



Judicial Review and Civil Society Oversight: Synergy in Realizing a Democratic Constitutional Court (Study of Constitutional Court Decision Number 90/PUU-XXI/2023)

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Abstract: The intervention of political power in judicial review has a significant impact on the constitutional court, which is considered to disrupt the independence of constitutional judges and the pattern of constitutional interpretation in line with power. Although, the resulting decision opens up opportunities for people's constitutional rights, it does not fully favour the power of the community as a counterweight in judicial review. The research method used is normative juridical with a conceptual approach, a statutory approach and a case approach to Constitutional Court Decision Number 90/PUU-XXI/2023. This study aims to analyze Judicial Review and civil society oversight that work together in realizing democratic judicial decisions in the midst of political forces that intervene in constitutional courts in Indonesia. The results show that in a judicial review that has been intervened by political forces, public access to the judicial review process has been controlled by political interests. Therefore, the importance of special arrangements regarding the amicus curiae mechanism of public participation is a form of democratic control in a state of law to provide opinions as additional considerations for judges which should be part of the formal procedures in judicial review. This is done while still ensuring the protection of the constitutional rights of the community actively and objectively in the decisions produced by the Constitutional Court.

Keywords: Judicial Review; Constitutional Court Decision Number 90/PUU-XXI/2023; Amicus Curiae

1. Introduction

Political interference in constitutional courts is one of the most important factors that has the potential to undermine the principles of law and democracy. Although, judicial decisions that have been intervened by political forces are used to help maintain the legitimacy of the government and open up opportunities for short-term benefits in line with government policies, it also raises criticism regarding the potential for politicization of judicial institutions and inconsistent legal provisions (Zurn, 2007, p.4). Under conditions of democratic regression and rule of law, Constitutional Court decisions are often used to support the interests of power, such as the independence of constitutional judges, constitutional interpretations that are in line with power, and limited public participation. This is evidenced by the case testing in Constitutional Court Decision Number 90/PUU-XXI/2023 related to the judicial review of Article 169 letter q of Law Number 7 of 2017 concerning General Elections which is considered to have violated the principle of judicial independence.

The article stipulates that the requirement to be a candidate for President and Vice President is at least 40 (forty) years old. The applicant argues that the norm a quo is considered contrary to the constitution related to the right of every person to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law. In the substance of the Constitutional Court's decision, it is stated that the economic

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growth in Surakarta has increased by 6.25 percent from the beginning of his tenure as Mayor. Gibran Rakabuming Raka for the period 2020-2025, who is still 35 years old, has been able to build and advance the city of Surakarta with honesty, moral integrity and obedient and obedient to serve the interests of the people and the country.

The political intervention lies in the substance of the norms tested by the applicant which is closely related to the person of Gibran Rakabuming Raka who is related to President Jokowi. Gibran Rakabuming Raka is also related to the Chief Justice of the Constitutional Court Anwar Usman who was in office when this case was tested. Anwar Usman is Gibran Rakabuming Raka's uncle, so there has been a denial of the formal procedural law as stipulated in Law No. 48/2009 on Judicial Power. Article 17 paragraph 3 of Law No. 48/2009 on Judicial Power states that "judges or clerks must withdraw from the trial if they have a direct or indirect interest in the case being examined, either of their own accord or at the request of a litigant". The violation of Article 17 paragraph (3) of Law No. 48/1999 will reduce the independence of judges in exercising their authority which will also have implications for the pattern of interpretation used in making decisions, which is fixated on the influence of political power and the absence of the principle of independence supported by morals.

Although the application for *constitutional review* involves elements of civil society, it is only used in procedural aspects because judge Anwar Usman did not act independently in handling case Number 90/PUU-XXI/2023 related to the minimum age limit for presidential and vice-presidential candidates, which changed the minimum age of 40 years as long as the candidate has or is currently occupying a position elected through elections, including regional head elections (Pilkada), such as governor, regent, or mayor, provided that the candidate has or is currently occupying a position elected through elections, including regional head elections. This is considered to provide an opportunity for Gibran Rakabuming, Anwar Usman's nephew and President Joko Widodo's son, to run in the 2024 presidential election.

The Judicial Review instrument, which is supposed to be a control mechanism for legal products that are not in accordance with the constitution, can lose its critical power due to political intervention that is not balanced with the principles of judicial and moral independence (Nainggolan & Nina Zainab, 2024, p.170). Even though, the resulting decision opens up opportunities for people's constitutional rights, especially for young individuals who are experienced in politics to run for president or vice president, but there is a violation of the principles of the constitution itself. Therefore, in the midst of the regression of the rule of law and democracy, which has lost its critical power due to political intervention, the weakness of judicial review and civil society oversight is increasingly clear.

This research has been analysed with entitled "*A Review on Strengthening the Independence of the Constitutional Court*" (Sang Kyum Kim, 2023). In his analysis, the independence of the Constitutional Court must be stronger than other state institutions and the importance of public understanding of Constitutional Court decisions whose interpretation must be accessible and reflect fairness and objectivity, even in the midst of the influence of political intervention. By observing previous research, this study focuses

more on judicial review and civil society oversight as two important pillars in a democratic system that complement each other through *amicus curiae*.

Judicial review functions as a formal control tool in maintaining that constitutional principles are not violated in the form of laws and regulations or in other forms of government action (Huda, 2008, p.103). Then, civil society oversight acts as a control of active participation of citizens in monitoring legislation that is considered to violate the rights of citizens through *amicus curiae* in judicial review. Both have a close relationship in ensuring that citizens' rights are protected and that the government acts in accordance with the principles of democracy and law. Judicial review and civil society oversight through *amicus curiae* are expected to provide added value that can certainly synergise in realising a democratic constitutional court amidst issues of regression of the rule of law and democracy.

2. Materials and Methods

This research uses normative research methods or doctrinal research, namely research that focuses on the positive legal norm system as a legal product of state power (Soemitro, 1991, p. 46). The approaches taken are conceptual approach, statutory approach and case approach. Data analysis is carried out on Constitutional Court Decision Number 90/PUU-XXI/2023, especially on the aspect of the judge's argumentation in interpreting Article 169 letter q of Law Number 7 of 2017 concerning General Elections which affects the independence of Constitutional Court judges in accordance with Law Number 48 of 2009 concerning Judicial Power. This case law study is then analyzed based on concepts or theories in legal principles.

3. Results and Discussion

Examination of the law in principle is one element of judicial *review*, which is specifically interpreted as a test of the value of the constitutionality of the law which includes material and formal testing or known as *Constitutional Review*. Jimly Asshiddiqie distinguishes *Judicial Review* from *Constitutional Review*. The concept of *Judicial Review* is that the object being tested is not only the product of legislation but also includes legislation under the law and its authority is submitted to the judicial power, while *Constitutional Review* only includes constitutionality testing, namely against the *Constitution* and the authority to conduct testing is not only a judicial institution, depending on which institution is authorized by the *Constitution* of a country (Jimly Asshiddiqie, 2005, p.5). The Judicial Review referred to in this paper focuses more on the constitutionality of laws against the *Constitution* which only includes material testing in the Constitutional Court.

Political and legal issues in judicial review first arose in the United States through the decision of the United States Supreme Court in the case of "Marbury vs Madison" in 1803 chaired by *Chief Justice* John Marshall in testing Article 13 of the Judicial Power Act by citing that the Court has the authority to issue a *writ of mandamus* (*The Writ of Mandamus*), namely a letter of appointment of officials who have received congressional approval as appropriate and the appointment has been signed and has been officially stamped (*sealed*). However, the letters of appointment were withheld by James Madison who was appointed by President Thomas Jefferson as the *Secretary of State* replacing John Marshall (Southard, 2007, p.18). In deciding the case, *Chief Justice* John Marshall con-

firmed the right of Marbury et al to legally challenge the actions of the acting executive government who could not issue a *writ of mandamus* regarding the appointment of Marbury et al as secretary of state. In an effort to uphold the rights of Marbury et al, the US Supreme Court faced a dilemma. On the one hand, the decision was favorable to Marbury but would show weakness if it issued a *writ of mandamus* which would certainly be rejected by Congress. On the other hand, if it denied the rights of Marbury et al, it would risk bowing to the power of Congress (Fallon, 2003, p.14).

In order to avoid conflict with Congress, John Marshall has shown his independence by using the authority to interpret the constitution on cases that are not found in federal law, more precisely the *Judiciary Act of 1789*, even though the United States Constitution does not provide for Judicial Review. However, John Marshall in his second judgment with the support of four other Supreme Court justices, made a surprising decision stating that section 13 of the *Judiciary Act of 1789* could not be justified, because the provisions of the *Judiciary Act* itself were contrary to Article III Section 2 of the United States Constitution (Jimly Asshiddiqie, 2005, p. 5). John Marshall's courage in the case became a breakthrough that showed the power of the constitution (*supreme of the law*), thus strengthening the position of the court which has an equal and independent position regarding political and legal issues. There is no single concept of the independence of judges in the judiciary, but there are certain limitations aimed at actions taken in the judicial role of judges, namely freedom from absolute government control, but this freedom is not absolute and must be limited by judicial functions (Whittington, et.al, 2020, p.678). With reference to the decision of the Constitutional Court on the Application for Material Test of Article 169 Letter (q) of Law No. 7/2017 on General Elections against the 1945 Constitution, it can be seen as a decision that is full of political power, so that it can affect the independence of judges in making decisions related to judicial review.

3.1 Political Intervention of Judicial Review by Judges in Constitutional Court Decision Number 90/PUU-XXI/2023

The inevitable political intervention in this *Constitutional Review* is also related to the political nature of the constitutional judges and to the objectives expected by them through the final decision or ruling. As Alec Stone Sweet points out, the rules governing the conduct of *constitutional review* are very different from those governing parliamentary decision-making. It is this difference that attracts the executive to the courts, because the courts are not parliamentary assemblies, but constitutional judges, so the political initiative comes from the judges (Safjan, 2009, p.4). In reality, there is a direct relationship between the *judicial review* application and Gibran as a vice presidential candidate being tested by constitutional judge Anwar Usman, who is related to him. This action violates the provisions of Article 17 of Law No. 48/2009 on Judicial Power. In that article, he should have the right to refuse. The right of refusal must be exercised by Anwar Usman himself or by the applicant. Article 17 paragraph 2 of Law No. 48/2009 on Judicial Power states that the right of objection is the right of a person being tried to file an objection accompanied by reasons against the judge who is trying the case. There is a moral obligation because there is an indirect relationship between the substance of the lawsuit and the judge hearing the lawsuit. This is the component of judicial good faith.

The measure of good faith is embodied in a judicial ethos that relies on moral values to distance themselves from politics and be able to maintain a neutral position so as to enable judges to achieve in terms of internal independence. According to Simon Shetreet and Peter H. Russe states that the limitations of judicial independence are divided into three categories, namely: *First*, the independence of the judicial power in deciding cases (*substantive independence*); *Second*, independence collectively as a branch of power in the state (*collective independence*). *Third*, the independence of judicial power internally (*internal independence*). (Widagdo Eddyono, 2017, p.74) However, the principle of internal independence is the central point of the concept of the *rule of law* or *rechtstaat* where the moral position itself lies in the awareness of the judges who have a direct relationship with the petition under review in the case *a quo*. Judges' awareness is also expressed in a different opinion in Constitutional Court Decision Number 90/PUU-XXI/2023 relating to integrity, independence and impartiality.

In line with the judge's opinion, the awareness actualized in the judge's conscience should be a guideline in exercising his/her authority. Although, even internally independent judges cannot completely abandon the political background from which they come, namely through political appointments by the legislature and the executive, judges are also not destined to become elements that are highly dependent on them. (Abdurrachman et al., 2021, p. 3). If an independent judge can accept a verdict that can have many negative impacts on his or her "political side" because of clear and obvious constitutional arguments, then surely his or her judgment will never be free from a subjective approach within the scope of vague general constitutional clauses and will leave a relatively large space for his or her interpretation pattern, including in Constitutional Court Decision Number 90/PUU-XXI/2023, Anwar Usman, M. Guntur Hamzah, and Mann Mann. Guntur Hamzah, and Manahan M. P. Sitompul granted in part, so that the wording of Article 169 letter q of Law No. 7 Year 2014 changed to "at least 40 years old or has / is currently holding an office elected through General Elections including Regional Head Elections". The use of the phrase 'or experience' in the age requirement of the candidate was interpreted by the Court as "alternative not cumulative", meaning that candidates can choose the age of 40 years or have / are currently occupying positions elected through General Elections including Regional Head Elections and this phrase has become a debate because the Court's interpretation pattern supports dynastic politics (Mulyadi & Megawati, 2024, p.6)

This pattern of interpretation creates uncertainty in the pattern of interpretation of the age limit for vice-presidential candidates in Constitutional Court Decision Number 90/PUU-XXI/2023, which gives the impression that the actions of constitutional judges tend to be political. From the results of the *judicial review*, there were dissenting opinions from 4 (four) Constitutional Court judges who stated that they rejected the petition. Meanwhile, the 5 (five) Constitutional Court judges who granted the petition also dissented. In the first group, 3 (three) Constitutional Court judges agreed that the age limit for presidential and vice-presidential candidates should be at least 40 (forty) years old or have / are running or occupying regional head positions such as Governor, Regent and / or Mayor. The second group, consisting of 2 (two) Constitutional Court judges, agreed that the age limit for presidential and vice-presidential candidates should be at least 40

(forty) years old or have /are running or occupying the position of regional head only Governor(Mudatsir & Samsuri, 2023, p.171)

The second group of judges who were classified as "partially granting the petition", namely Constitutional Judge Enny Nurbaningsih and Judge Daniel Yusmic Pancastaki Foekh. The *concurring opinion* is problematic, because the formulation of the norms of the two judges is very different from the norms contained in the Constitutional Court's ruling. This difference is apparent, where both judges included the requirement of 40 years of age or experience as a provincial or governor-level regional head whose criteria are determined by the legislator. This is in stark contrast to the Constitutional Court's ruling, which lowered the qualifications of presidential and vice-presidential candidates to "have held or are currently holding positions elected through general elections, including regional heads. Based on the Decision, it can be concluded that the total elimination of politics from constitutional justice must be considered inconsistency and unrealistic approach(Kelilauw & Firmantoro, 2024, p.104).

In the condition of political power that dominates the Constitutional Court's decision No. 90/PUU-XXI/2023 concerning the age limit for presidential and vice-presidential candidates, it will certainly have a negative impact on the social, political trust and credibility of the Constitutional Court. The social impact can be seen from the decline in public trust in the independence and professionalism of the Constitutional Court, especially after the public opinion of the majority of people who showed disapproval of this decision. Public opinion is very important for the authority of the Constitutional Court in shaping constitutional cultural standards in society regarding the Constitutional Court as an independent judicial institution that champions constitutional standards,(Skuratov et al., 2022, p.649). But, in reality does not have the ability to answer constitutional challenges. Therefore, weakening the status of the constitutional court in the eyes of public opinion means ultimately becoming a weak and ineffective institution because it has no real weapons(Safjan, 2009, p.11), for example, its authority as an impartial and independent judicial body. From a political perspective, the Court's institutional credibility is also affected by public insinuations that the Court is a "Family Court" due to allegations of nepotism and erodes public confidence in the Court as the guardian of the constitution and implementer of legal reform.

3.2 Synergy of Judicial Review and Civil Society Oversight in Realizing a Democratic Constitutional Court (Study of Constitutional Court Decision Number 90/PUU-XXI/2023)

Public trust in the justice of the Constitutional Court is one of independence that is not limited to independence in the personal position of judges, but involves the structural independence of the Constitutional Court among state institutions and the image of the Constitutional Court in the eyes of the public. At the sociological level, the court gains public trust not because of its independence which is guaranteed through legal norms. Lorne Neudorf argues that when the judiciary is co-opted or subject to influence or intimidation by corrupt officials, groups or individuals, citizens will not trust it, and they have no confidence that the judicial process will be a fair resolution to their contradictions(Hallebone & Priest, 2009,p.18). The phenomenon of politicization of *judicial review* in Constitutional Court Decision Number 90/PUU-XXI/2023 has damaged public

trust in the constitutional court by reducing the role of *judicial review*. Under these conditions, the synergy of judicial review independence and empowered civil society oversight becomes a central point in requiring the independence of judges to ensure public trust and the judicial authority of the Constitutional Court. Marek Safjan's opinion can be considered in this regard, that *judicial review* is not limited to constitutional testing, but rather a special mechanism of public dialogue in a democratic society that emphasizes rational and transparent arguments (Safjan, 2009, p.21).

Therefore, the independence that requires judges to be more politically accountable is also inseparable from social responsibility. Although, the phrase "social responsibility" cannot be measured normatively, as Ferejohn and Kramer explain, no one really believes that the law is entirely uncertain, but almost everyone recognizes that the tools of modern jurisprudence create a range of legitimate options in almost all cases (Hallebone & Priest, 2009, p.19). Starting from this opinion, the standards used to determine the synergy of judicial review and civil society oversight in the midst of regression of the rule of law and democracy in order to support judges to fulfill personal responsibilities concerning integrity and responsibility for their own ethical violations or other abuse of judicial authority that have an impact on the judicial authority of the Constitutional Court that is continuity of *amicus curiae* and public participation in judicial review and consistency of constitutional court decisions protecting people's constitutional rights.

The use of *amicus curiae* plays an important role as a mechanism that strengthens the transparency and independence of the judiciary by providing space for an impartial external voice, especially in cases with far-reaching implications. Theoretically, *Amicus Curiae* means "friend of the court" which is a legal concept in the Roman legal system, i.e. a person summoned by the court to provide information or expert opinion on a case (Nurdiyanti et al., 2024, p. 219). In its development, the concept of *Amicus Curiae* in constitutional courts is aimed at parties who are not litigants in a case, but are allowed by the court to provide information, opinions, or legal advice relevant to the case. The definition of indirectly interested parties is contained in article 14 of the Constitutional Court Regulation Number 06/PMK/2005 concerning Procedural Guidelines in Law Review Cases, namely a. parties who because of their position, duties, principal and function need to be heard; or b. parties who need to be heard as *ad informandum*, namely parties whose rights and/or authorities are not directly affected by the subject matter of the petition but because of their high concern for the petition. Furthermore, the definition of *amicus curiae* or friend of the court is also contained in Constitutional Court Regulation Number 1 of 2017 concerning Examination of Disputes between State Institutions which states that it is one of the parties that can provide information to the Constitutional Court.

The position of *Amicus Curiae* is only limited to that because there is no specific regulation governing *amicus curiae* in the Constitutional Court. In this case we must emphasize that civil society supervision through *amicus curiae* which is rooted in "input or opinion as an additional consideration for judges" is an added value in realizing a sense of justice and guaranteeing protection that frees judges from political pressure. *First, the* role of *amicus curiae* is different from intervention which is a factor inhibiting the independence of judges in making judicial decisions, but the action of *amicus curiae* is to assist judges on evidence and demands (*petitum*) from plaintiffs in court which are

limited to additional considerations of judges. *Second, the* role of Amicus Curae in providing input does not act as a party participating in the case filed but has a concern or interest in a legal case which is limited to providing the legality of his opinion to the judge and this is different from the intervention which is involved in the judicial review process as an opposing party in legal matters(Kholiq, 2023, p 165).

In the context of the civil law system, amicus curiae is not recognized as part of the official procedure in judicial review (Krislov et al., 2009, p.1659),but we can add that the use of amicus curae is positive and necessary for the quality of constitutional democracy because it provides a new impetus for the development of judicial review mechanisms that gradually open up space for public participation through special arrangements that regulate the supervision of NGOs and individuals as legal subjects that can allow as third parties who are not directly interested in legal standing case applications and standardization of cases that use amicus curae mechanisms as parties who have an interest in the protection of human rights.Furthermore, there are several things that need to be considered in the regulation of Amicus Curiae, which can be seen in the following table:

No.	Regulatory Aspects	Description
1	Position of Amicus Curae	a litigant or not part of a litigant who has no conflict of interest.
2	Duties and Authority of Amicus Curae	1. Provide additional information in the form of facts and legal opinions as additional considerations for judges in making decisions. 2. Providing supporting evidence to the arguments put forward by the litigants. 3. Amicus Curiae parties are individuals or NGOs that can submit applications (legal standing) in judicial reviews relating to the protection of constitutional rights or human rights.

From the table above, it can be seen that the use of Amicus Curae in the Constitutional Court judiciary aims to seek justice, so it is certain that people or groups must consider and pay attention to their scientific competence, knowledge and integrity so as not to be trapped in the "interests" of the litigants. This is different from the application of Almas Tsaqibbirru in Constitutional Court Decision Number 90/PUU-XXI/2023 as a party who has no direct interest in the case, but it is explained that the applicant is an admirer of the Mayor of Surakarta in the 2020-2025 period because during the reign of Gibran Rakabuming Raka, economic growth in Solo rose to 6.25 percent where when he first served as mayor, economic growth in Solo was minus 1.74 percent (Putusan MK No. 90/PUU-XXI/2023).

The reasons or arguments of the applicant do not explain the substance of the chronology of the case, disclosure of facts in the field from a philosophical, sociological, and juridical point of view, so it can be said that the arguments applied by the applicant Almas will be used by the political interests of the government at that time. On this basis, the continuity of amicus curae and community participation serves as a supervision to better see and better assess the methodology and reasoning of applicants who file cases

with proper procedures, although this continuity is a challenge for the wider community to further demonstrate the quality of the application argumentation, but the Constitutional Court will not lose its authority in the eyes of the public and can restrain judges from politically opportunistic judicial decisions.

3.3 Consistency of Constitutional Court Decisions Protecting People's Constitutional Rights

Issues relating to the protection of the constitutional rights of the people should be a major issue in the use of the participation of *amicus curiae* in the Constitutional Court because the idea of the protection of human rights is constitutionally reflected in the 1945 Constitution of the Republic of Indonesia, so that the protection of the rights of the people is a manifestation of the idea of the real human rights of citizens. This is shown in the first paragraph of the preamble of the 1945 Constitution which states that independence is the right of all nations, the statement is a reason to realize independence for the Indonesian nation which is universal because the independence of the Indonesian nation is an inspiration for other countries, such as Malaysia, the Philippines and Singapore to become independent and oppose inhumane colonialism. In its body, there are articles that have been considered as guarantees of protection for human rights, such as Article 18 B paragraph (2), Article 27 and Article 28 A-J of the 1945 Constitution, which is a recognition of the human rights of citizens that are particular, but also universal because one of the contents of human rights resulting from international conventions that have been ratified is the content of the constitution.

From the description above, public participation from *amicus curiae* that provides objective and independent information through analysis that may not be owned by the litigants into the content, scope and importance of specific guarantees in the field of human rights protection which will be forwarded to the interpretation or interpretation of judges in understanding the meaning of legal texts to adjust the legal text to concrete matters in society. (Triningsih & Agustine, p.858). This is what is called "friendly interpretation" of the interpretation or interpretation of judges in order to strengthen the political independence of the court which can be the basis for judges to explore, follow, and understand the values of law and a sense of justice that lives in society as mandated by Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. However, "friendly interpretation" as a result of the synergy of judicial review and civil society oversight has certain criteria so that the legitimacy of the decisions produced by the constitutional court becomes qualified and socially accountable. *First*, considering and accommodating *amicus curiae* submitted by civil society organizations and academics, so that it becomes an appropriate step in the mechanism of judicial review interpretation in explaining the purpose of legal norms in the constitution that are still abstract, whether they contain legal defects or not, whether they are fair or not, whether they have legal certainty or not, whether they provide benefits or not (Baehaqi, 2016, p.434).

Secondly, assessing the contradiction of legal norms materially through non originalist interpretation which provides an opportunity for the Constitutional Court to provide a broader interpretation in its capacity as the *sole judicial interpreter of the constitution*, This means that the Constitutional Court should not only be based on the originalism method

of interpretation through the formulation of the 1945 Constitution article, but the overall context of the spirit contained therein is needed to build a more appropriate constitutional life in an effort to integrate the ideals of law (*rechtsidee*) and the ideals of the state (*staatsidee*) in order to realize a democratic rule of law (Lailam, 2014). In the context of Constitutional Court Decision Number 90/PUU-XXI/2023, there is a fundamental difference between the considerations of Constitutional judges, namely Enny Nurbaningsih and Judge Daniel Yusmic Pancastaki Foekh, which are classified as *concurring* opinions by issuing a legal opinion on the minimum age limit of 40 years or experience as a regional head at the governor level (province) with the requirements determined by the legislator. This opinion is different from the Court's verdict which is classified as a concurring opinion with the substance being reduced to the extent of "ever / currently *holding an office elected through general elections including regional head elections*". This is what makes the element of "interest" appear in the constitutional consideration, considering that this decision coincides with the general election event involving the President's son, Gibran Rakabuming, running for vice president.

3.4 *The Impact of Amicus Curiae On Public Participation In Judicial Review*

The principle of a democratic rule of law requires that every decision taken must take into account efforts to ensure community participation, so the opinions and information provided by Amicus Curiae can help judges understand the complexity of a case and consider various relevant aspects, resulting in a consistent decision and adjusting it to the practice of experience in society that is not based on kinship factors. Recognition of community involvement or participation in judicial review that leads to amicus curiae is considered by judges as a supporting interpretation because it is not formally institutionalized in the judicial review mechanism, while the Constitutional Court's decision is *erga omnes* (not only binding on the party who filed the case at the Constitutional Court but also binding in general, be it the legislators, state officials, state institutions and all citizens). This has the consequence that the interpretation of the Constitutional Court judges is varied, giving birth to unusual decisions, namely conditional decisions, such as *conditionally constitutional (conditionally constitution)* and *conditionally unconstitutional (conditionally unconstitution)* (Muhammad Reza Winata, 2020).

Based on this, in order to support judges in determining their stance to defend themselves from political pressure, the consideration of judges using amicus curiae can be an important instrument to support judges in fulfilling their responsibilities which will result in a consistent decision that guarantees the constitutional rights of the community.

4. Conclusions

Judicial review and civil society oversight can work together in the realisation of a democratic Constitutional Court amidst the issue of the decline of the rule of law and democracy through public participation through amicus curiae, which allows civil society organisations and individuals to provide opinions or additional information to the legal considerations of the Constitutional Court judges during the decision-making process in order to improve independent and data-based perspectives. However, public participa-

tion through *amicus curiae* in judicial review is not specifically regulated by the Constitutional Court. Therefore, it is necessary to strengthen the normative framework through the establishment of a Constitutional Court Regulation (PMK) related to *amicus curiae*, which includes: *First*, acceptance procedures, criteria and working mechanisms for *amicus curiae*; *Second*, legal protection for *amicus curiae* who convey critical views or opinions but are constructive; *Third*, the development of a digital platform to facilitate the submission of legal opinions or opinions from academics and civil society in a transparent and verified manner.

With a more systematic regulation of the existence of *amicus curiae*, the consideration of judges (*ratio decidendi*) will be broader, which is objective, scientific and multidisciplinary in nature that bridges the gap between juridical interpretations and the aspirations of civil society, especially for constitutional review of law which is related to firstly, basic public services, such as education, health, environment, labour, and social security; secondly, disputes over election results, thirdly, the protection of human rights.

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