Analysis of the Quota of Women’s Representation as Candidates for Legislative Institutions in PKPU Number 10 of 2023 (Analysis of Affirmative Action of Legislative Candidates in General Election Commission Regulation Number 10 of 2023)

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INTRODUCTION

As a country with a civil law system, Indonesia principally believes that the government must uphold the rule of law to improve its fairness and no unaccountable authority. As a country based on law and responsive to the development of society, Indonesia should accommodate various issues faced by its people, including women’s participation in politics, especially in the legislature. However, women tend not to have many opportunities to be involved in politics. The opportunities are...
limited for women because society has a concept of the division of the roles of men and women, which limits women's roles to household activities. In fact, political participation is one of the most important indicators of state development. Every citizen, male and female, should be involved in pursuing national goals. In this way, achieving national goals becomes easier.

The beginning of the emergence of this 30% affirmation action was when the PPP faction proposed the contents of the draft legislative election law in 2003 which was then stated in article 65 of Law Number 12 of 2003 concerning Legislative Elections. This is in line with MPR Decree Number X/MPR/2001 concerning the Report on the Implementation of MPR RI Decisions by State Higher Institutions at the 2001 Annual Session of the MPR RI by the Institution, in the report, in the field of women's empowerment and child protection provides recommendations to the government to make a policy product aimed at increasing women's representation. The provision of 30% affirmation action has become a momentum for the women's movement to further emphasise the political rights of women through a quota system of at least 30%. However, in reality, the number of women's representation based on the representation of the number of DPR members only reached 6% - 13% during the period 1950 - 2004. In 2009, it reached 18% and the highest it reached in 2019 was 20.5%.

The theory of women's representation refers to efforts to increase the number of affirmation actions in various fields, including politics. The opportunity for women to actualise themselves in politics has been guaranteed by Indonesian law, particularly in the 2011 amendment to the Political Parties Act. Article 2 paragraph 2 of the law states that:

“The establishment and formation of political parties must include 30% representation of women.” Article 20 of the law also states:

“The composition of political party boards must pay attention to women’s representation with a minimum quota of 30%.”

It is intended that political parties participating in the election fulfil the 30% affirmation action, so that the number of women in the legislature increases compared to the previous election. As a follow-up to this policy, the General Election Commission (KPU) issued Regulation No. 7/2013 on the Nomination of Members of the DPR, Provincial DPRD, and Regency/City DPRD. Article 27 paragraph (1) letter b of the KPU Regulation states:

“If 30% of women’s representation is not fulfilled, political parties are declared not entitled to submit a list of candidates in the electoral district concerned.”

It is intended that political parties participating in the election fulfil 30% women's representation, so that the number of women in the legislature increases compared to previous elections.

The World Bank conducted a study in 2009 showing that women are not involved in corruption. A 2006 study by Vivi Alatas, which involved four countries, including: Australia, India, Indonesia and Singapore. The study showed that culture strongly influences corruption rather than gender. Therefore, the presence of women in parliament shapes society’s view of the character of female public officials, especially female politicians to further improve their quality as strong representatives of the people. Strategies are
needed to improve the quality of representation through various media and strengthen partnerships with women's organizations to increase their capacity and representation.

The requirements for increasing women's participation in the legislature in Indonesia are several binding rules. These include the Human Rights Law, the Law on Political Parties which is regularly revised ahead of elections, and the Law on Elections. Affirmative action policies have been established to ensure that the number of women involved in the public sphere, especially in the legislature, increases. Thus, the effort to involve women in the public sphere has a very positive impact. This can be seen from government policies regarding national regulations that legally guarantee women's participation in politics. However, although this regulation exists, maximum results have not been fully achieved in its journey.

In organising elections, one of the problems is the difference in regulations between regions in Indonesia. These differences are contained in various laws, qanuns, Constitutional Court decisions, and PKPU. One of the debated regulations is affirmation action in legislative candidacy, which is considered not to represent women's representation. This is stated in KPU Regulation Number 10 of 2023 concerning Amendments to KPU Regulation Number 7 of 2022 concerning the Compilation of Voter Lists in the Implementation of General Elections and Voter Data Information Systems, specifically in Article 8. This article will discuss affirmation action in the perspective of the theory of hierarchy of legal norms in PKPU No. 10 of 2023.

CONCEPTUAL FRAMEWORK
The Theory of Legal Norm Alignment

This theory is the view of a figure named Hans Kelsen. According to this theory, the validity of a legal norm depends on the process of making it following other legal norms. The legal norm that is the basis for the first legal norm is called the foundation of its validity. Kelsen argues that:

“The legal order, especially as embodied in the form of the state, is not simply a system of norms that are coordinative and equal to each other, but is a hierarchical order of different levels of norms. The formation of lower norms is determined by higher norms, and this process continues until it reaches the highest basic norm that is the basis of validity for the entire legal order.” Thus, there is unity in the legal order.

This research is based on the idea that regulations, in this case the General Election Commission Regulation, must be effective, not contradictory to the regulations above it, based on public interest, with decency and must have a human rights perspective. As regulated in Law No. 12/2011 on the Establishment of Laws and Regulations, and the substance regulated does not overlap with other Laws and Regulations, either vertically or horizontally. So that a regulation can be implemented in the life of society, nation and state.

According to Hamid S. Attamimi (2007), the formation of laws and regulations can run smoothly if it fulfils several principles, including: (1) formulating the principles, objectives, and substance of the regulation (inhalt der regeling); (2) fulfilling the form of legislation (form der regeling); (3) the
method of forming legislation (method erausarbeitung der regeling); (4) the process and procedures for forming legislation (verfahren der ausarbeitung der regeling); and (5) these activities must be carried out systematically so that they are applicable and competent both philosophically, sociologically, politically, and legally.

Hans Nawiasky developed a theory known as the Stufenbau theory in his book "Algemeine Rechtslehre" which states that legal norms are layered, hierarchical, and grouped. Hans Kelsen states that: "The legal system is a tiered system with a hierarchical method, where the lowest legal norm must adhere to a higher legal norm, and the highest legal method (such as the Constitution) must adhere to the most basic legal norm (grundnorm)."

Hans Nawiasky categorised legal norms into four broad categories: (1) staats fundamental norms; (2) statues grund gezets; (3) formal laws (Formeel gezets); and (4) implementing regulations and autonomous regulations (Verordungen and Autonome satzung). Group norms are an integral part of the legal system in every country, although the terminology and number of norms may vary from group to group. In Indonesia, the normative foundation of the state is Pancasila, which should guide policymakers in designing legal regulations. Based on this theory, Legislation includes rules issued by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, parallel agencies, institutions, or commissions, which must not contradict higher Legislation.

Feminist Legal Theory
It is a theoretical framework that critically examines the legal system through the lens of gender inequality and seeks to address and remedy the injustices faced by women. It analyses how laws and legal institutions perpetuate gender-based discrimination, and advocates for gender equality and women's rights in the legal sphere. Feminist jurisprudence emerged in the 1960s as part of the broader feminist movement. It challenged traditional legal theory that often ignored women's experiences, concerns, and needs. The theory highlights the pervasive influence of patriarchy in the legal system, recognising that laws and legal institutions are often designed to maintain male dominance and privilege. Feminist legal theory has made significant contributions to legal
scholarship and practice. It has helped expose the gender biases inherent in the legal system and influenced the development of gender-sensitive laws and policies.

Feminist jurisprudence has inspired legal reforms around the world. Many countries have implemented laws that address gender-based violence, employment discrimination, and reproductive rights. For example, "The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international treaty that promotes gender equality and non-discrimination in various spheres of life". Feminist jurisprudence has played an important role in exposing and challenging gender bias in the legal system. By advocating for gender equality and women's rights, it has encouraged legal reform and fostered a more inclusive and equitable legal landscape. While progress has been made, the fight for gender justice continues. The continued application and evolution of feminist jurisprudence is crucial in creating a more just and equal society for all.

RESEARCH METHODS

The problem-solving approach is a technique that is often used in solving a legal problem. The purpose of this approach is to solve research or writing problems. In the context described above, a normative juridical research approach will be used to analyse comprehensively and thoroughly. This approach involves legal research conducted by studying laws and literature that support answering the problems being discussed. In this legal research, the author uses several types of legal materials, including primary and secondary legal materials.

1. Primary legal materials refer to legal materials that play a major role or are the main basis for writing this research. In this legal research, the primary legal materials used consist of "The 1945 Constitution, Law Number 7 of 2017 concerning Elections, and PKPU Number 10 of 2023 concerning Amendments to KPU Regulation Number 7 of 2022 concerning the Compilation of Voter Lists in the Implementation of General Elections. Election Information System and Voter Data."

2. Secondary legal materials are sources of supporting legal materials in analysing a problem. Such secondary legal materials can come from books, journals, documents related to the issues being discussed, and relevant sources of information from the internet.

The analysis used by the author uses a qualitative descriptive approach, which is a technique/method that serves to briefly describe the problem to be studied based on analyses that are tested with norms, principles, and regulations that are related to the legal material being reviewed.

RESULTS AND DISCUSSION

Juridical analysis of Article 8 paragraph 2 of General Election Commission Regulation Number 10 of 2023

Affirmation action is an effort to provide equal opportunities and positions to women to fulfil their roles in the public sphere (executive, legislative, judicial, party, and electoral). Regulations on the principle of affirmation action, also known as the quota system for women's representation,
emerged as a response to the dissatisfaction of various parties. This can be seen from concerns about the proportion or percentage of women in the legislature, political parties, party activists, executive, and judiciary.

The era of reform and democratisation, along with the implementation of regional autonomy, became an important period for women in the regions to actively contribute to determining the direction of democracy in national life. Previously, women tended to be objects influenced by the decisions of others, often facing adverse impacts. Often women's presence is at a disadvantage, with low status and limited access to decision-making processes, as well as opportunities for self-actualisation. In the public sphere, whether in the social, economic, political, human rights protection or legal contexts, women often do not benefit equally in terms of opportunities, resources, development, and even become vulnerable to violence, human rights violations and the law.

Women are often victims of constructions of gender roles that are influenced by various social and cultural factors, including religion and its interpretations. Throughout history, women have been objects in an ever-changing political game. This social construction makes it difficult for women to actively participate in political parties. Although the women's movement is often involved in public issues such as the struggle for independence and regime change, when entering the political arena and public positions, women are again often ignored and marginalised. The subordination of women in the political sphere is also caused by the patriarchal political culture that becomes a reference in the political process. This can be seen in Muhamin's thoughts in (Sri Warjiyati, 2016: 7) who argues that:

"Political culture essentially revolves around the imagination (thoughts and emotions) of the individual, which forms the basis of all actions. These actions are guided by the values that have developed in citizens, both as individuals and as groups. These values, supported by tradition, form a political culture. Indonesia's socio-culturally diverse society has a distinctive political system due to the unique role of the military. The military regime exhibits a masculine style, which permeates the formal political culture and ethos. This political culture and ethos is characterised by a masculine lifestyle, which ultimately leads men to formulate political rules in accordance with male values and norms."

Recently, the General Election Commission issued a regulation that has been in the public spotlight due to a controversial article, namely Article 8 paragraph 2 which reads:

If the calculation of 30% (thirty per cent) of the number of female Candidates in each Dapil results in a fractional number, then if two decimal places behind the comma are worth:

a. less than 50 (fifty), the calculation result is rounded down; or
b. 50 (fifty) or more, the calculation results are rounded up."

Based on the General Election Commission Decree Number 352 of 2023 concerning Technical Guidelines for the Submission of Candidates for Members of the House of Representatives, Provincial House of Representatives, and Regency / City Regional House of Representatives, there is a Simulation of Calculation of Affirmation action in the List of Candidates for Members of the House of
Representatives, Provincial House of Representatives, and Regency/City Regional House of Representatives.

<table>
<thead>
<tr>
<th>No.</th>
<th>Number of Candidates</th>
<th>30% Calculation</th>
<th>Rounding</th>
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<td>0,30</td>
<td>0</td>
</tr>
<tr>
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<tr>
<td>12</td>
<td>12</td>
<td>3,60</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: KPU Decree No. 352 of 2023

Simulation Example:
- The electoral district obtained 4 seats.
- Female quota 30% x 4 = 1.2
- Rounding down, then the female quota is 2 people

Whereas in the old regulation, namely Article 6 of KPU Regulation number 20/2018 concerning Nomination of Members of the DPR, Provincial DPR, and Regency/City DPR:
"(1) Each Political Party may nominate candidates for members of the DPR, Provincial DPRD, and Regency/City DPR, provided that:
   a. proposed by the Leader of the Political Party according to its level;
   b. the number of candidates is at most 100% (one hundred per cent) of the number of seats determined in each Dapil;
   c. compiled in a list of candidates that must contain women's representation of at least 30% (thirty per cent) in each Dapil;
(2) In the event that the calculation of 30% (thirty per cent) of the number of female candidates in each Dapil results in a fractional number, rounding up is carried out.

Simulation Example:
- The electoral district obtained 4 seats.
- Female quota 30% x 4 = 1.2
- Rounding down, then the female quota is 2 people

In this case, it will raise a problem regarding PKPU Number 10 of 2023 which is based on the simulation that 1 person from the 4 seats is only 25%, meaning that it is less than the minimum of 30%. In this case, it is contrary to Article 245 of Law Number 7 Year 2017 which reads:
"The list of candidates as referred to in article 243 contains women’s representation of at least 30% (thirty per cent)"

Article 245 should be the main guideline in the nomination stage for legislative members. So that at this stage, it is considered a step backwards in terms of democracy. This alleged setback covers various aspects of the implementation of elections, ranging from regulations to the preparation of regulations that are not in accordance with public aspirations. In addition, the processes and mechanisms applied in organising elections are also in the spotlight in this case.

PKPU Number 10 Year 2023 not only contradicts Article 245 of Law Number 7 Year 2017, but also does not provide clarity regarding the implementation of the zipper system as stipulated in Article 246 paragraph (2) of Law Number 7 Year 2017 and its explanation which states: “In every 3 (three) candidates there shall be at least 1 (one) woman”. Furthermore, the explanation of the article a quo confirms “In every 3 (three) candidates, female candidates can be placed in the order of 1, and/or 2, and/or
3 and so on, not only at serial numbers 3, 6 and so on.” The update of Law No.7/2017 that ensures the placement of female candidates in a small sequence number is a follow-up to the Constitutional Court Decision No.20/PUU XI/2013.

However, KPU Regulation 10 Year 2023 only adopts the provisions of Article 246 paragraph (2) of Law No. 7 Year 2017. KPU as the executor of the Law ignores the provisions of the explanation of Article 246 (2) of Law No. 7 Year 2017. In this case, it causes losses for women candidates who have been affirmed in their political rights by the Constitution of the Republic of Indonesia, Constitutional Court Decision No.20/PUU XI/2013 and the Election Law. According to A. Hamid S. Attamimi, there are several factors that cause the content of the law to conflict with the 1945 Constitution, including the determination of content that is not in accordance with existing guidelines, namely: 1) the provisions in the 1945 Constitution, 2) based on the principle of state law (rechtstaat), and 3) based on the principle of constitutional government.

The General Election Commission (KPU) regulation is a binding regulation because it is part of the legal system and hierarchy in this country. This can be analysed by referring to Law Number 12/2011 on the Formation of Legislation. Although KPU regulations are not explicitly mentioned in Article 7 paragraph (1) of Law Number 12 Year 2011, the juridical basis can be seen in the next paragraph, namely Article 8 paragraph (1) which reads, “Types of laws and regulations other than those referred to in Article 7 paragraph (1) include laws and regulations stipulated by the People’s Consultative Assembly, People’s Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministers, institutions, agencies, or equivalent commissions established by law or the Government by law, provincial DPRD, Governors, district/city DPRD, regents/mayors, village heads or equivalent positions.”

The crucial position of KPU regulations in the implementation of each technical stage of the election requires that every provision contained in KPU regulations must be comprehensive, detailed, and most importantly, in line with other laws and regulations. The importance of harmonising KPU regulations with other regulations is an absolute necessity because regulations related to the implementation of elections cannot stand alone but require the foundation of other regulations. The four consequences arising from the disharmony of KPU regulations with other laws and regulations in the example above are as follows:

1. Technical differences in interpretation;
2. Leads to legal uncertainty;
3. Less productive and efficient implementation of legislation;
4. Legal dysfunction/failure, which means that the law cannot direct people’s behaviour, social control, resolve conflicts, and become an organised and structured instrument of social change. (Mahendra, 2010).

The Dynamics of Affirmation Action in the Legislature

The KPU regulation that deviates from the law above it is also inseparable from political dynamics. Until now, politicians have often shown interests that
are not related to maintaining and implementing the sacred principles of democracy and the aspirations of the people. Instead, they are more interested in self-justification and satisfying desires related to gender issues, competition and power sharing. When the issue at hand is related to political office such as becoming a legislator, the dominant political focus is not on the interests of the people based on the principle of equality, but rather on the goal of obtaining the position. This situation can be seen, for example, in the case of elections for the legislature, from the process of selecting candidates to the conduct of elections. At each of these stages, what is evident in the words, attitudes and behaviour of politicians is a focus on competition that prioritises ambition to achieve a position, rather than strengthening the people's vision and mandate.

So this is still a problem for the country itself to be able to increase women's representation. In the 2019-2024 DPR RI, there are only 123 women in the DPR RI or around 21.39%. Normatively, Article 8 of the KPU Regulation deviates from the law above it. However, empirically, the position of women in the legislative body for the 2019-2024 period did not reach 30%. Despite not reaching the 30% representation target, women's involvement in political decision-making is a key element in creating more inclusive and substantial decisions. Increasing the number of women in parliament is not just about numbers, but should also show a commitment to fight for women's issues seriously. At the local level, women's political participation has also not shown substantial progress. For example, in East Java Province, out of 38 districts/cities, there are 17 or 45% of regions that do not yet have a Regional Regulation on Gender Mainstreaming. In this case, there is still a gap in women's participation and representation in formal political structures.

Based on data from the Women's Political Caucus in East Java in (Sri Warjiyati, 2016: 20), it can be concluded that several issues regarding women's political participation are still problematic. "First, there is a reluctance of certain political parties to recruit women in accordance with the 30% quota, so that some women who are recruited as legislative candidates by certain parties are placed in unfavourable positions. Secondly, it is evident that many women are not ready to enter politics because of their low level of education and inadequate knowledge about politics. Third, there is a tendency among women to consider politics as the exclusive domain of men so that it is taboo for women to participate. Thus, in relation to women's representation, political party policies determine the success of affirmation action in the legislature."

In fact, the implementation of the quota for female candidates is not supported by the political system itself or the internal efforts of political parties to foster and prepare their members to fulfil the 30% affirmation action requirement. As a result, in elections, the selection of female candidates is only limited to fulfilling the quota, and political parties seem to have minimal efforts in determining potential female candidates. There is still no convergence between the quota mandated by the law and the party's efforts to improve the quality of women's human resource development. The assumption that gender and politics must be based on the principle of equality reflects the rationality of recruiting male and female candidates in political parties,
because in general there is no difference. Political parties recognise that the obligation to ensure 30% women's representation is not an easy task, because so far almost all political parties have not optimally recruited female cadres who have consistently succeeded in being elected as board members. Providing female representation is recognised as a challenging recruitment mechanism experienced by political parties. To dispel the notion that this affirmative regulation is a heavy burden for political parties, each political party must voluntarily implement a gender quota in the candidate selection process.

There are 3 (three) arguments that affirmative action is needed to encourage affirmative action in parliament. First, structural intervention is needed as an emergency measure to quickly address gender inequality in various fields. Second, in the political arena, the low representation of women in the legislature requires the application of quotas to increase the number of women in parliament. Third, women's life experiences have a unique value that is felt and has the potential to give birth to a different approach. Based on empirical facts, there are still many legislative products that do not favour women due to the lack of women's representation in both the DPR and DPRD at the provincial, district and city levels. In response to the mandatory nature of affirmative action, political parties need to formulate policies on the position of women in their party structures and platforms. They must also pay attention to party programmes related to women's empowerment and gender issues. In addition, political parties must formulate policies and strategies to prepare women candidates in the process of recruiting candidates for legislative positions. Identifying the challenges faced by women politicians and helping to find solutions to these problems is also important. The obligation of political parties to fulfil the 30% quota should not be the ultimate goal of affirmation action. Instead, political parties should focus more on the quality of women candidates who will sit in parliament. This ensures that the elected female candidates truly have the qualities to represent the people, understand their duties and responsibilities, know the steps to take for the advancement of women, and become legislators who channel aspirations and advocate for women's rights and interests.

POLICY IMPLICATIONS AND RECOMMENDATIONS

Recommendations related to PKPU that conflict with the regulations above are as follows:

1. The Chairperson of the KPU must conduct a thorough evaluation of PKPU Number 10 Year 2023 to identify specifically where the discrepancies with Article 245 of Law No.7 Year 2017 lie.
2. Involve legal experts in the PKPU correction and adjustment process to ensure that the revisions comply with applicable legal principles and do not create legal uncertainty.
3. Conduct transparent publications and education to stakeholders regarding the changes made to the PKPU. This is important to provide a clear understanding and prevent confusion or uncertainty regarding the implementation of the KPU regulation.
4. It should involve multi-stakeholders, including relevant government
agencies and the general public, in the process of evaluating, correcting, and implementing the revised PKPU. Thus, the process can be more inclusive and gain wider support.

CONCLUSION
The formation of a series of laws must have a high legal basis guideline and a law that has a high degree is the final basis in the formation of a series of laws. The existence of PKPU Number 10 of 2023 that the content material in the regulation shows the uncertainty of the stipulation of PKPU No.10/2023 has a broad impact on the implementation and protection of women's political rights to participate as candidates for DPR and DPRD members. However, empirically, the establishment of a 30% affirmation action quota in the legislative field is still problematic, especially within political parties. The goals of political parties need to be aligned with the goals of affirmative action as affirmed in the electoral regulations regarding the 30% affirmation action obligation. This is more than just fulfilling the quota of female candidates. The establishment of the women's quota must be a driving force for political parties to produce qualified female cadres and prepare potential female candidates who can compete in elections to garner support as representatives of the people in parliament, to voice the interests and aspirations of women.

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REFERENCES


Samosir, Daniel. "Factors That Cause the Material Content of the Law Contrary to the 1945 Constitution."
https://doi.org/10.31078/jk1246.
https://doi.org/10.15642/ad.2016