



Juridical Analysis of the Enactment of a Minimum Limit of 30% Representation of Female Legislative Candidates in Article 8 (2) of KPU Regulation Number 10 of 2023 in the Perspective of the Election Law

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ABSTRACT

This research analyzes the compatibility of Article 8 paragraph (2) of KPU Regulation No. 10 of 2023 with Election Law No. 7 of 2017 regarding women's representation in Indonesian politics. PKPU Article 8 paragraph (2) of KPU Regulation No. 10 of 2023 regulates the calculation method that applies rounding down for numbers below 50, potentially reducing the number of elected female legislative candidates and this research also identifies the challenges and obstacles faced in implementing the 30% quota for women's representation, including the lack of sanctions for political parties that do not meet the quota. This research uses the Library Research method to analyze the compatibility between the provisions in Article 8 paragraph 2 of PKPU No. 10 of 2023 with the principles stipulated in Election Law No. 7 of 2017 related to women's representation as well as the challenges and obstacles faced in the implementation of the quota of women's representation in the legislature after the enactment of PKPU No. 10 of 2023.

INTRODUCTION

Women's representation in politics is an important issue that has become a concern in various countries, including Indonesia (Weny Dunga, 2024). In the context of general elections, efforts to increase women's representation in the legislature have been regulated in various regulations, including Election Law No. 7/2017 which sets a minimum quota of 30% for female legislative candidates. However, the implementation of this provision faces challenges, especially with the enactment of KPU Regulation No. 10 of 2023, especially in Article 8 paragraph (2) which regulates the method of calculating women's representation. Article 8 paragraph (2) PKPU No. 10 of 2023 stipulates that the calculation of the number of female candidates will be rounded down if the number obtained is less than 50. This method has the potential to ignore the value obtained and can result in the number of female candidates not meeting the 30% proportion requirement as a whole. This has led to various viewpoints that consider this method discriminatory and does not support efforts to increase women's representation in politics.

LITERATURE REVIEW

a. Definition of women's representation in legislative elections

Women's representation refers to the number and proportion of women involved in the political process, both as voters and as candidates. The low representation of women in parliament and other political institutions not only has a negative impact on policy-making, but also on the way different perspectives can influence decisions taken. The emergence of various rules that require women's representation in legislative elections is based on affirmative action policies.

Affirmative action policies are strategic steps taken to increase the participation of marginalized groups, including women, in various fields, including politics. This policy can take the form of quotas, training, and other forms of support aimed at providing equal opportunities for women to participate in elections and public office. According to Puspita (2020), affirmative action policies can function as an eraser of structural injustices that make it difficult for women to compete equally in the political arena. With this policy, it is hoped that a more inclusive and diverse environment can be created.

b. Legal basis for women's representation in legislative elections

To guarantee women's right to participate in general elections, laws and regulations have been made to regulate women's representation in general elections. Some of the main legal bases that regulate women's representation in general elections are as follows:

- a. Election Law No.7 of 2017
- b. PKPU No. 10 of 2023

METHODOLOGY

The methodology in the juridical analysis of the enforcement of the minimum limit of 30% representation of female legislative candidates in Article 8 paragraph (2) of KPU Regulation No. 10 of 2023 is carried out through Library

Research which includes several steps. First, the literature study is sourced from primary legal materials by examining various relevant legal sources such as Election Law No. 7 of 2017 and KPU Regulation No. 10 of 2023, secondary legal materials obtained by reading and reviewing books, scientific articles and laws and regulations, especially those found in the library. With this method, it is expected to obtain materials in the form of writings of the parties that will be used as a guide in the theoretical basis. Tertiary legal materials by examining legal materials that provide guidance and explanation of primary legal materials and secondary materials. In the form of dictionaries, books/literature, legislation, official articles from print media and electronic media, tracing legal materials and statutory regulations related to the title of the thesis, as well as literature that discusses women's representation in politics. Furthermore, a qualitative analysis of the regulations will be conducted to understand the method of calculating women's representation and its implications for the 30% quota stipulated in the Election Law, by comparing this provision with PKPU No. 20/2018. A calculation simulation based on the rounding down method stipulated in PKPU No. 10 Year 2023 will also be conducted to see its impact on the number of female candidates who can be elected, using tables and graphs to visualize the simulation results. Finally, an evaluation of the impact of PKPU No. 10 Year 2023 policy on women's representation in the legislature will be prepared, along with policy recommendations to improve the calculation system and increase women's representation in politics. With this methodology, it is hoped that a comprehensive understanding of the challenges and opportunities faced in efforts to increase women's representation in the Indonesian legislature as well as the legal implications of the policies implemented can be obtained.

RESEARCH RESULT

Analysis of the conformity of Article 8 paragraph 2 PKPU No. 10 of 2023 with Election Law No. 7 of 2017 regarding women's representation

Article 8 paragraph (2) PKPU No. 10 of 2023 regulates the method of calculating women's representation as legislative candidates, in this article it is stated that the calculation of numbers less than 50 (fifty) will experience downward fulfillment and if the number is more than 50 it will experience upward fulfillment.

Article 8 paragraph (2) PKPU No. 10 of 2023 creates a condition in which this calculation method will ignore the value obtained if it is less than 50 so that the number of female candidates will not meet the overall proportion requirement rounded down as shown in Table 1 and the provisions of PKPU 10/2023 do not explicitly say what will happen if the 30% women's quota is not met so this will lead to various points of view that consider this method discriminatory and ignore the number of women's representation of 30%.

PKPU No. 10 Year 2023 revokes PKPU No. 20 Year 2018 with a clear difference in the method of calculating numbers where PKPU No. 20 Year 2018 only uses the calculation method of rounding up, this calculation method does not ignore the calculation value below 50 so it is considered not to conflict with the mandate of the number of women's representation of 30% regulated by the Law above.

Judging from the various points of view presented regarding article 8 Paragraph 2 PKPU 10/2023 submitted by (National Commission on Violence Against Women, 2023) includes elements of discrimination, with different ideologies, actions, consequences, and impacts on men and women. The rounding down policy is discriminatory because it prevents women from being elected as legislative members. As a result, women are hindered, hampered and unable to enjoy their human rights, especially the right to be elected as members of the legislature.

In research conducted (Akbar Kurniawan, 2023) criticized that PKPU regulations should be consistently interpreted that each electoral district should not have less than 30% women's representation, which means that the regulations in article 8 paragraph 2 PKPU have shown a setback for democracy in Indonesia, caused by the consequences of failing to achieve at least 30% women's representation.

Mathematically, this method can be simulated with a calculation system that can be seen in table 1.

Table 1. Simulated with a Calculation System

No	Number of legislative candidates	30% Calculation	Rounding	Percentage after Rounding	Description
1	1	0,30	0	0%	
2	2	0,60	1	50%	
3	3	0,90	1	33%	
4	4	1,20	1	25%	Less than 30%
5	5	1,50	2	40%	
6	6	1,80	2	33%	
7	7	2,10	2	29%	Less than 30%
8	8	2,40	2	25%	Less than 30%
9	9	2,70	3	33%	
10	10	3,00	3	30%	
11	11	3,30	3	27%	Less than 30%
12	12	3,60	4	33%	

If juxtaposed with the regulations governing the above, namely Election Law No. 7 of 2017, which is used as a legal basis and juridical guarantee used as an effort to make it a social engineering tool, so as to increase the number of women's political participation. Article 245 clearly contains women's representation of at least 30%.

However, with the existence of article 8 paragraph 2 PKPU, it seems that the frame of legislation does not apply, which ideally, PKPU should not conflict with the regulations above it, especially Election Law No.7 of 2017. This is important to maintain consistency and clarity in the legal system that applies in a country. If PKPU is not in line with higher regulations, then this can create legal uncertainty which in turn will have a negative impact on the implementation of

elections and public confidence in the integrity of the democratic process. A norm is always sourced and based on the norms above it (Indrati, 2020). In this context, every regulation issued by the KPU should be taken from the principles set out in the laws governing elections.

If PKPU violates higher norms, then the principle of legality, which is the main pillar in the legal system, may be threatened. This is important because the public and other political actors must be able to rely on legal certainty in every aspect of election implementation (Wijaya, 2020). In addition, the relationship between one regulation and another must be well established, where each norm must strengthen each other and provide clear direction for policy making and implementation (Silalahi, 2020).

In the implementation of the Election Law, KPU as the executor has issued several PKPU that are used in the implementation of elections, the following table shows the dynamics of changes in women's quota regulations in the Law and PKPU.

Table 2. Dynamics of Changes in Women's Quota Regulations in the Law and PKPU

Election	Law-level Regulation	PKPU-level regulation
2009	Law 10/2008 Imperative, explicitly does not regulate sanctions	PKPU 18/2008 Rounding down and up Imperative without sanctions
2014	Law 8/2012 Imperative, explicitly does not regulate sanctions	PKPU 7/2013 Rounding up Imperative with sanction of removal
2019	Law 7/2017 Imperative, explicitly does not regulate sanctions	PKPU 20/2018 Rounding up Imperative with sanction of removal by KPU
2024	Law 7/2017 Imperative, explicitly does not regulate sanctions	PKPU 10/2023 Rounding down and up Imperative without sanction (Deletion is left to political parties)

When viewed in Election Law No.7 of 2017, what is important to note is that the Election Law does not explicitly contain sanctions if women's representation of 30% is not fulfilled, so that it will make the regulation not binding or not heeded by political parties that nominate legislative candidates. Then, the law does not regulate the method or provisions related to the calculation method used in fulfilling 30% women's representation, so that in its regulations the KPU is not bound by how the method of determining the calculation, but the KPU is considered to come up with a calculation method that contradicts the law.

As an implementing and rule-making institution, the KPU responded to the note that in response to the absence of sanctions given if political parties could not meet 30% women's representation in (Ida Budhiatia, 2024) that first, there was an attitude of legislative activism, where the KPU made a systematic interpretation of the Election Law based on the existing imperative orders. In this view, the KPU argues that although the Election Law does not explicitly mention the provision of sanctions for political parties if the 30% quota is not met, but in

the process of organizing a fair, transparent and inclusive election, there needs to be firm steps to encourage the involvement of women in politics. This indicates that the KPU can formulate and set administrative sanctions in response to non-compliance by political parties, which will have a deterrent effect on political parties to pay more attention and fulfill these provisions.

Second, the restraint shows that PKPU, as a legal product prepared by the General Election Commission (KPU), chooses to follow the Election Law by not including provisions on sanctions for political parties that do not meet the 30% women's representation quota. The KPU took this stance in the 2009 elections and also in the 2024 elections, where they preferred not to put excessive pressure on political parties in terms of fulfilling the gender quota. This attitude may reflect an effort to comply with applicable norms and provide an opportunity for political parties to improve the composition of representation without the threat of sanctions, but on the other hand it also invites criticism from various parties who want real change in terms of women's participation in politics (Dahlerup, 2007).

In responding to the second note related to the Election Law, it does not regulate the method or provisions related to the calculation method used in fulfilling women's representation of 30% so that in its regulations the KPU is not bound by how the method in determining the calculation so whether the addition of sanctions by the KPU means that they have violated the regulations contained in the Law? This question arises in the context of efforts to fulfill the 30% gender quota in elections, especially referring to the provisions in Article 245 of Law No. 7/2017. The article clearly states that the list of candidates submitted by political parties must include a minimum of 30 percent female representation. However, there are no provisions that explicitly emphasize sanctions for parties that fail to meet the quota (Ade Irma Suryani, 2024). Therefore, if the KPU decides to include sanctions in the regulations they make, the move could be considered as an action that exceeds the legal limits set by the law.

On the other hand, we must consider whether the KPU is justified in not imposing sanctions, given that the law contains imperative norms. Imperative norms in the law should be binding and require all parties involved in the election, including political parties, to comply. In this context, the KPU actually has two choices: enforce the law by setting sanctions or choose to be more restrictive in the hope that political parties will fulfill gender provisions voluntarily without coercion.

The existing polemics can be examined, related to gender quotas that do not represent the 2024 Election Law because they are canceled by the emergence of KPU regulations. In this situation, debates often arise over the interpretation of Article 245, with various parties debating whether the existing regulations are strong enough to encourage the implementation of women's quotas. These disputes have raised doubts and concerns among the public as well as women activists who want increased representation of women in politics.

Challenges and obstacles faced in the implementation of the quota for women's representation in the legislature after the enactment of PKPU No. 10 of 2023

In addition, the 1945 Constitution protects women's representation rights in many articles, such as Article 27 paragraphs (1) and (2), Article 28B paragraph (2), Article 28I paragraphs (1) and (2), and Article 28J paragraph (2). The purpose of this constitutional protection guarantee is to ensure women's right to participate in politics and government. The articles also recognize the role of women in national development. Through these provisions, the 1945 Constitution creates a legal framework that supports women's empowerment and ensures that women's voices are heard in decision-making. This is an important step towards a just and inclusive society where women have equal opportunities to participate and contribute in all aspects of life (Juwita Hayyuning Prastiwi, 2024).

Women's representation in politics will also ensure that women have full freedom to exercise their rights and develop their potential without any restrictions (Kurnianingsih, et al., 2022). The urgency of women's representation in politics has a significant impact on various aspects of development, such as access to, and participation in, education, health, economic empowerment, more gender-inclusive decision-making and fair and equitable development benefits.

It emphasizes the importance of equality before the law, which guarantees that every individual has equal rights regardless of social, economic or cultural background. In addition, this article also emphasizes the right to decent work and livelihood, reflecting the state's commitment to provide social justice for all Indonesians (Asikin, 2017). It also emphasizes the right to freedom of expression, the right to religion, the right to education, the right to decent work and livelihood, and the state's responsibility to safeguard public welfare. The rights of Indonesian citizens and government are based on these articles.

The implications of the stipulation of the provisions of women's representation in the elections can be seen from the participation of women who run as legislative candidates, it can be seen from the 2009 elections to the 2019 elections, there is an increasing trend in the number of women's candidacy. In the 2009 elections, there were 31.8% of women registered as DPR candidates. Then, in the 2014 elections from 12 political parties participating in the elections, there were 2,061 people or 37.4%. Meanwhile, in the 2019 elections, 3,200 people or 40% of the total candidates for DPR members were women. However, despite the high nomination rate, in fact in the 2019 election itself there were only 20.5% of the 575 members of the House of Representatives.

Table 3. Percentage Of Women Represented In Parliament

Election Year	Women		Men		Women and Men	
	Amount	%	Amount	%	Amount	%
2009	100	17,86	460	82,14	560	100
2014	97	17.32	463	82,68	560	100
2019	120	20,87	455	79,13	575	100
2024	127	21,9	453	78,1	580	100

The table above shows that from the 1955 elections to the 1999 elections, the percentage of women represented in parliament was lower than the

minimum quota of 30%, which means that more women were represented in parliament. The highest in the 1992 elections was 12.40%, after the implementation of the minimum 30% quota in the 2004 elections, the level of women's representation gradually increased, although it fell in the 2014 elections at 17.32% and in the 2009 elections at 17.86%. However, the level of women's representation increased again in the 2019 elections with 20.87%.

In the 2024 legislative elections, 127 women members, or 21.9% of the 580 board members, are members of parliament. This is the highest percentage of women MPs ever recorded in Indonesia since the General Election. Although the percentage of women in parliament still does not reach 30%, affirmative action provides more opportunities for women to sit in parliament. However, the minimum quota of 30% is clearly still lower than male representation, but it is expected that more women will be represented.

Then based on the previous explanation related to the notes given to the KPU on PKPU No. 10 of 2023, especially in article 8 paragraph 2, there are challenges and obstacles that arise which will then lead to opportunities for not fulfilling the 30% amount or the emergence of actions to take advantage of legal loopholes. The challenges and obstacles that arise based on the note that the KPU does not contain provisions for sanctions against political parties that do not meet the 30% quota of women's representation can be seen in the next discussion.

Women's representation in the elections is only a formality due to the absence of sanctions contained in the provisions of PKPU No. 8 of 2023, making it common for political parties not to fulfill 30% representation of women in the elections, the assumption that the fulfillment of women's quota is not an obligation that must be carried out by political parties because there are no sanctions that will be received by political parties, if political parties do not have the ability to meet the quota of women's representation so that the provisions of PKPU do not have the power to regulate political parties.

Although there are parties that consider that the quota of women's representation is not an obligation, increasing women's representation in the legislature and political parties has a significant impact on women's participation in the formulation of important policies. However, political parties in this case create their own challenges in an effort to fulfill the quota of women's representation, political parties make efforts to fulfill women's representation only as an administrative requirement.

It can be seen from how the use of serial numbers of legislative candidates, in the context of legislative elections in Indonesia, candidate serial numbers affect voter behavior and women's representation. Voter behavior in Indonesia tends to choose candidates with higher serial numbers, which causes anomalies in women's representation. This can be seen from voter data that shows unevenness and often women are given the final number, indicating that women are nominated only to fulfill the requirements.

The implementation of a special quota system for women who want to actively participate in Indonesian politics can often be abused by various political parties that do not have reliable and decent female politicians in their ranks. One way political parties try to fulfill the quota is by attracting women from

entertainment backgrounds, such as artists, singers, or other public figures. The popularity they gain from a career in entertainment is often a promising prerequisite for political parties to recruit them. Although attractive, this approach often ignores the qualifications and competencies that a politician should have. As a result, women who enter the political structure do not always have a deep understanding of the issues facing society, and this can reduce their effectiveness in policy formulation.

In addition, the entry of women from the upper-class society who are already established in their careers and have prestige into political parties also has the potential to provide benefits to the party. Their presence is expected to increase the party's popularity in various political competitions, as they often have extensive social networks and significant influence. However, if not balanced with an appropriate screening system, this situation can exacerbate the problem of nepotism in politics. The involvement of women from the elite could create the impression that the women's quota is only being used for certain political interests, rather than as a real step to increase women's quality representation.

Furthermore, if the proportion of women in political party membership continues to increase without an objective assessment of their qualifications, the potential for creating political dynasties based on blood relations will increase. Women with easier access to power, especially those from the elite, can utilize their position to strengthen existing political networks and create inequities in the distribution of power. This creates a non-neutral and intriguing political environment, where political decisions are influenced more by personal relationships and patronage than by the interests of the wider community.

This situation adversely affects the democratic political system in Indonesia. When privileged women are able to exercise their power more widely, this can lead to the neglect of the voices of more marginalized and disadvantaged women (Andri Rusta, 2024). Women from low economic backgrounds or who do not have access to political networks will be further marginalized, while women from the elite continue to dominate the political space.

This results in reduced diversity in decision-making and hinders the creation of inclusive policies. To achieve the goal of true gender equality in politics, there needs to be deep reforms in the way political parties recruit and place women in their structures (Aprilian, 2022). A rigorous and transparent screening system should be implemented to ensure that women involved in politics are qualified individuals with a strong commitment to the public interest.

Thus, in order to create a more just and democratic political system, it is important for all parties to work together to strengthen the integrity of the political process and ensure that women's representation does not merely fulfill quotas, but also reflects a real commitment to positive social change (Ramdhani, 2021). Only in this way can we expect to see significant improvements in the quality and effectiveness of women's representation in Indonesia (Marsyifa Novia Fauziah, 2023).

Then, the application of the rounding down method becomes one of the important factors affecting representation in legislative seats, especially for

female legislative candidates. An explanation from (Anggraini, 2023) shows that the application of the downward rounding provision by the General Election Commission (KPU) can have a significant impact on women's representation in the House of Representatives of the Republic of Indonesia (DPR RI).

When the KPU applies rounding down, then in electoral districts (electoral districts) that have 4, 7, 8, and 11 seats, there is a possibility of a reduction in the number of female candidates who can be elected. With a total of 84 electoral districts, 38 of them are potentially affected by this rounding provision. This means that, in the context of political parties, the number of female candidates in one party could be drastically reduced, even reaching 684 if multiplied by the 18 parties participating in the election. This decrease in the number of female candidates clearly creates a major challenge for efforts to promote women's representation in the political arena (Bessel, 2010).

The situation is made more complex because political parties, in their strategy to achieve their seat acquisition targets, tend to take advantage of this provision by optimizing the number of available seats (Edward Aspinall, 2021). In electoral districts with 4 and 7 seats, for example, parties may focus more on listing male candidates who have strong support, thus ignoring or placing female candidates in less strategic positions. This, in turn, may exacerbate gender inequality in Indonesian politics, where women are already hindered from gaining an equal place (Nurchahyo, 2016).

From a political party's perspective, fielding candidates in electoral districts with 4, 7 and 8 seats is a highly relevant tactic. By focusing resources on male candidates, they can potentially increase their chances of achieving optimal legislative seats. However, this approach may create a value shift in politics, which prioritizes results over the principles of fairness and equality (Evi Novida Ginting Manik, 2024).

CONCLUSIONS AND RECOMMENDATIONS

From the discussion of the juridical analysis of the application of the minimum 30% limit of representation of female legislative candidates in Article 8 paragraph (2) of KPU Regulation No. 10 of 2023, it can be concluded that the application of the rounding down method has the potential to reduce the number of elected female candidates, especially in electoral districts (electoral districts) with the number of seats 4, 7, 8, and 11. This can result in a significant decrease in women's representation in the DPR RI, with an estimated reduction of 684 female candidates from a total of 18 parties participating in the election.

The calculation method stipulated in PKPU No. 10 of 2023, which revokes PKPU No. 20 of 2018, is considered discriminatory because it does not fulfill the mandate of Election Law No. 7 of 2017 which requires a minimum of 30% female representation. The lack of clarity regarding sanctions for political parties that do not meet this quota creates legal uncertainty and reduces the motivation of parties to pay attention to women's representation.

In addition, political parties tend to take advantage of this legal loophole by focusing more on male candidates who have strong support, thus neglecting female candidates. This exacerbates gender inequality in Indonesian politics,

where women who should have equal rights to participate in the political process are often marginalized.

Overall, the challenges and obstacles faced in implementing the women's representation quota point to the need for reforms in the way political parties recruit and place women, as well as the need for strict enforcement of sanctions to ensure that the quota is not just a formality, but also reflects a real commitment to gender equality in politics. To achieve the goal of true gender equality, all parties must work together to strengthen the integrity of the political process and ensure that women's representation in the legislature not only meets the quota, but also reflects quality and commitment to the interests of society.

ADVANCED RESEARCH

The author realizes in writing this journal that the knowledge and abilities possessed by the author are limited so that there are still many shortcomings in terms of language, writing, and presentation. Therefore, the author expects useful criticism and suggestions from various parties so that this paper becomes better.

Further research can be carried out by analyzing the development of the General Election Commission regulations that will be applied in the next election, so that it will be known how the suitability between Election Law No.7 of 2017 and the latest PKPU, challenges and obstacles in implementing the latest PKPU.

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