

Juridical Review of KPU Regulation Number 10 of 2023 on Women's Representation in Parliament

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Abstract

Women's representation in Indonesian politics is part of the journey of democracy and the protection of minority interests. The KPU, as the institution responsible for organizing elections, some time ago the KPU issued a new regulation on women's representation contained in PKPU No. 10 of 2023 concerning Women's Representation, which regulates the mechanism for rounding fractional numbers so that it can reduce women's representation if the calculation results are less than 50%. This is contrary to the Election Law, which requires at least 30% female representation. This KPU regulation creates uncertainty and the potential for a reduction in the number of women, which can be detrimental to women's rights. This study analyzes the position of PKPU No. 10 of 2023 concerning Law No. 7 of 2017 and the perspective of *siyasaḥ dusturiyah*; Regulations made by the authorized institutions emphasize that lower regulations must be subject to higher regulations and must prioritize the interests of the people. This article is based on articles and regulations governing women's representation. This research is qualitative research with a normative juridical approach, to facilitate data search as literature research through laws, journals, legal dictionaries, and others. As a result of this study, it can be concluded that PKPU No. 10 of 2023 is contrary to Law No. 7 of 2017 and should be revoked to ensure that women's rights are fulfilled under the principles of justice and equality in politics.

Keywords: Representation of Corruption; Elections; Parliament; Democracy.

Introduction

The role of women in politics to the government is very important to take a public policy so that women can channel their aspirations through their presence in parliament (Isnaini Rodiyeh, 2016). The government gives a quota to 30% of women in parliament as regulated based on Law No. 7 of 2017 concerning Elections, Article 245 states that "*The list of prospective candidates as referred to in Article 243 contains at least 30% (thirty percent) female representation.*" Based on the provisions contained in the article, it can be interpreted that every political party must involve at least 30% of the role of women to be included in parliament (Keep Adriadi, 2019).

Regulations in Law No. 7 of 2017 concerning Elections if a political party does not meet the 30% requirement, it will be declared disqualified and disqualified from the election (Surface Light Conquest, 2024). The involvement of women in parliament

is very clear that every political party must meet the requirements without exception. KPU as an institution that will running and ordering each political party in order to meet the requirements of the women's coalition as much as 30% in accordance with the Election Law.

However, in preparing for the 2024 elections, the KPU issued a new regulation related to women's representation in parliament contained in PKPU norm No. 10 of 2023 Article 8 Paragraph 2 which reads: "*in the event that the calculation of 30% (thirty percent) of the number of prospective female candidates in each Dapil produces a fractional number, then if the two decimal places after the comma are valued: a. less than 50 (fifty), the results of the calculation are rounded down; or b. 50 (fifty) or more, the results of the calculation are rounded upwards*".

The calculation of a quo decimal after a comma of less than 50 results in a setback in the fulfillment of the quota of women's representation as stated in the Election Law of at least 30% related to women's representation for each candidacy in parliament (Akbar Kurniawan 2023). However, we can see that the regulations made by the KPU are not in line with the hierarchy above. PKPU No. 10 of 2023 concerning Women's Representation states that it does not have to be 30%, while Law No. 7 of 2023 concerning Elections requires at least 30% without exception. According to Aldolf Merkl explained that in the regulatory framework, a norm always comes from the norm that is above so that the norm below it depends on the norm above it (Maria Farida, 1998).

Ideally, the KPU must comply with the regulations contained in the Election Law and must not contradict it as long as the Election Law is in force. With this problem, the researcher is encouraged to study this problem further to answer the following questions: (1) What should be the position of PKPU No. 10 of 2023 concerning Women's Representation towards Law No. 7 of 2017 concerning Elections? If it is linked to the *siyasah* regarding laws and regulations contained in the *siyasah dusturiyah* in making a rule, then the researcher draws the problem in order to be able to answer (2) What is the view on PKPU No. 10 of 2023 concerning Women's Representation in the perspective of *siyasah dusturiyah*?. With the above statement, the researcher hopes to be able to explain from these two problems.

This study aims to explain: (1) How ideally a regulation is not in line with the hierarchy above it; (2) How is a regulation that violates the above rules from the perspective of *siyasah dusturiyah*. In this study, the researcher saw problems related to women's representation that did not exist before, which was contrary to the Election Law. Therefore, this problem is interesting to study further.

The researcher has an argument that the enforcement of PKPU No. 10 of 2023 is invalid and should not be carried out by the KPU. Regulations related to women's representation contained in Law No. 7 of 2017 concerning Elections, which requires 30%, cannot be challenged because the Election Law is a hierarchy that is valid in the eyes of the law, while PKPU No. 10 of 2023 concerning Women's Representation is

under the auspices of Law No. 7 of 2017 concerning Elections. The KPU should be subject to the regulations contained in the Election Law, so that PKPU No. 10 of 2023 concerning Women's Representation is revoked and cannot be enforced.

Discussion of regulations related to the quota of women's representation in parliament can be found in several works. First, Ogie Nuggraha in his research reviewed "Distortion of Women's Representation Through Article 8 Paragraph (2) PKPU No. 10 of 2023." Ogie Nuggraha explained that to fulfill the quota of 30% female representation in the political world, especially to the legislature, there should be no setback from the previous policy (Ogie Nuggraha, 2023). Second, Akbar Kurniawan's work in his article entitled "Questioning the KPU's Follow-up Regarding the 30% Female Representation in the Candidacy of Legislative Members After the Supreme Court's Decision." Akbar Kurniawan in his work explained that the consideration of PKPU is not in line with the concept of equality for women's representation because rounding behind the comma reduces the quota by 30% for women's representation so that violations of the Election Law (Akbar Kurniawan, 2023).

Yuliana Fatmawati's writing in her article entitled "Women's Involvement in Parliament from the Perspective of Mashlahah Mursalah." Yuliana Fatmawati explained that democracy will not be complete if women's involvement does not exist in the political area, so the provision of special quotas for women is in order to achieve equality of political status so that patriarchs who prioritize men do not arise. The calculation model of the new regulations made by the KPU will cause many stakeholders in the future and cause inequality towards women in the political world (Yuliana Fatmawati, 2024).

Viewed from the perspective of *Siyasah dusturiyah*, there are several papers such as Jefri entitled "Regional Regulation No. 7 of 2017 concerning Nagari Regarding the Density of Nagari Customs: *Siyasah dusturiyah* Perspective." In his work, he explained that Regional Regulation No. 7 concerning Nagari regarding the density of Nagari Customary which consists of *from Niniak Mamak, Alim Ulama, Cadiak Pandai, Bundo Kandung and Parik Paga Nagari*. The three members have their own duties that must not conflict with each other in making rules. If it is linked to the perspective of *siyasah dusturiyah*, the duties and institutional functions in the Nagari Customs which are in accordance with Sulthah al-tasyri'iyah as a legislative power in an Islamic country that makes and sets laws is Niniak Mamak who makes regulations in the Nagari Customs then followed by Alim Ulama, Cadiak Pandai, Bundo Kandung and Parik paga Nagari. The rules that have been made or set by Niniak Mamak must not contradict others because the position of Niniak Mamak in the perspective of *siyasah dusturiyah* has the same authority as Sulthah al-tasyri'iyah as a high institution for state affairs whose provisions are already contained in the Qur'an and Sunnah (Jefri, 2022).

Fizay Muhammad Faozan's article entitled "Juridical Analysis of the Prerequisites for the Formation of the KPU and Bawaslu Selection Team in 2022 from

the Perspective of *Siyasah dusturiyah*," explains Presidential Decree No. 120/P of 2021 regarding the requirements for the formation of a selection team for prospective members of the KPU and Bawaslu. Faozan criticized that this Presidential decision is not in accordance with Law No. 7 of 2017 Article 22 Paragraph 3, which regulates the composition of the selection team, namely 3 government elements, 4 academics, and 4 members of the community. According to Faozan, the President's decision ignores the provisions in the Election Law, thus opening up opportunities for group interests that can cause collusion and nepotism between prospective Bawaslu members and the selection team. In the perspective of *siyasah dusturiyah*, a leader's policy must be based on the benefit, which prioritizes justice and trust in accordance with the law, so that no citizen's rights are harmed (Fijzai Muhammad Faozan, 2023)

This article is divided into three parts. First, the introduction includes the background, problem formulation, objectives, literature review, article systematics and research methods. Second, discussing the theoretical part regarding the position of PKPU No. 10 of 2023 concerning Women's Representation towards Law No. 7 of 2017 concerning Elections and how the view of PKPU No. 10 of 2023 concerning Women's Representation in the perspective of *siyasah dusturiyah*. Third, the concluding part in the form of the core conclusion of the end of the problem that has been presented from the entire discussion.

Research Methods

In conducting a research, of course, a researcher has a useful research method to simplify, formulate and design a research. This research is a type of research using a qualitative research method with a normative juridical approach as a literature material and secondary material to make it easier to find data and can be accounted for (Kornelius Benuf, 2020). Data is collected through laws and regulations related to women's representation, review of documentation of books, journals, theses, fiqh books, legal dictionaries, along with the opinions of experts and others.

Results and Discussion

KPU and Women's Representation in Parliament

The General Election Commission is an institution that has a legal responsibility to hold elections. The KPU plays an important role in formulating rules related to general elections based on the Election Law. The responsibility of the KPU in making regulations aims to achieve democratic goals in the community (Mhd. Taufiqurrahman 2022). In preparing for elections, political parties must follow the rules applicable in the KPU regulations for the election of parliamentarians and other requirements.

The implementation of elections in the context of elections is certainly familiar with the presence of women's representation in parliament. Women's representation is an aspiration from various circles in society so that the interests of minorities can be

protected. With the presence of women in parliament to channel their aspirations into the world of politics, a quota of 30% is given to be nominated to each parliament by each political party. The implementation of elections related to the role of women in parliament has certainly been regulated in KPU regulations in accordance with the applicable election law. Therefore, the provision of quotas to women as much as 30% has been regulated based on Law No. 7 of 2017 concerning Elections. The involvement of women in parliament is also useful to boost the existence of women in the political world, so it is important to voice their opinions and not be separated from the public sphere (Regita Aulia Putri 2022).

Position of KPU Regulation No. 10 of 2023 Concerning Women's Representation in Parliament

In the context of general elections in Indonesia, people have the right to vote as representatives of the people, especially in the legislative realm. The people have the right to legitimize legislative candidates, one of which is by presenting women in parliament. Women have the right to fight for their rights without discrimination. Women's representation is an important concern in the government so that women's representation is one of them through policies *affirmation action* (Oriza, Rania Putri, 2013). Action *Afirmation action* It is very influential to get women's rights in the legislature, so that women's regulations can be guaranteed in parliament (Andi Aulia Nabila 2019).

In the implementation of the 2024 election regarding the regulation of women's representation in parliament, the KPU will implement the rules for women's representation that have been regulated based on Law No. 7 of 2017 concerning Elections. Women's representation must reach a maximum of 30% at least. This applies as long as there are no changes to Law No. 7 of 2017 Article 245 which states that: "*The list of prospective candidates as referred to in article 245 contains at least 30% (thirty percent) female representation.*" The KPU must adhere to the implementation of these regulations, to ensure the provision of women's quotas in every political party. The KPU, as a state administrative institution, has the authority to attributively make its own regulations on election regulations (Dir: Siti zuhro 2019).

KPU regulations do not need to be approved by the DPR, because KPU regulations only regulate the technicalities of election organizers. Therefore, the KPU is not allowed to regulate something that can limit a person's rights. Restrictions on a person's rights must be based on applicable law (Hananto Widodo 2021; Erick & Ikhwan 2022). The KPU cannot make regulations that are not in line with the law, even though the KPU is an independent institution.

However, in preparation for the 2024 elections, the KPU issued a new regulation on women's representation in parliament, which is contained in PKPU norm No. 10 of 2023 Article 8 paragraph (2) which reads: "*in the event that the calculation of 30% (thirty percent) of the number of prospective female candidates in each constituency produces a*

fractional number, then if the two decimal places after the comma are valued: a. Less than 50 (fifty), the results of the calculation are rounded down; or b. 50 (fifty) or more, the results of the calculation are rounded upwards." Downward rounding that results in a number of less than 50 has regressed which causes less than 30% to cause confusion with the previous regulations.

Based on Law No. 7 of 2017 concerning Elections, which requires 30% in each political party, there is a discrepancy with the regulations that have been made by the KPU, thus creating a gap in the restriction of women's rights. The enactment of PKPU No. 10 of 2023 concerning Women's Representation, related to the fractional number, rounding the fractional number after the comma reduces women's representation to less than 30% of women's representation. Regulation of Law No. 7 of 2017 concerning Elections stipulates that each legislative candidate who will be a candidate has a total of 3 (three) names, so one of them must have female representation (Aisyah Putri Budiatri 2011). However, if referring to PKPU No. 10 of 2023, the rounding down system can eliminate women's representation in parliamentary seats.

The General Election Commission is only positioned as an institution that implements regulations, so the implementing regulations must be subject to higher regulations, namely the Law (Dedi Sumanto, 2020). With the regulations issued by the KPU, the public and political parties feel confused in following the regulations that should be followed. The KPU does not require regulations to reach 30%, even though in the Election Law, women's representation must reach 30%. As a result, the regulations issued by the KPU cause confusion in the community.

Law No. 7 of 2017 concerning Elections has a higher position than PKPU No. 10 of 2023 concerning Women's Representation. Therefore, the Election Law cannot be challenged by lower regulations, because it has the force of law as a higher regulation. The regulations under it must follow the provisions set by the higher regulations. Therefore, PKPU No. 10 of 2023 concerning Women's Representation should be invalid and cannot be enforced as long as the Election Law is still in effect.

Supreme Court Decision Against PKPU No. 10 of 2023 concerning Women's Representation in Parliament

The Supreme Court has the authority to examine laws and regulations that are under the Law, which are inseparable from the authority to examine the Constitution. This is a consequence of the hierarchy of laws and regulations that must not conflict with higher laws (Saldi Isra 2015). Hans Kelsen is of the view that a norm that is below will apply, be based on, and be sourced from a higher norm (Michael Frans Berry 2018). In Hans Kelsen's view, it can be interpreted that a norm cannot be implemented if a lower regulation is contrary to the legislation which is a norm with a higher level (Bambang Antariksa, 2017). Therefore, the Supreme Court adheres to maintaining and enforcing hierarchical norms in accordance with the provisions of the Constitution.

The Supreme Court, some time ago, after approaching the 2024 elections, conducted a material test of PKPU No. 10 of 2023 Article 245 of the Elections. This stems from the a quo problem related to the downward rounding system contained in PKPU No. 10 of 2023 Article 8 paragraph (2) which reads: "*in the event that the calculation of 30% (thirty percent) of the number of Prospective Female Candidates in each Dapil results in a fractional number, then if the two decimal places after the comma are valued: a. Less than 50 (fifty), the result of rounding down; or b. 50 (fifty) or more, the results of the calculation are rounded upwards.*" With the regulation regarding rounding down to the decimal fraction number after the comma with a value of less than 50, it does not reach 30% for women's representation in parliament.

In Supreme Court Decision Number 24/HUM/2023, it provides a great opportunity for a material test related to PKPU No. 10 of 2023 concerning Women's Representation which states that it is contrary to Law No. 7 of 2017 concerning Elections. The Supreme Court ordered the KPU to revoke the rule made by the KPU regarding women's representation which does not have to reach 30%. However, the KPU only followed up by providing an official letter as a request to political parties through a letter numbered 1075/PL.01.4-SD/05/2023. Supposedly, the Supreme Court's decision is not only limited to an official letter, but the KPU must cancel PKPU regulation No. 10 of 2023 concerning Women's Representation, because the official letter does not have permanent legal force, while the Supreme Court's decision is final and has permanent legal force (Akbar Kurniawan, 2023). Therefore, the revocation of the norm in PKPU article 10/2023 needs to revise the rules, so as to provide legal certainty for women's representation and adhere to Law No. 7 of 2017 concerning Elections as a higher level regulation.(See Map 2021)

KPU Regulation No. 10 of 2023 concerning Women's Representation in the Perspective of *Siyasah dusturiyah*

Siyasah dusturiyah, is a branch of science *fiqh siyasah* which discusses the issue of state legislation, in this section has several discussions in the form of constitutional concepts, legislation as the formulation of laws, democratic institutions, and *Shura* which is an important pillar in the making of a Law (Muhammad Iqbal 2014). *Political motto* consists of 2 words, namely *siyasah* and *dusturiyah*. Word *siyasah* Starting from the word *Sasa* which has the meaning of managing, regulating, governing or governing. According to Abdul Wahab, Khallaf *siyasah* is a law and regulation that was created to preserve the benefit and regulate a situation(Abdul Wahab Khalaf, 1994). While the word *dusturiyah* comes from the Persian word, which is *dusturi* who has the meaning of someone who has abilities in the field of politics and religion. In terminology, *siyasah dusturiyah* is a rule that regulates the relationship between the community and the government as representatives of the state, both written (constitutional) and unwritten. (Lubis, 2019)

Fiqh siyasah dusturiyah The scope is very wide. Therefore, restrictions are made that only discuss the regulations and laws demanded by state affairs, based on the conformity of religious principles that are beneficial to mankind (Miftahol Fajar Sodik, 2021). The power of legislation (the formation of laws and regulations) is called *As-Sulthah al-Tasyri'iyah*, The implementation is carried out by *Alh al-hall Wal Aqd*. They have the authority to make and establish a law in Islamic government (Alia Noor Afdhalina, 2021). Determination of a law made by an institution *As-Sulthah al-Tasyri'iyah* As a lawmaker, it must be based on the provisions of Allah SWT, which is taken from the nash (Al-Qur'an and Hadith), to form laws that will be applied in society for the benefit, in accordance with Islamic teachings.

According to Al-Maududi, *Ahlu ahalli wal Aqdi* who carry out the duties of *This-Sulta Tasiri'it*, which has the authority to implement regulations in the formation of legislation and also as a fatwa issuing institution. They have the authority to decide and determine something over the people, and have the authority to choose a caliph (Suyuti Pulungan, 2022). The Caliph, in carrying out his duties, must be based on the authority of the *Ahlu ahalli wal Aqdi*. The Caliph also cannot replace his position without the approval of the *Ahlul Ahalli wa Aqdi*, And the caliph must also submit and obey the authority possessed by the *Ahlul Ahalli wal aq*(Lubis 2019)at.

Thus, when making legislation by institutions *As-Sulthah al-Tasyri'iyah* run by *Alh al-hall Wal Aqd*, so *Alh ah-hall Wal Aqd* In choosing a caliph, they must obey and submit to the regulations legislated by the *As-Sulthah al Tasyri'iyah*, which is the institution with the highest position in making laws and regulations. So that *Alh ah-hall Wal Aqd* which is positioned as an institution that carries out the duties of *As-Sulthah al-Tasyri'iyah* cannot be in conflict with the regulations legislated by the *As-Sultah al-Tasyri'iyah*, which refers to the benefit of human beings in accordance with the teachings of Islamic sharia (See Ed. Saputra, 2021).

The regulations set by *As-sulthah al-Tasyri'iyah* must prioritize the benefit in accordance with Islamic law. Related to PKPU No. 10 of 2023 concerning Women's Representation, this policy must be in line with the principle of *tasharruful imam 'ala ra'iyah manutun bil maslahah*, which requires the leader's policy to bring benefits (Juwita Rahayu Manurung, 2023). However, if the KPU regulation is contrary to Law No. 7 of 2017 concerning Elections, it can harm the rights of citizens and is not in accordance with the principle of *siyasah dusturiyah* which guarantees the rights of citizens through the constitution.

The above problem, if associated with the regulation made by the KPU regarding women's representation in parliament, is contained in KPU Regulation No. 10 of 2023 concerning Women's Representation, which regulates rounding down and does not require 30%. Therefore, this PKPU regulation must first prioritize Law No. 7 of 2017 concerning Elections, which requires 30% for each political party, because the law has a higher position compared to PKPU No. 10 of 2023 concerning Women's

Representation. Therefore, the KPU regulation should not apply. However, the KPU's actions in making regulations related to the provision of women's representation quotas are not in accordance with what is stated in the law, which is one of the legitimate hierarchies in the eyes of the law. With the existence of KPU regulation No. 10 of 2023, there are citizens' rights that are harmed.

Conclusion

The General Election Commission (KPU) plays an important role in the implementation of fair and democratic elections, including in terms of women's representation in parliament. Based on Law No. 7 of 2017 on Elections, each political party is required to nominate women at least 30% of the total legislative candidates. However, in KPU Regulation No. 10 of 2023, there is a rule regarding rounding of numbers that has the potential to reduce the female representation rate to less than 30%. This has the potential to contradict the provisions in the Election Law which is higher in hierarchy. The Supreme Court's decision examined the regulation and ruled that the KPU should revoke the rule that allows downward rounding, as this is contrary to the higher Election Law. Although the Supreme Court gave a firm ruling, the KPU only issued an official letter to political parties without officially revoking the regulation, which created legal uncertainty.

In the perspective of *siyasah dusturiyah*, which prioritizes the benefit of the people and justice in legislation, KPU regulations that are contrary to the Election Law should not apply. The government, in this case the KPU, must ensure that every regulation made supports the principle of justice and does not harm the rights of citizens, especially women's rights to participate equally in politics. Overall, KPU regulation No. 10 of 2023 needs to be evaluated and adjusted to be in line with the Election Law which strictly regulates women's representation, in order to ensure that women's rights in the political world are well protected.

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