

Implementation Of Supreme Court Decision Number 24 P/HUM/2023: Opportunities and Challenges For Women's Representation

Sarah Kamahadi

Universitas Islam Negeri Salatiga; E-mail: sarahkamahadi@gmail.com

Cholida Hanum*

Universitas Islam Negeri Salatiga; E-mail: cholidahanum@uinsalatiga.ac.id

Abstract

On April 17, 2023, the General Election Commission (KPU) issued General Election Commission Regulation (PKPU) Number 10 of 2023 concerning the Nomination of Members of the People's Representative Council, Provincial People's Representative Council and Regency or City People's Representative Council. However, not long after the ratification of the regulation, there began to be a lot of rejection from various groups. The PKPU then filed a judicial review to the Supreme Court which was considered to reduce the minimum number of 30% of female representation as stated in the Election Law. The Supreme Court then issued Decision Number 24 P/HUM/2023 concerning the judicial review of the PKPU. With the issuance of the decision, the Supreme Court ordered the KPU to immediately change the contents of PKPU Number 10 of 2023 from Article 8 paragraph 2. However, instead of changing the contents of the PKPU, the KPU issued an official letter number 1075 / PL.01.4-SD / 05/2023 on October 1, 2023. So the author is interested in conducting research on this problem by highlighting the contents of the implementation of the Supreme Court's decision and the opportunities and challenges for women's representation in Indonesia. This research is a doctrinal legal research which uses primary legal materials, namely the Supreme Court decision, PKPU and other legal materials and secondary legal materials in the form of articles, books and writings that discuss the issue of women's representation and the validity of the Supreme Court's decision. The results of this study indicate that the KPU has ignored the Supreme Court's decision by not revising PKPU Number 10 of 2023, but the KPU only issued a circular to each political party to meet a minimum of 30% women's representation. This is an obstacle to fulfilling women's representation in the 2024 Election, where women's representation of at least 30 percent in the list of legislative candidates from political parties in each electoral district (dapil) has not all been fulfilled.

Keywords: Supreme Court Decision, PKPU, Women's Representation, Political Parties, Legislative Election.

INTRODUCTION

The Supreme Court is a state institution that has the authority to try at the cassation level. In addition, the Supreme Court also has the authority to test regulations under the Law, as well as other authorities that have been stated in the Constitution.¹One of the powers granted by the Constitution to the Supreme Court is as an implementing institution of judicial power and also a place to test laws and regulations.

The power to examine and decide a case is carried out by a judge who is considered to have freedom. In this case, the ability to see and choose a case, a judge has an opportunity. However, the freedom of judges is influenced by many factors such as the framework of public authority, legislative issues, financial issues, and others. To carry out the responsibility of upholding law and justice based on Pancasila, judges are given freedom. So by explaining the law and seeking the basics and standards that underlie it.

Women's representation in Indonesian politics has actually increased every year, although it has never reached the minimum number of women's representation of 30%. The increase in the legislative body regarding women's representation has grown quite significantly. This can be seen from the data on the figures in the 2014 election at 17.32%, then in the 2019 election the figure increased to 20.52%.²Regulations regarding women's representation have been regulated in Law Number 7 of 2017 concerning General Elections, Article 245 concerning the minimum number of 30% women's representation in parliament.³The law implies the importance of gender equality and women's participation in politics. However, after the General Election Commission (KPU) issued the General Election Commission Regulation (PKPU) Number 10 of 2023 concerning the nomination of members of the Provincial People's Representative Council (DPRD) and Regency or City DPRD in article 8 paragraph 2, there has actually been a reduction in the calculation of female legislative candidates (Bacaleg) in the upcoming simultaneous elections.

On April 17, 2023, the KPU issued PKPU Number 10 of 2023. However, not long after the ratification of the regulation, there was a lot of rejection from various groups in society. The controversy arose from the problem because it was considered to discriminate against women. The mechanism for drafting the regulation contradicts Law Number 7 of 2017 Article 245 which states that in "The list of prospective candidates as stated in Article 243, women's representation is at least 30%".

The Association for Elections and Democracy (PERLUDEM), the Indonesian Women's Coalition (KPI), Hadar Nafis Gumay, Titi Anggraini, Wahidah Suaib then filed a request for a judicial review of PKPU Number 10 of 2023 to the Supreme Court. They considered that there was a distortion in Article 8 paragraph 2 regarding how to calculate women's representation. The article is considered to reduce the minimum number of women's representation by 30% as stated in the Election Law.

¹Indonesia, Article 24 A number 1 of the 1945 Constitution.

²Director of the Center for Gender and Democracy at the Institute for Economic and Social Research, Education, and Information (LP3ES), 2022.

³Indonesia, Law Number 7 of 2017 concerning General Elections

The Supreme Court then issued Decision Number 24 P/HUM/2023 concerning the judicial review of PKPU Number 10 of 2023 Article 8 paragraph 2 of 2023 concerning the Nomination of Members of the DPR, Provincial DPRD and Regency or City DPRD on August 29, 2023. The decision contains the elimination of all types of discrimination against women which will no longer be considered.⁴With the issuance of this decision, the Supreme Court ordered the KPU to immediately change the contents of PKPU Number 10 of 2023 from Article 8 paragraph 2. However, instead of changing the contents of the PKPU, the KPU instead issued an official letter number 1075/PL.01.4-SD/05/2023 on October 1, 2023.

METODE

This type of research is doctrinal legal research which applies legal problems based on previous legal views that are in accordance with the problem being discussed. . The approach used is a normative legal approach, namely an approach that refers to applicable laws and regulations. Data collection using library research or literature the reason for taking this research is because the research data is obtained from books, journals, legal documents, and others. Primary legal materials are taken from the 1945 Constitution, Law Number 7 of 2017 concerning general elections, PKPU Number 10 of 2023, Official Letter Number 1075.P.04.L and Supreme Court Decision Number 24 P/HUM/2023. While secondary legal materials are obtained from articles, books and related documents that discuss the Supreme Court decision, KPU and women's representation.

HASIL DAN PEMBAHASAN

Supreme Court Decision

Supreme Court Decision Number 24 P/HUM/2023 was issued due to a material review of Article 8 paragraph (2) of KPU Regulation Number 10 of 2023 concerning the Nomination of Members of the DPR, Provincial DPRD, and Regency/City DPRD.⁵The petition for judicial review that was challenged in the article to the Supreme Court was filed by several parties and from different other circles. The parties that sued were the Association for Elections and Democracy (PERLUDEM), the Indonesian Women's Coalition (KPI), Haidar Nafis Gumay, Titi Anggraini, and Wahidah Suaib.

The case in this decision relates to a petition objecting to the right to judicial review of Article 8 paragraph (2) of KPU Regulation Number 10 of 2023 concerning the Nomination of Members of the DPR, Provincial DPRD, and Regency/City DPRD. The regulation is considered to violate the rules above it, namely the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning Elections and also Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

⁴Supreme Court Decision Number 24 P/HUM/2023.

⁵State Gazette of the Republic of Indonesia Number 348 of 2023

There are several reasons for the request to review the General Election Commission Regulation Number 10 of 2023, including discrimination in Article 8 paragraph (2) as it regulates the calculation of 30% of the number of female Prospective Candidates in each Electoral District. Where the calculation method is if the two decimal places behind the comma are more than 50 (fifty), the sum will be rounded up, and vice versa, if it is less than 50 (fifty), the result of the calculation will be rounded down. These results can have a negative impact on the strategy for adjusting estimates for women's representation, because some of the sum methods do not reach a minimum of 30%.

Assuming the calculation of the equation carried out by the KPU is seen from if there are 4 legislative candidates and only 1 female candidate. In fact, the calculation of 1 out of 4 candidates is not 30% but 25%. Therefore, the application of the formula by the KPU clearly distorts the representation of women which does not reach 30%. Likewise, if the nomination of the number of electoral districts consisting of 4 candidates, the rounding will produce a figure of 25%, then if 7 candidates, the rounding will produce a figure of 29%, then 8 candidates, the rounding will produce a figure of 25%, and while 11 candidates will produce a figure of 27% of the number of women's representation. Where the number of women's representation is not up to 30%.⁶

Many of the DPRD elections are authoritative and spread throughout Indonesia and the large number of DPRD district/city electoral districts. This obstacle is what Gun Gun Heryanto means as a political and institutional obstacle where women do not have a definite forum to make choices in the design of state institutions or political party structures. The current situation causes women's powerlessness to influence political party plans and strategic development plans in state institutions.

Supreme Court Ruling

After much consideration, the Supreme Court then granted the request of the plaintiffs who had conducted a judicial review. The Supreme Court stated that Article 8 paragraph (2) of the guidelines for KPU Regulation Number 10 of 2023 concerning the Nomination of Members of the DPR, Provincial DPRD, and Regency/City DPRD contradicts higher legal guidelines, especially Law Number 7 of 2017 concerning Elections. So this guideline does not have the force of legal restrictions as long as it is not interpreted, if the estimate of 30% of the number of female candidates in each constituent area with the results of fractional figures will be rounded up.

Furthermore, the result of the decision is The Indonesian KPU must revoke Article 8 paragraph (2) of the General Election Commission Regulation Number 10 of 2023 concerning the Nomination of Members of the People's Representative Council, Provincial People's Representative Council, and Regency/City People's Representative Council. And order the Registrar of the Supreme Court to send an excerpt of the decision to the State Printing Office to be included in the State Gazette. Then impose a penalty on the respondent, namely the KPU RI, to pay court costs of Rp. 1,000,000 (one million rupiah).⁷

⁶Supreme Court Decision Number 24 P/HUM/2023

⁷Supreme Court Decision Number 24 P/HUM/2023

Data shows that the quota for women's representation in the 2024 election shows that the minimum quota of 30% has not been achieved. So it can be said that the stipulation of the General Election Commission Regulation Number 10 of 2023 is one of the obstacles for women to meet the minimum quota. And the absence of action from law enforcement regarding firmness and sanctions against what the KPU has done will cause the quota for women's representation to decline in this election.

Disregard of Supreme Court Decision Number 24 P/HUM/2023

Regulations regarding women's representation have been regulated in Law Number 7 of 2017 concerning General Elections, Article 245 concerning the minimum number of 30% women's representation in parliament.⁸The law implies the importance of gender equality and women's participation in politics. However, after the KPU issued the General Election Commission Regulation Number 10 of 2023 concerning the nomination of members of the Regional People's Representative Council, in article 8 paragraph 2 there has actually been a reduction in the calculation of female legislative candidates in the 2024 simultaneous elections.

The civil society coalition and women's observers filed a judicial review to the Supreme Court to consider the regulation. Through decision Number 24/P/HUM/2023, the Supreme Court granted the judicial review request from women's NGOs and activists, the Supreme Court believed that the PKPU had violated the provisions of the law. When the decision on the regulation of the calculation of female legislative candidates was issued, the KPU was entrusted to revise the PKPU. However, before revising it, the KPU asked for input from the DPR regarding the next decision to be taken. However, the DPR actually provided input to reject the revision of the PKPU which then indirectly reduced the number of women's representation in legislative seats.

Position of Supreme Court Decision

The judge's decision or also called a court decision is something that is eagerly awaited by the disputing parties in order to resolve their dispute as effectively as possible. According to Makara⁹. This is because the disputing parties expect legal certainty and justice in the situation they are experiencing, where the judge's decision can be obtained in court.

The standard of decisions expressed in court hearings that are accessible to the public is emphasized in Article 20 of Law No. 4 of 2004 concerning Judicial Power, that all court decisions are only substantial and have legal force on the assumption that the decision is articulated in a consultation that is open to the public. This is no exception for every judgment in a closed court, and especially in the field of family law, for example, in divorce cases, although legal guidelines allow divorce cases to be analyzed in secret.

Several other legal experts have similar views, including Muhammad Nasir, who characterizes a judge's decision as an explanation made by a judge as a state official who is

⁸Indonesia, Law Number 7 of 2017 concerning General Elections

⁹Moh. Taufik Makara, Principles of Civil Procedure Law (Jakarta: PT. Rineka Cipta, 2004), p. 124.

authorized to do so and articulated under the supervision of a court that fully intends to resolve it, or settle a matter between the disputing parties.¹⁰

Therefore, judges must consider at least three general principles when making decisions. First, Legal Justice means that the judge's decision must aim to guarantee, maintain, and realize a sense of justice for everyone while still complying with all applicable laws and regulations. Second, Social Justice implies that the judge's choice must be made with determination to ensure, secure and satisfy a sense of justice for all people while still considering the quality, rules and social standards that apply in the public eye. Third, Moral Justice implies that the choice of judges is made with the full intention of ensuring, maintaining and satisfying a sense of justice for all people by considering moral and ethical perspectives.

Legal Expert Opinion on the Ignorance of Supreme Court Decision Number 24 P/HUM/2023

Here are some expert opinions regarding the Abandonment of Supreme Court Decision Number 24 P/HUM/2023, namely:

First, the Association for Elections and Democracy or commonly known as PERLUDEM said that the KPU as the organizer of the 2024 elections is increasingly far from the supremacy of law. The many controversies carried out by the KPU without any shame which are proven to always avoid and many reasons not to comply with the decision, especially the Supreme Court Decision on the PKPU from the calculation of the quota for female legislative candidates in each electoral district. The Supreme Court Decision has also stated that the PKPU is in conflict with the Election Law. However, the KPU's supremacy of law is actually unmoved in carrying out its duties. They are constantly looking for reasons so as not to carry out their interests regarding the Supreme Court Decision. As well as inviting and also asking for opinions from legal experts and the DPR, then finally in re-implementing the decision, the KPU instead sent an official letter to each party leader whose binding power and follow-up were unclear.¹¹ The decision should have made the KPU aware to immediately revise the PKPU. Instead of looking for every way to get a defense for the action to escape responsibility.

Second, Suharto as the spokesperson for the Supreme Court said that the Supreme Court granted the lawsuit of PKPU 10 of 2023 Article 8 paragraph 2 concerning women's representation of at least 30% in each electoral district. "Granting the demands of the applicants' complaints," said the Supreme Court's decision Number 24 P/HUM/2023. In the decision, Irfan Fachruddin as the chairman of the council and two other figures from the Party, namely Cerah Bangun and Yodi Martono Wahyunadi. The representative of the Supreme Court, namely Soeharto, also confirmed the decision. Article 8 paragraph (2) of PKPU 10 of 2023 no longer has binding legal force due to this Supreme Court decision.¹²

¹⁰Muhammad Nasir, Civil Procedure Law (Jakarta: Djambatan. 2005), p. 187.

¹¹<https://perludem.org/2023/11/30/kpu-sertasi-kap-membangkang-pada-mahkamahkonstitusi-dan-mahkamahagung-oleh-fadliramadhanil/> accessed on March 25, 2024, at 20.00 WIB

¹²<https://www.bawaslu.go.id/id/berita/majelis-bawaslu-puaskan-kpu-besar-administrasi-pemilu-cepatan-abaikan-bangunan> accessed on March 25, 2024, at 20.00 WIB

Third, the General Elections Commission asked for input from five legal experts regarding the follow-up to the two judicial review decisions of the KPU Regulations decided by the Supreme Court. In general, the experts suggested that the decisions be followed up immediately so as not to erode the legitimacy of the election. The KPU is still considering the input. KPU member Mochammad Afifuddin said that to discuss the steps after the Supreme Court judicial review decision Number 24 P/HUM/2023 concerning 30 percent female representation and Supreme Court Decision Number 28P/HUM/2023 concerning the requirements for the cooling-off period for former convicts, the KPU asked for advice from five constitutional law and state administrative law (HTN-HAN) experts.¹³

The discussion about the neglect of the Supreme Court's decision is also discussed in the documentary entitled "Dirty Vote: A Design of Fraud in the 2024 Election". The explanation of the topic takes about 1 hour 57 minutes. This documentary was uploaded on the Youtube channel on February 11, 2024, which is 3 days before the general election. The explanation in the film's plot is explained by 3 experts in Constitutional Law, namely Bivitri Susanti, Feri Amsari and Zainal Arifin Mochtar.

As for the neglect of the Supreme Court's decision, the discussion related to the film began with the closeness established by the chairman of the KPU and the golden woman who had an unusual relationship, they both often met without any clear purpose. On the other hand, the KPU has also received a severe sanction in the form of a final warning, namely the last severe warning.

In fact, the KPU prioritizes the interests of political parties which results in the failure to fulfill public rights for the community. The example of the case we are discussing is about the KPU not fulfilling the 30% representation of women issued in the Supreme Court decision, in fact the KPU has been entrusted to improve how to calculate the 30% representation of women due to the wrong approach.¹⁴

So that women's representation cannot reach the minimum quota which causes many reports to the Supreme Court and then the Supreme Court's decision is issued. After the decision was issued, the KPU never corrected or revised the PKPU directly. The KPU is also selective in implementing every Supreme Court decision issued in court, including the decision on women's representation.

The authority of the Supreme Court is to examine cassation or appeals, test legislation under the Law against the Law, determination of jurisprudence, resolution of disputes that occur between governments, resolution of disputes between individuals or different legal entities, supervision of the performance of the judicial system as a whole, determination of court rules and procedures.

CONCLUSION

¹³<https://www.kompas.id/baca/polhuk/2023/10/02/jaga-legitimasi-pemilu-pakar-hukum-sarankan-kpu-segera-tindak-lanjuti-dua-putusan-ma> accessed on March 25, 2024, at 20.00 WIB

¹⁴Didn't Have Time to Watch? Check Out the Summary of the Contents of the Documentary Film Dirty Vote, Jawa Pos, Monday, March 18, 2024.

The regulation issued by the General Election Commission Number 10 of 2023 has been widely rejected. Especially in Article 8 paragraph 2 which was then decided to be reviewed by the Supreme Court. The results of the submission resulted in Supreme Court Decision Number 24 P/HUM/2023. The KPU actually asked for input and suggestions from the DPR Commission II regarding the decision, which was then decided not to change the PKPU and only to announce to the media about how the addition for female legislative candidates was rounded up. The KPU also only sent official letters to each political party to meet the minimum quota of 30% female representation. In fact, when viewed from the legal force of the DPR's opinion and also the official letter, it does not have clear legal force. There has been legal neglect by the KPU and DPR regarding Supreme Court Decision Number 24 P/HUM/2023 and this has contributed to the decline in female representation in the 2024 legislative elections in a number of DPRD's both in the Province and Regency/City.

DAFTAR PUSTAKA

Books and Journals

- Agustina, H. (2009). Women's Representation in Parliament in the Perspective of Gender Justice and Equality. In Siti Hariti Sastriyani (ed): Gender and Politics. (Yogyakarta: Tiara Wacana).
- Asshiddiqie, Jimly. (2008). Principles of Indonesian Constitutional Law Post-Reformation. (Jakarta: Bhuana Ilmu Populer).
- Asshiddiqie, Jimly. (2018). Introduction to the Science of Constitutional Law. (Depok: Raja Grafi Indo Persada).
- Director of the Center for Gender and Democracy at the Institute for Economic and Social Research, Education, and Information (LP3ES). (2022).
- H. van Kreveld. (1983). Beleidsregel in het Recht, Kluwer-Deventer.
- Kiftiyah, Anifatul. (2019). Women in Political Participation in Indonesia, Journal of Islamic Studies, Gender and Children. Vol. 14 No. 1.
- Lestari, Yuni. et al. (2019). Formulation of Political Party Participation Strategy in Increasing Women's Representation Quota in the 2019 Election. (LENTERA: Journal of Gender and Children Studies).
- Nasir, Muhammad. (2005). Civil Procedure Law. (Jakarta: Djambatan).
- Priyono, Ery Agus. Lecture Materials on Research Methodology, Master of Notary Study Program, Diponegoro University, Semarang, 2003/2004.
- Rodiyah, Isnaini. (2008). Women's Political Empowerment at Village Level. DIPA Research Report. Directorate General of Higher Education. Ministry of National Education.
- Soemitro, Ronny Hanintijo. (1986). Legal Research Methodology. (Jakarta: Ghalia Indonesia).
- Taufik Makarao, Moh. (2004). Principles of Civil Procedure Law. (Jakarta: PT. Rineka Cipta).

LEGISLATION

- State Gazette of the Republic of Indonesia Number 348 of 2023.
- The 1945 Constitution.
- Law Number 7 of 2017 concerning General Elections.
- General Election Commission Regulation Number 10 of 2012.

General Election Commission Decree Number 996 of 2023.

General Election Commission Regulation Number 10 of 2023 concerning the Nomination of Members of the People's Representative Council, Provincial People's Representative Council, and Regency or City Regional Representative Council.

Supreme Court Decision Number 24 P/HUM/2023.

WEBSITE

<https://perludem.org/2023/11/30/kpu-serta-sikap-membangkang-pada-mahkamah-konstitusi-dan-mahkamah-agung-oleh-fadli-ramadhanil/> accessed on March 25, 2024, at 20.00 WIB.

<https://www.bawaslu.go.id/id/berita/majelis-bawaslu-puaskan-kpu-besar-administrasi-pemilu-cepatan-abaikan-bangunan> accessed on March 25, 2024, at 20.00 WIB.

<https://www.kompas.id/baca/polhuk/2023/10/02/jaga-legitimasi-pemilu-pakar-hukum-sarankan-kpu-segera-tindak-lanjuti-dua-putusan-ma> accessed on March 25, 2024, at 20.00 WIB

“Didn’t Have Time to Watch? Check Out the Summary of the Contents of the Documentary Film Dirty Vote”, Jawa Pos, Monday, March 18, 2024