

# Legal Dynamics of Age Limits for Presidential and Vice Presidential Candidates Based on Article 169 Letter Q of Law Number 7 of 2017 Concerning General Elections

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## ABSTRACT

Justice, non-discrimination, equality before the law are important values of the constitution. This study seeks to examine the constitutional rights of the younger generation that were cut by the framers of the law through the age requirement in the electoral law for presidential and vice presidential candidates. The research method used is a normative legal research method with qualitative methods. The age requirement no longer needs to be regulated in the Election Law because it is not in line and is not expressly regulated by the 1945 Constitution. If it is still regulated, the age requirement used must be 18 years, in accordance with the adult size applicable in Indonesia, as a consequence providing opportunities for the younger generation to participate in politics and government, and realize a more inclusive democracy. Factors influencing the setting of age requirements for presidential and vice presidential candidates are the history of national leadership, maintaining the status quo, and senior-junior practices. Therefore, Article 169 letter Q of the Election Law must be revised/deleted.

**Keywords:** *Presidential And Vice Presidential Candidates, The Younger Generation, Constitutional Rights, Age Restrictions*

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## 1. INTRODUCTION

The requirements for the nomination of President and Vice President are regulated in Law Number 7 of 2017 concerning Elections which is a derivative regulation from Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), which states: "Requirements -The conditions for becoming President and Vice President are further regulated by law".

A person who desires to propose themselves for the positions of President and Vice President at the recommendation of a political party is required to fulfill twenty requirements, as stipulated in Article 169 of Law Number 7 of 2017 concerning General Elections (hereinafter referred to as the Election Law). A minimum age requirement of forty years old is one of the conditions (letter q). Therefore, a person who has not yet reached the age of 40 is not eligible to nominate or be nominated for the positions of President and Vice President. This is not in line with Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "Everyone has the right to advance themselves in fighting for their rights collectively to develop their society, nation and state", Article 28D paragraph (1), namely "Everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law" and paragraph (3), namely "Every citizen has the right to equal opportunities in government", as well as with the fundamental rights contained in the 1945 NRI Constitution [1]–[4].

The minimum age limit of forty (40) years for Presidential and Vice Presidential Candidates based on the Election Law is a big jump from the previous age limit, namely thirty (35) years in Law Number 23 of 2003 and 42 of 2008. This limitation is not appropriate. with constitutional values, namely justice, non-discrimination and equality before the law. The younger generation should be given the same opportunity to contest through elections because after all, the responsibility of this

nation lies on the shoulders of the younger generation, not on the other hand amputating/cutting off the rights of the younger generation which are protected by the 1945 Constitution of the Republic of Indonesia.

The minimum age limit for candidates for President and Vice President in the Election Law, namely forty (40) years, is a form of discrimination against the younger generation. This is because the younger generation under forty years of age do not have the same opportunities to participate in politics, including running for President and Vice President. This minimum age restriction can also be considered as denying the rights of the younger generation. The younger generation has the right to participate in government and decide their future. This minimum age limit is contrary to the 1945 Constitution of the Republic of Indonesia [5]–[13].

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirms that "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." So that the minimum age restriction can be considered a violation of human rights, especially the right to be treated fairly before the law .

Based on this description, the problem to be studied is what is the size/definition of adulthood based on other laws and regulations? Is setting the age limit for Presidential and Vice Presidential candidates something that must be regulated in the Election Law? What is the comparison between the age limit settings for Presidential and Vice Presidential candidates and their practices in several countries? What factors are driving the regulation regarding the age limit for Presidential and Vice Presidential candidates in Law Number 7 of 2017 concerning Elections?

## 2. METHODS

This study employs normative legal research methodologies by conducting an analysis of laws and regulations that pertain to the age limitations for candidates running for the presidency and vice presidency. A wide variety of sources, including books, journals, statutory rules, and articles found on the internet, are utilized to collect data for research purposes.

## 3. RESULTS AND DISCUSSION

### 3.1 Definition of Adult According to Several Legislation

According to Gustav Radbruch, good law must fulfill three basic principles, namely justice, certainty and expediency. In relation to the age requirement for candidates for President and Vice President, it must be at least (40) years old in Law number 7 of 2017 concerning Elections, it is not in line with these 3 values. Age restrictions do not provide a sense of justice for the younger generation because they amputate their constitutional rights which do not provide benefits to the younger generation, and these restrictions also illustrate that the value of legal certainty is not achieved due to the unsynchronized regulation of the meaning of adulthood as regulated in other statutory regulations [14], [15]. The regulations regarding the definition of adulthood are based on several other statutory regulations, namely:

Table 1. Adult Age Limit

No	Legislation	Adult Age Limit
1.	Civil Code (Article 330)	21 years
2.	Law Number 1 of 1974 concerning Marriage	18 years
3.	Law Number 39 of 1999 concerning Human Rights (Article 69 paragraph (1))	18 years
4.	Law number 35 of 2014 concerning child protection	18 years

5.	Law Number 13 of 2003 concerning Employment (Article 1 number 26)	18 years
6.	Law Number 30 of 2004 concerning Notary Positions	18 years
7.	Law Number 12 of 2006 concerning Citizenship (Article 9)	18 years
8.	Law Number 2 of 2008 concerning Political Parties	17 years
9.	Law Number 7 of 2017 concerning General Elections (Article 1 number 34)	17 year old and 21 year old DPD member candidates
10.	Supreme Court Circular Letter Number 7 of 2012 concerning Legal Formulation of the Results of the Supreme Court Plenary Meeting as a Guide to the Implementation of Duties for the Court	18 years old/married
11.	Decree of the Minister of Home Affairs Dir. Agrarian DPT No. Dpt. 7/539/7-77.	Political maturity 17 years Sexual maturity (16 years female/19 years male)
12.	Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 4/SE/I/2015 concerning Adult Age Limits in the Context of Land Services (number 7)	18 years old/married

Based on the table above, the right to vote and the right to be elected should not be separated. Thus, a person aged 17 years who is legally eligible to vote also has the right to vote. So that there are no differences interpretation Regarding the definition of adult, the makers of the General Election Law need to consider the definition of adult based on other laws and regulations. This will create harmonization norms and harmony of age settings. The age for political rights, namely voting and being elected, may not be regulated and interpreted differently from the definition of adulthood (legal competence) by other regulations. Apart from providing certainty, clarity and commonality of norms, this will also guarantee equality and the fulfillment of human rights. There should be no exceptions for someone in one area who is allowed, but who is restricted in another area. Therefore, the ideal and fair age for the right to vote is 18 years. Someone who is 18 years old does not necessarily have competence, popularity, electability, and liked by the public to run for office. However, this is not a problem, because democracy prioritizes the sovereign voice of the people. Everyone has the right to be selected and selected regardless of their background.

### 3.2 The Age Requirements of the Election Law Contradict the 1945 Constitution of the Republic of Indonesia

A provision of the Constitution of the Republic of Indonesia from 1945 specifies that "the conditions for becoming President and Vice President are further regulated by law." This provision may be found in Article 6 paragraph (2). In light of this, it is abundantly evident that there are no stringent constraints placed on applicants for the positions of President and Vice President with regard to age restrictions. With the provision of guarantees and legal certainty that every Indonesian citizen has the same position and has the right to vote and be elected, as regulated in Article 27 paragraph (1), which states that "All citizens have equal status. in the law and government and is obliged to uphold that law and government without exception," the Constitution of the Republic of Indonesia, which was ratified in 1945, has established itself as the protector of the rights of citizens. In order to ensure that every person has the right to be treated in a manner that is both fair and non-discriminatory [16]–[21].

It can be said that the inclusion of age requirements for Presidential and Vice Presidential candidates in the Election Law is inappropriate. In fact, if we think logically, there should be no need for age restrictions in the Election Law, because logically, in the current era of democracy, everything depends on the people. If the people want anyone can become President and Vice President, whether

old or young. The minimum age limit of forty (40) years in the Election Law is a big jump from the previous age limit, namely thirty (35) years in law number 23 of 2003 and law number 42 of 2008. This limitation is not in line with the values constitution, namely justice, non discrimination, equality, and equality before the law .

History has proven that the warriors and founders of this nation had great enthusiasm and vision, even when they were still young. Let's just say Ir. Soekarno founded the Indonesian National Party (PNI) at the age of 25, and his speech entitled "Indonesia Sues" in 1930 shook the international world. Soekarno was also elected as the first President of Indonesia at the age of forty-four (44) years. Commander-in-Chief Soedirman became Commander-in-Chief of the TNI at the age of twenty-nine (29) years, and Sutan Syahrir became Indonesia's first Prime Minister at the age of thirty-six (36) years. There are many other examples of young leaders who have extraordinary achievements, both in Indonesia and in the world [22]–[27].

These age restrictions are not in line with or are not in accordance with the life breath of the constitution (1945 Constitution of the Republic of Indonesia), namely justice, equity and equality. This is because these restrictions are not in accordance with the principles of the Indonesian rule of law, namely equality before the law. These regulations are not expressly contained in the 1945 Constitution of the Republic of Indonesia. Therefore, these requirements are not mandatory and mandatory for legislators to regulate them in the Election Law. Where these conditions seem to have prevented potential young people from running for national leadership.

This is in line with Mahfud MD's opinion, that law as a result of political agreements is largely determined by the tastes of politicians. In essence, the articles in the law are the result of political agreements between politicians. This can be found from the inconsistency of a regulation during one government period with another government period. These differences can be caused by differences in tastes and interests of politicians who sit in the DPR.

Therefore, efforts need to be made so that the resulting law can fulfill legal objectives, namely providing certainty, justice and benefit. This is important to do so that state goals can be achieved optimally, even if there is a change of government. Law is instrument important in organizing society's life so that it is orderly and fair. If legal purposes distorted, it will be difficult to achieve the state's goal, namely the creation of a just and happy society.

Past experience shows that articles in the law can be regulated, bartered, and made to meet the interests of political parties. This was proven in the discussion of the 2003 election law, where Golkar and PDIP had differences of opinion regarding the two requirements for presidential and vice presidential candidates, namely that defendants who did not have legal power were still prohibited from running for office and had minimum educational requirements. As stated by Denny JA, the Golkar Party proposed a requirement for the President's education level, namely a minimum of a bachelor's degree. At that time, Akbar Tandjung, the general chairman of Golkar, who also attended the convention, was involved in a case of misuse of funds. don't buy Logistics Affairs Agency (Bulog) worth IDR 40 billion. Golkar finally offered a deal to PDIP. Although there are other parties who also disagree. Because they want to nominate Megawati Soekarnoputri, PDIP has a greater interest. Even though she only graduated from high school, she did receive an education at campus, but did not finish.

PDIP will try its best to oppose the minimum bachelor's education requirement for presidential candidates, because this requirement will prevent Megawati from running again in 2004. PDIP and Golkar will definitely reach an agreement or exchange support. Golkar will help Megawati by not supporting the minimum education requirement of a bachelor's degree, and PDIP will help Golkar to ignore the requirements for presidential candidacy for those who have not yet been sentenced inkraft. Thus, Akbar Tanjung is still running for President and will become President if elected. As a result of bargaining between PDIP and Golkar, Law 23 of 2003 was finally issued which states that the lowest level of education is Senior High School (SMA). In addition, those who

"are no longer deprived of their rights in accordance with court decisions that have permanent legal force" can also continue to register and become heads of state.

### 3.3 Comparison of Age Requirements and Practices in Several Countries.

It is important for us to know and compare the age requirements for leaders in other countries, especially large countries with established democracies [28], [29]. Practices in these countries show that young leaders can bring positive impact and change to their countries.

Table. 2 Minimum Age for Leaders in Several Countries in the World

No	Country	Minimum Age
1	Austria	35 years old
2	United States of America	35 years old
3	Brazil	35 years old
4	Cyprus	35 years old
5	Iceland	35 years old
6	India	35 years old
7	Ireland	35 years old
8	Nigeria	35 years old
9	Poland	35 years old
10	Russia	35 years old

*Source: Processed From Various Sources*

If we compare the age restrictions in several countries, we can conclude that the age restrictions in Indonesia are the highest. In some countries, the age limit is only 35 years. This shows that Indonesia has not fully provided equal access to the younger generation to take part in politics.

As an illustration and comparison, several young leaders have been elected as heads of state/prime ministers in several countries, namely [30]:

#### 1. Sanna Marin, Prime Minister of Finland (2019-2023)

Sanna Marin was born in 1985 and was elected prime minister of Finland at the age of 34. He was the youngest Prime Minister in Finland and the youngest government leader in the world at that time. Marin is from the Social Democratic Party and was transport and communications minister before becoming prime minister.

#### 2. Jacinda Ardern, Prime Minister of New Zealand (2017-2023)

Jacinda Ardern was born in 1980 and was elected Prime Minister of New Zealand at the age of 37. She was New Zealand's youngest female Prime Minister and the youngest government leader in the world at that time. Ardern is from the Labor Party and was minister for housing and community reform before becoming prime minister.

#### 3. Emmanuel Macron, President of France (2017-present)

Emmanuel Macron was born in 1977 and became president of France at the age of 39. He is the youngest president in France since Napoleon Bonaparte. Macron is from the En Marche Party! and was a former economics minister before becoming president, gaining 66.06% of the vote.

#### 4. Sebastian Kurz, Chancellor of Austria (2017-2021)

Sebastian Kurz was born in 1986 and became chancellor of Austria at the age of 31. He was the youngest chancellor in Austria and the youngest government leader in Europe at that time. Kurz is from the Austrian People's Party and was a former foreign minister before becoming chancellor.

#### 5. Justin Trudeau, Prime Minister of Canada (2015–present)

Justin Trudeau was born in 1971 and was elected Prime Minister of Canada at the age of 43. He is Canada's youngest Prime Minister since Lester B. Pearson. Trudeau is

from the Liberal Party of Canada and is the son of Pierre Trudeau, Canada's two-term prime minister.

**6. Gabriel Boric (35 Years)**

Gabriel Boric was the 35 year old President of Chile when he won the Presidential election in December 2021. The man who was born on February 11 1986 successfully defeated other candidates.

**7. President Daniel Noboa (35 Years)**

Daniel Noboa has become President of Ecuador at the age of 35. He was born on November 30, 1987 and managed to win the second round of the Presidential election on October 15, 2023 and beat his rival, Luisa Gonzales, who is a leftist.

**8. President of Montenegro (36 Years)**

Jakov Milatovic is the 36-year-old President of Montenegro when he takes office in 2023.

**9. Nayib Bukele (37 Years) President of El Salvador**

Nayib Bukele was 37 years old President in 2019. At that time, he obtained 53% of the vote by defeating his two opponents.

Age is not a measure to measure someone's ability to become a leader. This is because someone who is still young can have a mature mind and be able to lead many people and provide prosperity.

The emergence of young leaders in various countries in the world is not a new thing. In those countries, the young generation is not restricted to nominate themselves as leaders. It is the people who decide who will lead them. If the people want young leaders, then surely, they will be elected.

This should be a reference for the legislator in Indonesia to accommodate the participation of the younger generation on the national stage. The young generation must be given the widest possible access to develop their potential. The fate and sustainability of the Indonesian nation rests on the shoulders of the younger generation. Therefore, there must be no attitude apathetic on the role of the younger generation.

### **3.4 Factors Driving the Setting of Age Limits in the Election Law**

A country's legal system is influenced by the history and legal subculture that developed in that society. The nature, structure and lifestyle of law are subsystems that influence the implementation of the legal system. These three subsystems are indicators of the success of regulatory utility for society [31], [32].

Laws or regulations, are the result of political methods. Setting the age limit in the Election Law cannot be separated from the historical experience of the National leadership, maintaining status quo practice senior-junior which is already rooted in the body of a political party in running its party organization. These things can be analyzed as below:

#### **1. Historical Factors of National Leadership**

Another reason that can be used as a comparative factor for the regulation of age limits by legislators is because of the historical background of national leadership. The average age of the nation's leaders, from the first President to the seventh President of Indonesia, was over forty years when they were appointed President. This is as in this table:

Table 3. Age of the Indonesian President when inaugurated

President	No	Age
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<i>First</i>	Ir. Sukarno	44 years old
<i>Second</i>	Suharto	45 years old
<i>Third</i>	B.J. Habibie	61 years old
<i>Fourth</i>	Abdurrahman Wahid	59 years old
<i>Fifth</i>	Megawati Soekarnoputri	54 years old
<i>Sixth</i>	Susilo Bambang Yudhoyono	55 years old
<i>Seventh</i>	Ir. Joko Widodo	59 years old

Source: Processed From Various Sources

Based on the explanation in the table, it can be seen that: relay national leadership from the first President to the seventh President of Indonesia, when he was appointed President, was over forty (40) years old. This factor is used as a measure to measure the maturity or maturity of someone who will later become President and Vice President.

The DPR as the legislator measures and determines a person's maturity or maturity to lead at least forty years of age. Those who are not yet forty years old are considered incapable or unable to lead millions of Indonesian people.

## 2. Factor Status Quo Political Party Leader

For comparison, currently all political party leaders are politicians senior (over 50 years old) except for the Democratic Party and the Indonesian Solidarity Party (PSI). In fact, there are political party leaders who have served as General Chair for 30 years. This shows the impression that politicians *senior* trying to defend *status quo* without *regeneration*.

Table 3. Age of General Chairpersons of Political Parties

Party	President's name	Age
PDIP	Megawati Soekarnoputri	74 years old
Golkar	Airlangga Hatarto	61 years old
Gerindra	Prabowo Subianto	71 years old
PKB	Muhaimin Iskandar	57 years old
PPP	Muhammad Mardiono	66 years old
PKS	Ahmad Shaikhu	55 years old
PAN	Zulkifli Hasan	52 years old
Demokrat	Agus H. Yudhoyono	45 years old

Source: Processed From Various Sources

From the table above, the age of political party leaders is over forty (40) years. This is caused by the dominance of old cadres (old cadres) at the helm of political parties. The older cadres are considered the most capable, the most knowledgeable and the most understanding about managing the party and the state. Therefore, in every succession of political party leadership, those who appear are the people senior party or party leader.

This factor is one of the reasons why the normative age limit in the Election Law is set at forty (40) years. These rules aim to prevent this from happening monopoly power by politicians senior and push regeneration leadership.

## 3. Political Party Seniority Practice Factors (Senior-Junior)

The political culture and interests that have been passed down for generations have become a tradition in the House of Representatives. Domination of old politicians (senior) in Senayan is also one of the factors that makes it difficult to accept proposals to change the age requirements for presidential and vice presidential candidates. So, it will directly hinder the birth of young Indonesian leaders .

Based on data, a total of 575 members of the House of Representatives elected for the 2019-2024 term came from nine political parties, the majority aged 51-60 years (35.65%). Ages 41-50 years

were in second place with a percentage of 31.83%. Meanwhile, female members of the House of Representatives are dominated by the age group 41-50 years (55.56%). Only 4% of DPR members are aged 23-30 years.

The majority of members of the People's Representative Council of the Republic of Indonesia are currently over forty years old and are dominated by politicians senior. This leads to the principle senior-junior still thrives in political parties. Every position in a political party, from general chairman to members, is dominated by politicians senior. This is because of the assumption that young politicians are not ready, incapable and inexperienced.

The younger generation has not been fully given the opportunity to be truly involved in politics. Principles are still thriving senior-junior This is one of the factors why there is such an age requirement setting.

As in practice, the DPR's apparatus is also filled with politicians senior, starting from the Chair of the Deliberative Body, Commission, Legislative Body, Budget Body, BAKN, Inter-Parliamentary Cooperation Body, MKD, BURT, and Special Committee. Cultural factors and practices senior-junior This has been going on for a long time in political parties and is one of the driving factors for setting the minimum age for presidential and vice presidential candidates.

Efforts to save the political rights of Indonesia's young generation need to be made. Boundaries are like principles status quo And senior-junior in politics must be eliminated. Candidates for national leadership should not be determined based on age, position or seniority in the party. Selected candidates must have the ability, popularity, and electability high, and supported by the people.

Political behavior pragmatic and corrupt which have taken root and are ingrained in Indonesia need to be addressed. Otherwise, our democratic system will not develop and progress, behavior elitist will continue to thrive, and no young leaders will be born with the soul of Sukarno who want to build the nation. This is in accordance with John Rawls' opinion, namely that justice is the most important value in society, just like truth in science. Untrue theories cannot be accepted, and likewise unjust laws and institutions cannot be maintained.

It is time for the younger generation to be given a platform in national politics to participate in changing the fate of their nation. Golden Indonesia 2045 is the responsibility of the young generation who are currently twenty years old. In 2045, they will be forty-forty-five years old, which is the ripe age to lead the nation.

## CONCLUSION

The minimum age requirement in the Election Law is a form of discrimination that violates the political rights of the younger generation. This provision is not based on the 1945 Constitution and inhibits youth participation in national leadership. The age requirements in the Election Law not only limit the political rights of the younger generation, but also conflict with the principles of justice and legal certainty. History has proven that young people are capable of becoming visionary leaders. The DPR needs to revise the Election Law to open up space for wider participation of the younger generation in national leadership. It is time for us to remove the age limit in the Election Law. Indonesian Youth are ready to lead! The DPR must immediately revise this law to accommodate the aspirations of the younger generation.

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