

**LEGAL ANALYSIS OF IMPLICATIONS CONSTITUTIONAL COURT DECISION
NO.60/PUU-XXII/2024 ON SIMULTANEOUS REGIONAL HEAD ELECTIONS AND
DEMOCRACY**

Muhammad Ihza Yuris Setiawan

Program Studi Sarjana Ilmu Hukum, Fakultas Hukum, Universitas Muhammadiyah Surakarta

E-mail: C100210147@student.ums.ac.id

Labib Muttaqin, SH, MH

Program Studi Sarjana Ilmu Hukum, Fakultas Hukum, Universitas Muhammadiyah Surakarta

E-mail: lm812@ums.ac.id

ABSTRACT

Constitutional Court Decision Number 60/PUU-XXII/2024 which has urgency for the implementation of the 2024 Pilkada. This study aims to determine the implications of the Constitutional Court Decision on regional head elections and democracy and how judges consider in deciding the decision. The approach used is the Statute Approach which conducts a review of laws and regulations related to the legal issues being studied. This type of research is juridical-normative research, juridical research that examines legal perspectives based on statutory regulations, and normative research to find legal regulations, and legal doctrines that are useful for answering existing issues. The data collection process is carried out by collecting primary legal materials, secondary legal materials, and non-legal materials through library research or searching for information on the internet. The data obtained is then collected to ensure its validity. The results of the study show that based on the considerations of the Panel of Judges which states that Article 40 paragraph (1) and paragraph (3) of Law No. 10 of 2016 is unconstitutional against the 1945 Constitution, then the results of the Constitutional Court decision N0.60 / PUU-XXII / 2024 emerged, the results of which changed the nomination threshold depending on the permanent election list in each region. This decision opens the door for parties that do not have enough votes in the DPRD to be able to nominate their candidates as

regional heads as long as they meet the requirements, and equalizes the rights and requirements for candidates who are in political parties and individual candidates to be able to nominate themselves as regional heads.

Keywords: Decision, Constitution, Regional Election, Constitutional Court

INTRODUCTION

Law No. 10 of 2016 Article 40 paragraph (1) regulates that political parties or coalitions of political parties are entitled to a minimum of 20% of the number of seats in the DPRD or 25% of the number of valid votes obtained through the general election of DPRD members. The above requirement states that the regional head candidate pair can run as regional heads. Based on Article 40 Paragraph (1) it contradicts Law No. 2 of 2008 and Law No. 2 of 2011 concerning Political Parties and Article 12 letter a has emphasized that "Political parties have the right and obligation to receive similar, fair, and equal treatment by the state." [1]

Article 40 paragraph (3) explains about another way of nominating regional heads, namely with 25% which is the total valid votes obtained through the local DPRD member elections. However, the regulation does not explicitly regulate the results of the calculation into fractional nominals, as stipulated in Article 40 paragraph (2) of the Regional Election Law. Meanwhile, Article 40 paragraph (3) of Law No. 10 of 2016 even adds provisions that the accumulation of valid votes only applies to political parties that get seats in the DPRD. This provision has also been discussed for its constitutionality because it is considered not in line with the principles of democratic regional elections as stipulated in Article 18 paragraph (4) of the 1945 Constitution. [2]

The Labor Party and the Gelora Party have conducted a judicial review of Article 40 paragraph (3) of the Regional Election Law to the Constitutional Court, because the Labor Party and the Gelora Party believe that the article is not appropriate and is considered to provide less justice. Therefore, Article 40 Paragraph (3) requires that regional election candidates must be carried out by political parties and coalitions of political parties that already have seats in the DPRD. When tested with the 1945 Constitution paragraph (3), this Regional Election Law

refutes the 6 principles that have been regulated by the constitution, namely the principle of sovereignty for the people, principle of equality before the law, principle of rule of law, pdemocratic election principles, the principle of collective rights that shape society, nation and state, the principle of legal certainty based on justice. [3]

The Constitutional Court Judge's application for the verdict approved the applicants' application in part. In this context, as a judicial institution that examines constitutional issues in Indonesia, the Constitutional Court issued a decision on regional elections stating that Article 40 paragraph (1) of the Regional Election Law does not have binding legal force as intended by political parties or coalitions of political parties that are election candidates who can include candidate pairs if the requirements have been met to nominate regional heads.

The Constitutional Court's decision to approve part of the petition proposed by the Labor Party and the Gelora Party has a major impact on the procedure for nominating regional heads. The nomination limit that was lowered to small political parties obtained 6.5% - 10% in accordance with the population that has been registered as permanent voters who have a greater opportunity to nominate their partners. This decision is the same as the principle of a constitutional democratic state, where the freedom of the community to participate is recognized by the constitution.

The existence of this decision certainly has a major impact on political parties, regional head candidates, and the wider community. In addition, the Constitutional Court Decision No. 60 of 2024 on the other hand opens a large democratic door for political parties to nominate their candidates.[4] Although this change is intended to increase the participation of wider political parties, it can be considered a double-edged sword because on the one hand, the lowering of the threshold provides an opportunity for small political parties and some independent candidates to compete. However, if not accompanied by a continuous simplification of the political process, this could lead to even greater political fragmentation.[5]

This ruling also risks triggering conflict with other regulations with the same substance. It is interesting how it is interpreted in the eyes of the election system in Indonesia to realize the principles of direct, general, free, secret, honest, and fair as a benchmark for election democracy or regional elections.

Therefore, the researcher conducted a study that discussed the implications of the Constitutional Court Decision No. 60/2024 for regional elections and democracy and how judges considered the decision.

METHOD

This research uses a statute approach, which examines all laws and regulations relating to the legal issue being researched, such as:[6]Constitutional Court Decision No. 60/PUU-XXII/2024,Andusing a case study approach(*Case Approach*)Whichhas the aim of studying the legal rules and norms that have been used in carrying out legal practice.The approach used is usually related to cases that have received a decision.[7]

This type of research is legal-normative research, legal research refers to the study of legal perspectives based on statutory regulations, and normative research aims to find legal regulations and legal doctrines that are useful for answering existing issues.[8]Norms not only include positive law, but are based on rules set by government agencies and officials.[9] The data collection process is carried out by combining primary legal materials, secondary legal materials, and non-legal materials through library research or searching for information on the internet. The data obtained is then collected to ensure its validity.

RESULTS AND DISCUSSION

A. Judge's Considerations in Deciding on MK N's Decisiono.60/PUU-XXII/2024

In the application for the verdict, the Constitutional Court Judge approved the applicants' application in part. In this context, as a judicial institution that examines constitutional issues in Indonesia, the Constitutional Court issued a decision on the Regional Elections which explained that Article 40 paragraph (1) of the Regional Election Law did not yet have binding legal force. So that political parties or coalitions of political parties participating in the election in registering regional head candidates must meet the specified requirements.

In its development, the Constitutional Court Panel of Judges explained that there was a discrepancy between Article 40 paragraph (1) and paragraph (3) of Law No. 10 of 2016. Article 40 paragraph (1) provides an opportunity for parties or coalitions of parties that do not have seats in the DPRD, on the condition that the candidate candidates have won at least 25% of valid votes. However, paragraph (3) actually eliminates the opportunity because it has closed access for parties that do not have seats in the DPRD who are nominating as Regional Heads.[10]The meaning of this inconsistent approach is that the regions that have been selected through elections as explained in Article 40 paragraph (3) clearly contradict Article 28 B paragraph (1) of the 1945 Constitution which orders the State to hold regional elections by upholding the principles of honesty and justice.[2]

This article is contrary to Article 28D paragraph (1) of the 1945 Constitution, because the restriction on political parties to nominate candidate pairs in regional elections based on valid votes clearly violates the conditions referred to, is unreasonable and disproportionate. Without any guarantee of recognition and respect for the right to freedom that humans have, this system eliminates the rights of citizens to participate fairly in government.

The Constitutional Court is of the opinion that the "threshold" for political parties or coalitions of political parties in proposing regional head and deputy regional head candidate pairs becomes inappropriate if the nomination requirements through political parties are more stringent than through individual channels. Then the percentage of requirements for political parties or coalitions of political parties in proposing candidate pairs must be adjusted to the percentage of support that applies to individual candidates.[10]

B. Implications of the Constitutional Court's Decision NO.60/PUU-XXII/2024 regarding the Regional Elections Simultaneously

Elections are fundamental to democracy, enabling nations and states to achieve democratic ideals and the development of civilization. Election became a crucial momentum for the ruling regime in realizing the aspirations of an independent state.[11] Direct regional head elections are real evidence of democracy at the local level, Pilkada namely a form of sovereignty that confirms that voters are local people. The mechanism for electing regional heads at the regional level

provinces and districts/cities have the same principle, namely being directly elected by the people. [12]

When discussing democratic contestation, especially in the context of Regional Head Elections, we cannot ignore the importance of the concept of constitutional democracy. Fair and dignified democracy can only be realized from the election that carry out honestly and fairly. One of the key components of a credible election is the need for a legal system that provides freedom for all citizens to engage in political competition. This guarantee is in line with the principle of the State law as stated in Article 1 paragraph (3) of the 1945 Constitution, which places law as the main foundation.

The requirements for participating in the competition are based on legal regulations that make it easier for the public and political parties to nominate candidates for the Regional Head Election. These provisions are regulated in Article 40 paragraph (1) of Law Number 10 of 2016 concerning the Regional Head Election, which is then reviewed and decided by the Constitutional Court. [13]

The Regional Election Law, Article 41 Paragraph (1) and Paragraph (2) stipulates that individual candidates may register as regional head candidates, provided they meet the specified support qualifications. The regional election framework that provides for the contribution of single candidates in direct elections reflects an opinion that shows a decrease in trust in the effectiveness of political parties. By allowing individual candidacy, it is expected that leaders will emerge who truly advocate for the welfare of their people, because these candidates are those who receive direct support from the community, not from political parties or their coalitions. [1]

The submission of a request for material review (*objectum litis*) by the Gelora Party and the Labor Party filed a request in the case, namely Article 40 paragraph (3) of Law No. 10 of 2016. The Constitutional Court judge has decided to approve part of the request from the applicants. In its decision, it was stated that Article 40 paragraph (1) of the Regional Election Law does not have a binding legal effect, unless it is interpreted that political parties or political parties participating in the election can nominate their candidates, as long as they have met the requirements to nominate regional head candidates. [14]

The decision adjusts the minimum requirements for regional head nominations, from the original 20% of DPRD seats or 25% of valid votes to 6.5% to 10% of valid votes in the province and district, significantly opening up greater opportunities for political parties to nominate candidate pairs. This has the potential to increase competition in the selection of quality leaders, because each candidate pair proposed is expected to have gone through a strict selection process.[4]

PMK envoy No.60 2024makeopening up space for parties that do not have seats in the DPRD in the General Election to nominate regional head candidates and have the same constitutional rights as parties that have seats in the DPRD in their respective regions, provided they can fulfill the accumulationpercentagefrom the number of valid votes of the party or party coalition based on the Constitutional Court Decision No. 60 of 2024. So that the guarantee of the party's right to participate in the contestation in the regional head elections can be realized and in accordance with the principles of democracy.[15]

C. Implications of Constitutional Court Decision No. 60/PUU-XXII/2024 on Democracy

Democracy is a way of government system that involves the participation of all citizens in decision making for the advancement of community life that allows for the implementation of political freedom that is very free, honest and fair.[16]The application of thresholds in the Indonesian Pilkada system is an issue that needs to be resolved. This is because this provision can limit the rights of political parties to contest in the regional elections.

In fact, the application of the parliamentary threshold remains in Law No. 10 of 2016 concerning Regional Elections as regulated in Article 40 Paragraph (1) that a political party or coalition of political parties has the right to nominate a pair of regional head candidates. Political parties or coalitions of political parties have the right to register their candidates if they have met the requirements of having a minimum of 20% of the total number of seats in the DPRD or having 25% of the valid votes obtained through the general election of DPRD members in the region.

The implementation of Article 40 is a factor that hinders the realization of the ideals of an inclusive and just democracy. This provision is clearly contrary to the spirit of the law on Political Parties, which explicitly states ensure that all people in this country are served in the

same and fair manner for all parties. Article 12 letter (a) of the Law emphasizes the principle of equality, so that the application of articles in the Pilkada has the potential to create discrimination in the regional head contestation.[1]

Constitutional Court Decision Number 60/2024 stated that the acceptable threshold for nominations of 20-25% is considered unconstitutional. In the decision, the acceptable threshold can be lowered to 6.5-10% based on the number of DPT in each region. The determination of the maximum threshold for regional head candidates is in line with the understanding contained in Article 6A paragraph (2) and Article 28D paragraph (3) of the 1945 Constitution.

This can provide a sense of fairness to political parties and single candidates, as well as political parties that have not met the previous threshold. Some people believe that this Constitutional Court decision is detrimental to democracy. This excess of the acceptable threshold level does not eliminate the political rights of minority parties, but can provide strength to the role of the party and the position of the rights of the majority political party. In addition, political parties will indirectly become simpler. [17]

The Constitutional Court's decision in a broad context can reflect on the strengths and weaknesses of the political system in Indonesia. By providing more opportunities for small parties and single candidates, the political system has the potential to accept new ideas and change the practice of democracy to be more dynamic and participatory. However, this change requires continuous monitoring and evaluation to anticipate fraud in the political process. Poor performance implementation can reduce the quality of democracy and even hinder the initial objectives of the Constitutional Court's decision.

A comprehensive understanding from various parties including academics, legal practitioners, and the wider community is needed to make this regulatory transition a success. Active and participatory public discourse will ensure that this change truly brings benefits to the democratic process in Indonesia.[5]It is hoped that this change will prevent the dominance of large parties.[18]

This change can also reduce the number of single candidates in a region due to the high nomination threshold. This decision has a major impact on political parties, regional head candidates, and the community, where with the many parties that can nominate candidates,

competition in the regional elections increases, and the community has more choices which ultimately have the potential to improve local democracy, in addition, this also has a significant impact on the mechanism for nominating regional heads. By lowering the nomination threshold, small political parties that win a minimum of 6.5% to 10% of the vote, according to the number of residents on the permanent voter list, now have a greater opportunity to nominate regional head candidate pairs.[2]

CONCLUSION

Based on the consideration of the Panel of Judges which stated that Article 40 paragraph (1) and paragraph (3) were unconstitutional against the 1945 Constitution, the results of the Constitutional Court Decision No. 60/PUU-XXII/2024 emerged, the results of which changed the nomination threshold to 6.5% - 10% depending on the permanent election list in each region. The results of this decision greatly changed the dynamics of politics in Indonesia, because this decision opened the door for parties that did not have enough votes in the DPRD to be able to nominate their candidates as regional heads, as long as they met the requirements, and equalized the rights and requirements for candidates who were in political parties or individual candidates to be able to nominate themselves as regional heads. With this decision, it can minimize the existence of single candidates and provide more choices of candidates, thus encouraging each party and candidate to compete strictly in the regional head elections and also improve the quality of democracy. However, an evaluation is needed so that the Pilkada process does not experience fraud and is in line with the objectives of the Constitutional Court.

REFERENCES

- [1] SunriseKardeli. Analysis of Parliamentary Threshold and Individual Candidates Based on Law Number 10 of 2016 in the Perspective of Democracy and the Principle of Checks and Ballances. *Legality*. 2018 Mar;Vol.26.

- [2] Hartono H. Urgency of Constitutional Court Decision Number 60/PUU-XXII/2024 Regarding the Implementation of the 2024 Regional Elections. JICN: Jurnal Intelek dan Cendekiawan Nusantara [Internet]. 2024 Aug; Vol. 1 No. 4. Available from: <https://jicnusantara.com/index.php/jicn>
- [3] Angga Laraspati. Detiknews. 2024. Labor Party and Gelora Party File Judicial Review of Regional Election Law to the Constitutional Court.
- [4] Muhammad Anwar Soleh, Durohim Amnan. Implications of Constitutional Court Decision Number 60/PUU-XXII/2024 on the Democratization of Regional Head Elections. *Presidensial: Journal of Law, State Administration, and Public Policy* [Internet]. 2024 Sep 3; 1(3):116–27. Available from: <https://ejournal.appihi.or.id/index.php/Presidensial/article/view/85>
- [5] English: Muhammad Eko Purwanto. kompasiana. 2024. The Impact of the Latest Constitutional Court Decision on the Dynamics of the 2024 Regional Elections.
- [6] Peter Mahmud Marzuki. *Legal Research*. Jakarta: Kencana Prenada Media Group; 2005.
- [7] Dr. Fajar Mukti ND YAMH. *Dualism of Legal Research*. Dimaswids, editor. Yogyakarta: PUSTAKA PELAJAR; 2010. 157 p.
- [8] Peter Mahmud Marzuki. *Legal Research Revised Edition*. Suwito, editor. Jakarta: KENCANA; 2016. 1–259 p.
- [9] Wardiono K, Dimiyati DK. Epistemological Basis of Rational Paradigm in Legal Science: A Description of Basic Assumptions of Pure Legal Theory-Hans Kelsen. *Journal of Legal Dynamics* [Internet]. 2014; Vol. 14 No. 3. Available from: <http://www.bjutijdschriften.nl/tijdschrift/>
- [10] Gugum Ridho Putra. *grplaw*. 2024 [cited 2025 Feb 7]. Annotation and Implications of Constitutional Court Decision Number 60/PUU-XXII/2024. Available from: <https://grplaw.id/2024/08/21/annotation-and-implications-of-constitutional-court-rule-number-60-puu-xxii-2024/>
- [11] Syarwi P, 1*C, Abstract IA. Indonesian Politics Indonesian Political Science Review Evaluation of the 2015 Simultaneous Regional Elections. *Indonesian Politics: Indonesian*

- Political Science Review [Internet]. 2016;1(2):196–211. Available from:
<http://journal.unnes.ac.id/nju/index.php/JPI>
- [12] NoorKristiyanto Researcher at the Center for Legal Research and Development, Legal and Human Rights Research and Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, Jl Rasunan Said Kav EH, South KJ. The Implementation of Simultaneous Regional Elections in Indonesia: A Study in Batam. Journal Article De Jure [Internet]. 2017;17(1):48–56. Available from: <http://www.kemendagri.go.id/ar>
- [13] Muhammad Anwar Soleh, Durohim Amnan. Implications of Constitutional Court Decision Number 60/PUU-XXII/2024 on the Democratization of Regional Head Elections. Presidential: Journal of Law, State Administration, and Public Policy [Internet]. 2024 Sep 3;1(3):116–27. Available from:
<https://ejournal.appihi.or.id/index.php/Presidensial/article/view/85>
- [14] Decision No. 60/PUU-XXI/2024. Constitutional Court of Indonesia, No. 60/PUU-XXI/2024 Indonesia: MK RI; Jul 1, 2024 p. 1–92.
- [15] Baehaki K. Political Implications of Constitutional Court Decision Number: 60/PUU-XXII/2024 Regarding the Threshold for Regional Head Nominations. Yustisi. 2024 Sep;Vol.11 No.3:451–60.
- [16] Muttaqin L, Ananda MAR. Presidential Threshold Seen From the Perspective of Constitutional Democracy. International Journal of Social Science Research and Reviews. 2022 Oct 5;5(10):259–65.
- [17] Willa Wahyuni. Online Law. 2024 [cited 2025 Feb 7]. Positive Impact of MK Decision 60/2024 for Indonesian Democracy. Available from:
<https://www.hukumonline.com/berita/a/dampak-positif-putusan-mk-60-2024-bagi-demokrasi-indonesia-lt66ea38473530b/>
- [18] SisterAulia Pratiwi. UNAIR Legal Expert Highlights the Impact of the Constitutional Court's Decision on the Implementation of Regional Elections [Internet]. Surabaya; 2024 Jul [cited 2025 Feb 7]. Available from: <https://unair.ac.id/pakar-hukum-unair-soroti-dampak-putusan-mk-terhadap-pelaksanaan-pilkada/>