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**Constitutional Court Judges' Interpretation on the Limitation of Presidential and Vice-Presidential Term of Office: A Study of the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022**

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**ABSTRACT**

**Purpose of the Study:** This paper aims to analyze the philosophical meaning behind the Constitutional Court judges' interpretation of Decision No. 117/PUU-XX/2022 on the limitation of presidential and vice-presidential terms of office. It also aims to analyze the limitation of the presidential and vice-presidential term of office in the legal transformation and renewal in Indonesia.

**Methodology:** This was normative research that used the qualitative method. The writer used the development law theory and judges' interpretation and philosophical theory.

**Results:** It was found that the Constitutional Court judges' interpretation of Decision No. 117/PUU-XX/2022 considered the grammatical interpretation, sociological interpretation, systematic interpretation, historic interpretation, comparative interpretation, and futuristic interpretation. In the legal transformation and renewal in Indonesia, the limitation of the presidential and vice-presidential term of office aims to create a checks and balances system among the state's high institutions. This limitation is already according to the 1945 Constitution.

**Applications of this Study:** This research can motivate political parties to presidential and vice-presidential candidates that have integrity, morals, and character, as presidents and vice presidents can only serve for two periods. Thus, it is best to find the best candidates to serve the country.

**Novelty/Originality of this study:** There has not been any previous research that analyzes Constitutional Court judges' interpretation of Decision No. 117/PUU-XX/2022 on the limitation of presidential and vice-presidential terms of office.

**Keywords:** Judicial interpretation, constitutional court, term of office, president, Indonesi

**INTRODUCTION**

The leadership and the presidential term of office of the Republic of Indonesia's first president, Soekarno, to the current president, Joko Widodo, has experienced developments according to the issues and needs of each era. The presidential term of office has clearly been regulated in the 1945 Constitution. Regulations of the 1945 Constitution have been amended four times. Legal politics certainly have a role in formulating, planning, and discussing certain articles that need to be amended according to what is needed by the state and the Indonesian people. One of them was Article 7 of the 1945 Constitution. Before the Reformation Era, the term of office was not specifically regulated. Thus, presidents and vice presidents had unlimited terms of office. This made President Soeharto (Indonesia's second president) become reelected into office many times.

But after the Reformation, Article 7 of the 1945 Constitution on the presidential and vice-presidential term of office was amended. The first amendment of this article states, "Presidents and Vice Presidents *hold office for five years, and they can be reelected.*" Then, this was changed into, "Presidents and Vice Presidents *hold office for five years, and they can be reelected into the same position after that, only for a term of office.*" The formulation of this Article still has weaknesses. Thus, an *ius constituendum* is needed to resolve this issue.

Second, there were new ideas on the constitutional design where Article 7 of the 1945 Constitution

should be divided into two clauses: The formulation of clause (1) should be added with the phrase, “either successively or non-consecutively”. Then, there is the addition of clause (2) which states the constitutionality of the limitation of the presidential and vice presidential term of office as requirements for presidential and vice presidential candidacy in Indonesia (Latansa, 2019). At the start of the independence, there was no limitation on the presidential and vice-presidential term of office. The term of office was only limited by the first amendment of the 1945 Constitution.

According to Isra, the presidential election is directly organized because of the people’s support for their chosen presidents. Presidential elections are inseparable from the political party representatives that have political power and interests in the presidential term of office (Saldi, 2016). Presidential and vice-presidential election through general elections is always supported by political parties, with the hope that the people they nominate will be appointed as presidents and vice presidents.

In the development of the limitation of the presidential and vice-presidential term of office, from 2018 to 2019, prior to the 2019 presidential/vice presidential general election, there was a discourse to reelect presidents and vice presidents for three periods. Quoting from Kompas online news platform, the Vice Head of the People’s Representative Assembly from the Partai Persatuan Pembangunan (The United Development Party/PPP) fraction, Arsul Sani stated that the change of the presidential term of office into three periods was suggested by a Legislative House member from the *Nasional Demokrat* (National Democratic) Party fraction, one of the parties that supported the incumbent president (Farisa, 2022). Many political parties supported President Joko Widodo and wanted him to renominate in the 2024 general election.

Then, in 2022, Muchdi Purwopranjono (the General Manager of the Central Board of *Berkarya* (the Work) Party) and Fauzan Rachmansyah (General Secretary of the Central Board of *Berkarya* Party) filed a lawsuit against the Constitutional Court. The material examination was conducted on November 30<sup>th</sup>, 2022 with case number 117/PUU-XX/2022. Purwopranjono and Rachmansyah applied for the constitutional review of Article 169 letter n and Article 227 letter i of Law No. 7 of 2017 on General Elections. The main content of their lawsuit was to undergo a material examination of the presidential and vice-presidential term of office which is only two periods. These two people's applications aimed to give another chance to the currently-serving president to renominate themselves as president in the 2024 general election. Concerning that review, this lawsuit was rejected by the Constitutional Court judges (The Republic of Indonesia’s Constitutional Court, 2022). In rejecting the application on the lawsuit on the presidential term of office, the Constitutional Court judges carried out legal interpretations.

In deciding upon the case, the judges analyzed the legal facts of the legal case applied in court. The judges carried out a normative review by interpreting the meaning of abstract/*in abstracto* sentences in the legal regulations (Indah, 2019). K. C. Wheare stated that the interpretation of legal regulations can be changed through amendments, judicial interpretations, and constitutional interpretations of judges. Judges may add, subtract, and fix the meaning of legal regulations (Hoft, 2021). Judges require legal interpretations of legal regulations through material examination in the Constitutional Court.

There is an interesting issue in the discourse on making the presidential and vice-presidential term of office into three periods. This case has been materially examined in the Constitutional Court but it was rejected by Constitutional Court Judges with the issuing of the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022. Thus, the writer is interested in academically and profoundly analyzing this decision. This paper aims to analyze the Constitutional Court Judges’ interpretation of the limitation of the presidential and vice-presidential term of office. It is a study of the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022.

The problems of this research are: (1) What is the philosophical meaning behind the Constitutional Court judges’ interpretation of Decision No. 117/PUU-XX/2022 on the limitation of presidential and vice-presidential terms of office? and (2) What is the limitation of presidential and vice-presidential terms of office in the legal transformation and renewal in Indonesia?

## RESEARCH METHODS

In this paper, the writer used the normative research method to analyze the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022 and other legal regulations. This was qualitative research that explained or narrated the results of the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022. It used primary data in the form of the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022, Law No. 7 of 2017 on General Elections, and the Republic of Indonesia's 1945 Constitution. The writer used secondary data in the form of the development law theory, i.e., the legal political theory and democracy. The writer also used the judges' interpretation theory and associated it with the judges' philosophical theory to analyze the problem of this research.

## RESULTS AND DISCUSSION

### ***The philosophical meaning of the constitutional court judges' interpretation of Decision No. 117/PUU-XX/2022 on the limitation of the presidential and vice-presidential term of office***

Legal interpretation is when judges undergo a legal discovery by interpreting legal regulations. Judges have the right to judge and examine cases proposed by applicants to fill the legal void due to the lack of legal regulations. Judges are not allowed to reject judging or examining proposed cases, as it is their job to fill the legal void by interpreting legal regulations (Khalid, 2014). According to Mertokusumo and Pitlo, interpretation methods are divided into the following types: (1) grammatical interpretation, where the law is linguistically interpreted. There is an interpretation of legal articles' sound or meaning, (2) sociological interpretation, where the law is analyzed on whether or not it is beneficial for society, (3) systematic interpretation, where a legal regulation is analyzed on whether or not it is structurally arranged, (4) historical interpretation, where the historical basis of the law is analyzed to see whether or not it needs to be substituted or changed, (5) comparative interpretation, where the law is compared with other laws, and (6) futuristic interpretation, where the meaning contained in the proposed law is analyzed (Mertokusumo & Pitlo, 2020). Legal interpretation has an extensive meaning. Judges may undergo interpretation of either written or unwritten legal regulations. Judges undergo normative interpretation of regulations in written or unwritten Articles (Askarial, 2018). Judicial interpretation is required to define the meaning of legal regulations in order to provide a sense of justice in society. Judges do this by interpreting the proposed articles.

The judicial interpretation that the writer will discuss in this paper is the decision of the Constitutional Court on the material examination of Article 169 letter n and Article 227 letter i of Law No. 7 of 2017 on General Elections which regulate the presidential and vice-presidential term of office. Judicial review applicants proposed the presidential and vice-presidential term of office to become more than two periods from what was previously only two periods. The applicants were Muchdi Purwopranjono and Fauzan Rachmansyah. They applied a plea for material examination of the regulations concerning the presidential and vice-presidential term of office. Muchdi Purwopranjono (the General Manager of the Central Board of *Berkarya* Party that is placed in the central office in Jakarta) and Fauzan Rachmansyah (the General Secretary of the Central Board of *Berkarya* Party is placed in the central office in Jakarta) submitted an application to the Constitutional Court on November 23<sup>rd</sup>, 2022. After submitting an application, they obtained an application number. Their registration submission deed had the application number 111/PUU/PAN.MK/AP3/11/2022. Then, on November 30<sup>th</sup>, 2022, it was approved by the Constitutional Court committee and obtained case number 117/PUU-XX/2022 (The Republic of Indonesia's Constitutional Court, 2022).

Next, the writer will describe the philosophical meaning behind the Constitutional Court Judges' interpretation, according to what was delivered by Mertokusumo and Pitlo. Constitutional Court judges carried out interpretation on the application submission from Muchdi Purwopranjono and Fauzan Rachmansyah on the material examination of Article 169 letter n and Article 227 letter i of Law No. 7 of

2017 on General Elections. The material examination of the laws concerning the presidential and vice-presidential term of office in case No. 117/PUU-XX/2022 was as follows:

1) Grammatical Interpretation

Law No. 7 of 2017 on General Elections Article 169 letter n states the requirement for becoming prospecting president and vice president candidates is that candidates have not become presidents or vice presidents before twice for the same term of office. Article 227 letter i states that when registering, prospecting president and vice president candidate pairs have not served twice for the same term of office. The Constitutional Court judge interpreted Article 169 letter n and Article 227 letter i as follows: the term of office of president and vice president is twice for the same term of office. If it is associated with Article 7 of the 1945 Constitution, presidents and vice presidents serve for five years. The presidential term of office only lasts two periods with a total of ten years. To exceed two terms of office or to make a president serve for more than two periods or more than ten years, the 1945 Constitution must be amended.

2) Sociological Interpretation

Sociologically, Plaintiffs with the name of Muchdi Purwopranjono and Fauzan Rachmansyah proposed for material review on Article 7, Article 169 letter n, and Article 227 letter i of Law No. 7 of 2017 on General Elections which states that presidents and vice presidents are chosen through a general election. They serve for five years and they can be reelected in the next period (with a total of two periods or ten years). Purwopranjono and Rachmansyah argued that all political parties have constitutional rights to propose names of prospecting president and vice president candidate pairs that have served for two periods to re-participate in the 2024 presidential and vice-presidential elections.

3) Systematic Interpretation

Systematically, the juridical regulations that became the Constitutional Court's legal basis to handle the case in the name of Plaintiffs Purwopranjono and Rachmansyah were Article 24C clause (1) of the 1945 Constitution and Article 10 clause (1) letter a of Law No. 24 of 2003 on the Constitutional Court, Decision of the Constitutional Court No. 2 of 2021 on Procedural Guidelines in Cases of Legal Review, Article 6A and Article 7, Article 226 clause (1) and Article 227 letter n of Law No. 7 of 2017 on General Elections.

4) Historical Interpretation

The history of the application submission from Purwopranjono and Rachmansyah was that Indonesia is a state that is regulated by law. The law states that the presidential and vice-presidential term of office is five years. Presidents and vice presidents are chosen through a free, public, honest, just, and confidential general election, as regulated in Article 1 clause (3) of the 1945 Constitution, Article 7 of the 1945 Constitution, Article 22E clause (1) of the 1945 Constitution, and Article 28D clause (1). Presidents and vice presidents may be chosen and reelected after that. It means that the presidential and vice-presidential term of office is only twice or two periods. Prospecting president and vice president candidates are nominated by political parties, and these candidates must not have previous experience of serving twice in a row or for two periods. This is as regulated in Article 6A and Article 7, Article 226 clause (1), and Article 227 letter of Law No. 7 of 2017 on General Elections.

5) Comparative Interpretation

Regarding the comparative interpretation of other legal regulations, Plaintiffs Purwopranjono and Rachmansyah stated that it was guaranteed by the 1945 Constitution, namely: Article 1 clause (3) of the 1945 Constitution, Article 7 of the 1945 Constitution, Article 22E clause (1) of the 1945 Constitution, and Article 28D (1) that was amended into Law No. 7 of 2017 on General Elections. The proposed articles were Article 226 clause (1) and Article 227 letter n.

6) Futuristic Interpretation

According to Article 7 of the 1945 Constitution and Article 22E clause (1) of the 1945 Constitution, the General Elections are organized every five years. It is a unity of norms which reads

that presidents and vice presidents can only serve for one period and they can be reelected for the same term of office. The philosophical meaning is based on the grammatical and systematic interpretation of Article 226 clause (1) and Article 227 letter n of Law No. 7 of 2017 on General Elections. Presidents and vice presidents can serve for five years, then they renominate themselves and become reelected into office for another five years. The norm that applies in Indonesia is that a term of office is not ten years. But the presidential and vice-presidential pair may re-participate in the next general election, meaning that they have served for five years, then continued for the next five years if they are reelected through presidential and vice-presidential elections.

The Constitutional Court is a judicative institution that has the authority to judge material reviews on legal regulations, dissolve political parties, and resolve the results of disputes. They judge from the first to the last level and their decisions are final and binding. This is as regulated in Article 24C clause (1) of the 1945 Constitution, Article 10 clause (1) letter a of Law No. 24 of 2003 on the Constitutional Court, and Regulation of the Constitutional Court No. 2 of 2021 on Procedural Guidelines in Cases of Legal Review.

Concerning the meaning of the philosophical interpretation of Constitutional Court judges on Decision No. 117/PUU-XX/2022 on the limitation of presidential and vice presidential terms of office, quoting from Abraham Lincoln, this ex-president of the United States provided a concept of democracy, which was from the people, by the people, for the people (Lincoln, 2018). Democracy that is from the people and for the people, is carried out through presidential and vice-presidential general elections.

Based on Abraham Lincoln's opinion, the writer interprets that the people must be involved in presidential and vice-presidential general elections. The people choose based on their conscience and they have the will of choice. The 1945 Constitution has regulated legislative, executive, and judicial institutions to apply the checks and balances principle in the Indonesian governmental system. The division of state institutions aims to prevent dominant power. This also applies to presidential and vice-presidential terms of office. If the term of office is too long, it will cause a dominant, executive-heavy power. Thus, there need to be regulations that limit the presidential and vice-presidential terms of office in the legal transformation and renewal in Indonesia.

#### ***Limitation of presidential and vice-presidential terms of office in the legal transformation and renewal in Indonesia***

When Joko Widodo and Yusuf Kalla participated in the contestation of presidential and vice-presidential candidate elections in 2015-2018 they were chosen as the Republic of Indonesia's 7<sup>th</sup> president and vice president. Then, in 2019, Joko Widodo re-participated in the presidential candidate election. Joko Widodo was reelected as president with KH. Ma'ruf Amin as his vice (Junaidi, 2022). President Joko Widodo served as President twice, even though he paired up with different vice presidents.

According to Article 6A (1), presidents and vice presidents are directly chosen by the people. Article 7 of the 1945 Constitution regulates that the presidential and vice-presidential terms of office are five years. But during President Joko Widodo's rule, there was a discourse to amend the 1945 Constitution and revise Article 226 clause (1) and Article 227 letter n of Law No. 7 of 2017 on General Elections ("Wacana Amandemen UUD 45: Presiden Bisa Dijabat Tiga Periode (Discourse on the Amendment of the 45 Constitution: The President Can Serve Three Periods)," 2019). This discourse wished to change the presidential and vice-presidential terms of office, from two periods into three. The writer will analyze the limitation of presidential and vice-presidential terms of office which require legal transformation and renewal in Indonesia. The transformation of the creation of democracy for people's welfare and legal renewal in the form of legal politics is as follows:

*First*, the *rechtstaat* legal state. According to Dedi Mulyadi, the Indonesian *rechtstaat* legal state has a special characteristic, i.e., Pancasila, that serves as a source of legal norms. Thus, Indonesia is a Pancasila legal state (Mulyadi, 2020). The state establishment in the governmental system requires power that is limited by the law that aims to protect the people (Wignjosoebroto, 2018). The legal state that applies in Indonesia is guided by Pancasila as the guidelines for life as a nation and a state. The legal state has the principle of the highest power. Indonesia is made by the people through people's representatives. All

stately regulations in the form of political positions filled through general elections, including the position of president, can be taken through presidential and vice-presidential general elections. The appointment of state officials, i.e., presidents and vice presidents as the highest official and as the head of the legal state, applies the principle of the highest power. Presidents and vice presidents are directly elected by the people through presidential and vice-presidential general elections.

*Second*, Jimly Asshiddiqie stated that Indonesia is a democratic legal state. It is a legal state that has a principle of people's sovereignty (*democratie*), called a democratic legal understanding (*demokratische reichstaat*). It has a constitutional form, called the constitutional democracy (*constituinal democracty*) (Asshiddiqie, 2021). In a condition where the power in a state is too dominant, democracy will fail as the state will always control the people, making it become an authoritarian state. If the presidential power is extended into three periods, it will exceed the state's civil society. It makes politicians that desire group interests more dominant. It will create a chaotic, messy, and government-less state without clear direction. Thus, that is why there are democratic constitutional stipulations in the 1945 Constitution that formulate economic and social welfare (the welfare state). The presidential and vice presidential terms of office that are extended into three periods do not guarantee welfare for Indonesians, as stipulated in the Preamble of the 1945 Constitution which states that, "Subsequent thereto, to form a government of the state of Indonesia which protect all the people of Indonesia and all the independence and the land thathas been struggled for, and to improve public welfare, to educate the life of the nation and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia is formulated into a constitution of the Republic of Indonesia whichis built into a sovereign state based on a belief in the One and Only God, justand civilized humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia."

*Third*, Mahfud MD expressed that legal politics is legal policy. Legal politics is official policies on law, that will be well-implemented with the formation of new laws or with the change of old laws to reach the state's goals (Mahfud MD, 2020). Legal politics is required to formulate the direction of government policies directed to citizens. Legal renewal to legal politics in every country is carried out through the formulation of governmental policies. Legal policy or legal politics are legal regulations to be complied with by citizens. Legal politics or legal renewal are choices on the laws that will apply as well as choices on regulations from laws that will be revoked or not enforced. All of this aim to reach the state's ideals.

Concerning Article 169 letter n of the Republic of Indonesia's Law No. 7 of 2017 on General Elections and Article 7 of the 1945 Constitution, according to Huda, the articles in the 1945 Constitution state that the president has a very strong and great position and power (Huda, 2019). The presidential term of office needs to be regulated to prevent the abuse of power. If it is not limited, there are concerns about the creation of an authoritarian state (Yudhistira, 2020). There need to be limitations on the presidential term of office so that there is no misuse of power and authority.

Thus, some political aspirations wish the power in the presidential term of office to be limited so that there are checks and balances among the state's high institutions. The presidential system that is applied by some countries in the world regulates the presidential term of office. Thus, the Decision of the Constitutional Court Judge No. 117/PUU-XX/2022, on the limitation of the presidential and vice-presidential term of office is, according to the writer, already accurate and is according to the 1945 Constitution, which limits the presidential term of office into only two periods.

If the Constitutional Court judge grants the application of the plaintiff, thus the People's Representative Assembly must amend Article 7 of the 1945 Constitution, which is certainly not easy to do. It requires academic analysis through more profound research, that is specially reviewed in various aspects. It requires great funds and there are the demand and deeds of the state and the people. On the other hand, in situations where presidents are deemed successful, two periods are deemed as suboptimum in continuing the ongoing programs. Thus, political parties that nominated presidential

candidates will certainly want the presidential term of office to be three periods from what was previously two periods. But if the term of office is three periods, it does not always guarantee that the country will reach welfare and justice. It might be that the extension of the presidential term of office may lead to misuse of authority and cause corruption, collusion, and nepotism to widely occur.

### CONCLUSION AND SUGGESTION

The Constitutional Court judges' interpretation of Decision No. 117/PUU-XX/2022 considered the grammatical interpretation, sociological interpretation, systematic interpretation, historic interpretation, comparative interpretation, and futuristic interpretation. In the legal transformation and renewal in Indonesia, the limitation of the presidential and vice-presidential term of office aims to create a checks and balances system among the state's high institutions. This limitation is already according to the 1945 Constitution. Decision No. 117/PUU-XX/2022 has permanent binding power. Thus, every political party should choose presidential and vice-presidential candidates that have integrity, morals, and character. Candidates should work for the people instead of the political parties interests.

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