must be formulated in a clear way (avoiding misinterpretation and easy to implement); and (4) positive law is not easily changed. Supreme Court Decision Number 23P/HUM/2024 when examined from the four indicators initiated by Gustav Radbruch shows legal uncertainty.

## 1. Introduction

Supreme Court Decision Number 23P/HUM/2024 is a judicial review of General Election Commission Regulation Number 9 of 2020 concerning the Fourth Amendment to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents and/or Mayors and Deputy Mayors submitted by the Garuda Republik Indonesia (Garuda) Party as the Petitioner to the General Election Commission (KPU) as the Respondent. The Garuda Party filed an objection because Article 4 paragraph (1) letter d of KPU Regulation Number 9 of 2020 is considered contrary to Article 7 paragraph (2) letter e of Law Number 10 of 2016. Article 7 paragraph (2) letter e of Law Number 10 of 2016 contains a minimum age requirement of 30 years for candidates for governor and deputy governor. Meanwhile, Article 4 paragraph (1) letter d adds the requirement with the wording “at least 30 years as of the determination of the candidate pair”. The editorial “starting from the determination of the candidate pair” for the Applicant seems to make restrictions related to age

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requirements that are contrary to Article 7 paragraph (2) letter e of Law Number 10 Year 2016.

Given the many stages in the Regional Head Election, including the preparation and implementation stages as stipulated in article 3 of PKPU Number 2 of 2024 concerning Stages and Schedules for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors in 2024. At the organizing stage as described in article 4 paragraph (2) includes:

- a. announcement of candidate pair registration;
- b. registration of candidate pairs;
- c. research of candidate requirements
- d. determination of candidate pairs
- e. implementation of the campaign;
- f. implementation of voting
- g. vote counting and recapitulation of vote counting results;
- h. determination of elected candidates;
- i. settlement of violations and disputes over election results and
- j. proposing the ratification of the appointment of elected candidates.

It does not regulate when and at what stage the age requirement for candidates for Regional Head must be met. This results in multiple interpretations in giving definite meaning to when the age must be met. One form of multi-interpretation can be seen in the 2010 Regional Head Election, the KPU issued PKPU Number 13 of 2010 as an implementing regulation of Law Number 22 of 2007 concerning the Implementation of General Elections and Law Number 32 of 2004 concerning Regional Government stipulating the age requirement for regional head candidates, “calculated at the time of registration”. On the other hand, in PKPU Number 9 of 2020 “as of the determination of the candidate pair”. Changes from time to time regarding when and at what stage the age requirement for regional head candidates is a form of inconsistency and not in accordance with the principle of legal certainty. So that the Supreme Court is authorized to give an opinion regarding when and at what stage the age requirements for regional head candidates must be met. Until finally the Supreme Court in its decision interpreted Article 4 paragraph (1) letter d with the wording “at least 30 years old for candidates for Governor and Deputy Governor and 25 years old for candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor ‘as of the inauguration of the elected candidate pair’.

The additional wording “as of the inauguration of the elected candidate pair” certainly raises polemics among the public. The question is if it is counted since the inauguration, while it is not known when the inauguration of the elected candidate pair is and how the KPU verifies that the regional head candidates meet the qualification requirements related to age limits or not. This situation does fulfill the principle of legal certainty. For this reason, it is interesting to examine the age limit of regional head candidates studied with aspects of legal certainty. In this study, researchers examined Gustav Radbruch's legal certainty aspects. Gustav Radbruch was a German jurist and legal philosopher. Although Radbruch was a German legal scholar, his ideas are able to reflect the applicability of law in Indonesia. The theory of legal certainty was first initiated by

Gustav Radbruch in his book entitled *introduction to the legal sciences*. Departing from Radbruch's idea of law, there are 3 basic values, namely justice, expediency and legal certainty. (Julyano, M., & Sulistyawan, A. Y., 2019)

## **2. Method**

This research uses normative research or library research method with a case approach model. The case approach is carried out by examining cases that have been outlined in court decisions (with permanent legal force). The case approach refers to the *ratio decidendi*, namely the legal reasons used by the judge to reach a decision. (Marzuki, 2012) Sources of legal research in the form of primary legal materials, secondary legal materials. Primary legal materials include Supreme Court Decision Number 23P/HUM/2024 and laws and regulations relevant to regional head elections. Meanwhile, secondary legal materials include textbooks, legal writings in the form of books or journals.

## **3. Result and Discussion**

### **3.1 Gustav Radbruch's Theory of Legal Certainty**

Gustav Radbruch was a jurist and legal philosopher born on November 21, 1878 in Lubeck. Coming from a prosperous and wealthy merchant family background. Gustav Radbruch has expertise in the field of law. According to Gustav Radbruch in law enforcement there are 3 basic values that must be met, namely, legal certainty in terms of juridical aspects; legal justice in terms of philosophical aspects and expediency in terms of sociological aspects. Gustav Radbruch is the first legal scholar to straightforwardly describe the idea of philosophical, juridical and sociological foundations. (Manullang, 2022)

The concept of “standard priority teaching” initiated by Gustav Radbruch explains that justice is the main basic value, but it does not mean ignoring the basic values of expediency and legal certainty. Gustav Radbruch's idea of law is a combination of the three basic values embodied in real rules in the form of legislation and should not be violated. (Samekto, 2015) According to Gustav Radbruch, justice in the narrow sense is equal rights for all people before the court. Benefit describes the content of the law in accordance with the objectives achieved. Meanwhile, legal certainty is a condition where the law is a regulation that must be obeyed. (Bagir Manan dan Kuntanan Magnar, 2017)

One of the basic values that must be fulfilled is legal certainty. Certainty and law are like two sides of a coin, a unity that cannot be separated. Law without the basic value of certainty is meaningless because everyone does not have standard provisions in behavior formulated in written legal norms. Legal certainty is not only studied from a regulation that must be obeyed, but also implemented, and the norms or content material in the regulation contain the basic principles of law. Legislation is a written legal norm as the basis for organizing the State. (Dimiyati, 2015)

Gustav Radbruch explained that there are 4 indicators in the meaning of legal certainty, namely: (Rahardjo, 2012)

- 1) Law is a positive thing, meaning that positive law is legislation;
- 2) Law is based on facts, meaning that the law is made based on reality;
- 3) The facts stated in the law must be formulated in a clear way. So as to avoid confusion in meaning or interpretation and easy to implement;
- 4) Positive law is not easily changed.

### **3.2 Analysis of the Age Limit for Regional Head Candidates in Supreme Court Decision Number 23P/HUM/2024 from the Perspective of Gustav Radbruch's Legal Certainty Sitting of the Case in Supreme Court Decision Number 23P/HUM/2024**

#### **3.2.1 Chronology in Supreme Court Decision Number 23P/HUM/2024**

The application for judicial review in decision number 23P/HUM/2024 was filed by the Garuda Party, which is a public legal entity, in this case a political party. The Garuda Party felt that it suffered actual and potential losses because it was unable to nominate a candidate for Governor and Deputy Governor due to the age requirement, which is calculated from the determination of the candidate pair. The Garuda Party feels disadvantaged by the requirements in article 4 paragraph (1) letter d of PKPU Number 9 of 2020, so that the written legal norms cause injustice.

The Garuda Party claims that Article 4 paragraph (1) letter d of PKPU Number 9 of 2020 contradicts higher laws and regulations, namely Article 7 paragraph (2) letter e of Law Number 10 of 2016. Article 7 paragraph (2) letter e only regulates the minimum age requirement for regional head candidates. Meanwhile, Article 4 paragraph (1) letter d of PKPU Number 9 of 2020 contains the additional wording “as of the determination of the candidate pair”. The Garuda Party believes that the additional wording restricts the age of regional head candidates and contradicts Article 7 paragraph (2) letter e of Law Number 10 of 2016. The Garuda Party believes that the minimum age limit for regional head candidates should be implemented at the time of the inauguration of the elected candidate pair. For this reason, the Garuda Party requests the Supreme Court to grant the petition for judicial review of article 4 paragraph (1) letter d to have binding legal force as long as it is interpreted as “as of the inauguration of the elected candidate pair” or order the revocation of article 4 paragraph (1) letter d of PKPU Number 9 of 2020.

On the other hand, the KPU as the Respondent expressly rejects all arguments in the Garuda Party's petition. The KPU states that article 4 paragraph (1) letter d of PKPU Number 9 of 2020 remains valid and binding and does not conflict with Law Number 10 of 2016. The arguments submitted by the KPU are 1) Explanation related to the authority of the KPU in the formation of article 4 paragraph (1) letter d PKPU Number 9 of 2020; (2) The preparation and formation of PKPU is in line with the principles of the formation of laws and

regulations, is not formally flawed, is still valid, is final and binding; (3) PKPU Number 9 of 2020 does not conflict with Law Number 10 of 2016.

The Supreme Court's decision in case number 23P/HUM/2024 includes: (1) granting the Garuda Party's petition; (2) Article 4 paragraph (1) letter d of PKPU Number 9 of 2020 contradicts Law Number 10 of 2016 and does not have binding legal force as long as it is not interpreted as “at least 30 years old for Candidates for Governor and Deputy Governor and 25 years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the inauguration of the elected candidate pair”; (3) Ordering the KPU to revoke article 4 paragraph (1) letter d of PKPU Number 9 of 2020 (4) Ordering the Registrar to send a copy of the decision to be included in the State Gazette and (5) Charging the costs of the case to the Respondent.

The basis for the judge's consideration in granting the Applicant's request, namely:

- 1) The Applicant has an interest and legal standing to challenge the right to judicial review. The legal basis is based on Article 31A paragraph (2) of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, which outlines that judicial review of laws and regulations is carried out for parties who feel aggrieved by the enactment of these regulations, namely (a) individual citizens; (b) customary law community units are still alive, in accordance with the development of society and the principles of the Republic of Indonesia as regulated in laws and regulations; (c) public legal entities or private legal entities.
- 2) The panel of judges considered the main request for judicial review of article 4 paragraph (1) letter d of PKPU Number 9 of 2020 contrary to Article 7 paragraph (2) letter e of Law Number 10 of 2016. After examination, no explanation was found regarding when and at what stage the age limit requirements for candidates for Governor and Deputy Governor, Candidates for Regent or Deputy Regent and Candidates for Mayor or Deputy Mayor must be met. The lack of explicit stipulation in the law, at what stage of the regional head election the age limit of the regional head candidates is fulfilled, gives birth to different meanings and interpretations and does not rule out the possibility that something similar will happen in the future. One form of multiple interpretations in laws and regulations can be seen in PKPU Number 13 of 2010 stipulating the age requirement for regional head candidates is calculated at the time of registration, while PKPU Number 9 of 2020 the age requirement for regional head candidates is calculated at the time of determining candidate pairs. The Supreme Court is of the opinion that the change in interpretation made by the KPU is a form of inconsistency that creates injustice for citizens and is not in accordance with the principle of legal certainty. For this reason, the Supreme Court needs to provide an

opinion regarding when the age limit requirements for regional head candidates must be met.

- 3) Considering the replacement of a Regional Head Candidate pair if one of the candidate pairs dies as stipulated in Article 54 of Law Number 10 Year 2016, it has the potential to cause legal uncertainty related to the mechanism whether the determination of the candidate pair needs to be reissued or not as well as the calculation of the age limit of the Regional Head candidate since the determination of the candidate pair for the first time or calculated at the time of the determination of the replacement candidate.
- 4) The Supreme Court is of the opinion that the age calculation for candidates for officials or State administrators including candidates for regional heads “must” be calculated from the date of inauguration or shortly after the end of the “candidate” status, both candidates for registrants, candidate pairs and candidates for elected regional heads and in accordance with the spirit of simultaneous Regional Head Elections. Therefore, the KPU and related parties arrange the stages of the Regional Head Election from the initial stage to the date of inauguration of the Elected Regional Head Candidates in order to realize legal certainty.

### **3.2.2 Analysis of the Age Limit for Regional Head Candidates in Supreme Court Decision Number 23P/HUM/2024 from the Perspective of Gustav Radbruch's Legal Certainty**

The Supreme Court in Decision Number 23P/HUM/2024 granted the petition of the Garuda Party as the Petitioner with the verdict changing the meaning of Article 4 paragraph (1) letter d PKPU Number 9 of 2020, which was originally at least 30 years old for Candidates for Governor and Deputy Governor and 25 years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor counted “since the determination of the candidate pair” to count “since the inauguration of the elected candidate pair”. The additional wording “since the inauguration of the elected candidate pair” raises various polemics in the community. If the calculation of the age limit is carried out at the time of the inauguration of the elected candidate pair, while it is not known when the inauguration of the elected candidate pair is. This condition does not fulfill the principle of legal certainty.

The meaning of legal certainty according to Gustav Radbruch is at least 4 indicators, namely:

- 1) Law is a positive thing, meaning that positive law is legislation. Referring to Radbruch's idea that positive law is legislation, the age limit provisions for regional head candidates have been outlined in written legal norms, namely Article 7 paragraph (2) letter e of Law Number 10 of 2016. Then it is further regulated in Article 4 paragraph (1) letter d PKPU Number 9 of 2020, as a technical guideline for each stage in the Election. This shows that the

provisions regarding the age limit for candidates for regional head of money are outlined in laws and regulations have realized the principle of legal certainty. However, the Supreme Court Decision number 23P/HUM/2024 reduces “legal certainty”. The implementation of the Supreme Court Decision has not been followed up in the form of regulations, in this case laws and regulations.

Decision number 23P/HUM/2024 is a material test conducted by the Supreme Court. The nature of the material test decision is equivalent to a cassation decision, namely, permanent legal force (*inkracht van gewijsde*). If an invitation regulation is declared invalid or not generally applicable, then the invitation regulation requested does not have binding law. The verdict number 23P/HUM/2024 basically states that (1) Article 4 paragraph (1) letter d PKPU Number 9 of 2020 does not have binding legal force as long as it is not interpreted as “at least 30 years old for Candidates for Governor and Deputy Governor and 25 years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the inauguration of the elected candidate pair” and (2) Ordering the KPU to revoke article 4 paragraph (1) letter d PKPU Number 9 of 2020.

According to Ni'matul Huda and R. Nazriyah, norms that order the relevant agencies, in this study the KPU, to revoke laws and regulations that are declared invalid and not applicable to the public can cause problems, namely reducing the “legal certainty” of the Supreme Court's decision. This is because the interpretation will arise because the legislation has not been revoked, so it is considered to remain in effect. (Ni'matul Huda dan R. Nazriyah, 2011) If examined carefully, as long as the KPU, in this case as the organizer of the general election and has the attribution authority to formulate PKPU as a guideline for election organizers, has not changed the wording or ordered the KPU to revoke article 4 paragraph (1) letter d PKPU Number 9 of 2020, it is considered to remain in effect.

- 2) The law is based on facts, meaning that the law is made based on reality.

The law is a fact, not a formula about the judgment that will be made by the judge, for example “good will” and “decency”. (Agustha, 2017) The fact of drafting PKPU Number 9 of 2020 is a regulation that is used as a reference and guideline in the implementation of elections and regional head elections by taking into account the juridical aspects and hierarchy of laws and regulations. The birth of PKPU has certainly passed a definite, standardized and standardized procedure and must go through the approval of the DPR. So that, if Law Number 10 of 2016 only regulates the minimum age limit for regional head candidates, but does not regulate at what stage the age must be met. For this reason, the KPU as the organizer of regional head elections needs to issue detailed regulations as instructions for implementing simultaneous regional head elections, one of which is PKPU Number 9 of

2020 which regulates in detail the minimum age limit starting from the determination of candidate pairs.

- 3) The facts stated in the law must be formulated in a clear manner. So as to avoid confusion in interpretation or interpretation and easy to implement.

Two important points of the meaning of legal certainty according to Radbruch are avoiding mistakes in interpretation and easy to implement. If we examine the verdict number 23P/HUM/2024, it basically states that (1) Article 4 paragraph (1) letter d PKPU Number 9 of 2020 does not have binding legal force as long as it is not interpreted as “at least 30 years old for Candidates for Governor and Deputy Governor and 25 years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the inauguration of the elected candidate pair”. The additional editorial “since the inauguration of the elected candidate pair” in the author's view creates confusion in interpretation and is not easy to implement.

First, the mistake in the interpretation that the minimum age of 30 years for Candidates for Governor and Deputy Governor and 25 years for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor is calculated “since the inauguration of the elected candidate pair” is how the Regional KPU as the organizer of Regional Head Elections (Pilkada) conducts research on the requirements of candidates, whether they meet the age limit qualifications or not. This means that there is no clear and rigid benchmark regarding the age limit for the registration of candidate pairs, as long as at the time of inauguration they have reached the age of 30 years for Governors and Deputy Governors and 25 years for Candidates for Regents and Deputy Regents or Candidates for Mayors and Deputy Mayors. Couples who are 29 years old or older can register as Candidates for Governor and Deputy Governor and 24 years old or older can register as Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as long as at the time of inauguration the elected candidate pair has met the lowest age limit. This is contrary to the provisions of Article 7 paragraph (2) letter e of Law Number 10/2016 which regulates the requirements in the nomination of Regional Heads and is contrary to legal certainty. The minimum age limit requirement is an administrative requirement that must be met at the candidate pair registration stage. Rational requirements and restrictions are needed to state the fulfillment of a condition. Time limitations must be formulated in written legal norms with firm, clear and understandable sentences.

Second, it is not easy to be implemented by the KPU and related parties in the implementation of Pilkada, because the inauguration of regional heads, in this case the Governor and Deputy Governor, is not the authority of the KPU, but the President as stipulated in Article 163 paragraph (1) and Article 165 of Law Number 10 of 2016 concerning the Second Amendment



to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. Meanwhile, the schedule and procedures for the inauguration are regulated in Presidential Regulation Number 80 of 2024 concerning Amendments to Presidential Regulation Number 16 of 2016 concerning Procedures for the Inauguration of Governors and Deputy Governors, Regents and Deputy Regents and Mayors and Deputy Mayors. After the Supreme Court's decision number 23P / HUM / 2024 promoted simultaneous inauguration in order to fulfill the element of legal certainty regarding the minimum age limit. However, as mandated in Article 2A paragraph (3) of Presidential Regulation Number 80 of 2024, the schedule that has been set can be missed for 3 reasons, namely:

- a) Disputes over the results of the regional head and deputy regional head elections at the Constitutional Court;
  - b) The second round of regional head elections in the Special Capital Region of Jakarta/ Special Region of Jakarta Province; and/or
  - c) Force majeure that causes a delay in the implementation of the inauguration.
- 4) Positive law is not easily changed

As a legal result of the Supreme Court's decision number 23P/HUM/2024, it is necessary to improve and adjust the procedures for nominating Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors by establishing PKPU Number 8 of 2024 concerning the Nomination of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors and revoking PKPU Number 9 of 2020. Changes in laws and regulations in a country are a natural thing, as an effort to accommodate legal developments and needs in line with the dynamics in society. Moreover, laws and regulations are human-made regulations that cannot be applied continuously. Changes to laws and regulations are possible by paying attention to the rules set so that the substance of the content does not raise many questions that seem to legalize certain interests. Referring to the provisions of legal certainty which state that positive law is not easily changed by changes, PKPU on the procedures for nominating regional heads reduces the meaning of legal certainty.

According to Maria Farida Indrati, states that aspects that are able to create legal certainty, namely (1) Legislation or other legal products must be formulated clearly and thoroughly, so that the public knows what can be done and cannot be done; (2) Existing laws and regulations should not be changed without considering the interests of the community and adequate transitional provisions. (Indrati, 2007) The two statements above show that in preparing good laws and regulations must know the basis for the formation of laws and regulations, starting from the principles of laws and regulations, the authority

to form laws and regulations, content material and types and hierarchy of laws and regulations.

#### **4. Conclusion**

Gustav Radbruch's view in interpreting legal certainty, namely positive law is laws and regulations; based on facts; facts in law are formulated in a clear way so that they can be implemented and do not cause multiple interpretations and positive laws are not easy to change. The analysis of the age limit for regional heads in the Supreme Court decision Number 23P/HUM/2024, when examined with the four indicators of legal certainty according to Gustav Radbruch, shows legal uncertainty. The first indicator of positive law is laws and regulations, the implementation of the Supreme Court Decision has not been followed up in the form of regulations, in this case laws and regulations indirectly reduce legal certainty. The second indicator, the law based on facts and reality which is the problem in the Supreme Court decision Number 23P/HUM/2024, namely PKPU Number 9 of 2020 as a guideline for the implementation of regional head elections regulates in detail the minimum age limit from the determination of candidate pairs, in its formulation based on facts and reality has met the aspect of legal certainty. The third indicator, the Supreme Court's decision number 23P/HUM/2024 with the addition of redaction "since the inauguration of the selected candidate pair" in the author's view, causes errors in meaning and is not easy to implement, this shows legal uncertainty. The fourth indicator states that positive law is not easy to change, the implementation of the Supreme Court decision number 23P/HUM/2024 the establishment of PKPU Number 8 of 2024 concerning the Nomination of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor and revoking PKPU Number 9 of 2020, this shows that the requirements in the fourth indicator are not met.

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