

## Reflection & Projection Women's "Special Treatment" in the 2024 Election Regulations: Study of PKPU 10/2023

Ida BUDHIATI<sup>1</sup>, Rian Adhivira PRABOWO<sup>2</sup>

<sup>1</sup>Faculty of Law, Bhayangkara University, Greater Jakarta, Indonesia

<sup>2</sup>Faculty of Law, University of Jember, Indonesia

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### Corresponding Author:

Ida Budhiati

### E-mail:

[idabudhi11@yahoo.co.id](mailto:idabudhi11@yahoo.co.id)

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### Abstract:

#### Purpose:

During the 2024 election, the KPU issued PKPU 10/2023, which regulates candidacy. PKPU 10/2023 contains changes to a new method for calculating decimals for calculating women's quotas in electoral districts. The question arises: Does PKPU 10/2023 contain the spirit of special treatment in the interests of women? For this purpose, this study was carried out by departing from three aspects: (i) The historicity of the dynamics of "special treatment" in the 1945 Constitution.

#### Methodology:

Also considered in this section are the circumstances and conditions that served as the background for including special treatment provisions in the constitution, along with the dynamics surrounding them. (ii) Precedents in Constitutional Court Decisions which provide rules for the meaning of special treatment. (iii) The role of the KPU as a regulator in formulating its regulations, namely the attribution of authority possessed by the KPU to translate the spirit of the constitution towards special treatment. Finally, (iv) the substance of the PKPU 10/2023 norm itself is reviewed for conformity with the norms.

#### Findings:

In succession, the following were found: First, from a historical perspective, the special treatment of women's political quotas shows a tendency for constitutional interpretations to open space for women's political involvement. Second, the KPU as the regulator has a strategic role in interpreting the constitutional spirit, including special treatment for women. Third, regarding substance, the content of norms contained in PKPU 10/2023 is different from Law 7/2017 and the 1945 Constitution.

#### Implication:

From these three aspects, this study concludes that PKPU 10/2023 shows a discrepancy in the spirit of special treatment in capturing the interests of women's political representation. There should be changes to PKPU 10/2023 norms while maintaining the special treatment provisions for women as contained in PKPU 20/2018.

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## INTRODUCTION

There is no democracy without adequate women's voices in political contestation in representative institutions. This article will highlight efforts to embrace equality through legal channels, especially the 2024 General Election contestation. The question is simple: How can regulators create "social engineering" by issuing regulations guaranteeing equality for vulnerable groups, namely women? More specifically, for this purpose, the research was carried out by analyzing the role of the General Election Commission (KPU) as the authority to formulate and issue regulations at each election stage. Another essential element that will also be discussed is the substance of the norms of the regulations governing women's political quotas. Two aspects of regulator and regulation are the central topics of discussion.

In implementing the 2024 Election, the KPU issued PKPU 10/2023, which regulates the rounding of decimal places for calculating the representation of female candidates. PKPU *a quo* adheres to a new calculation model where if the calculation of the number of prospective legislative candidates in each electoral district results in two decimal places less than fifty, then rounding down will be carried out. This arrangement immediately sparked concern among academics, ministers, MPR members, and civil society groups, to the point that parties also

submitted a judicial review to the Supreme Court. The main thing is that the mechanism adopted in PKPU 10/2023 will be detrimental to the interests of women's political quotas. These concerns continued until the KPU finally agreed to change PKPU 10/2023. This step supports two other election management bodies, Bawaslu and DKPP.

Previously, the term "women's political quota" used throughout this article referred to a body of knowledge that discussed women's political representation through a policy of positive discrimination. In essence, giving special treatment to women in order to achieve a situation of equality. Another term often used by scholars is "*affirmative action*." In Indonesia, the form of special treatment referred to above has been regulated explicitly in Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia (after this: the 1945 Constitution). More specifically, regulating women's political quotas in political contestation is regulated through Law 7/2017. In addition, the technical regulations for each stage of the election are governed by regulations issued by the KPU.

Next, the research topic was raised. In the range of literature, there have been several studies that have reviewed the topic of regulation of women's political quotas in Indonesia. Purwanti (2014), Budhiati (2018), and Vasandani et al. (2022) each discussed the politics of women's political quota laws. The three highlighted the complexity of achieving the 30% quota in the People's Representative Council (DPR) due to socio-cultural obstacles. Further research from Aspinall et al. (2021) focuses on identifying barriers to fulfilling women's quotas. This research takes a different approach than previous studies by suggesting that having regulations that offer opportunities for women's political participation during elections may only sometimes lead to expected outcomes. Suppose such a perspective is applied to the context of the calculation method regulated by PKPU 10/2023. In that case, a question arises that needs to be answered at this opportunity: Does this mechanism create additional obstacles that contradict the spirit of special treatment in the Constitution?

This paper presents new findings from two perspectives, building upon previous research. First, this research will focus on the KPU as the regulator and its regulatory products concerning women's political quotas. To what extent do regulators capture the spirit of women's interests in special treatment and translate it through the resulting regulations? Second, dimensions *tempus* implementation of the 2024 election, whose stages are ongoing. It means a new legal, political situation is different from previous research. At the same time, it is still related to the first aspect, PKPU 10/2023 issuance caused upheaval, representing a setback in regulating women's political quotas.

The study results led the writer to believe that PKPU 10/2023 needs to capture the spirit of the constitution regarding special treatment for women's political quotas. This conclusion was reached after looking at four aspects. Each aspect is, at the same time, a method used by the author to discover what should be the main idea of special treatment as ordered in the Constitution. These four aspects include (i) the historicity of the dynamics of "special treatment" in the 1945 Constitution; (ii) the president of the rule in the Constitutional Court Decision; (iv) the KPU's strategic role as a regulator in formulating its regulations; and (iii) the substance of the PKPU 10/2023 norm itself. The following is a discussion of each of the aspects just mentioned:

## METHODS

For this purpose, this study was carried out by departing from three aspects: (i) The historicity of the dynamics of "special treatment" in the 1945 Constitution. Also considered in this section are the circumstances and conditions that became the background for including special treatment provisions in the Constitution and the dynamics surrounding them. (ii) Precedents in Constitutional Court Decisions which provide rules for the meaning of special treatment. (iii) The role of the KPU as a regulator in formulating its regulations, namely the attribution of authority possessed by the KPU to translate the spirit of the constitution towards special treatment. Finally, (iv) the substance of the PKPU 10/2023 norm itself is reviewed for conformity with the norms.

## RESULT AND DISCUSSION

**Historical Aspects of "Special Treatment" in the Constitution.** The inclusion of special treatment clauses in the constitution. This unit of analysis is needed to capture the spirit of the movement for women's equality. Efforts to reduce the gap between men and women through social engineering in legal instruments cannot be separated from the long history of discrimination against women. So Historical Aspects of "Special Treatment" in the Constitution describe the context of women's interests as a justification for giving positive discrimination as a countermeasure. This background is needed to see the Constitutional meaning of the rule of women's political

quotas and how it should be translated into technical regulations. Included in the discussion is the precedent for the interpretation of the Constitutional Court (MK), which in its consideration, provides a rule of meaning regarding what is referred to as special treatment in the form of positive discrimination in the interests of women in achieving equality.

**Equality and Protection of Women's Interests in the Constitution.** Awareness to achieve equality for women has been voiced for a long time. Even since the pre-independence period, the need to be involved in the public space was a topic of discussion voiced at the Women's Congress in 1928 (Blackburn, 2007). Then it was also conveyed by Soekarno (1963) through "Sarinah," which emphasized the importance of the role of women in the struggle for the Indonesian revolution. Not to mention that what should also be considered is the bustling, mushrooming, and excitement of contestation between women's movements in the early days of independence. Each of the above shows how the issue of equality is a separate concern that cannot be separated from the history of the republic.

It is just that history also proves that incidents of human rights violations often occur against groups of people who are weak, both economically, socially, and physically and to minority groups. Karlina (2002) said that, especially in conflict situations, weak groups, especially women, would be more vulnerable to being impacted as victims of human rights violations. It does not mean that during peacetime, women did not experience marginalization. Starting from the patriarchal culture in the private sphere, placement as a secondary actor (*second-line position*) in the workplace, also including in politics and government, which sees women only as mere complements (Sadli, 1999). Suppose this situation can continue without any change in the legal system and culture. In that case, it will increasingly lead to discrimination and dehumanization of the role of women in social and state life. Indonesia is one of those experiencing these obstacles.

From the background of the discrimination experienced appeared a reverse movement. One of the most important developments is the inclusion of equality between men and women in the *Universal Declaration of Human Rights* (UDHR) in 1948. The spirit of equality is contained and is a driving factor in documents often considered one of humanity's most significant achievements (Morsink, 1999). Both men and women have equal rights, and any form of discrimination cannot be justified. Not to be left behind is Indonesia's attitude in carrying out several ratifications of international law, among which the most important ones for the protection of women's rights are:

1. Ratification of ILO Convention No. 100 concerning equal remuneration between men and women through Law 80/1957.
2. Law 68/1958 ratified the 1952 Convention on Women's Political Rights.
3. Ratification of CEDAW through Law 7/1984.
4. Agreement of the 4th World Conference on Women in Beijing 1995 identified "Women in Power and Decision-Making" as one of 12 critical areas that must promote women's full and equal participation.
5. Ratification of the ICCPR through Law 12/2005.

So it becomes clear that Indonesia has a long history of equal human rights for women, demonstrated through the ratification of international legal instruments. The top priority should be to guarantee and encourage equal treatment following the principles of the Constitution and the goals we strive to achieve. However, it must be admitted that more than this measure was needed. Marginalization in the form of discrimination and violence against women still occurs (Wieringa, 2014; Perempuan, 2007; Anggraeni, 2014). Dissatisfaction with the government, which was felt to be authoritarian, spurred a reform movement that demanded a more democratic change in government. The encouragement of civil society resulted in amendments to the 1945 Constitution, including the inclusion of provisions regarding human rights through the second amendment to the 1945 Constitution.

Along with the flow of democratization is a realization that equality cannot be applied just like that. Vulnerable groups, women, with all the social burdens of discrimination and inequality of access, will undoubtedly have a greater level of difficulty in enjoying the same rights. Against this, in 1998, the MPR VII/MPR/1998. The decree contained "special treatment" for vulnerable groups, which was then regulated in Law 39/1999. Furthermore, the issue of special treatment also emerged during discussions on the second amendment to the 1945 Constitution which would later be included in Article 28H Paragraph (2) of the 1945 Constitution (Konstitusi, 2010). Due to the importance of the position of the quo Article in this study, it is necessary to quote it as follows:

"Everyone has the right to get convenience and special treatment to obtain the same opportunities and benefits to achieve equality and justice."

*Affirmative action* policies are chosen by the state as a response to discriminatory social conditions, inequality, and marginalization in all areas of life due to patriarchal structures at the public and private levels. Such a social structure gives birth to certain social groups that do not have access and experience obstacles in public life, like society in general. For this reason, a form of state intervention is needed to create a more just order and ensure that everyone participates in life together.

Affirmation policies are temporary special measures to achieve gender equality and justice in the political arena, bearing in mind that women are left behind in filling and taking opportunities in the political field, which are still very far from expectations. Affirmative action encourages the achievement of justice and gender equality and provides opportunities and opportunities for women to achieve equality and justice in the political sphere. This action is a positive discrimination carried out to accelerate the achievement of justice and equality. One of the most important means of implementing it is the law, and guarantees must be contained in the constitution and laws and regulations (Mansur, 2009). It is also in line with the understanding given by the Constitutional Court:

[...] specific and temporary actions (affirmative actions) are aimed at encouraging and at the same time accelerating certain groups of people or specific groups of members of society to pursue progress so that they reach the same level of development and are on par with most groups of people who are already much more advanced. [...].

**Dynamics of Women's Quota Policy in the Post-New Order Election Law.** In the hierarchy of norms, Article 28H paragraph (2) of the 1945 Constitution occupies the highest position containing legal principles and moral values. These provisions align with the spirit of international law, namely CEDAW and Beijing Action. Furthermore, during the time of President Gus Dur, Presidential Instruction 9/2000 was issued, which contained gender inclusion in national development. All involvement at the national and international levels shows Indonesia's commitment to realizing gender equality in both public and private life. Taking into account the moral values of affirmation policies in the 1945 Constitution of the Republic of Indonesia and international conventions that have been ratified by the Indonesian government and the legislators (the government and the DPR), it can be understood that the policy of special treatment of women in political contestation should also be placed in such a context. The premise is simple: Political equality will be complex without women's voices in representative institutions.

In retrospect, the guidelines for receiving special treatment in electoral competitions were established in the 2004 General Election by enforcing Article 65, paragraph (1) of Law 12/2003. Special treatment is considered too weak and does not provide legal certainty because it only uses the phrase "paying attention." As a result, the parties participating in the election interpret it not as an obligation. There were several improvements in the implementation of the next election. First, Law 2/2008 was issued, which requires women's representation of at least 30% in establishments and management from the central to district/city levels. So every political party is required to include women's representation and include it in the Statutes/Bylaws of each political party. This regulation strengthens political party institutions to implement affirmative policies by proposing female cadres.

Following later was the issuance of Law 10/2008, which made it mandatory to include 30% of women in the list of prospective candidates. In addition, 10/2008 contains significant advances for affirmative policies. In addition to the obligation to fulfill the 30% quota for female candidates, the *zipper system* method was also introduced. So in the serial number list of prospective candidates, there will be one female candidate for every three potential candidates. This provision was again maintained in Law 8/2012. The *zipper system* has been strengthened in Law 7/2017, which states that women are not only placed as the last serial number. The change favoring the affirmative spirit was motivated by a judicial review of Article 55 paragraph (2) of Law 10/2008 and Article 56 paragraph (2) of Law 8/2012 through the Constitutional Court, which will be explained in the following section.

#### **Special Treatment in the Constitutional Court's Decision Precedent.**

**Zipper System Material Test in Law 8/2012.** Two provisions of the particular treatment policy as prospective members listed in UU 10/2008 and UU 8/2012 are being requested for judicial review. Then the

Constitutional Court, through decision Number 20/PUU-XI/2013, stated that 30% of women's representation was constitutional. The affirmative quota policy is needed to maintain the opportunity for women to be elected to a role in representative institutions. That is, the Constitutional Court clarified the intention of the legislators to advise the political parties participating in the general election not to place one woman in the "last" order for every three potential candidates. However, it is also possible for one woman to be placed in the "first" order for every three potential candidates or the "second" order for every three potential candidates. The Constitutional Court, in its consideration, stated:

[...] so that women's representation of at least 30% (thirty percent) [vide Article 55 UU 8/2012] is an absolute requirement for political parties that meet the requirements to participate in general elections to nominate party cadres and at the same time to maintain the chances of women being elected to play a role in representative institutions [...]. It can also be interpreted, based on Article 56 paragraph (2) of Law 8/2012, a political party in an electoral district can nominate 100% (one hundred per hundred) of prospective members of the representative body who are entirely women [...].

To be clear, the Constitutional Court has made the interpretation that follows.:

Article 56 Paragraph (2) Law 8/2012	MK decision 20/PUU-XI/2013	Ps. 246 Paragraph (2) Law 7/2017
[...] For every 3 (three) prospective candidates, there is at least 1 (one) female prospective candidate.	In every 3 (three) prospective candidates, female prospective candidates can be placed at sequences 1, 2, and 3, and so on, not only on serial numbers 3, 6, and so on.	In every 3 (three) prospective candidates, there is at least 1 (one) woman. <b>Explanation</b> "In every 3 (three) prospective candidates, female candidates can be placed in sequence 1, 2, and 3, not only on serial numbers 3, 6, and so on."

The DPR and the government followed the Constitutional Court decision No.20/PUU-XI/2013 by adopting it in Article 246 Paragraph (2) of Law 7/2017 and its explanation. Following the Constitutional Court decision No.20/PUU-XI/2013, the elucidation of Article 246 (2) of Law No. 7 of 2017, it must be interpreted that the legislators advised political parties participating in the general election not to place female candidates in the "last" order or the highest serial number. However, it can be placed in the initial or small serial number.

**Material Review of Provisions for Candidates with Equal Votes in Law 8/2012.** Still, in Decision 20/PUU/XI/2013, part of the application questions the mechanism when two or more candidates have the same vote. The location of the problem is in Article 215, letter b of Law 8/2012, which uses the phrase "considering." The quo provision requires the reference when candidates obtain the same votes, namely by considering: (i) the distribution of vote acquisition and (ii) the sex of the candidates concerned. The Court then views that the phrase consider does not guarantee the implementation of *affirmative action*. The Constitutional Court then interpreted that "considering" must be interpreted as "prioritizing." If male and female candidates receive the same number and distribution of votes, the female candidate will be prioritized. This provision was also adopted in Law 7/2017.

**Interpreting the precedent of the Constitutional Court's decision on "affirmative action" in Law 7/2017.** From the president mentioned earlier, it can be immediately understood that the Constitutional Court has given meaning to the constitutionality of the particular treatment policy for women's quotas. The Constitutional Court displays the attitude that although the determination of whom the elected candidate must still come from the acquisition of the number of votes, the Constitutional Court provides legitimacy that it is necessary to apply facilities both in the organizational structure of political parties to involve participation as well as the nomination procession in order to maintain the chances of female candidates being elected. The Constitutional Court reaffirmed the affirmative policy, which stated that special treatment could only be applied to specific groups. Ease aimed at groups without which they cannot achieve equality, so they will not get justice. Based on the principles stated in the Constitutional Court Decision, the following will explain the meaning of Law 7/2017 related to the issue of special treatment for women in electoral district seats.

The special treatment for women's quota in Law 7/2017 is stated in Article 245, which states that the list of prospective candidates must contain at least 30% representation of women. Furthermore, Article 243 paragraph (1) and Article 244 of Law 7/2017 regulate political parties to compile a list of candidates that contain at most 100% (one hundred percent) of the seats in each electoral district. Following the rules of the constitution and being in harmony with its legal objectives, the two provisions mentioned must be read systematically. Whereas the purpose of formulating the norms of Law 7/2017 has been systematically compiled to achieve women's equality in political contestation. Only through such reading can it be understood that there is coherence between the articles in the body and the explanatory attachments.

Treating Law 7/2017 as an independent article will provide a constitutional basis for fulfilling women's political rights. It is only a partial interpretation. The spirit of special treatment cannot be separated from other provisions, which, if carried out, are contrary to the moral values of the constitution, which requires equality for every citizen to participate in government and to obtain opportunities and benefits in achieving equality and justice. Based on constitutional norms and systematic meaning, the provisions of Article 245 of Law 7/2017 must be interpreted that Political Parties compile a list of candidates containing at least 30% (thirty percent) women's representation in each electoral district. Compliance with these provisions is part of the KPU's authority to issue implementing regulations, which will be explained briefly.

**The Strategic Role of the Election Commission.** The increase in women's representation in politics, especially in elections, does not happen automatically but is due to continuous struggles. One of them is through laws and regulations that support the creation of an atmosphere of equality as ordered by the Constitution. The regulation of the Election Law since the reformation period until today has clearly emphasized the central role of the KPU as the regulator. The particular treatment policy contained in Law 7/2017 provides attribution of authority for the KPU to compile and determine PKPU. It is just that this great authority cannot be separated from the orderly hierarchy of norms as stipulated in Article 7, paragraph (2) of Law 12/2011. From a more theoretical perspective, this has also been explained by Hans Kelsen (1949) through Stufenbau's Theory regarding the level of norms. That lower norms may not conflict with higher norms hierarchies. Thus, every formation of laws and regulations must consider the hierarchical system to create harmony between laws and regulations.

This paper argues that implementing regulations should pay attention to the moral values of the affirmative policy as stipulated in the hierarchy of norms of Article 28H paragraph (2) of the 1945 Constitution, the rules in the Constitutional Court's Decisions, as well as the journey of the policy on special treatment of quotas for women since Law 12/2003, Law 10/2008, Law 8/2012 to Law 7/2017. For this purpose, the KPU, in organizing the 2014 and 2019 elections, issued PKPU 7/2013 and PKPU 20/2018, each containing a women's political quota policy. The KPU shows a serious commitment to implementing affirmative policies from these regulations. Further details are described in the following table:

**Table 1.** Implementing Affirmative Policies

Norm Hierarchy	KPU regulations No. 7/2013	Norm Hierarchy	KPU regulations No. 20/2018
Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia:  Everyone has the right to get convenience and special treatment to obtain the same opportunities and benefits to achieve equality and justice. <b>Article 54 paragraph (2) Law no. 8 of 2012:</b> The list of prospective candidates contains a maximum of 100% of the	<b>Article 11:</b> Mandatory political parties a. Compile a list of nominees with a maximum of 100% of the seats determined in each electoral district. b. The list of prospective candidates includes at least 30% representation of women in each constituency. c. The names of the candidates in the list	Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia: Everyone has the right to get special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice  <b>Article 244 Law no. 7 Year 2017:</b> The list of prospective candidates contains a maximum of 100% of the	<b>Article 6 Paragraph 1 letters a, b, c, and d:</b> a. The maximum number of prospective candidates is 1005 from the number of seats determined in each Electoral District b. Compiled in a list of prospective candidates which must contain at least 30% representation

seats in each electoral district.

**Article 55 Law no. 8 of 2012:**

The candidate list contains at least 30% representation of women.

**Article 56, paragraphs (1) and (2) of Law No. 8 of 2012**

The names of the candidates are arranged by serial number, and for every three potential candidates, there is at least one woman

**MK decision No. 20/PUU-XI/2013**

Explanation of Article 56 paragraph (2) of Law 8/2012, which initially stated, *"In every 3 (three) prospective candidates, female prospective candidates can be placed in sequence 1, or 2, or 3 and so on, not only on serial numbers 3, 6, and so on."* changed to *"In every 3 (three) prospective candidates, female prospective candidates can be placed in the order of 1, 2, and 3."*

of nominees are arranged by serial number.

The order of placing female candidates is that for every three candidates, there is at least one female candidate.

**Article 24 paragraph (2):**

Suppose a political party has met the 30% requirement for women's representation and placed at least one name of a potential female candidate for every three potential female candidates in a smaller serial number. In that case, the political party is declared to have met the requirements.

seats in each electoral district.

**Article 245 Law no. 7 of 2017**

The candidate list contains at least 30% representation of women

**Article 246 of Law No. 7 of 2017**

The names of the candidates are arranged by serial number, and for every three potential candidates, there is at least one woman.

**Explanation of Article 246**

In every 3 (three) prospective candidates, female prospective candidates can be placed in sequences 1, 2, and 3, not only on serial numbers 3, 6, and so on.

of women in each electoral district

c. There must be at least one prospective female candidate for every three prospective candidates.

**Article 6 Paragraph (2):**

If the calculation of 30% of the number of female candidates in each electoral district results in a fractional number, a round-up is carried out,

According to the two regulations mentioned, political parties must ensure that at least 30% of their electoral candidates are women and that they are placed in the lower positions on the candidate list. A round-up is carried out if calculating 30% of the number of female candidates in each electoral district results in a fractional number. The policy was issued to realize democratic and inclusive elections and to provide access to women as a vulnerable group to use their political rights to participate in government as stipulated in the constitution and the Election Law.

Regarding impact, PKPU 7/2013 and PKPU 20/2018 affirmation policies have positively impacted involving women in political contestation. As a comparison, in the 2004 election, there were only 33% of women candidates for DPR, 34.7% for the 2009 election, 37.01% for the 2014 election, and 40.29% for the 2019 election. The increase in the percentage of the number of candidates was also accompanied by the level of electability, namely 11.09% in the 2004 election, 17.86% in the 2009 election, 17.3 2% in the 2014 election, and 20.35% in the 2019 election. The increase in nomination and electability rates must be interpreted as the fruit of continuous improvement in the women's political quota policy format. The data description shows the success of social engineering that was carried out through the law and was translated with sincerity by the KPU through the PKPU that was issued. In other words, the position of the KPU as the executor of the stages, which at the same time has the authority to issue PKPU, has an immense contribution to the realization of the women's political quota. The next question, which is also the main presentation of this paper, is how the affirmative policy will be implemented for the 2024 General Election.

**Special Treatment of Women's Political Quotas in PKPU 10/2023.** Two aspects are the unit of analysis in this section, namely: (i) the suitability of PKPU through a review of the norm hierarchy to describe whether the calculation model adopted in PKPU 10/2023 is following the will of the constitution; and (ii) bid projections on how improvements should be made in the future. These two aspects depart from what has been described in the first paragraph under discussion, paragraph fourteen in the discussion, and paragraph twenty under discussion both from the historicity aspect, the precedent for meaning through the Constitutional Court Decision, and the position of the KPU institutionally. Each contributed to the constitution's moral values and legal orders regarding the special treatment rules and to what extent they were translated into the PKPU a quo.

**Content of Special Treatment Norms in PKPU 10/2023.** For the implementation of the 2024 elections, the KPU issued PKPU 10/2023. PKPU a quo contains a new model of affirmation policy, namely in the provisions of Article 8 paragraph (2), which principally states as follows:

If the calculation of 30% (thirty percent) of the number of female Prospective Candidates in each Electoral District results in a fractional number, then if two decimal places are after the decimal point, the value is:

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

From the orderly interpretation of the norm hierarchy, discrepancies were found between Article 8 paragraph (2) PKPU 10/2023 and the provisions of the norms of Article 245 Law 7/2017. The rounding model for converting women's quotas for electoral districts impacts the percentage of women's representation. It can be seen in the simulation; for example, in the electoral districts, the number of candidates 4, 7, 8, and 11 will not fulfill the number of prospective female candidates, namely as much as 30%. Here is the simulation table:

**Table 2.** Electoral Districts

No.	Number of Prospective Candidates	30% Calculation	Rounding Off	Percentage After Rounding	Information
1	1	0,30	0	0%	
2	2	0,60	1	50%	
3	3	0,90	1	33%	
4	4	1,20	1	25%	less than 30%
5	5	1,50	2	40%	
6	6	1,80	2	33%	
7	7	2,10	2	29%	less than 30%
8	8	2,40	2	25%	less than 30%
9	9	2,70	3	33%	
10	10	3,00	3	30%	
11	11	3,30	3	27%	less than 30%
12	12	3,60	4	33%	

*Source: Community Coalition Concerned with Women's Representation*

According to the simulation above, the calculation model adopted in PKPU 10/2023 results in less conversion of women's political quotas than the previous PKPU. Apart from that, PKPU 10/2023 also does not comply with the zipper system provisions adopted in Article 246 paragraph (2) of Law 7/2017. PKPU a quo no longer contains a norm obliging political parties participating in elections to place prospective female candidates in low serial numbers. In other words, the implementing regulations issued do not provide legal certainty. Departing from there, the moral values of the constitution, which are mainly contained in Article 28I paragraph (2) and Article 28H paragraph (2), as well as the principles of the Constitutional Court Decision and Law 7/2017, are not correctly translated into implementing regulations. On the other hand, the KPU is bound by the provisions of Article 36 paragraph (2) of Law 7/2017, which states that the KPU is to carry out its duties and obligations as well as possible.

Up to this point, through historical and systematic interpretations regarding the precedents contained in the Constitutional Court Decision, as described in sections first paragraph under discussion, paragraph fourteen in the discussion, and paragraph twenty under discussion, it can be concluded that PKPU 10/2023, which regulates the calculation of 30% of the number of prospective female candidates in each electoral district produces a fractional



number of less than 50 which is rounded down contrary to the 1945 Constitution of the Republic of Indonesia and Law 7/2017. The simulation, as shown in the table above, shows the application of norms in terms of the results of calculating 30% of the number of prospective female candidates resulting in fractions of less than 50 being rounded down contrary to the affirmation policy as stipulated in Article 28I of the 1945 Constitution and Article 245 of Law 7/2017. The calculation of 30% of women's representation in KPU regulations eliminates women's political rights as candidates for members of the DPR and DPRD.

**Improvement of PKPU 10/2023 Special Treatment for the 2024 Election.** There are two ways to improve the provisions of PKPU 10/2023: submit a judicial review to the Supreme Court, or the KPU issues an amended PKPU. On the one hand, the KPU stated in a press conference on May 10, 2023, that it would make changes to PKPU 10/2023; however, until this writing was written, there had not been any significant progress. From the existing chronological sequence, there is a possibility that the KPU prefers to wait for the results of the judicial review submitted by civil society groups through the Supreme Court. This choice has its consequences, especially regarding implementing the ongoing election stages. Because at the time this writing was written, there was no decision from the Supreme Court, based on the above reasons, it was appropriate for the Supreme Court to give priority in deciding the quo case.

Next is about the contents of the repair substance itself. From the long historicity of the struggle for equality which can be traced since before the independence period, provisions for special treatment are finally contained in Article 28H paragraph (2) of the 1945 Constitution; the rules stated in the Constitutional Court Decision, which have justified the constitutionality of law for the ease of special treatment in electoral contestation; and, the institutional position of the KPU as a regulator which, in its experience in holding previous elections, has implemented a particular treatment policy; therefore this paper proposes to restore the calculation model as adopted in PKPU 20/2018.

For future improvements, the KPU as executor of stages and regulator, has a significant burden of moral and legal responsibility to convey the spirit of reform regarding the holding of elections in a dignified manner. The independence of the KPU as an independent institution, as stated in Article 22E of the 1945 Constitution, Law 7/2017, and has been confirmed through the Constitutional Court Decision Number 92/PUU-XIV/2016, should also be interpreted that in carrying out its duties and authorities it is part of history to realize the politics of equality. Apart from that, careful and careful action should also be taken in the process of making regulations. It can be realized through the involvement of civil society groups. In an orderly review of laws and regulations, [*meaningful participation*] is one of the essential elements that must be met (Anggono, 2014; Wiratraman, 2012; Firdaus, 2022). In this context, it would be more appropriate for the KPU to fulfill the *due process of law* in establishing PKPU by involving *stakeholders*, including civil society groups, especially observers of women's issues. Apart from embodying the rule of law, compliance with prudential standards in formulating norms has also become a rule of the EMB code of ethics that must be implemented with commitment and seriousness. Thus the formation of norms in the future, including those relating to special treatment for women, should be carried out with due observance of the orderly hierarchy of norms, institutional independence, involvement of stakeholders, and the ethical principles of election administrators.

## CONCLUSION

Based on the description that has been explained, the conclusions here are reached through several sequences described as follows: First, there is historical justification in the form of strengthening particular treatment policies to achieve women's equality in the political sphere in representative institutions. This justification is obtained not only from history and the role of women since independence. However, it has also become the spirit contained in civilized nations' constitutions and human rights provisions. A second, further embodiment of special treatment since the reform era has been implemented and continues to experience strengthening. Rules for this can be found through MK Decisions and their adoption in Law 7/2017. Third, the KPU, as an independent institution, has an essential role in implementing the election stages, including translating the provisions of the constitution and laws into their technical regulations. Fourth, PKPU 10/2023, which contains the seat conversion method, creates legal uncertainty resulting from the non-fulfillment of the provisions on the representation of special treatment. From a broader perspective, the a quo PKPU becomes an additional obstacle to fulfilling the representation of women's political quota. In other words, there is a norm hierarchical disorder. Thus, it is better

to improve PKPU 10/2023 by referring to the calculation norms stated in PKPU 20/2018 and PKPU 7/2013, which were used for holding the 2019 and 2014 elections.

Finally, and as an affirmation, in carrying out the attribution of authority to issue technical regulations for the candidacy of representative members, the KPU must comply with and comply with the hierarchy of norms as stipulated in the provisions of Article 28H paragraph (2) and 28I of the 1945 Constitution. These provisions are then derived into the Law on Political Parties and the Law on Elections to guarantee the implementation and protection of women's political representation. So it is fitting for the KPU as the regulator to act carefully and cautiously in formulating norms, namely guided by the spirit of equality, manifested through special treatment of the quota for women.

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