

The Constitutional Court's Decision as an Effort to Realize the Fulfillment of Constitutional Rights in Determining the Threshold for Regional Head Candidates in the 2024 Regional Elections

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ABSTRACT: Regional head elections (*Pemilukada*) represent a form of democratization in Indonesia, conducted simultaneously across the entire country. This process embodies the mandate of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945)—specifically Article 18, Paragraph (4)—which stipulates that governors, regents, and mayors must be elected democratically. In practice, however, the lead-up to these elections often sparks controversy. A notable instance occurred in 2024 with Constitutional Court Ruling Number 60/PUU-XXII/2024, which addressed a challenge brought by political parties claiming their constitutional rights were infringed upon by Article 40, Paragraph (1) of Law Number 10 of 2016 concerning Regional Head Elections (UU 10/2016). This study examines the implementation of democratic principles within the Constitutional Court's ruling regarding candidacy thresholds for regional head elections in 2024, as well as the impact of that ruling. Employing a normative-juridical research method based on a literature review of regional elections, the study presents its findings through descriptive analysis to provide a clear and comprehensive explanation of the candidacy thresholds applicable to the 2024 regional elections.

I. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which explicitly states that Indonesia is a state based on the rule of law, entails the logical consequence that Indonesia upholds the principles of the rule of law—including guarantees for the protection of human rights and democratic governance.¹ This necessitates that all affairs of state and society in Indonesia be grounded in law, consistent with the very purpose of law: to safeguard justice, legal certainty, and utility.

The implementation of the rule of law in Indonesia is also reflected in the political sphere. Article 1 paragraph (2) of the 1945 Constitution stipulates: “Sovereignty is vested in the people and exercised in accordance with the Constitution”; consequently, political contests must be conducted in compliance with the 1945 Constitution. One such political process is the Regional Head Election (*Pemilukada*), as mandated by Article 18 paragraph (4) of the 1945 Constitution, which states that “Governors, Regents, and Mayors shall be elected democratically.”

Conducting regional elections democratically is a desired ideal, aiming to realize a system that is “of the people, for the people, and by the people”²—governance derived from the people, serving the people, and executed by the people. Aligning with the view of Dahlan Thaib, in a democratic society, elections constitute a process for the peaceful, periodic transfer of power based on principles or values established by the constitution.³

The 2024 regional head elections (*Pemilukada*) took place amidst various obstacles and challenges, ultimately succeeding in facilitating the transition of regional leadership across Indonesia. A particularly interesting aspect of this study is the Constitutional Court ruling issued just one week prior to the opening of candidate registration.

¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Konstitusi Press, Jakarta, 2005), 123-130.

² Sri Sumantri, *Tentang Lembaga-Lembaga Negara menurut UUD 1945*, Citra Aditya Bakti, 1993, hal.1

³ Dahlan, Thaib, *Ketatanegaraan Indonesia Perspektif Konstitusional*. Yogyakarta: Total Media. (2009). hal. 98

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The Constitutional Court serves as a forum for those seeking redress for constitutional rights violated during the enactment of legislation. The Constitution represents a normative crystallization of the state's duty to protect human rights and govern based on popular sovereignty, within legally defined limits of power exercised for the public interest.⁴

Two political parties—the Labour Party (*Partai Buruh*) and the Gelora Party (*Partai Gelora*)—exemplify the entities that sought legal redress for constitutional rights infringed upon by a specific legislative provision. In their petition for judicial review, they argued that the norm contained in Article 40 paragraph (1) of Law Number 10 of 2016 concerning Regional Head Elections (*Pilkada*) violated their rights under Article 1 paragraphs (2) and (3), Article 18 paragraph (4), Article 27 paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Through Constitutional Court Ruling No. 60/PUU-XXII/2024, the Court mandated a reduction in the nomination threshold for regional heads, ruling that Article 40 paragraph (1) of Law No. 10/2016 violated or contradicted Article 18 paragraph (4) and Article 28D paragraph (1) of the 1945 Constitution.

This Constitutional Court ruling added a dynamic element to the 2024 regional elections. Ultimately, there were 37 instances of single-candidate pairs, down from an initial 44 prospective single-candidate pairs. That figure did not experience a decline during the 2020 regional head elections, a period in which 25 regencies/cities featured single-candidate pairs.

Based on this, it is evident that the Constitutional Court ruling has fostered greater democratic openness in regional elections and had a significant impact on determining the registration threshold for regional head candidates. This has prompted numerous questions regarding the implementation of democracy and the role of the law in achieving justice within the regional election process.

II. FORMULATION OF PROBLEM

Based on the background of the issue outlined above, the problem formulations the author intends to examine are:

1. How is the democratic implementation reflected in the Constitutional Court ruling regarding the candidacy threshold for regional head elections in the 2024 regional elections?
2. What is the impact of the Constitutional Court ruling regarding the candidacy threshold for regional head elections in the 2024 regional elections?

III. Resreach Method

IV. Discussion

1. Summary of Constitutional Court Decision No. 60/PUU-XXII/2024

Based on Constitutional Court Decision No. 60/PUU-XXII/2024 regarding the nomination threshold for regional heads, it is noted that:

- Petitioner I identifies itself as a political party organization with legal entity status (the Labour Party) that possesses the authority to file a petition as a legal entity subject (Article 51 paragraph (1) of the Constitutional Court Law),
 - Meanwhile, Petitioner II identifies itself as a political party organization with legal entity status (the Indonesian People's Wave Party (GELORA)) that meets the requirements pursuant to Article 51 paragraph (1) of the Constitutional Court Law.
 - The Petitioners believe their constitutional rights have been impaired by the enforcement of Article 40 paragraph (3) of Law No. 10/2016, which states: "A Political Party or a coalition of Political Parties may register a candidate pair if they meet the requirement of securing at least 20% (twenty percent) of the seats in the Regional House of Representatives (DPRD) or 25% (twenty-five percent) of the accumulated valid votes in the general election for members of the Regional House of Representatives in the relevant region,"
 - The constitutional rights in question are those enshrined in Article 1 paragraphs (2) and (3), Article 18 paragraph (4), Article 27 paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia;
 - The operative part of Constitutional Court Decision No. 60/PUU-XXII/2024 is as follows:
 - Regarding the Petition for Provisional Ruling:
 - Denies the Petitioners' petition for a provisional ruling. Regarding the Merits of the Petition:
- 1) Grants the Petitioners' petition in part.
 - 2) Declares that Article 40 paragraph (1) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the

⁴ Moh Mahfud MD, *Demokrasi dan Konstitusi di Indonesia*, (Jakarta: Rineka Cipta, 2003) h. 142.

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State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, insofar as it is not interpreted as follows: “a political party or a coalition of political parties participating in the election may register a candidate pair if they have met the following requirements:

To nominate a candidate for governor and a candidate for deputy governor:

- a. for a province with a population—as recorded in the final voters list—of up to 2,000,000 (two million) people, a political party or a coalition of political parties participating in the election must obtain at least 10% (ten percent) of the valid votes in said province;
- b. for a province with a population—as recorded in the final voters list—of more than 2,000,000 (two million) up to 6,000,000 (six million) people, a political party or a coalition of political parties participating in the election must obtain at least 8.5% (eight and a half percent) of the valid votes in said province;
- c. for a province with a population—as recorded in the final voters list—of more than 6,000,000 (six million) up to 12,000,000 (twelve million) people, a political party or a coalition of political parties participating in the election must obtain at least 7.5% (seven and a half percent) of the valid votes in said province;
- d. for a province with a population—as recorded in the final voters list—of more than 12,000,000 (twelve million) people, a political party or a coalition of political parties participating in the election must obtain at least 6.5% (six and a half percent) of the valid votes in said province;

To nominate candidates for regent and vice-regent as well as candidates for mayor and vice-mayor:

- a. for a regency/city with a population—as recorded in the final voters list—of up to 250,000 (two hundred and fifty thousand) people, a political party or coalition of political parties participating in the election must obtain at least 10% (ten percent) of the valid votes in said regency/city;
 - b. for a regency/city with a population—as recorded in the final voters list—of more than 250,000 (two hundred and fifty thousand) up to 500,000 (five hundred thousand) people, a political party or coalition of political parties participating in the election must obtain at least 8.5% (eight and a half percent) of the valid votes in said regency/city;
 - c. for a regency/city with a population—as recorded in the final voters list—of more than 500,000 (five hundred thousand) up to 1,000,000 (one million) people, a political party or coalition of political parties participating in the election must
 - d. obtain at least 7.5% (seven and a half percent) of the valid votes in said regency/city;
 - e. for a regency/city with a population—as recorded in the final voters list—of more than 1,000,000 (one million) people, a political party or coalition of political parties participating in the election must obtain at least 6.5% (six and a half percent) of the valid votes in said regency/city;”
- 3) Declares Article 40 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898)
 - 4) Order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate.
 - 5) Dismiss the Petitioners' petition regarding all other matters.⁵
2. Democratic Implementation in the Constitutional Court Ruling Regarding Regional Head Candidacy Thresholds for the 2024 Regional Head Elections

The legal challenge pursued by the two party representatives concerning Article 40 paragraph (3) of Law No. 10/2016 had previously been adjudicated in Constitutional Court Ruling Number 51/PUU-XVII/2019—pronounced during a public plenary session on November 28, 2019—albeit based on a review against Article 18 paragraph (4), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This differs from the petition *a quo**, which is grounded in Article 1 paragraph (2), Article 1 paragraph (3), and Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The nomination of regional heads is intended to be conducted by the people, for the people, and from the people. The aforementioned Constitutional Court ruling clearly provides an avenue for citizens—particularly political parties or coalitions of political parties wishing to field candidate pairs but facing obstacles due to candidacy thresholds.

The panel of judges' reasoning in ruling on the petition was based on Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which mandates that the election of regional heads and deputy regional heads be conducted via direct general elections; this is read in conjunction with Constitutional Court Decision Number 072-073/PUU-II/2004—delivered during

⁵ Putusan MK No 60/PUU-XXII/2024

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an open plenary session on March 22, 2004—which affirmed that determining the procedures for regional head elections is a policy choice belonging to the lawmakers.

Pursuant to Constitutional Court Decision Number 072-073/PUU-II/2004, the matter is regulated in Law Number 10 of 2016, which stipulates that pairs of candidates for regional head may be nominated by political parties or coalitions of political parties based on valid vote counts, in accordance with Article 40 paragraph (1) and Article 41 paragraph (2) letters a through d of Law Number 10 of 2016.

Constitutional Court Decision Number 60/PUU-XXII/2024 regarding candidacy thresholds for regional heads demonstrates the implementation of democratic principles. Etymologically, the term "democracy" derives from the words **demos** (the people) and **kratein** (to rule).⁶

Based on this legal reasoning, the decision in question serves as the foundation for establishing candidacy requirements for regional heads, ensuring that constitutional rights are not violated. The decision aligns with theories of justice by safeguarding the constitutional rights of citizens—specifically the rights of political parties that secured sufficient votes but did not obtain seats in the Regional House of Representatives (DPRD).

This ensures the preservation of democracy in the 2024 regional election process, guided by the legal considerations of the Constitutional Court panel.

The Petitioners invoked Article 18 paragraph (4) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia regarding the requirements for regional head candidacy.

However, Constitutional Justice M. Guntur Hamzah issued a concurring opinion; in the researcher's view, this opinion warrants attention—particularly regarding the candidacy threshold—as he maintained that the norm in question remains constitutional but should be applied conditionally. Specifically, political parties or coalitions of parties participating in the 2024 Election that garnered public support but failed to secure seats in the Regional House of Representatives (DPRD) should be permitted to nominate regional head candidate pairs based on a parameter of securing at least 25% of the accumulated valid votes.

While this approach arguably fosters fairness in the adjudication of the case, it is worth noting that, ideally, such judicial review petitions should be filed well before the registration process begins. This is because Constitutional Court rulings are final and binding; timely resolution is essential to prevent legal uncertainty or public unrest during the registration period for regional head candidate pairs.

3. The Impact of the Constitutional Court Ruling on Regional Head Candidacy Thresholds for the 2024 Regional Elections

The Constitutional Court ruling delivered on August 20, 2024, resulted in a decrease in the number of single-candidate races across Indonesia, although the figure remains significant at 37 pairs. This development should be viewed through the lens of legal operation theory, which encompasses personal, economic, socio-cultural, and political factors.

The reduction in single-candidate races demonstrates that the Constitutional Court ruling can foster democratic regional elections and uphold legal certainty by enabling a greater number of political parties—or coalitions thereof—to nominate candidates capable of advancing local governance.

Although the ruling was issued on short notice—just one week prior to the registration period—relevant institutions were able to adopt it as the benchmark for candidate qualification. Consequently, regulations governing candidacy requirements have incorporated the ruling, thereby avoiding legal uncertainty or potential challenges arising from conflicts between existing regulations and the Court's decision; such conflicts would otherwise have been problematic, given that the norms in the prior regulations had been declared contrary to the law.

V. CONCLUSION

A petition for judicial review at the Constitutional Court serves as an excellent legal mechanism for safeguarding citizens' constitutional rights, including in matters concerning regional head elections. Parties whose constitutional rights are infringed upon by specific statutory norms are effectively protected by pursuing this avenue of judicial review. This study focuses on Constitutional Court Decision Number 60/PUU-XXII/2024.

The implementation of democratic principles in this decision clearly upholds justice for citizens, addressing the fact that Article 40 paragraph (3) violated Article 18 paragraph (4) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The legal impact of this decision has significantly shaped the landscape of the 2024 regional elections; specifically, it has reduced

⁶ Wiratno, Memaknai Demokrasi dan Perkembangnya, <https://doi.org/10.25105/prio.v10i1.17004>, Vol. 10, No.1, 2022

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the prevalence of uncontested elections (races with a single candidate pair) by enabling the nomination of candidate pairs that previously could not meet the requirements of Article 40 paragraph (3) of Law No. 10/2016.

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