

BAB II

KUALIFIKASI CALON PRESIDEN DAN CALON WAKIL PRESIDEN DI BERBAGAI NEGARA

2.1 Usia Calon Presiden dan Calon Wakil Presiden di Berbagai Negara

Beberapa negara di benua Eropa, Asia, Amerika dan Afrika dalam konstitusinya mengatur batas umur minimal seorang Calon Presiden dan Wakil Presiden adalah 35 (tiga puluh lima) Tahun:

a. Austria, Article 60 (3) Konstitusi Austria 1920 (Amandemen 2013):

Only a person who is eligible to the National Council and has completed the thirty-fifth year of life on the day of the election can be elected Federal President.

b. Polandia, Article 127 (3) Konstitusi Polandia 1997 (amandemen

2009): *Only a Polish citizen who, no later than the day of the elections, has attained 35 years of age and has a full electoral franchise in elections to the Sejm, may be elected President of the Republic. Any such candidature shall be supported by the signatures of at least 100.000 citizens having the right to vote in election to the Sejm.*

c. Ukraina, Article 103 Konstitusi Ukraina 1996 (amandemen 2019):

A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years

prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine.

d. Irlandia, Article 14 (4) Konstitusi Irlandia 1937 (amandemen 2019):

Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.

e. Belarusia, Article 80 Konstitusi Belarusia 1994 (amandemen 2004):

Any citizen of the Republic of Belarus by birth at least 35 years of age who is eligible to vote and has been resident in the Republic of Belarus for at least ten years to the election may be elected President.

f. Romania, Article 37(2) Konstitusi Romania 1991(amandemen

2003): *Candidates must be at least 23 years of age by or on election day to be elected to the Chamber of Deputies or to the local public administration bodies, at least 33 years of age to be elected to the Senate, and at least 35 years to be elected to the office of President of Romania.*

g. Rusia, Article 81(2) Konstitusi Rusia 1999(amandemen 2014): *Any*

citizen of the Russian Federation not younger than 35 years of age who has resided in the Russian Federation on a permanent basis for not less than 10 years may be elected President of the Russian Federation.

h. Islandia, Article 4 Konstitusi Irlandia 1944 (amandemen 2013): *Any*

person who is at least thirty-five years of age and fulfills the

requirements necessary to vote in elections to Althingi, with the exception of the residency requirement, is eligible to be elected President.

- i. Armenia, Article 122 Konstitusi Portugal 1976 (amandemen 2005):
Citizens of Portuguese origin who are registered to vote and have attained the age of thirty-five shall be eligible for election.
- j. Hungaria, Article 10 Konstitusi Hungaria 2011 (amandemen 2016):
Any Hungarian citizen above the age of 35 years may be elected to serve as the President of the Republic.
- k. Amerika. Article II section 1 Konstitusi Amerika Serikat 1789 (rev. 1992): *No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirtyfive Years, and been fourteen Years a Resident within the United States.*
- l. Meksiko, Article 82 (II) Konstitusi Meksiko 1917 (amandemen 2015): *The candidate for the Presidency must be 35 years of age on the election date.*
- m. Uruguay, Article 151 Konstitusi Uruguay: *The President and the Vice President of the Republic shall be elected jointly and directly by the Electoral Body by absolute majority of voters. Each party may only present one candidature to the Presidency and to the*

Vice Presidency of the Republic. If on the date indicated in the first paragraph of numeral 9) of Article 77, none of the candidatures obtains the required majority, a second election between the two candidates with the most voted for shall be held on the last Sunday of the month of November of the same year. In addition, the guaranties established for suffrage in Section III shall govern, the Republic being considered as a single electoral circumscription. Only natural citizens in full exercise of their civil rights and who have attained thirty-five years of age may be elected.

n. Panama, Article 179 Konstitusi Panama 1972 (amandemen 2004):

In order to be eligible as President or Vice- President of the Republic, it is necessary to be Panamanian by birth and to have reached thirty- five years of age.

o. Peru, Article 110 Konstitusi Peru 1993 (amandemen 2021):

The President of the Republic is the Head of the State and personifies the Nation. To be elected President of the Republic, one must be Peruvian by birth, have attained the age of thirty-five years at the time of candidacy, and enjoy the right to vote.

p. Cuba, Article 127 Konstitusi Cuba 2019:

To be President of the Republic, one must have reached the age of thirtyfive, enjoy full civil and political rights, be a Cuban citizen by birth, and not possess any other citizenship.

- q. Uzbekistan, Article 90 Konstitusi Uzbekistan 1992(amandemen 2011): *A citizen of the Republic of Uzbekistan not younger than thirty-five, being in full command of the state language and permanently residing on the territory of Uzbekistan for at least 10 years, immediately preceding the elections, may be elected the President of the Republic of Uzbekistan. One and the same person may not be the President of the Republic of Uzbekistan for more than two consecutive terms.*
- r. Maldives, Article 109 Konstitusi Maldives: *A person elected as President shall have the following qualifications: Be a Maldivian citizen born to parents who are Maldivian citizens, and who is not also a citizen of a foreign country; be a Muslim and a follower of a Sunni school of Islam; be at least thirty-five years of age.*
- s. Khyrgyztan, Article 62 (1) Konstitusi Kyrzystan 2010 (amandemen 2016): *A citizen of the Kyrgyz Republic, no younger than 35 years of age and not older than 70 years of age, who has a command of the state language and who has been resident in the republic for no less than 15 years in total may be elected President.*
- t. Timor Leste, Article 75 (1) Konstitusi Timor Leste: *To qualify as presidential candidates, East Timorese citizens must meet cumulatively the following requirements: original citizenship, at least 35 years of age, to be in possession of his or her full faculties, to be proposed by a minimum of five thousand voters.*

- u. Bangladesh, Article 48(4) Konstitusi Bangladesh (amandemen 2014): *A person shall not be qualified for election as President if he: Is less than thirty-five years of age; or is not qualified for election as a member of Parliament; or has been removed from the office of President by impeachment under this Constitution.*
- v. India, Article 68(1) Konstitusi India 1949 (amandemen 2016): *No person shall be eligible for election as President unless he is a citizen of India, has completed the age of thirtyfive years, and is qualified for election as a member of the House of the People.*
- w. Cyprus, Article 50 Konstitusi Cyprus 1960(amandemen 2013): *A person shall be qualified to be a candidate for election as President or Vice-President of the Republic if at the time of election such person: is a citizen of the Republic; has attained the age of thirtyfive years; has not been, on or after the date of the coming into operation of this constitution, convicted of an offence involving dishonesty or moral turpitude or is not under any disqualification imposed by a competent court for any electoral offence; is not suffering from a mental disease incapacitating such person from acting as President or Vice-President of the Republic.*
- x. Cameroon, Article 6(5) Konstitusi Cameroon: *Candidates for the office of President of the Republic must be Cameroonian by birth, enjoy their civic and political rights and must have attained the age of 35 (thirty-five) by the date of the election.*

y. Angola, Article 110(1) Konstitusi Angola: *Citizens of Angolan origin aged at least thirty-five who have habitually resided in the country for at least ten years and are in full possession of their civil and political rights and physical and mental capacities shall be eligible for election as President of the Republic.*

z. Tunisia, Article 74 Konstitusi Tunisia: *Every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for election to the position of President of the Republic. On the day of filing the application for candidacy, the candidate must be at least 35 years old.*

aa. Zambia, Article 100(1) Konstitusi Zambia: *A person qualifies to be nominated as a candidate for election as President if that person— is a citizen by birth or descent; has been ordinarily resident in Zambia; is at least thirty-five years old.*

bb. Pantai Gading, Article 55 Konstitusi Pantai Gading: *The President of the Republic is elected for five years by direct universal suffrage. He may be re-elected only once. He chooses a vice-president of the Republic, who is elected concurrently with him. The candidate for the presidential election should be in possession of his civil and political rights and should be at least thirty-five years old. He must be exclusively of Ivoirian nationality, born of a father or mother who is of Ivoirian origin.*

- cc. Madagaskar, Article 45 Konstitusi Madagaskar: *Any candidate to the functions of President of the Republic must be of Malagasy nationality, enjoy their civil and political rights, be at least thirtyfive years old at the date of the closure of the presentation of the candidatures, and reside on the territory of the Republic of Madagascar for at least six months before the day of the deadline established for the presentation of the candidatures.*
- dd. Nigeria, Article 47 Konstitusi Nigeria: *Nigeriens of the two (2) sexes, of [Nigerien] nationality of origin, at least thirty-five (35) years old the day the dossier is deposited, enjoying their civil and political rights [,] are eligible to the Presidency of the Republic.*
- ee. Senegal, Article 28 Konstitusi Senegal: *Any candidate to the Presidency of the Republic must be exclusively of Senegalese nationality, enjoying his civil and political rights, [and] be thirtyfive (35) years of age at least and seventy-five (75) years at most [on] the day of the ballot. He must know how to write, to read and to fluently speak the official language.*
- ff. Togo, Article 62 Konstitusi Togo: *No one may be a candidate for the office of the President of the Republic if they: are not exclusively of Togolese nationality by birth; are not thirty-five (35) years of age on the date of the deposit of the candidature; do not enjoy all their civil and political rights; do not present a general state of physical and mental well-being duly declared by three (03)*

*sworn physicians, designated by the Constitutional Court; do not reside in the national territory for at least twelve (12) months.*⁸

No.	Negara	Batas Umur Calon Presiden dan Wakil Presiden	Kualifikasi Pendukung
1	Austria	35 Tahun	
2	Polandia	35 Tahun	Memiliki 100.000 tanda tangan pendukung
3	Ukraina	35 Tahun	Berbicara dengan Bahasa Ukraina
4	Irlandia	35 Tahun	
5	Belarusia	35 Tahun	
6	Romania	35 Tahun	Kandidat <i>Chamber of Deputies</i> berumur paling rendah 23 Tahun, <i>Senates</i> berumur 33 Tahun
7	Rusia	35 Tahun	
8	Islandia	35 Tahun	
9	Armenia	35 Tahun	
10	Hungaria	35 Tahun	
11	Amerika	35 Tahun	Bertempat tinggal di Amerika selama 14 Tahun
12	Meksiko	35 Tahun	

⁸ *The World's Constitutionto Read, Search, and Compare*, https://www.constituteproject.org/constitutions?lang=en&status=in_force&status=is_draft, diakses pada tanggal 22 Mei 2024.

13	Uruguay	35 Tahun	
14	Panama	35 Tahun	Warga asli Panama
15	Peru	35 Tahun	Warga asli Peru
16	Cuba	35 Tahun	Warga asli Cuba
17	Uzbekistan	35 Tahun	Bertempat tinggal di Uzbekistan selama 10 Tahun
18	Maldives	35 Tahun	Memiliki orang tua asli Maldives, seorang Muslim, pengikut <i>Sunni School of Islam</i>
19	Khyrgyztan	35 Tahun	Bertempat tinggal di Khyrgyztan selama 15 Tahun
20	Timor Leste	35 Tahun	Warga asli dan memiliki 5.000 pendukung
21	Bangladesh	35 Tahun	
22	India	35 Tahun	
23	Cyprus	35 Tahun	
24	Cameroon	35 Tahun	Kelahiran Cameroon
25	Angola	35 Tahun	
26	Tunisia	35 Tahun	Kelahiran Tunisia dan seorang Muslim
27	Zambia	35 Tahun	Kelahiran Zambia

2.2 Syarat Menerapkan Hukum dari Negara Lain

Ketentuan usia calon presiden dan calon wakil presiden diatas juga menjadi salah satu bahan pertimbangan dari Mahkamah Konstitusi dalam putusan MK Nomor 90/PUU-XXI/2023. Hal tersebut seharusnya tidak menjadi bahan pertimbangan Hakim Mahkamah Konstitusi, pada dasarnya setiap Negara hukum memiliki sistem hukum yang berbeda. Sistem hukum tersebut terbagi menjadi dua yaitu Negara dengan sistem hukum *common law* dan Negara dengan sistem hukum *civil law*.

Negara dengan sistem hukum *common law* adalah negara dimana sistem hukumnya didasari oleh yurisprudensi⁹, keputusan- keputusan hakim terdahulu menjadi dasar putusan hakim selanjutnya. Pada sistem hukum ini kebiasaan adalah sesuatu yang ditekankan. Sedangkan Negara dengan sistem hukum *civil law* adalah Negara yang lebih mengacu kepada Undang- Undang untuk memberikan kepastian hukum¹⁰. Pada dasarnya hakim memiliki perbedaan dalam hal kewenangan, pada negara dengan sistem hukum *common law* hakim bertugas untuk menciptakan hukum sedangkan dalam negara dengan sistem hukum *civil law* hakim bertugas untuk menjaga agar hukum tetap terjaga.

Selain perbedaan sistem hukum *common law* dan *civil law* perbedaan berikutnya yang harus dipertimbangkan adalah bentuk negara itu sendiri,

⁹ MD. Shodiq, *Perbandingan Sistem Hukum*, 2023, PT Mafy Media Literasi Indonesia, h. 26.

¹⁰ Ibid, h. 43.

kesatuan, konfederasi, atau federasi. Bentuk negara kesatuan menurut F. Isjawara adalah salah satu bentuk negara yang paling kokoh jika dibandingkan dengan bentuk negara federasi atau konfederasi, karena negara kesatuan memiliki susunan negara yang tunggal bukan negara yang tersusun dari beberapa negara. Menurut Throsten V. Kalijarvi, Negara dengan bentuk kesatuan menggunakan sistem kekuasaan desentralisasi yaitu kekuasaan suatu negara dipusatkan pada satu organ pusat seperti halnya di Indonesia. Negara dengan bentuk konfederasi menurut L. Oppenheim adalah gabungan dari beberapa negara yang berdaulat penuh bersatu atas dasar perjanjian internasional yang diakui untuk mempertahankan kemerdekaan ekstern dan intern. Pada dasarnya negara konfederasi hanyalah bentuk kerjasama dari beberapa negara. Sedangkan bentuk negara federasi menurut R. Kranenburg adalah negara yang memiliki peraturan organ pusat yang mengikat langsung ke semua warga negara bagian.

Jika sistem hukum dan bentuk negara sudah identik, perbandingan berikutnya adalah dari faktor standard hidup dan perekonomiannya yaitu dibagi menjadi dua, negara maju dan negara berkembang. Hal itu berkaitan dengan kualitas sumber daya manusianya. Semakin baik kualitas sumber daya manusianya semakin bagus penerapan demokrasi.