

# CHAPTER I

## INTRODUCTION

### 1.1 Background of Research

The Constitutional Court is a government institution that has an important responsibility in safeguarding the Indonesia constitution. The duties and powers of the Constitutional Court are set out in Law No. 24 of 2003 on the Constitutional Court. Based on Law No. 24 of 2003, the Constitutional Court has the authority to review the laws against the 1945 Constitution of the Republic of Indonesia, has the authority to decide disputes over the authority of state institutions, decide on the dissolution of this political parties, and decide disputes over general election results.<sup>1</sup> Jimly Asshiddiqie stated that the Constitutional Court is widely used in countries with government democratic systems and extensively utilized in nations with democratic political systems.<sup>2</sup>

In essence, the Constitutional Court stands as an oversees institution whether there is a deviation from constitutional principles in making regulations and laws.<sup>3</sup> The Constitutional Court and Constitutional Principles are the elements that cannot be eliminated, especially for the countries that embrace a democratic government system, therefore the Constitutional Court in exercising its authority as stipulated in Article 24C paragraph (1) UUD 1945 should be based on constitutional principles.

One of the powers of the Constitutional Court importantly considered the authority to review laws against the 1945 Constitution. We can see this in a form of examining the Law against the 1945 Constitution. Decision No.90/PUU-XXI/2023 examines Article 169 of Law Number 7 Year 2017 on Elections. Law Number 7 of 2017 has covered various aspects related to the

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<sup>1</sup>Indonesia, "Pasal 10 ayat 1 Undang-Undang No.24 tahun 2003 Tentang Mahkamah Konstitusi," JDIH BPK, 2003, <https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003>

<sup>2</sup>Sirajuddin, Winardi, *Dasar-Dasar Hukum Tata Negara Indonesia* (Malang: Setara Press, 2015), 32.

<sup>3</sup>Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 153, <https://doi.org/10.33331/rechtsvinding.v11i1.867>.

implementation of general elections, starting from the planning stage, and implementation, to supervision and resolution of election disputes.<sup>4</sup>

Law Number 7 of 2017 directly explains the structured legal framework for the conduct of general elections and makes guarantees that every step is properly planned and regulated to provide the legal clarity for all stakeholders including the election organizer, political parties, and voters themselves. The law itself aims to raise the quality of democracy in Indonesia, providing the clear rules regarding the rights and the obligations of election participants, as well as strict monitoring mechanisms that help prevent fraudulent practices and abuse of power in elections.

The implementation of general elections involves many parties, especially state institutions, each of which has a role and responsibility by prioritizing the principles of direct, general, free, honest, and fair elections. The Constitutional Court (MK) is one of the government agencies that participate in general elections, along with the Honorary Board of Election Organisers (DKPP), the General Election Commission (KPU), the Election Supervisory Agency (BAWASLU).

The decision of the Constitutional Court, which was a judicial review of Law Number 7 of 2017 concerning General Elections, became the public focus of the 2024 general election. The General Election was held on February 14, 2024, concurrently with both the legislative General Election and the presidential General Election, and the object of testing in Law Number 7 of 2017 concerning Elections was the age requirement for presidential and vice presidential candidates, which was considered by the applicant that the provisions regarding the age limit were discriminatory or not by constitutional principles that guarantee the right to participate in government. Finally, through the consideration of the Constitutional Court judges, the petition was granted. After all, it was considered that Law Number 7 of 2017 was not following the 1945 Constitution because it limited the political rights of the Indonesian people and also provided political space for young people.

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<sup>4</sup>Sholehudin Zuhri, "PROSES POLITIK DALAM PEMBENTUKAN REGULASI PEMILU: Analisis Pertarungan Kekuasaan pada Pembentukan Undang-Undang Nomor 7 Tahun 2017 tentang Pemilu," *JWP (Jurnal Wacana Politik)* 3, no. 2 (2018): 94, <https://doi.org/10.24198/jwp.v3i2.17670>.

According to Bivitri Susanti, an expert on constitutional law in a public lecture at the Faculty of Law, University of Indonesia, the Constitutional Court Decision Number 90/PUU-XXI/2023 shows the decline of democracy. The reason is that in the determination of the decision, many controversial issues drew criticism from both legal experts and the wider community.<sup>5</sup>

In the determination of the Constitutional Court's decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates, there are several things that we must observe in depth regarding the facts that existed before and after the decision was made. Several issues have become the focus of the public and legal experts regarding the decision that issued by the Constitutional Court, the age of presidential and vice presidential candidates has been regulated in Law Number 7 of 2017 concerning elections which states that "The requirements to become a presidential candidate and vice presidential candidate are: q. at least 40 (forty) years old." So the sound of this law is then submitted as a request for judicial review of the law, which requests that the sound of Article 169 letter q of Law Number 7 of 2017 be interpreted as "at least 40 years old or experienced as a regional head at both the provincial and district/city levels".

When we review the process of determining the decision of the Constitutional Court Number 90/PUU-XXI/2023, there are several significant problems regarding ethical transgressions and the judges' inconsistencies on the Constitutional Court. The applicant's legal standing, the content of the complaint, the disagreements among constitutional judges' arguments, and the function of constitutional judges in rendering a ruling all provide obvious insights into these difficulties. From the issues that arise, we can conclude that the things that can be criticized from the decision are the material aspects,

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<sup>5</sup>Humas FHUI, "Kuliah Umum Bivitri Susanti : Kemunduran Demokrasi dan Hukum Pasca-Putusan MK 90/PUU-XXI/2023," Faculty of Law University of Indonesia, 05 Desember 2023, accessed 18 Mei 2024, <https://law.ui.ac.id/kuliah-umum-bivitri-susanti-kemunduran-demokrasi-dan-hukum-pasca-putusan-mk-90-puu-xxi-2023/>

procedures, and inconsistencies in the decision of the Constitutional Court with other cases in the same object.<sup>6</sup>

It viewed from the legal standing of the applicant of the case is questionable, an applicant who is a student of Surakarta University Almas Tsaqibbirru in a petition that examines Article 169 letter q of Law Number 7 of 2017 concerning General Elections reveals both presidential and vice presidential candidates aged at least 40 years or have/are currently holding positions elected through elections including regional elections can run in the 2024 General Election, this is seen by the public as a questionable thing because the reason for the applicant to apply is not following the requirements of the party entitled to submit a material review application, but the application is granted. A similar application had previously been filed by the PSI party, which proposed changes to the minimum age limit from 40 years old to 35 years old, but this application was rejected on the grounds of moral offense and considered unfair and discriminatory for those under 35 years old.

In determining the decision of the Constitutional Court judges often show a dual personality where the nature of constitutional judges is judicial activism, which acts as a positive legislator who can interpret and add new norms, but sometimes it is judicial retrains, namely as a negative legislator which cancels laws deemed contrary to the 1945 Constitution, and does not add new norms. Constitutional Court judges used judicial activism or acted as positive legislators in Constitutional Court Decision Number 90/PUU-XXI/2023 by adding new election-related norms to Law Number 7 of 2017. In contrast, the Constitutional Court used judicial retrains in Constitutional Court Decision Number 46 of 2016 by declaring that the petition was not within the court's jurisdiction because it was within the legislative body's jurisdiction as the legislator.<sup>7</sup>

In the process of determining the decision, it seemed that it was done instantly and hastily, so it seemed that the Constitutional Court did not carry

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<sup>6</sup> Kiswondari, “Pakar Hukum Sebut Putusan MK 90 Injak-injak Rasa Keadilan Masyarakat,” *SindoNews*, 2023, <https://nasional.sindonews.com/read/1258235/13/pakar-hukum-sebut-putusan-mk-90-injak-injak-rasa-keadilan-masyarakat-1700658672>

<sup>7</sup> Adena Fitri Puspita Sari, Purwono Sungkono Raharjo, “Mahkamah Konstitusi Sebagai Negative Legislator Dan Positive Legislator,” no. 4 (2022): 685–686.

out the function of *checks and balances* and did not involve public participation, withdrawal of requests, and forced processing. In the results of the decision, the Constitutional Court judges were divided into three different arguments, out of seven Constitutional Court judges, three of them stated that they accepted, two judges stated that they rejected, and two judges conveyed different arguments but the argument was closer in meaning to the opinion that stated that they rejected.<sup>8</sup> Therefore, all of these events must be studied in depth using the science of constitutional law to achieve legal certainty and avoid the impact of public attacks on the Constitutional Court.

As a democracy, Indonesia prioritizes the voice of the people in the political decision-making process, either directly or through the intermediary of elected representatives in general elections. A democracy is a form of government in which power is vested in the people, and the main characteristics of a democracy are political freedom, human rights, and the rule of law.<sup>9</sup> The general election is one of the main instruments of a democratic country, the general election itself is a process where the people determine their choice of representatives of the people in the government to then for the elected representatives to perform their duties in accordance with the mandate that given by all people.

Constitutional principles that depend vary depending on the legal system and the values which upheld by society and state institutions in a country. Some general constitutional principles include popular sovereignty, just and equitable government, separation of powers, human rights, rule of law, social justice, protection of minorities, transparent and accountable government. The principles were mentioned above are a reflection of the points listed in Pancasila as the foundation of the Indonesian state and must be considered by law-making bodies or institutions because a state of law cannot be declared a constitutional state without implementing the constitutional principles themselves.<sup>10</sup>

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<sup>8</sup> Indonesia, "Salinan Putusan Mahkamah Konstitusi No.90/PUU-XXI/2023 tentang Batas Usia Calon Presiden dan Wakil Presiden," MKRI, 2023, [https://mkri.id/public/content/persidangan/putusan/putusan\\_mkri\\_9332\\_1697427438.pdf](https://mkri.id/public/content/persidangan/putusan/putusan_mkri_9332_1697427438.pdf)

<sup>9</sup> Suhartini, "Demokrasi dan Negara Hukum," *Jurnal De Jure*, Vol 11, No. 1(2019): 68.

<sup>10</sup> Jimly Asshiddiqie, *Gagasan Konstitusi Sosial* (Jakarta: LP3ES, 2015), 5.



From the problems described above, the researcher wants to analyze the procedures passed by the applicant and also the decision makers and the decision that came out whether the decision was considered unconstitutional both in violated the applicable and president election. Then this research will link the unconstitutionality of the decision with *Fiqh Siyasah Dusturiyah*, namely the science of law that applies in Islam which refers to constitutional politics or state administration and regulates the formation of laws so that they are by sharia and the public interest, which will then compare whether the procedures passed by the constitutional court are by the principles of *Fiqh Siyasah Dusturiyah* in determining laws and elections of heads of state. *Fiqh Siyasah Dusturiyah* ensures that governance and legislation run following Islamic values and law, intending to achieve justice, public good, and public welfare.<sup>11</sup>

In this study, researcher will analyze the decision of the Constitutional Court No.90/PUU-XXI/2023 using *Fiqh Siyasah Dusturiyah*, which according to researcher has compatibility with the constitutional law in force in Indonesia and also has a relationship with legislative policies which taken by the government to regulate the society, *Fiqh siyasah dusturiyah* also focuses on making, applying, and enforcing laws by Islamic teachings, to achieve justice and public benefit.<sup>12</sup>

In this study, researcher saw a lack of supervision of judicial power, so the *checks and balances* function did not work properly, especially in the Constitutional Court. This function is very important for several reasons, namely, preventing abuse of power so that no one institution or individual has absolute power, ensuring transparency so that every action and decision of the judiciary can be monitored and evaluated, protecting the individual rights by ensuring that policies will avoid the violate human rights, maintaining a balance of power by ensuring that each branch of government run the function

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<sup>11</sup>Hamzah Kamma et al, *Fiqh Siyasah Simpul Politik Islam Dalam Membentuk Negara Madani* (Sumatera Barat: Mafy Media Literasi Indonesia, 2023), 2.

<sup>12</sup>Wahyu Abdul Jafar, "Fiqh Siyasah Dalam Perspektif Al-Qur'an Dan Al-Hadist," *AL IMARAH: JURNAL PEMERINTAHAN DAN POLITIK ISLAM* 3, no. 1 (2018): 18, <https://doi.org/10.29300/imr.v3i1.2140>.

effectively without being dominated by other branches so that these things can increase the public confidence in the government.

By looking at some of the above, the researcher considers that the science is closest to the government system that applies in Indonesia and is considered to be able to overcome the problems that arise in the Indonesian government system is *Fiqh Siyasah Dusturiyah*, therefore, based on the explanation of the issues arising from the Constitutional Court Decision Number 90/PUU-XXI/2023, the researcher wants to analyze the constitutionality of the Constitutional Court Decision Number 90/PUU-XXI/2023 with the approach of constitutional law and *Fiqh Siyasah Dusturiyah*. Therefore, the researcher took the title **"CONSTITUTIONALITY OF THE CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023 FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW AND *FIQH SIYASAH DUSTURIYAH*"**

### 1.2 Problem Formulation

By the research title raised above, the researcher makes a formulation of the problems, as follows:

1. How is the constitutionality of Constitutional Court Decision Number 90/PUU-XXI/2023?
2. How does *Fiqh Siyasah Dusturiyah* view the constitutionality of Constitutional Court Decision Number 90/PUU-XXI/2023?

### 1.3 Purpose of Research

By the background and subject matter above, the objectives to be achieved in this study are:

1. To determine the suitability of the process of determining the decision of the Constitutional Court Number 90/PUU-XXI/2023 with constitutional principles.
2. To find out the view of *Fiqh Siyasah Dusturiyah* on the constitutionality of the Constitutional Court's decision Number 90/PUU-XXI/2023.

#### 1.4 Benefits of Research

A research that will be researched or carried out must first know what the benefits of the research are. By the title raised above, this research hopes to provide benefits for:

##### 1.4.1 Theoretical Benefits

1. To add information, insight into the thinking, and knowledge of constitutional law that applies in Indonesia and *Fiqh Siyasah Dusturiyah*.
2. To increase understanding of the relationship between constitutional law and *Fiqh Siyasah Dusturiyah* in decision-making.

##### 1.4.2 Practical Benefits

1. Helping policymakers evaluate and improve regulations related to the age limit of presidential and vice-presidential candidates so that the resulting policies are by constitutional principles and the principles of *Fiqh siyasah dusturiyah*.
2. Provide motivation and new knowledge to the public about the legal implications of Constitutional Court Decision Number 90/PUU-XXI/2023 in the context of citizens' political rights.

#### 1.5 Literature Review

After reviewing several studies, not many have taken research on the review of *Fiqh siyasah tasyri'iyah* on the decision of the Constitutional Court, both in the form of theses and journals. However, several studies have a connection with the research that researchers are doing now, including:

1. Khotibul Umam, with the thesis title "Analysis of Fiqh Siyasah Against the Constitutional Court Decision No. 56 / PUU-XVII / 2019 Regarding the Nomination of Former Corruption Convicts as Candidates for Regional Heads", this study explains the Constitutional Court's decision which is conditionally unconstitutional so that the Constitutional Court allows former prisoners as candidates for regional heads which are reviewed with *fiqh siyasah* covering the issue of people's rights. The author will especially address the opinion of *siyasah dusturiyah* with the



Constitutional Court's ruling No.90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates, which sets this research apart from earlier studies.

2. Chrysanti Augustin, with the thesis title "Siyasah Dusturiyah Analysis of the Constitutional Court Decision No. 70/PUU-XVII/2019 Regarding Revision of Law No. 19 of 2019", the results of this study indicate that Law No. 19 of 2019 can influence the position of the KPK which is part of the branch of government power. This law also determines the employment status of the KPK, which was previously not ASN, to ASN. According to the Constitutional Court Decision No. 70 of 2019, the appointment of KPK employees is a right that cannot be disturbed for any reason. Based on the facts above, it is concluded that the transition of the KPK's status to ASN made 75 KPK employees lose their employment status, this shows that the Constitutional Court Decision No. 70 of 2019 shows the loss of elements of justice for the benefit of the people. What distinguishes the author's research from previous research is that the author will specifically discuss the view of *siyasah dusturiyah* on the determination of the Constitutional Court's decision No.90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates.
3. M. Hidayat Austria, with the thesis title "Analysis of the Constitutional Court Decision No.90/PUU-XXI/2023 Regarding Additional Provisions for Serving Experience from Election/Election in the Minimum Age of Presidential Candidates/Vice Presidential Candidates from the Perspective of Fiqh Siyasah", this study discusses the impact caused by the Constitutional Court's decision No.90/PUU-XXI/2023 regarding the provisions for additional experience serving from election elections and the opinions of constitutional law experts and *fiqh siyasah* experts regarding the provisions for additional experience serving from election elections as a condition for registering presidential and vice

presidential candidates. What distinguishes the author's research from previous research is that the author will specifically discuss the view of *siyasah dusturiyah* on the stipulation of the Constitutional Court's decision No.90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates.

4. Anita Rizki, with the thesis title “Siyasah Syar’iyyah Review of the Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding the Minimum Age of Presidential and Vice Presidential Candidates”, the type of research used in this research is juridical-normative with a legislative and case approach. The results of this study indicate that leaders under the age of forty do not conflict with *siyasah syar’iyyah* as long as they have a good political track record. The difference between this research and previous research is that previous research focused on the age limit of leaders from the perspective of *Siyasah Shar’iyyah*, while this research discusses the review of *Siyasah Dusturiyah* related to the process of determining the Constitutional Court Decision No.90/PUU-XXI/2023 which was declared unconstitutional.
5. Ferdi Febriansyah and Sugeng Prayitno, with the journal title "Legal Analysis of the Constitutional Court Decision No.90/PUU-XXI/2023 Regarding the Age Limit for Presidential and Vice Presidential Candidates", explains that it is important to maintain judicial independence to protect freedom and prevent abuse of power. In the context of the separation of powers, this article emphasizes the need to maintain the independent role of the judiciary to prevent abuse of power by the executive and legislature. What distinguishes the author's research from previous research is that the author will specifically discuss the view of *siyasah dusturiyah* on the determination of the Constitutional Court's decision No.90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates.

6. Akbar Raga Nata and Muhammad Rifki Ramadhani Baskoro, with the journal title "Analysis of the Impact of the Decision of the Constitutional Court Judges on the Constitutional Court Decision No.90/PUU-XXI/2023", which explains that the nature of the constitutional court's decision is different from other decisions so that the research aims to find a way for the constitutional court's decision to be reviewed because the discovery of extrajudicial intervention indicates a weak *checks and balance* system. What distinguishes the author's research from previous research is that the author will specifically discuss the view of *siyasah dusturiyah* on the determination of the Constitutional Court's decision No.90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates.
7. Agung Bayu Adji et al, with the journal title "The Constitutionality of Changes in the Age of Presidential and Vice Presidential Candidates in a Democratic Legal State", explain that the implications of changing the age of presidential and vice presidential candidates in a democratic legal state, as stated in the Constitutional Court's decision No.90/PUU-XXI/2023, essentially adds norms that should not be by the initial principles of the Constitutional Court which tests the constitutionality of existing norms. What distinguishes the author's research from previous research is that the author will specifically discuss the view of *siyasah dusturiyah* on the determination of the Constitutional Court's decision No.90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates.

From some of the research above, the difference between these studies is the results of the first study prove that it is possible to analyze the regulations in force in Indonesia with the principles used in Islam in determining regulations reviewed based on *fiqh siyasah*. The second study proves that it is possible to analyze the decision of the Constitutional Court using *fiqh siyasah dusturiyah*. The third study focuses on the impact of the Constitutional Court's

decision Number 90/PUU-XXI/2023 regarding the provision of the additional electoral experience and the opinions of constitutional law experts and *fiqh siyasah* experts regarding the provision of additional electoral experience as a condition for registering presidential and vice-presidential candidates. The fourth study analyses the age requirements for presidential and vice-presidential candidates in Decision Number 90/PUU-XXI/2023 from the perspective of *Siyasah Syar'iyah*.

The fifth study analyses the decision of the Constitutional Court Number 90/PUU-XXI/2023 by looking at the applicable law in Indonesia. The sixth study focuses on analysing the impact arising from the Constitutional Court's decision Number 90/PUU-XXI/2023. While the seventh study focuses on research on the constitutionality of decisions in a democratic legal state, and this study will focus on the constitutional law and *siyasah dusturiyah* review of the determination of the constitutional court decision and pay more attention to the unconstitutionality of the constitutional court decision both in the process of determining the decision and the content of the decision. Therefore, researchers have examined that no one has discussed **"CONSTITUTIONALITY OF THE CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023 FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW AND *FIQH SIYASAH DUSTURIYAH*."**

### **1.6 Research Methods**

This research method is an important part of a study because in research methods the researcher could explain, examine, and analyze an event that will be discussed in depth by the researcher. In this thesis, the researcher will use methods such as the following:

#### **1.6.1 Type of Research**

In writing this research, the type of research that used by the researcher is normative legal research or what is called by juridical-normative, namely library research. Using a variety of secondary sources, including laws and regulations, court rulings, legal theories, and sometimes the opinions of academics, library research is study that looks

at document studies. In this case, the researcher took some data from legal theories, legal opinions, political science experts and legal practitioners.<sup>13</sup>

### 1.6.2 Object of Research

The main object of research is the Constitutional Court Decision No.90/PUU-XXI/2023 which is relating to changes or to test the minimum age limit for presidential and vice presidential candidates. The research includes the study of Islamic law, especially *fiqh siyasah dusturiyah* (constitutional politics), which regulates the government management based on Islamic law.

How does the court's decision affect the political system and national leadership in relation to the age limit for candidates. So, this research can review whether these decisions support democracy, justice, and the fulfillment of citizens' rights. This research focuses on the interaction of positive law (Constitutional Court Decision) and *fiqh siyasah duturiyah* approach, making it a multidisciplinary study involving constitutional law, Islamic law, and politics.

### 1.6.3 Data Source

For the purposes of data collection in this study, the data sources needed to assist the author in analyzing this problem are:

1.6.3.1 Primary Data: Legal materials consisting of laws and regulations, official minutes, court decisions and official State documents.<sup>14</sup> Which in this study consists of:

- 1) 1945 Constitution
- 2) Law No.24 of 2003
- 3) Law No.7 Year 2017
- 4) Constitutional Court Regulation No.2 of 2021
- 5) Constitutional Court Decision No.90/PUU-XXI/2023
- 6) Imam Ibn Qayyim Al-Jauziyyah, *Siyasah Syar'iyah*
- 7) *Tau'iyah Ra'iyah Bi Siyasah Syar'iyah*

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<sup>13</sup> Wahyudin Darmalaksana, *Metodologi Penelitian Hukum Islam* (Bandung : Sentara Publikasi Indonesia, 2022), 15.

<sup>14</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 59.



- 8) Al-Mawardi, *Ahkaamus-Sulthaaniayah Wal-Wilaayaatud-diiniyyah*

1.6.3.2 Secondary Data: Legal materials consisting of law books, legal journals containing basic principles (legal principles), views of legal experts (doctrine), legal research results, legal dictionaries, legal encyclopedias.<sup>15</sup> Which in this study consists of:

- 1) Jimly Ashiddiqie's books include: *Gagasan Konstitusi Sosial, Pelbagai Perkembangan Baru Tentang Konstitusi dan Konstitusionalisme, Hukum Acara Pengujian Undang-Undang.*
- 2) Suyuthi Pulungan, *FIQH SIYASAH (Simpul Politik Islam Dalam Membentuk Negara Madani)*
- 3) Journals which related to constitutional law and *siyasaah dusturiyah.*
- 4) Official government websites related to the examination of Law No.7 of 2017 and related to the Constitutional Court Decision No.90/PUU-XXI/2023.

#### 1.6.4 Data Collection Methods

The data collection method used in this research is document study or also called literature review, by collecting data from various literatures such as books, journals, articles, and documents relevant to the Constitutional Court Decision Number 90/PUU-XXI/2023. Analyze the views of Islamic law experts, scholars or legal practitioners to get a clear view of the Constitutional Court Decision Number 90/PUU-XXI/2023. Also by analyzing the content of texts from Islamic law such as the Qur'an, Hadith, and fiqh books. The analysis aims to understand the legal principles contained therein.<sup>16</sup>

#### 1.6.5 Data Analysis Method

The data analysis method used to examine the constitutionality in the Constitutional Court Decision No.90/PUU-XXI/2023, as well as the

<sup>15</sup> Ibid, 60.

<sup>16</sup> Faisar Ananda Arfa, *Metodologi Penelitian Hukum Islam* (Bandung : Citapustaka Media Perintis, 2010), 36.

causes that resulted in the problem is descriptive-qualitative analysis, which is a way of analyzing data by examining decision texts as well as laws and regulations or other legal sources. A qualitative method is a method that produces descriptive data in the form of written or spoken words and observable behavior, the data collected is qualitative in nature by describing it in a word arrangement.<sup>17</sup>

### 1.7 Writing Systematics

The discussion system in this study is poured into 5 chapters, each chapter consisting of:

#### Chapter I: Introduction

In this chapter describes the research in general, the preparation consists of:

1. Background of the Problem
2. Problem Formulation
3. Research Objectives
4. Benefits of Research
5. Literature Review
6. Research Methods
7. Writing Systematics

#### Chapter II: Constitutional Court Decision And *Fiqh Siyasah Dusturiyah*

In this chapter, it explains more about the understanding and arguments that form the basis of this research, namely matters relating to:

1. Constitutional Law
2. Constitutional Court
3. Constitutional Court Decision Number 90/PUU-XXI/2023
4. *Fiqh Siyasah Dusturiyah*

#### Chapter III: Constitutionality Of The Constitutional Court Decision

According To Constitutional Law And *Fiqh Siyasah Dusturiyah*

1. Constitutionality of Constitutional Court Decision Number 90/PUU-XXI/2023 according to constitutional law

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<sup>17</sup> Muhaimin, *Metode Penelitian Hukum*, 45.

- Examining Law Number 7 of 2017 on Elections
  - Conformity with formal law
2. The view of *fiqh siyasah dusturiyah* on the constitutionality of the Constitutional Court's decision Number 90/PUU-XXI/2023.
- Conformity with *Fiqh Siyasah Dusturiyah*
  - Justice and *Shari'ah* Compliance
  - Ethics as a judge according to *fiqh siyasah duturiyah*

#### Chapter IV: Closing

This chapter is the closing of this thesis, which consists of conclusions and suggestions based on the results of the research.

