2024 Election Dispute at the Constitutional Court of Indonesia : Procedural Law and Landmark Decisions

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A. Introduction:

General elections are essential for establishing a democratic government. In numerous democratic nations, elections are regarded as both a symbol and a metric of democracy. Elections serve as a tangible manifestation of democratic ideas and a rational outcome of the implementation of democratic principles. It is crucial to recognize that while elections represent democracy, not all elections are democratic. Furthermore, elections must be conducted democratically as an integral aspect of democracy. Democratic elections must be competitive, periodic, inclusive, and conclusive rather than merely symbolic. An essential marker of democratic elections is the presence of public trust in the electoral process that yields legitimate governments. Consequently, resolving disputes regarding election outcomes is categorized as a constitutional issue.

The presence of an election dispute resolution mechanism is an important requirement for the functioning of democracy. Stephen A. Siegel asserted that the issue of vote counting in the General Election is one of the most ancient activities within a nation-state and ranks among the oldest challenges in constitutional law. Numerous constitutional law scholars have endeavored to address the issue of vote counting.[1] Following the establishment of the 1920 Austrian Constitution, authored by Hans Kelsen, the emergence of the Constitutional Court as a judicial entity for adjudicating constitutional matters became a worldwide phenomenon. Numerous countries subsequently designated the Constitutional Court as the adjudicator for resolving electoral issues.

The Constitution of Indonesia outlines the resolution of election disputes, specifically in Article 24 C Paragraph (1) of the 1945 Constitution. The authority is specified in Article 10, Paragraph (1) of Law Number 7 of 2020, which pertains to the Third Amendment of Law Number 24 of 2003 regarding the Constitutional Court Law (MK Law). According to Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court (MK) possesses the ability to adjudicate as the court of first and final instance, with its decisions being conclusive, including matters related to election results. The general elections in Indonesia serve as a manifestation of popular sovereignty, conducted in accordance with the principles of directness, universality, freedom, confidentiality, integrity, and fairness, aligned with the

framework of the Unitary State of the Republic of Indonesia, which is founded on Pancasila and the 1945 Constitution. According to Article 1, paragraph (1) of Law Number 7 of 2017, general elections are conducted to elect:

a)- Members of the People's Representative Council;
b)- Members of the Regional Representative Council;
c)- The President and Vice President; and
d)- Members of the Regional People's Representative Council.

Moreover, Constitutional Court Decision Number 85/PUU-XX/2022 has clarified that general elections encompass regional head elections at the province, district, and municipal levels. Until the publication of this article, lawmakers had not enacted legislation affirming the inclusion of regional head elections within the general election framework. Thus, regional head elections and the resolution of disputes continue to be governed by Law Number 10 of 2016, which pertains to the Second Amendment of Law Number 1 of 2015 regarding the Stipulation of Government Regulation instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors. This writing will exclusively address cases concerning disputes over the results of the general election for the President, Vice President, members of the People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD) at the Constitutional Court.

The development of election result dispute adjudication in the Constitutional Court pertains not only to the determination of the numerical outcomes achieved by electoral candidates but also to the integrity of the electoral process itself. The Constitutional

Court will evaluate the merits of the election execution. The Constitutional Court, in election disputes, functions not merely as an appellate or cassation court for various election-related issues but also addresses matters that have established resolution mechanisms through sectoral and local legal remedies concerning election offenses and administrative disputes. MK serves as the primary and final judicial authority in election disputes, addressing quantitative issues related to significant figures in final election results and the constitutionality of the election process. The Court will only be concerned with allegations of qualitative election violations if the election standards outlined in Article 22E, paragraphs (1) and (5) of the 1945 Constitution are breached.[2]

In the 2024 election, there were 9,917 candidates contesting for DPR membership and 668 candidates for DPD RI. The total number of contested seats amounted to 20,462, with 580 DPR Member seats distributed across 84 electoral districts. The Provincial DPRD comprises 2,372 seats across 301 electoral districts, while the Regency/City DPRD consists of 17,510 seats distributed over 2,325 electoral districts. In the case of the DPD, 668 candidates were competing for 152 seats. Following the ratification of the vote results by the General Election Commission (KPU) on March 20, the Court has also received the 2024 Legislative PHPU application. A total of 297 cases were registered and processed by the Constitutional Court. Between April 29 and May 14, 2024, the MK conducted a preliminary examination hearing and a trial examination hearing

concurrently. The agenda included listening to the responses of the Related Parties, the response of the KPU as the Respondent in the 2024 Legislative PHPU, and the statement from Bawaslu.

Based on the available circumstances, the MK has vast expertise handling cases, particularly general election result disputes (PHPU), which is difficult to duplicate. The Constitutional Court of the Republic of Indonesia is the only court in the world that handles matters in such a massive fashion. In a single day, the Constitutional Court can deliver verdicts for hundreds of PHPU cases across Indonesia, encompassing 38 provinces, 514 regencies/cities, 7,288 sub-districts, and extending to polling stations (TPS) in remote villages. Furthermore, MK must take into account societal diversity and geographical circumstances, including electoral methods like as the noken/ikat system, which involves group elections or consensus-based agreements characteristic of the Papuan highland community.

This article will provide a comprehensive analysis of the procedural law governing disputes related to general election results before the Constitutional Court, and will also cover two pivotal rulings from the 2024 general election results controversy. The initial decision addressed is decision number 125-01-08-29/PHPU.DPR-DPRD-XXII/2024 which mandated a re-vote in the electoral district of Gorontalo 6 due to multiple parties failing to satisfy the minimum female representation requirement of 30%. The second decision to be addressed pertains to the introduction of the noken system in Papua. A

distinctive feature of Indonesia's general election system is the noken system, wherein the votes of a tribe in Papua are dictated by its tribal head. The discourse on noken is intriguing as this system represents a reconfiguration of democratic thought intertwined with customary values transmitted through generations in Papua.

B. Procedural Law of Election Dispute in MK :

The MK Procedural Law governs the procedures and means for exercising the authority of the Court. The designation MK Procedural Law was selected due to its relevance to cases under the jurisdiction of the Constitutional Court. The Constitutional Court adjudicates issues regarding general election results by consulting the provisions outlined in the general election law, the Constitutional Court statute, and its associated rules. [3] The procedural law delineated in the MK Law is bifurcated into two segments: basic procedural law governing hearings at the Constitutional Court and specific regulations tailored to the unique attributes of each case under the Court's jurisdiction. To ensure the effective execution of its responsibilities and powers, the Constitutional Court is granted the competence to finalize procedural law in accordance with the Constitutional Court Law.

Initially, there existed a singular authority of the Constitutional Court deemed extraneous to constitutional inquiries, specifically adjudicating disputes regarding election outcomes. The Constitutional Court Law mandates that the Constitutional Court has the jurisdiction to resolve disputes about

the calculation of election results between electoral participants and organizers. In the context of addressing election result disputes, the Constitutional Court underscored that its authority encompasses the power to assess the legitimacy of election implementation. The transition was reinforced by the Constitutional Court Decision Number 41/PHPU.D-VI/2008 about the Dispute over Election Results in East Java Province. The Constitutional Court underscored that the jurisdiction over PHPU extends beyond merely evaluating and resolving disputes regarding result calculations; it also encompasses addressing violations that lead to discrepancies in these calculations, thereby preserving justice and democracy as stipulated in the 1945 Constitution.[4]

The MK has established guidelines for general election result dispute (PHPU) procedural laws, including the following:

1. Constitutional Court Regulation No. 2 of 2023 regarding Procedural Protocols in Disputes over General Election Results for Members of the People's Representative Council and Regional People's Representative Council;
2. Constitutional Court Regulation No. 3 of 2023 regarding Procedural Protocols in Disputes over General Election Results for Members of the Regional Representative Council;
3. Constitutional Court Regulation No. 4 of 2023 regarding Procedural Protocols in Disputes over General Election Results for President and Vice President.

As a judicial institution, the MK exercises its authority based on the applications received. The term used in MK Law is

"application" not "lawsuit" as in civil procedural law. The term "application" seems to indicate that the case filed is one-party (*ex parte* or voluntair), whereas in the five authorities held by the Constitutional Court, four of them can be said to contain the respondent. According to Maruarar Siahaan, the term "application" is used because of the dominant nuance of public interest in every case handled by the Constitutional Court. Although a case is filed by an individual citizen, its decision applies generally and affects law and state administration. [5] Meanwhile, the Respondent based on these provisions is the General Election Commission (KPU) which is a national, permanent, and independent election organizing institution.

The applicant's application has to include his or her identity. Name, place/date of birth, religion, occupation, address. If the Applicant confers power of attorney to an individual to represent them in and out of the trial, the power of attorney must be incorporated into the application by attaching it during the application registration at the Constitutional Court. Notably, in a process at the Constitutional Court, the Applicant's attorney is not required to be an advocate or licensed attorney. The Applicant may confer power of attorney to an individual who is not a legal counsel but is deemed by the Applicant to be competent in safeguarding his/her interests.

The Applicant must also provide an explanation of their identity as a participant in the Election, Member of the DPR and DPRD, candidate for DPD member, candidate pair in the Regional Head Election, or candidate pair in the Presidential and

Vice Presidential Election in the PHPU application. Simultaneously, the material prerequisites necessitate that the application encompass two elements: the principal issue (*posita*) and the grounds for contesting the determination of the relevant Election results and the *petitum* (demands).

The subject of contention in the general election results dispute at the MK is the decision made by the General Election Commission (KPU) concerning the determination of the vote count results. General election participants must adhere to a submission deadline for applications, contingent upon the KPU's announcement of vote count results. For disputes regarding legislative candidates, applicants must submit their applications to the Constitutional Court within 72 hours following the KPU's national announcement of the vote count for DPR, DPD, and DPRD members.[6] In cases concerning Presidential and Vice Presidential candidates, applications must be submitted no later than three days after the KPU declares the election results. The Constitutional Court may rule that the decision is inadmissible if the election participant applies to the designated timeframe.[7]

The PHPU application must incorporate the events that form the basis of the application in its posita. What kind of electoral process flaws can lead to inaccuracies in vote counting that impact election outcomes? The validity of the election results as determined by the KPU, as well as those established by the province KPU, district/city KPU, provincial KIP (Independent Election Commission), and district/city KIP, is also under scrutiny. The PHPU application may contest the unlawful

conduct of the KPU, provided that the Applicant deems these actions capable of influencing the vote counting outcomes. The MK can indirectly engage with the administrative domain of the KPU's decision regarding such an application. The Constitutional Court may determine that the election officials misused their authority in the conduct of the election and deems this abuse to have substantially affected the electoral outcomes to represent an arbitrary act. The Constitutional Court may overturn the election results due to the misuse of authority, in alignment with the principles of constitutional protection regarding the conduct of elections. In numerous procedural statutes, both civil and administrative, these justifications are typically referred to as the grounds for the petition. The grounds must include valid reasons in the demand that elucidate the emergence of a voting dispute which resulted in a substantial alteration of the election outcomes and the allocation of seats (in the context of parliamentary elections).

The parties involved in the disagreement on the general election results include the presidential and vice presidential candidates, candidates for the DPR and DPRD member elections, and candidates for DPD membership. Additionally, the Applicants in the disputes regarding the DPR and DPRD general election results at the Constitutional Court comprise not only political parties but also individual candidates for the DPR, DPRD, Aceh People's Representative Council (DPRA), and Regency People's Representative Council (DPRK) from the same political party, provided they have secured written consent from

the party's general chairman and secretary general.[8] The presence of individual Applicants signifies the open proportional model of the general election system in Indonesia, whereby disputes regarding election outcomes pertain not only to the vote differentials among political parties but also to vote discrepancies among legislative candidates within a single political party. The Constitutional Court may rule that the decision is inadmissible if the petition is submitted by an entity not participating in the general election, affecting the legal standing of the Applicant.

Upon receipt of the application, the MK allocates a timeframe for the Applicant of the legislative election results dispute to amend the application, which must occur within 3 x 24 hours from the moment the Applicant receives the submission deed issued by the Constitutional Court.[9] Regarding the contention around the outcomes of the Presidential and Vice Presidential elections, the general election legislation does not stipulate a timeframe for amending the application. Moreover, the Constitutional Court will register all accepted petitions and provide the Applicant with a registration deed for the constitutional case. Additionally, the Constitutional Court will publish all registered applications on its website and transmit copies to the KPU as the Respondent and the General Election Supervisory Body as the information provider. Participants in the general election who have an interest in the case may apply as associated parties.

The MK's management of claims over general election results is constrained by the statutory time frame for expedited

proceedings. The timeframes for adjudicating disputes differ between legislative election cases and presidential or vice presidential election cases. Disputes regarding legislative election results must be resolved by the Constitutional Court within a maximum of 30 (thirty) working days from the date of application registration, [10] whereas disputes concerning presidential and vice presidential election results are adjudicated within a significantly shorter period of 14 (fourteen) working days from the application registration date.[11]

The subsequent phase is the assessment. The acceptance examination is bifurcated into two phases: the evaluation of responses and declarations, and the assessment of witnesses and experts. During the review phase of the responses and declarations, the Court will assess the Respondent's Answer, the Statement of the Related Party, and/or the Bawaslu Statement. Additionally, before to the examination of witnesses and experts, the Court will convene a judges' discussion meeting to evaluate the formal criteria of the Applicant's submission. Should the application fail to satisfy the formal criteria, the MK will refrain from proceeding with the examination of witnesses and experts, opting instead to issue a dismissing ruling. The application comprises the name and address of the Applicant and/or attorney, a clear delineation of the power of the Constitutional Court, the legal standing of the Applicant, the submission deadline, the principal arguments of the application, and the petitum. If a case arises in an application pertaining to formal requirements, the Constitutional Court may issue a dismissal ruling. [12] The

dismissal judgment may be approved if uncertainty exists in the application, such as a conflict between posita, a conflict between posita and petitum, or a dispute between petita.[13]

The Court will continue to review applications that have satisfied the formal requirements during the trial examination stage. The applicants, respondent, and related parties will submit their agendas for the examination of witnesses and experts. Witnesses and experts must swear an oath or make a vow in accordance with their religion or beliefs prior to appearing before the Constitutional Court. Additionally, during the trial examination of witnesses and experts, it is occasionally essential to employ the services of a translator, as certain witnesses or experts may utilize the local regional language.

At every stage of the examination, parties may file a request to attend the trial online. All proceedings of the Constitutional Court are public trials, and in light of technology advancements, the Court also transmits these trials through electronic means accessible to the broader population. The panel of constitutional judges conducts a deliberative meeting in two phases. The judges' deliberation meeting in the initial stage pertains to determining the compliance with the formal criteria of the application as previously outlined. The subsequent phase of the judges' deliberation meeting involves rendering a conclusion about the principal aspects of the application, following the examination of witnesses and experts.

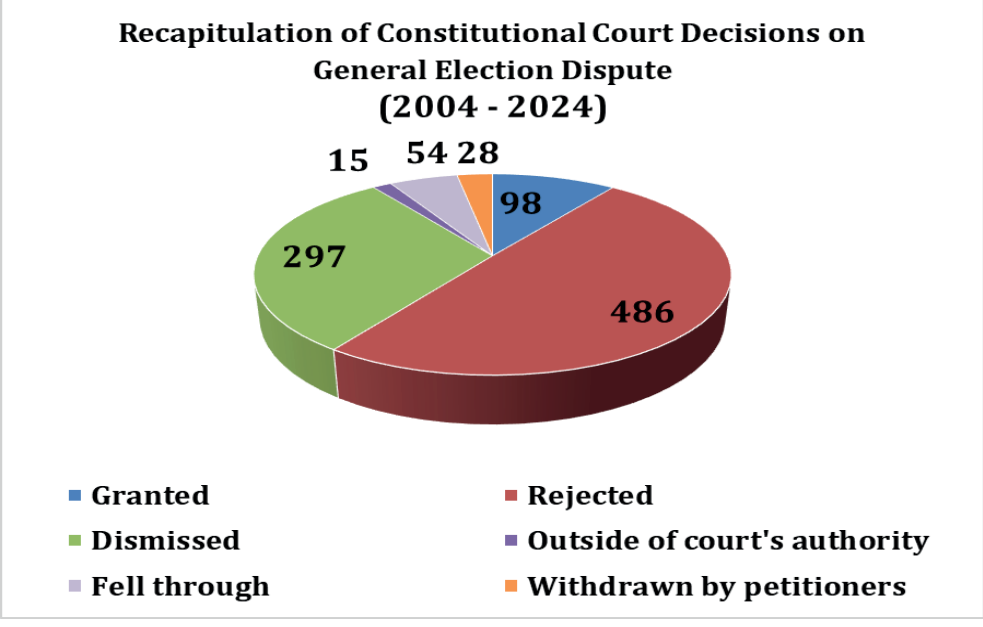
The MK's ruling may take the form of a verdict, interim decision, or stipulation. The verdict often encompasses three

categories: declaring the application inadmissible, rejecting the applicant's request, or granting the application. Should the Constitutional Court approve the applicant's petition, it will annul the results of the general election vote acquisition and issue directives to the KPU, which may include orders for a re-vote, a recount of ballots, or the establishment of accurate vote acquisition results, among other actions. The interim ruling includes a directive to the Respondent and/or other parties to either perform or refrain from an action concerning the contested object. The Constitutional Court may render a decision if the application falls outside its jurisdiction, the applicant withdraws the application, or the applicant and/or legal counsel are absent without justifiable cause at the initial hearing of the Preliminary Examination.

In its capacity as the constitution's guardian, the Constitutional Court must make sure that general elections are conducted in conformity with the principles of direct, general, free, secret, honest, and fair elections as outlined in Article 22E, paragraph (1) of the Republic of Indonesia's 1945 Constitution. The Constitutional Court has adjudicated claims about general election results since the elections of 2004, 2009, 2014, 2019, and 2024. This is a summary of the management of disputes over general election results:

Table (1) : Recapitulation of Constitutional Court Decisions based on Rulings :

No.	General Election	Granted	Rejected	Dismissed	Withdrawn by petitioner	Fell through	Outside Court's Authority
1.	2004	15	13	16	0	0	0
2.	2009	24	37	8	1	0	0
3.	2014	1	292	2	2	0	0
4.	2019	13	83	122	10	34	0
5.	2024	45	64	149	15	20	15



C. MK Emphasizes Requirement of 30% Women's Representation :

This section will highlight the issue of women's representation of at least 30% in Decision Number 125-01-08-29/PHPU. DPR-DPRD-XXII/2024. A significant ruling issued by the Constitutional Court in the context of the election results dispute was the annulment of those results due to the fact that the quota for women's representation in a particular region fell below 30%. During the proceedings of the 2024 General Election Results Dispute Hearing (PHPU) concerning Members of the Indonesian House of Representatives, Provincial DPRD, and Regency/City DPRD on Friday, May 3, 2024, the Prosperous Justice Party (PKS) submitted a petition in accordance with Article 248 of Law Number 7 of 2017 regarding General Elections. PKS emphasized that four political parties involved in the 2024 Election -PKB, Gerindra, NasDem, and Demokrat- failed to fulfill the requirement of 30% female representation in the Electoral District (Dapil) of Gorontalo 6. Data provided by the Respondent indicates that the four parties attained a mere 27.27% female representation, with allocations of 1 seat, 2 seats, 2 seats, and 1 seat respectively. The Applicant contended that these parties ought not to have been awarded seats, as they failed to satisfy the relevant legal criteria. Conversely, the parties that satisfy the 30% female representation criterion—specifically PDIP, Golkar, PPP, and PKS—each attained a female representation of 36.36%, whereas PAN reached 45.45%.

Furthermore, the Supreme Court in Decision Number 24P/HUM/2023 has underscored the significance of fulfilling the requirement for 30% female representation. Nonetheless, the Petitioner asserts that the Respondent (KPU) failed to execute the decision by persistently approving political parties that did not satisfy the administrative criteria for female representation in the nomination of legislative members. In the context of the 18 political parties participating, it is noteworthy that five parties achieved the requisite 30% female representation in Electoral District Gorontalo 6. These parties include PDIP, Golkar, PPP, and PKS, each attaining a representation rate of 36.36%, alongside PAN, which reached a commendable 45.45%.

In light of these considerations, the Applicant petitioned the Court to disqualify four political parties that failed to achieve the 30% quota for women's representation in Electoral District Gorontalo 6 concerning their membership in the Gorontalo Provincial DPRD. Furthermore, the Applicant requested that the Court assess the vote acquisition and allocation of seats, ensuring a minimum of 30% female representation for the Gorontalo Provincial DPRD seats in Electoral District Gorontalo 6. In this context, PKS secured 7,343 votes, constituting 36.36%, thereby qualifying for 1 seat.

The 1945 Constitution, particularly following the changes from 1999 to 2002, has constitutionally offered a more extensive and thorough assurance of human rights. The state is mandated to execute and uphold this assurance. Constitutionally, an imbalance among different groups within a country permits the

implementation of special provisions to attain equilibrium among those groups. The opportunity to attain the desired equilibrium is specifically governed by the 1945 Constitution. Article 28H, paragraph (2) of the 1945 Constitution stipulates, "Everyone is entitled to convenience and special treatment to secure equal opportunities and benefits, thereby achieving equality and justice." In state administration, the women's group is persistently advocated for special treatment to secure equal chances and advantages in the pursuit of justice. The current data indicates that despite a virtually equal number of women and men, women's participation significantly trails that of males across nearly all sectors of state administration.

For instance, according to the statistical data and numbers provided by the expert before the Court, the 2000 Population Census revealed that there were 206,264,595 individuals living in Indonesia, with 102,847,415 women, or 49.86 percent of the total population, being women. The 2004 and 2009 elections yielded 11.09 percent and 17.85 percent female representation in the DPR, respectively. Additionally, the 2010 Population Census revealed that Indonesia's population was 237,641,326, with women comprising 118,010,413, or 49.65 percent. The 2014 and 2019 elections yielded 17.32 percent and 20.50 percent female members of the DPR, respectively. The 2020 Population Census recorded Indonesia's population at 270,203,917, with women numbering 133,542,018, or 49.42 percent, whereas the 2024 Election is anticipated to provide less than 20 percent female DPR members.[14]

Considering the parameters of logical reasoning, when interpreted through the lens of the phrase "obtaining equal opportunities and benefits in order to achieve equality and justice" as articulated in Article 28H paragraph (2) of the 1945 Constitution, it can be inferred that the realization of women's interests is seen as an inevitable outcome, particularly when there is a relatively balanced representation. In this scenario, the Court suggests that this inevitability has been a significant factor influencing lawmakers to establish norms across various legal frameworks, particularly within the political domain, following the amendment to the 1945 Constitution. This initiative aims to enhance the commitment to boosting women's representation, establishing a framework that promotes gender equality and justice by ensuring that women constitute at least 30 percent of the representation.

The historical development of the minimum quota regulation of 30% commenced with the first election following the amendment to the 1945 Constitution, specifically the 2004 Election. The regulation concerning women's representation was established in Law Number 12 of 2003. According to Article 65 paragraph (1) of the Law, political parties are required to ensure that women's representation in the nomination of legislative candidates is at least 30%. The 2009 Election saw a reaffirmation of women's representation through Law Number 10 of 2008 (Law 10/2008). This legislation mandates that political parties involved in the election must ensure that women constitute 30% of their central management and must include women in their

lists of prospective legislative candidates. During the 2014 Election, a comparable regulation was articulated in Law Number 8 of 2012 (Law 8/2012), mandating that political parties ensure 30% representation of women in both central management and the list of legislative candidates. The 2019 and 2024 elections introduced measures aimed at enhancing women's representation, as outlined in Article 245 and Article 246 of the Election Law. These articles mandate that each list of legislative candidates must include a minimum of 30% female representation, ensuring that there is at least 1 woman for every 3 candidates proposed.

Furthermore, according to Article 245 of the Election Law, "The list of prospective candidates as referred to in Article 243 must include at least 30% (thirty percent) women's representation." At least one female candidate must be listed for every three DPR, provincial DPRD, and district/city DPRD candidates under Article 246 of the Election Law. In addition to the electoral law, political party legislation addresses women's quotas. Article 2, paragraphs (2) and (5) of Law Number 2 of 2008 on Political Parties, as amended by Law Number 2 of 2011, requires political parties to have at least 30% female representation. Central political party governance requires 30% female representation. Article 20 of the Political Party Law requires provincial and district/city political parties' Articles of Association and Bylaws to include at least 30% female participation. Article 29 paragraph (1a) of the Political Party Law requires democratic cadre selection in accordance with the

Articles of Association and Bylaws to recruit DPR and DPRD members, ensuring a minimum 30% female participation.

The primary aim is to prevent disparate treatment of individuals in comparable circumstances. Differential treatment is regarded as an issue, particularly if it subjects individuals within the same group to disparate treatment, instead of safeguarding them against unwarranted advantages or disadvantages. Differential treatment under the law is appropriate for individuals who are not "equal" or who occupy distinct circumstances. The primary problem in implementing this strategy is ascertaining whether a group is "equal" or "distinct." Recognizing disparities within a group, rather than the origins, foundations, and ramifications of those disparities, is regarded as the primary challenge in achieving equality. If "differences" are acknowledged or accepted, then differential treatment will ensue. If differences are not apparent, differential therapy should not be applied.[15]

According to this conventional perspective, two prevalent tactics are employed in the pursuit of gender equality. The first approach rejects gender distinctions between men and women, advocating for equal treatment; the second acknowledges these differences and promotes them through disparate treatments. Concerning women's equality, these two prevailing paradigms are referred to as the 'formal' and 'protectionist' equality models. Furthermore, a third method emphasizes the underlying assumptions of these disparities and their effects on women, facilitating the identification and rectification of disadvantages.

This methodology is referred to as the 'corrective' approach or substantive equality model, which is the framework endorsed by CEDAW.[16]

Law No. 10 of 2008 regarding legislative elections and Law No. 2 of 2008 pertaining to political parties mandates a 30 percent participation of female candidates in legislative bodies. To enhance female representation, one initiative undertaken is the use of the zipper system. The method serves as a mechanism of affirmative action to promote women's representation in compliance with legal mandates. The zipper system mandates that for every three legislative candidates, one must be a female candidate. This zipper method is deemed highly successful for implementing affirmative action, ensuring that women's presence in the political sphere receives preferential treatment.[17]

Affirmative action is a transitory policy designed to enhance women's involvement in social, economic, and political spheres. Numerous actions can still be undertaken regarding affirmative action policies in the political arena. As elucidated by Pippa Norris, these policies can not only include the inclusion of women on legislative candidate lists but also entail offering specialized training, financial support, and equitable publicity for these female candidates.[18]

Maria Farida Indrati, in her dissenting opinion, emphasized the significance of women's representation quotas by referencing Hanna Pitkin's work, The Concept of Representation: [19]

1. Women constitute fifty percent of the population and are entitled to fifty percent of the seats, reflecting the principle of justice.
2. Women possess distinct experiences compared to men, both biologically and socially, which supports the "experience argument." According to this argument, women may attain positions of power due to their adherence to distinct political frameworks.
3. Women and men possess conflicting interests, rendering men incapable of adequately representing women (the "interest group argument").
4. Female politicians serve as significant role models, motivating other women to pursue similar paths. The primary objective of gender quotas in elections is to increase the representation of women in political institutions.

The Court has ruled that the Decree of the Gorontalo Provincial General Election Commission Number 83 of 2023, which pertains to the List of Permanent Candidates for the Gorontalo Provincial People's Representative Council in the 2024 General Election, is unenforceable and must be deemed invalid, lacking any binding legal effect. However, this does not imply that the Court possesses the authority to unilaterally ascertain the vote acquisition for the Petitioner as outlined in the petitum of the a quo petition. Consequently, to ensure equitable legal certainty, it is imperative for the Court to mandate a re-vote for the election of candidates for the Gorontalo Provincial DPRD, Gorontalo Electoral District 6. This should be preceded by

granting political parties involved in the election, which fail to meet the minimum female representation quota of 30 percent on their candidate lists, the opportunity to amend their lists accordingly to satisfy this essential requirement.

In the event that a political party does not meet the established minimum criteria, the KPU of Gorontalo Province will proceed to disqualify the party from participating in the election for candidates for members of the Gorontalo Provincial DPRD, Gorontalo Electoral District 6. In the upcoming elections, for electoral districts that do not meet the minimum requirement of 30 percent female candidates, the KPU will require the political parties participating in the election to amend their candidate lists as necessary. If the criteria are not satisfied, the KPU is mandated to disqualify the political party from engaging in the election within the designated electoral district.

Given that the a quo Court's ruling was made in a public plenary session, the Court believes that a re-vote in Electoral District Gorontalo 6 is required, and that the results of the vote-acquisition process for the re-vote must be determined within a maximum of 45 (forty-five) days. This is based on the full description of the legal considerations mentioned above. The Court has determined that a period of 45 days is adequate for the Respondent to execute the a quo decision, taking into account that the Electoral District Gorontalo 6 encompasses two districts: Boalemo Regency and Pohuwato Regency. The Court also notes that the 45-day period is designed to ensure that the implementation of the a quo Court's decision does not interfere

with the inauguration timeline for members of the Gorontalo Provincial DPRD following the 2024 Election, as well as other state events, including the simultaneous elections for governor and deputy governor, regent and deputy regent, and mayor and deputy mayor in 2024, with voting scheduled for November 2024.

The Court's ruling to invalidate the list of legislative candidates inadequate a minimum of 30% representation aligns with the earlier judicial review decision issued by the Constitutional Court in 2008. The Court's ruling articulated that the implementation of a 30 percent quota, alongside the stipulation for one female candidate among every three candidates, constitutes a form of affirmative action aimed at achieving a more equitable representation of women and men within the legislative bodies of the DPR, DPD, provincial DPRD, and district/city DPRD. The quota system for women may be perceived as diminishing the constitutional rights of male legislative candidates. Nonetheless, this does not imply that it contradicts Article 28D paragraph (1) of the 1945 Constitution. The constitution provides a rationale for these restrictions, as articulated in Article 28J paragraph (2) of the 1945 Constitution. This provision asserts that in the exercise of rights and freedoms, individuals are required to adhere to legally established limitations. Such limitations are intended solely to ensure the recognition and respect for the rights and freedoms of others, while also addressing legitimate demands in alignment with moral principles, religious values, security, and public order

within a democratic framework. Article 28H paragraph (2) of the 1945 Constitution permits such conveniences and special treatments to secure equal opportunities and benefits, thereby striving for equality and justice. The policy advocating for a 30 percent quota for women, alongside the stipulation that one woman must be included among every three legislative candidates, serves as a provisional affirmative measure aimed at fostering women's involvement in national policy-making through their engagement in the legislative process.[20]

The court subsequently affirmed that 30 percent quota should be perceived as a mechanism to equilibrate the representation of women and men within the legislative bodies of the DPR, provincial DPRD, and district/city DPRD, thereby ensuring and enhancing the prospects for women to secure election to these positions. This initiative seeks to create avenues for women to engage actively in state administration in an equitable and balanced fashion, particularly in shaping state policy directions that promote the advancement of women's lives. There is a prevailing hope that the acceptance of women in the political sphere transcends their gender, focusing instead on their qualifications and competencies as legislators within parliamentary frameworks at the district, provincial, and national tiers. As the representation of female legislative members continues to rise, there is a prevailing expectation that they will effectively advocate for the interests of women, particularly those whose voices may not be adequately heard by their male counterparts. In this framework, the necessity for women's

representation among the prospective candidates for the DPR, provincial DPRD, and district/city DPRD emerges as a critical issue that must be advocated for, serving as a constitutional mandate aimed at fostering equality in the overarching landscape of national development.[21]

D. Improving the implementation of the noken system in Papua :

Noken is an election system acknowledged in the constitution. Noken is typically utilized by individuals residing in the mountainous regions of Papua to inform their decisions during elections and regional elections. Noken is implemented through consultations with traditional elders or tribal chiefs. The implementation of noken has a long history and represents a legacy rooted in local wisdom and cultural heritage. Two noken systems exist: the big man pattern, where votes are submitted and represented to the traditional leader, and the hanging noken pattern, in which votes agreed upon are visible and allocated to a predetermined party pocket.

There are multiple methods used to carry out the noken implementation procedure. The community convenes to deliberate and select an elder responsible for articulating the political aspirations of the group. The elected elder is responsible for marking the ballots in accordance with the agreed-upon candidate pairs, as witnessed by the Polling Organizing Group (KPPS) officer. Marked ballots are subsequently delivered to the nearest (polling station) TPS for placement into the ballot box. The elder designated by the community can directly enter the

voting booth and obtain a number of ballots equivalent to the registered voters at the polling station from the KPPS officer. The ballots are marked and submitted to the KPPS officer for placement into the ballot box, followed by the commencement of vote counting at the polling station. The outcomes of the deliberation must be adhered to by all individuals without exception, as these customary deliberation decisions represent the highest authority that has been upheld for generations.[22]

Despite the technical differences in the implementation of noken within the ikat system and the big man system, both practices involve the role of the tribal chief (traditional elder). The tribal chief holds a significant position within the customary government system. The role of a tribal chief is significant both within customary frameworks and at the level of state governance. A tribal chief assumes a leadership role characterized by the authority to issue directives, with the community complying voluntarily and without coercion. The authority of a tribal chief in customary contexts can be classified as a form of power. The authority of the tribal chief encompasses both traditional and charismatic forms of authority. This is founded on traditional norms transmitted through generations. The authority of a tribal chief is derived from patriarchalism, characterized by inherited power that is transmitted through lineage.[23]

Furthermore, various sources elucidate the voting procedure utilizing the noken system, specifically :[24]

1. Prior to the General Election or Regional Election, the community, in conjunction with the tribal chief, initiates a stone-burning ceremony to decide their voting preference for a specific party, candidate, or candidate pair. Conducted either collaboratively or in the absence of the Party, Candidate, or Candidate Pair involved.
2. Voters either cast their votes independently or are represented by the tribal chief.
3. The voting method may involve marking the ballot or directly inserting the ballot paper into the noken of the selected Party, Candidate, or Candidate Pair without marking.
4. Another method involves voters selecting their chosen noken, which are then counted by the KPPS. Alternatively, the tribal chief may request the KPPS to record a specific number from the voter list corresponding to the Party/Candidate/Candidate Pair that reflects the number of voters they represent.
5. Ballot papers inserted into the noken of a specific Party/Candidate/Candidate Pair that remain unmarked by voters will be fully marked by the KPPS.

Noken is an integral cultural object within the daily life of the Papuan highland community. Noken serves as a symbol of welcome, farewell, and gift-giving among ethnic groups in the central mountains. At weddings and funerals, the noken is consistently honored, similar to the use of pandan-woven bags in the Malay community. The noken election system, within communal decision-making, is understood as a political

commitment, characterized by mutual agreement and the collective endorsement of a specific candidate through deliberative processes. Proponents of the noken system argue that the choice of each citizen to entrust their vote to a trusted individual represents a personal decision, collectively forming a community consensus symbolized by the noken. This represents a manifestation of the sovereignty of the people residing in the central Papuan mountains.[25]

The regulations for voting using the noken/ikat system are delineated in Article 118, paragraphs (1) to (4), of KPU Regulation Number 25 of 2023 on Voting and Counting in General Elections. The law specifies that voting via the noken/ikat system is exclusively conducted in the Central Papua Province and the Mountainous Papua Province in districts that continue to utilize noken/ikat. Regions that have discontinued the noken/ikat system must have elections. Subsequently, election organizers at the TPS, sub-district/village, and district levels in the specified locations shall oversee the execution of voting and the tabulation of results in compliance with the stipulations outlined in this KPU Regulation. The implementation guidelines for voting via the noken/ikat system are outlined in a KPU Decree. The voting process utilizing the noken/ikat system in the Provinces of Central Papua and Mountainous Papua is governed by KPU Decree Number 66 of 2024, as amended by KPU Decree Number 216 of 2024, which outlines the Technical Guidelines for the Implementation of Voting and Vote Counting in the General Election. The directive specifies the regions authorized

to conduct voting via the noken system. Both the Provinces of Mountainous Papua and Central Papua comprise six regencies; however, not all villages or districts within these provinces utilize the noken system during elections. This directive further stipulates that the PPS[26], PPK[27], and Regency KPU are forbidden from altering the election results at the TPS.

Despite the Court's conclusion that the Petitioner's petition was not substantiated, the Court made numerous key observations about the implementation of voting using the noken system. The MK stressed the importance of significant attention by election organizing organizations, the government, political parties, traditional leaders, tribe chiefs, and the general public to enhance this system. The Court expressed this consideration in Decision Number 130-01-17-37/PHPU.DPR-DPRD-XXII/2024, which was read on June 10, 2024, and relates to the dispute over the election results of members of the Yahukimo Regency DPRD. Although the United Development Party's (PPP) request was denied, the Court urged all parties engaged to make reforms to prevent potential problems in future elections, particularly in election infrastructure, administrative systems, and the socialization of the noken system. The MK highlighted that the noken system must be viewed as a tool for exercising the right to vote and be elected, particularly for those who continue to use the Big Man notion in their daily lives. Therefore, election organizers have a duty to facilitate these rights more carefully and explicitly, taking into account the demographic and topographical constraints in the Papua Mountains.

Regarding electoral infrastructure, the Court stressed the necessity of KPU officers' technical knowledge and the availability of supplies at polling stations. Furthermore, the Court emphasized the necessity of precise data recording, from voter data to vote counting results, in order to reduce discrepancies in outcomes at the next level. In this case, the Court discovered data disparities at multiple polling locations as a result of improper recording techniques. The KPU was urged to develop the administrative process so that it is more adaptable to the culture of the noken system's user community.

The Court determined that numerous aspects of the noken voting system's implementation require urgent attention from electoral authorities, the government, political parties, traditional leaders, and the broader community to facilitate improvements aimed at mitigating potential issues in future electoral contests. This is particularly pertinent concerning electoral infrastructure, administrative processes, data recording, and public education regarding the functionality of the noken system, alongside existing measures.

In order to ensure that the implementation of political contestation does not subsequently cause harm and division in the social order, the Court maintains that the noken system must continue to be interpreted as a tool for achieving the right to vote and to run for office for all citizens, particularly for those who still live by the Big Man concept. Consequently, it is the responsibility of the election organizers to ensure the facilitation of the pertinent rights, necessitating meticulous and specialized

management distinct from other areas, given the demographic and geographical characteristics of the Papua Mountains region. Concerning election infrastructure, the paramount factor is the technical comprehension of field implementation by the KPU personnel and the accessibility of logistics at the polling stations. In this context, it is crucial for the Court to underscore the significance of the data recording mechanism pertaining to voter information, ballot papers, and specific occurrences or incidents directly associated with the electoral process.[28]

The KPU Decree 66/2024 comprehensively and clearly delineates the procedures for conducting voting, encompassing the deliberation on decision-making for electoral support prior to voting day, the voting process by tribal chiefs based on deliberation outcomes on voting day, the recording of present voters by the KPPS, and, crucially, the administration of vote counting data in Form Model C.[29] The results serve as the foundation for vote tallying at the subsequent level. The availability of vote collection data at the TPS is expected to reduce discrepancies in vote counting outcomes. KPU Decree 66/2024 prohibits PPS, PPK/PPD, or Regency KPU from altering election results at the TPS. Consequently, following the voting procedure conducted by tribal chiefs at the TPS, no further agreements will be made to transmit or alter vote acquisition data.

The Court believes that to ensure and safeguard the integrity of voters' constitutional rights and uphold the principles of democratic elections-characterized by direct, general, free, secret,

honest, and fair processes, while respecting distinct cultural contexts regarding the violations of general elections through the nolken/ikat system in Papua Pegunungan-it is advisable to act on the Bawaslu recommendation by initially recounting the ballots for data comparison, after which the Respondent should ascertain the accurate vote tally based on the comparative results.[30]

E. Conclucion :

The MK derives its authority from Article 24C of the 1945 Constitution and relevant laws, including Law No. 7 of 2017. As the final judicial authority in electoral disputes, the MK's decisions are binding and unappealable, emphasizing the need for procedural adherence to protect electoral integrity and democracy. The article provides a comprehensive legal analysis of the MK role in Indonesia's 2024 general elections. It underscores several key issues and decisions that reflect the evolving nature of electoral jurisprudence in Indonesia.

The Court plays a pivotal role in safeguarding the legitimacy and fairness of elections in Indonesia by resolving disputes based on constitutional principles and electoral laws. The 2024 decisions underscore the Court's dual focus on procedural compliance and substantive justice-particularly in promoting gender equality and respecting cultural traditions. Moving forward, the MK emphasizes the need for robust electoral governance, ensuring that both legal standards and societal values are harmonized to foster public trust and democratic stability. Furthermore electoral dispute procedures

are governed by specific regulations to ensure expeditious adjudication. Legislative election disputes are resolved within 30 working days, while presidential disputes must be concluded within 14 days of registration, ensuring the prompt resolution of election controversies.

In addition, this article examines two landmark decisions regarding women's representation in legislative bodies and improvements to the noken system in Papua. The court mandated a re-vote due to failure to meet the 30% women's representation quota, emphasizing gender equality in political representation. The MK's ruling in the Gorontalo 6 electoral district annulled election results due to the failure of certain political parties to meet the 30% female candidate requirement. The Court reaffirmed that gender quotas serve as a constitutional affirmative action mechanism to correct systemic gender imbalances, consistent with Article 28H(2) of the 1945 Constitution, which mandates special treatment to promote equality and justice. The decision reflects the MK's commitment to upholding the principle of non-discrimination and equitable political participation.

The MK acknowledged the noken system-a customary electoral practice in Papua-as a constitutionally valid voting method, provided it aligns with electoral integrity and transparency standards. The noken system, in which tribal leaders cast votes on behalf of communities are relevant in Indonesian election system. In the other hand, The Court stressed the importance of improving administration and socialization to

avoid potential issues while respecting local customs. The Court emphasized the importance of strengthening administrative oversight, accurate voter data recording, and infrastructure to support the noken system while respecting local traditions. The ruling reflects the MK's balancing of constitutional rights with Indonesia's cultural pluralism. Moreover, the Rule highlighted the need for electoral organizers, including the KPU, to enhance logistical preparedness, data management, and public education regarding electoral procedures.

The MK's decisions on PHPU cases demonstrate the application of substantive equality principles, particularly through its enforcement of gender quotas. Furthermore, the recognition of the noken system aligns with Indonesia's constitutional principle of unity in diversity, ensuring that democratic processes accommodate cultural distinctiveness where feasible.

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7- Article 475 section (1) Law Number 7 Year 2017 of General Election
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26 - The Voting Committee, hereinafter abbreviated as PPS, is a committee formed by the Regency/City KPU/KIP to carry out elections in villages or other names/sub-districts.
27 - The Sub-district Election Committee, hereinafter referred to as PPK, is a committee formed by the Regency/City KPU to organize the Regional Head and Deputy Regional Head Elections at the sub-district level or other designation and is temporary in nature.
28 - Decision Number 130-01-17-37/PHPU.DPR-DPRD-XXII/2024 dibacakan pada tanggal 10 Juni 2024, pp 130
29- Form C1 is a certificate of results and details of the vote count at the TPS. Form C1 needs to be filled out as a report on the voting process and to record the results of the count. The information in it includes the number of valid votes, invalid votes, and the vote count for each candidate and political party.
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