

Legislative and Judicial Dynamics of Setting the Quota for Women's Representation in Parliament in the 2024 General Elections

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ABSTRACT: The policy choice of regulating women's quota by the General Election Commission through PKPU Number 10 of 2023 (PKPU 10/2023) has caused debate among democracy observers, especially those who care about women's representation in parliament. This study aims to analyze the compatibility of PKPU Number 10 of 2023 with the Election Law and analyze the Supreme Court Decision Number 24 P/HUM/2023 regarding the material testing of Article 8 paragraph (2) PKPU 10/2023. The method used in the study is normative research with a statutory approach and a case approach. The results of this study show that there are differences between the quota for women's representation in PKPU 10/2023 and the Election Law. When viewed in terms of its formation, PKPU 10/2023 was made with the choice of authoritarian political configuration and is characterized as a conservative legal product. The results also justify the first discussion through the annulment of the provisions of Article 8 paragraph (2) PKPU 10/2023 through the Supreme Court Decision Number 24 P/HUM/2023. The conclusion of this study shows the incompatibility of women's quota arrangements regulated by the KPU, but this has been corrected through the Supreme Court's decision. The results of this study are also a contribution of thought for policymakers to always harmonize regulations in every legislative process.

KEYWORDS: Affirmative Action; Legal Politics; Women's Representation.



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I. INTRODUCTION

The state is a reflection of sovereignty because one of the elements of the state is sovereignty.¹ In the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia after the Third Amendment in Article 1 paragraph (2), it is explained that "*sovereignty is in the hands of the people and is exercised according to the Constitution*". The provision of Article 1 paragraph (2) indicates that the people play a role in the government of the Republic of Indonesia.² The writing of the people's role in the constitutional norms that regulate public participation in the government of the Republic of Indonesia is a reflection of democracy that is limited by the constitution.³ The elements of democracy that are outlined in the form of norms in the constitution indicate the existence of a democratic state of law.⁴ A democratic state of law is certainly not only limited to setting norms, but how the norms are implemented. The indication of how the norm can be realized or not can be seen from whether the norm can be enforced following with the intent when the norm was formed. In this case, it is realized with the General Election which is a means to provide equal opportunities and equality in politics.⁵

Equal equality in politics can only be achieved through elections that are also participatory to all citizens by providing equal opportunities,⁶ including marginalized groups⁷ or minorities.⁸ One such marginalized group is

¹ One of the manifestations of the implementation of popular sovereignty in the context of governance is the recognition of the people to actively participate in determining the form of governance. Sodikin, *Hukum Pemilu : Pemilu Sebagai Praktek Ketatanegaraan* (Bekasi: Gramata Publising, 2014).

² See Article 1 paragraph (2) of the 1945 Constitution which states "*Sovereignty is in the hands of the people and shall be exercised according to the Constitution*". The sovereignty of the people mandated in Article 1 paragraph (2) of the 1945 Constitution places the people as having the highest power in exercising governmental authority.

³ Adhitya Widya Kartika, "Fungsi Mahkamah Konstitusi Dalam Sistem Pemilihan Umum Dalam Rangka Penegakkan Negara Hukum Dan Demokrasi" (2021) 10:2 Jurnal Pro Hukum 10–22 .

⁴ Atang Hermawan Usman, "Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum di Indonesia" (2014) 30:1 Jurnal Wawasan Yuridika 26–53.

⁵ John Dirk Pasalbessy, "Aspek Hukum Pidana Di Dalam Pelanggaran Pemilihan Umum" (2009) 2:1 Konstitusi Jurnal .

⁶ Usep Hasan Sadikin, "Menarik Kerah Keterwakilan Perempuan" (2016) 126 Pemilu Demokrasi.

⁷ Alfi Nursyifa et al, "Partisipasi Perempuan dalam Politik" (2023) 9:1 Jurnal Ilmu Politik dan Pemerintah.

⁸ Muhammad Imaduddin Nasution, "Demokrasi dan Politik Minoritas di Indonesia" (2013) 4:2 Jurnal Politica Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional.

women.⁹ Although demographically women constitute a majority in the composition of the Indonesian population, they are no more than a silent majority.¹⁰ The issue of women's involvement in politics became an important issue at the United Nations (UN) Conference on Women in Beijing in 1995. The crucial issue discussed at that time was the need to increase the number of women's participation in politics and strengthen their power base. It is necessary to increase women's political participation with a focus not only on numbers, but also on improving the quality and impact of their involvement.¹¹ This includes improving women's political performance, assessing their participation in the political system, monitoring the political climate and plans, and monitoring the problems that accompany their involvement in politics.¹²

Broadly speaking, women's involvement in politics continues to increase every year.¹³ The indicator can be seen from the increasing trend of women's representation in the legislative body, namely the House of Representatives (DPR) from the 1999 elections to the 2019 elections. Representation in the 1999 elections was recorded at 8.8%, 11.82% in the 2004 elections, 17.86% in the 2009 elections, 17.32% in the 2014 elections and 20.87% in the 2019 elections.¹⁴ The involvement and representation of women in the legislature are important because it gives them a strategic position in making decisions¹⁵ related to legislation, ¹⁶budget

⁹ The condition of women is said to be still marginalized in social life, politics, economics, and even more so in culture Siti Rokhimah, "Patriarkhisme dan Ketidakadilan Gender" (2014) 6:1 Muwazah.

¹⁰ Nany Suryawati, *Hak Asasi Politik Perempuan* (Ideas Publishing).

¹¹ The Beijing Platform of Action (BPFA) section 181 states that "the equal participation of women in decision-making is not only a demand for simple justice or democracy, but also takes into account the conditions necessary for the interests of women".

¹² Antik Bintari, "Perempuan dan PILKADA: Peluang dan Tantangan" (2020) 1:1 Jurnal Keadilan Pemilu 53–62.

¹³ Juniar Laraswanda Umagapi, "Representasi Perempuan di Parlemen Hasil Pemilu 2019: Tantangan dan Peluang" (2020) 25:1 Kajian 19–34.

¹⁴ Badan Pusat Statistik Indonesia, "Persentase Kursi Yang Diduduki Perempuan Di DPR Dan DPRD - Tabel Statistik", online: <<https://www.bps.go.id/id/statistics-table/2/MTMzNyMy/persentase-kursi-yang-diduduki-perempuan-di-dpr-dan-dprd--persen-.html%3E.>>.

¹⁵ Siti Masruroh & Irham Bashori Hasba, "Normatifitas Keterlibatan Perempuan dalam Proses Legislasi Nasional Perspektif Feminist Legal Theory" (2022) 3:2 *Interdisciplinary Journal on Law Social Science Humanities* 143–149.

¹⁶ Halida Nabilla Salfa, "Peran Sosial Perempuan dalam Masyarakat dan Implikasinya terhadap Penempatan Perempuan Anggota Legislatif Pada Komisi-Komisi di DPR RI Periode 2019-2024 [Women's Social Role in Society and Its Implication to The Division of Job of Women's MP]" (2023) 13:2 *Jurnal Politica Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 162–181.

determination, and supervision.¹⁷ This urgency arises because women are often less involved in the decision-making process, so they are often ignored and become politically, socially,¹⁸ culturally, and economically marginalized groups.¹⁹ Increasing women's representation is an important step towards achieving fair and gender-balanced policies.²⁰

Affirmative action²¹ is one form of fast-tracking policies,²² namely policies taken to accelerate efforts to participate in politics.²³ According to Dahlerup, the core of the affirmative policy concept is the concept of positive discrimination in order to increase women's representation with a certain period of time. Affirmative policies have a limited duration, namely until obstacles to women's active participation in politics can be overcome. According to Dahlerup, affirmative policies are implemented through the use of gender quotas, which allocate a certain number or representation for women in political institutions. Affirmative policy²⁴ methods to ensure women's representation²⁵ can be implemented in a variety of ways.²⁶ Two common approaches involve the application of quotas, which can be set

¹⁷ Ani Ani Martini, Maichel Wutoy & Perdana Dewi Wardhani, "Keterwakilan Perempuan dalam Keanggotaan Legislatif di Kabupaten Sukoharjo Provinsi Jawa Tengah Periode 2019-2024" (2021) *Jurnal Kebijakan Pemerintahan* 14-22.

¹⁸ Andie Hevriansyah, "Hak Politik Keterwakilan Perempuan dalam Sistem Proporsional Representatif pada Pemilu Legislatif" (2021) 1:1 *Awasia Jurnal Pemilu dan Demokrasi* 67-85.

¹⁹ Haradhan Kumar Mohajan, "Four Waves of Feminism: A Blessing for Global Humanity" (2022) 1:2 *Studies Social Science Humanities* 1-8.

²⁰ Women's representation is the most important component to ensure women's interests are accommodated. In the concept of pictorial representation, the representative must resemble the represented party. On the basis of this similarity, the representatives can act on behalf of the people they represent. See Nuri Suseno, "Representasi Politik: Perkembangan dari Ajektiva ke Teori" (2013) *PUSKAPOL FISIP UI*.

²¹ Harry Holzer & David Neumark, "Assessing Affirmative Action" (2000) 38:3 *Journal of Economic Literature* 483-568. Holzer and Neumark provide view that affirmative action is proactive measures taken to eliminate differences between women and men, minorities and non-minorities, and other differentiated groups. other different groups

²² M Tirto Sanyoto, Toni Haryadi & Imam Asmarudin, "Penerapan Fast Track di Dalam Pembentukan Peraturan Perundang-Undangan di Indonesia" (2023) 1:1 *Pancasakti Law Journal PLJ* 55-60.

²³ Siti Zaetun & Chusnul Mar'iyah, "Politik Keekerabatan Dalam Keterwakilan Perempuan Pada Rekrutmen Politik Partai Nasdem Pada Pemilu 2019" (2020) 1:3 *The Journalish Social and Government* 119-129.

²⁴ Michaeline A Crichlow & Edmund Terence Gomez, "Revisiting Affirmative Action, Globally" (2015) 27:1 *Cultural Dynamics* 3-18. Crichlow and Gomez view affirmative action as an attempt to create a more just political and economic order, which entails the need to expose, even emphasize, the importance of the "idea of race" in the colonial and contemporary construction of society.

²⁵ Angela Ranina Listiyani, "Penerapan Affirmative Action Oleh Partai Politik Sebagai Upaya Peningkatan Keterwakilan Perempuan Pada Lembaga Legislatif" (2020) 5:1 *Res Publica* 16-30.

²⁶ Sulastris, "Sejarah Penerapan Affirmative Action dalam Keterwakilan Perempuan di Lembaga Legislatif" (2019) 7:1 *Jurnal Wasaka Hukum* 103-130.

through the constitution or legislation, and also through the setting of quotas by political parties. These approaches aim to create a more inclusive and equitable environment for political participation.²⁷

Affirmative policies²⁸ in Indonesia have been regulated in the constitution, namely in Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that *"Everyone has the right to receive facilities and special treatment to obtain equal opportunities and benefits to achieve equality and justice."* The provision regarding the affirmative policy clause is an effort to take sides that is constitutionally guaranteed and has also been strengthened by the provisions of the Constitutional Court Decision Number 22-24 / PUU-VI / 2008²⁹ which in its legal considerations states that:

"Affirmative action is also called reverse discrimination, which provides opportunities for women for the establishment of gender equality in the same role field (level playing-field) between women and men, although in the dynamics of historical development there are differences, for cultural reasons, women's participation in decision-making in national policy, both in the field of law and in economic and socio-political development, the role of women is still relatively small. If the quota system for women is seen as reducing the constitutional rights of male legislative candidates as a restriction, it does not mean that it is contrary to Article 28D paragraph (1) of the 1945 Constitution. Such restrictions are justified by the Constitution as stipulated in Article 28J (2) of the 1945 Constitution. Even in Article 28H paragraph (2) of the 1945 Constitution, such special treatment is allowed with the aim of obtaining equal opportunities and benefits in order to achieve equality and justice. Today, Indonesia's commitment to human rights instruments related to the elimination of all forms of discrimination against women and the commitment to advance women in politics has been realized through various ratifications and various government policies. That as long as the 30% (thirty per hundred) quota threshold and the

²⁷ Mudiwati Rahmatunnisa, "Affirmative Action dan Penguatan Partisipasi Politik Kaum Perempuan di Indonesia" (2016) 1:2 Jurnal Wacana Politik 90–95.

²⁸ Faye J Crosby, Aarti Iyer & Sirinda Sincharoen, "Understanding Affirmative Action" (2006) 57:1 Annual Review Psychology 585–611.

²⁹ Nalom Kurniawan, "Keterwakilan Perempuan Di Dewan Perwakilan Rakyat Pasca Putusan Mahkamah Konstitusi Nomor 22-24/PUU-VI/2008" (2014) 11:4 Jurnal Konstitusi 714–736.

requirement of one woman out of every three legislative candidates for women and men are considered adequate as an initial step to provide opportunities for women on the one hand, while on the other hand, offering the public/voters to assess and test the acceptability of women entering the political sphere not solely because of their status as women, but also in terms of their capacity and capability as legislators, as well as their place according to Indonesian culture. The provision of a 30% quota (thirty per hundred) and the requirement of one female candidate out of every three candidates is a positive discrimination in order to balance the representation of women and men to become legislators in the House of Representatives, the Regional Representatives Council, and the Provincial / Regency / City Regional Representatives Council".³⁰

The constitutional court decision is clearly the initial constitutional footing,³¹ in addition to the provisions of Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia to be further regulated both in the Election Law and derivative rules governing the holding of elections more technically. The provisions of the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Decision are a strong basis for all levels of citizens to avoid systemic and structural discrimination and receive facilities in various aspects of life, including in the political sphere for women.³² The concretization of affirmative policies for women's participation in politics through parliament can be seen from the provisions of Law Number 7/2017 on General Elections (Election Law)³³ in Article 245, which essentially states that the list of candidates for members of the House of Representatives (DPR), provincial House of Representatives (DPRD Provinsi), and regency/city House of Representatives (DPRD Kabupaten/Kota) contains at least 30% (thirty percent) women's representation.³⁴

³⁰ See the legal reasoning section of the Constitutional Court Decision Number 22-24/PUU-VI/2008

³¹ Widati Wulandari et al, "Putusan Mahkamah Konstitusi: Dampaknya terhadap Perubahan Undang-Undang dan Penegakan Hukum Pidana" (2021) 18:3 Jurnal Konstitusi 480–503.

³² Dede Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan di Indonesia: The Rights of Women in Indonesian Laws and Regulations" (2015) 12:4 Jurnal Konstitusi 716–734.

³³ Ishmah Naqiyah, "Perkembangan Pengaturan Tindakan Afirmasi Perempuan Pada Dewan Perwakilan Rakyat Republik Indonesia" (2021) 1:2 Jurnal Konstitusi Demokrasi.

³⁴ See Article 245 Law Number 7/2017 on General Elections stated "The list of candidates as referred to in article 243 contains women's representation of at least 30% (thirty percent)".

The provisions of Article 8 paragraph (2) of the General Election Commission Regulation (PKPU) Number 10 of 2023 concerning the Nomination of Members of the House of Representatives (DPR), Provincial House of Representatives (DPRD Provinsi), and Regency/City People's Representative Council (DPRD Kabupaten/Kota) state that:

"In the event that the calculation of 30% (thirty percent) of the number of female Candidates in each Dapil produces a fractional number, then if the two decimal places behind the comma are: a. less than 50 (fifty), the calculation results are rounded down; or b. 50 (fifty) or more, the calculation results are rounded up".

Technical rounding down if it results in a decimal fraction of less than 50 (fifty) has the potential to cause the proportion of women's representation to be below 30% (thirty percent) in an electoral district (dapil). This provision caused ripples of resistance from a number of academics, election activists, civil society organizations, and women's groups. They then formed the Coalition of Communities Concerned about Women's Representation, which through a press conference on May 13, 2023 demanded that the KPU immediately revise the provisions of women's representation in PKPU No. 10 Year 2023.³⁵ Because the revision was not realized, finally on June 5, 2023 the Coalition filed a judicial review to the Supreme Court in case Number 24 P/HUM/2023.³⁶ The petitioners in the case consisted of the Association for Elections and Democracy (Perludem), the Indonesian Women's Coalition (KPI), and three citizens with a petition that essentially states that Article 8 PKPU No. 10 of 2023 with a rounding down mechanism is contrary to the Election Law and to reimpose rounding up if the calculation of the number of female candidates in an electoral district results in a fractional value.

The issue of women's quota in the nomination process as reflected in PKPU and the material review of PKPU have led this research to two

³⁵ Nikolaus Harbowo, "Jaga Pemilu Tetap Konstitusional, KPU Didesak Segera Revisi Aturan Caleg Perempuan", (13 May 2023), online: *Kompas.id* <<https://www.kompas.id/baca/polhuk/2023/05/13/jaga-pemilu-tetap-konstitusional-kpu-didesak-segera-revisi-aturan-caleg-perempuan>>.

³⁶ Devi Puspitasari, "Koalisi Sipil Ajukan JR Pasal Keterwakilan Perempuan di PKPU 10/2023 ke MA", (6 May 2023), online: *DetikNews* <<https://news.detik.com/pemilu/d-6756975/koalisi-sipil-ajukan-jr-pasal-keterwakilan-perempuan-di-pkpu-10-2023-ke-ma>>.

problem formulations, namely how is the legal choice of KPU's policy on PKPU Number 10 of 2023 on women's representation in Parliament? and how is the existence of Supreme Court Decision Number 26/HUM/2023 analyzed towards women's representation in Parliament? This research aims to find out two important essential things in answering the problem of the projection of women's representation in parliament through two legal instruments, namely (i) PKPU 10/2023 which will be analyzed in relation to the choice of legal policy underlying the provisions of Article 8 paragraph (2) formulated in such a way as to the proportion of calculations on the quota of women's representation in parliament and (ii) analysis of Supreme Court Decision Number 24/HUM/2023 on changes to the provisions of Article 8 paragraph (2) regarding the proportion of women's representation quota in parliament.

Various stretches of problems have arisen as a result of the contradiction between PKPU No. 10 of 2023 and the Election Law; starting from the ratification, discourse on revision, to its cancellation through Supreme Court Decision Number 24/HUM/2023. These various dynamics have undoubtedly succeeded in creating legal uncertainty about women's representation, which also shows the government's lack of seriousness in efforts to emancipate gender in politics. This is what inspired the author to analyze the legal politics of women's representation policy in parliament through an analysis of PKPU Number 10 of 2023 and Supreme Court Decision Number 24/HUM/2023. Research on the object of study regarding women's representation in parliament in the observation of this research has been conducted by several authors which are described as follows:

First, research conducted by Ogie Nugraha with the title " *Distorsi Keterwakilan Perempuan Melalui Pasal 8 ayat (2) PKPU 10 Tahun 2023*" with the results of the research that (i) the provisions of Article 8 paragraph (2) PKPU 10/2023 have contradicted the concept of positive affirmation as The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified by Indonesia and the idea of equality for minority groups as stipulated in Article 27 paragraph (1), Article 28D paragraph (3), Article 28H paragraph (2), and Article 28I

paragraph (2) and (ii) the provisions of Article 8 paragraph (2) PKPU 10/2023 do not comply with the hierarchy of regulations above it, namely the provisions of Article 245 of the Election Law.

Second, research conducted by Ishmah Naqiyyah with the title " *Perkembangan Pengaturan Tindakan Afirmasi Perempuan Pada Dewan Perwakilan Rakyat Republik Indonesia*" with the results of research that the development of positive forms of affirmation for women includes quotas in parliament, quotas in the legislative nomination process and quotas in political parties reflected in the Political Party Law and the Election Law. In the author's review, this research still has originality value to the problem and research results because it focuses on two things, namely (i) a study of the choice of legal policy in PKPU 10/2023, especially regarding the provisions of Article 8 paragraph (2) and (ii) analysis of Supreme Court Decision Number 24/HUM/2023 on the impact of rationalizing the quota of women's representation in parliament.

II. METHODS

To obtain a comprehensive understanding of the analysis of the proportion and projection of the quota of women's representation in parliament through PKPU and the Supreme Court Decision, this research is classified as normative legal research.³⁷ Legal research³⁸ is conducted to produce new arguments,³⁹ theories or concepts as prescriptions in solving the problem at hand with research results in the form of descriptions of right, appropriate, inappropriate, or wrong, thus the results obtained in legal research already contain value.⁴⁰ This research uses two approaches, namely (i) statute approach⁴¹ and (ii) case approach.⁴² The statutory approach is used to examine the norms contained in the provisions of Article 8 paragraph (2)

³⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Grup, 2005).

³⁸ Carolina Felicita Gerardine Sunaryati Hartono, *Penelitian Hukum di Indonesia Pada Akhir Abad Ke-20* (Bandung: Alumi, 1994).

³⁹ Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum" (2015) 8:1 *Fiat Justisia Jurnal Ilmu Hukum* 15–35.

⁴⁰ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum" (2021) 8:8 *Nusantara Jurnal Ilmu Pengetahuan Sosial* 1483–1490.

⁴¹ Johnny Ibrahim, *Teori dan metodologi penelitian hukum normatif* (Malang: Bayumedia, 2006).

⁴² *Ibid.*

PKPU 10/2023 in depth to see the suitability of these provisions with the Election Law and the background of the formation of PKPU PKPU 10/2023, especially regarding Article 8 paragraph (2) which is the central object of study in this research. Meanwhile, the case approach is to examine and analyze Supreme Court Decision Number 24/HUM/2023, especially to see the *ratio dicendi* of the judge on the suitability of PKPU 10/2023, especially Article 8 paragraph (2) of the Election Law. The main thing to be examined in this approach is related to the *ratio decendi* and *ratio legis* in examining, deciding and adjudicating a case.

III. LEGAL OPTIONS OF KPU POLICY IN KPU REGULATION NUMBER 10 YEAR 2023 TOWARDS WOMEN'S REPRESENTATION IN PARLIAMENT

A. Arrangements for Women's Representation in the Election Law

The regulation of women's representation in politics based on the Election Law has an affirmative policy content.⁴³ The affirmative policies contained in the Election Law concern both election organizers and political parties participating in the elections⁴⁴ and their legislative candidates. Article 173 paragraph (2) regulates the requirements that must be met by political parties (parpol) to become election participants. One of the provisions, namely in letter e, states that political parties must include women's representation of at least 30% (thirty percent) in the management of political parties at the central level. An important regulation of women's representation in the Election Law is the regulation of women's representation on the list of candidates for legislative members. This is

⁴³ Aziza Aulya, Andi Pangerang Moenta & Hamzah Halim, "Perempuan dan Politik: Menakar Kebijakan Affirmative Action dalam Sistem Kepartaian" (2022) 30:2 Amanna Gappa 126–136.

⁴⁴ Article 10 paragraph (7) of the Election Law regulates the composition of election organizers to pay attention to women's representation. The article states that "*The composition of KPU membership, provincial KPU membership, and Regency / City KPU membership pays attention to women's representation of at least 30% (thirty percent)*". Another election organizer, the Election Supervisory Body (Bawaslu), also applies the same women's representation arrangement. This is regulated in Article 59 paragraph (11) of the Election Law, which states The composition of the membership of Bawaslu, Provincial Bawaslu, and Regency / City Bawaslu pays attention to women's representation of at least 30% (thirty percent) Women's representation of at least 30% (thirty percent) is also applied to the election committee, namely the District Election Committee (PPK), the Voting Committee (PPS) and the Voting Organizing Group (KPPS), which are contained in the provisions of Article 52 paragraph (3), Article 55 paragraph (3), and Article 59 paragraph (4) of the Election Law

regulated in Article 245 of the Election Law, which basically states that the list of candidates for members of the DPR, provincial DPRD, and district / city DPRD contains at least 30% (thirty percent) of women's representation.

A further provision in the affirmative electoral policy is the application of the zipper system.⁴⁵ This is regulated in Article 246 paragraph (2) of the Election Law which states that *"In the list of candidates as referred to in paragraph (1), for every 3 (three) candidates there is at least 1 (one) female candidate"*. The regulation of women's representation in the Election Law shows one distinctive feature, namely the consistency in applying women's representation of at least 30% (thirty percent) in every line of elections, be it election organizers, election participants, to the candidates proposed by political parties participating in the election. The provision of women's representation of at least 30% (thirty percent) in the submission of candidates for members of the DPR, Provincial DPRD, and Regency / City DPRD has existed long before the current Election Law, namely since Law Number 12 of 2003 concerning General Elections for Members of the House of Representatives, Regional Representatives Council, and Regional Representatives Council.

Law	Provision for Women's Representation
Law No. 12/2003 on the General Election of Members of the House of Representatives, Regional Representatives Council, and Regional People's Representatives Council	Article 65 <i>"Each political party participating in the election can nominate candidates for members of the DPR, Provincial DPRD, and Regency / City DPRD for each electoral district by taking into account women's representation of at least 30%".</i>
Law No. 10/2008 on the General Election of Members of the House	Article 53 <i>"The list of candidates as referred to in</i>

⁴⁵ The zipper system in the Election Law stipulates that for every 3 (three) candidates there is at least 1 (one) female candidate.

of Representatives, the House of Regional Representatives, and the Regional House of Representatives	<i>Article 52 contains at least 30% (thirty percent) of women's representation".</i>
Law No. 8/2012 on the General Election of Members of the House of Representatives, Regional Representatives Council, and Regional People's Representative Councils	Article 55 <i>"The list of candidates as referred to in Article 53 contains at least 30% (thirty percent) of women's representation".</i>
Law No. 7/2017 on General Elections (Election Law)	Article 245 <i>"The list of candidates as referred to in Article 243 contains at least 30% (thirty percent) women's representation".</i>

Table 1. Regulation of Women's Representation in the Law from Time to Time.

The application of this representation should also be done in accordance with the phrase "at least 30% (thirty percent)" which has been stated clearly. This indicates that there is no need for interpretation, in other words, if women's representation is less than 30% (thirty percent) then it automatically denies the provision. For example, if an electoral district with four legislative candidates (candidates) if multiplied by 30% (thirty percent) of women's representation will produce a figure of 1.20 (one point twenty), which follows the rounding down system in PKPU No. 10 of 2023, the final result of the quota of female candidates is only one person. In other words, women's representation is only $\frac{1}{4}$ or 25% (twenty-five percent). This mechanism also results in women's representation below 30% (thirty percent) for electoral districts with 7, 8 and 11 candidates.

The regulation of women's representation will clearly greatly affect the amount of representation and the quality of representation to take part in the strategic policy-making process. Political participation is the active involvement of individuals and groups in government processes that affect their lives. This includes involvement in decision-making and opposition. Importantly, political participation is an active process whereby a person

may be a member of a party or pressure group, but not play an active role in the organization. Acts of active engagement include conventional political participation, such as voting, holding office, campaigning for a political party or contributing to the management of a community housing cooperative, as well as unconventional acts, which may be considered legitimate, such as signing a petition or joining a peaceful demonstration, or illegal, such as violent protest or refusing to pay taxes.

Women's political participation is currently needed in efforts to integrate gender needs in various public policies.⁴⁶ Women's participation is about how women access the political sphere. Talking about how women 'win seats' in the parliamentary realm, which is still very much controlled by the patriarchal regime, even the political realm tends to be connoted as a patriarchal masculine realm. The assumption is that the low participation and substantive role of women in politics is directly proportional to the realization of their potential to voice women's interests and rights.⁴⁷ Women's political representation is quite important if we want to place gender-friendly democracy.⁴⁸ Efforts to strengthen women's political participation need to strengthen the role and equal opportunities for both men and women to be involved in politics, starting from direct involvement by including a larger portion for women in the structure of each political party.⁴⁹

B. Compatibility of PKPU 10/2023 With the Election Law

PKPU No. 10 of 2023 as a derivative of the Election Law has reinterpreted the minimum 30% (thirty percent) representation of women in the submission of candidates for members of the DPR, provincial DPRD, and regency/city DPRD. Article 8 paragraph (2) PKPU No. 10 of 2023 states that

⁴⁶ Susanti, "Partisipasi Politik Perempuan Dalam Pemilihan Kepala Daerah Riau Tahun 2013 (Studi Kasus di Kelurahan Batang Serosa Kecamatan Mandau Kabupaten Bengkalis)" (2015) 2:2 Jurnal Online Mahasiswa Fakultas Ilmu Sosial Dan Ilmu Politik 1–18.

⁴⁷ Adek Risma Dedees, "Merebut Kursi Impian Partisipasi Perempuan di Tengah Intervensi Negara dan Dinasti Politik" (2016) 22:2 Intizar 319–332.

⁴⁸ Abraham Nurcahyo, "Relevansi Budaya Patriarki Dengan Partisipasi Politik Dan Keterwakilan Perempuan Di Parlemen" (2016) 6:01 Agastya Jurnal Sejarah Dan Pembelajarannya 25–34.

⁴⁹ Susanti, *supra* note 47.

"In the event that the calculation of 30% (thirty percent) of the number of female Candidates in each Dapil produces a fractional number, then if the two decimal places behind the comma are: a. less than 50 (fifty), the calculation results are rounded down; or b. 50 (fifty) or more, the calculation results are rounded up."

The reinterpretation of the meaning of at least 30% (thirty percent) with the decimal rounding down method allows the final result of women's representation to be below 30% (thirty percent). Such a final result clearly violates the provisions of the Election Law.⁵⁰ The emergence of PKPU No. 10 of 2023 with a method of calculating women's representation that is different from the previous PKPU.

Law	Election Commission Regulations	Provisions Regarding Women's Representation in KPU Regulations
Law No. 8/2012 on the General Election of Members of the House Representatives, Regional Representatives Council, and the Regional People's Representatives Council	PKPU Number 07 of 2013 on the Nomination of Members of the House of Representatives, Provincial House of Representatives and Regency / City Regional House of Representatives	Article 24 paragraph (1) letter c <i>"The number and percentage of women's representation is at least 30% (thirty percent) for each electoral district as referred to in Article 11 letter b".</i>
Law Number 7/2017 on General Elections (Election Law)	PKPU Number 20/2018 on the Nomination of Members of the House	Article 6 paragraph (1) letter c <i>"Compiled in a list of candidates that must</i>

⁵⁰ Ida Budhiati & Rian Adhivira Prabowo, "Reflection & Projection Women's 'Special Treatment' in the 2024 Election Regulations: Study of PKPU 10/2023" (2023) 1:1 Journal of Political and Legal Sovereignty 21–31.

of Representatives, Provincial House of Representatives and Regency / City Regional House of Representatives contain *women's representation of at least 30% (thirty percent) in each Dapil.*"

Article 6 paragraph (2)

"In the event that the calculation of 30% (thirty percent) of the number of female candidates in each Dapil results in a fractional number, rounding up is carried out".

PKPU Number 10 of 2023 concerning the Nomination of Members of the House of Representatives, Provincial House of Representatives and Regency / City Regional House of Representatives Article 8 paragraph (1) letter c

"The list of candidates as referred to in letter a must contain women's representation of at least 30% (thirty percent) in each Dapil".

Article 8 paragraph (2)

"In the event that the calculation of 30% (thirty percent) of the number of female Candidates in each Dapil results in a fractional number, then if the two decimal places behind the comma are: a. less than 50 (fifty), the calculation results are

rounded down; or b. 50 (fifty) or more, the calculation results are rounded up".

Table 2. Application of Women's Representation in PKPU.

PKPU No. 10 Year 2023 contains differences in calculation methods with previous PKPUs, especially with PKPU No. 20 Year 2018 because it comes from the same main law, namely the Election Law. This sudden difference in calculation method indicates irregularities in the political aspect of law, namely the political configuration when the PKPU was formed. As discussed the importance of women's representation in politics, the impact of PKPU 10/2023 as the rules of the game on how the minimum nomination of women in parliament will have an impact on how the fulfillment of candidates and the election of women candidates who can sit in parliamentary positions.

C. PKPU 10/2023's Political Choice of Law on Women's Representation

Legal politics can simply be defined as legal policy that is official or formal.⁵¹ According to Padmo Wahjono, legal politics functions as a basic study that determines the direction, form, and content of the law to be formed.⁵² The concept of legal politics is built on the assumption that law is a product produced by politics.⁵³ The character of legal products is highly dependent on the configuration of legal products when they are designed. Political configuration (independent variable) will affect the character of legal products (dependent variable).⁵⁴ The political configuration can be a democratic political configuration or an authoritarian political configuration. Meanwhile, the product character can be a legal product

⁵¹ Komisi Yudisial Republik Indonesia, *Meluruskan Arah Manajemen Kekuasaan Kehakiman* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2018).

⁵² *Ibid.*

⁵³ Abdus Salam, "Pengaruh Politik Dalam Pembentukan Hukum Di Indonesia" (2015) 14:2 MAZAHIB Jurnal Pemikiran Hukum Islam 120-131.

⁵⁴ Lintje Anna Marpaung, "Pengaruh Konfigurasi Politik Hukum Terhadap Karakter Produk Hukum" (2012) 7:1 Pranata Hukum 1-14.

with a responsive/autonomous character or a repressive, orthodox and conservative legal product character.

The democratic political configuration provides ample room for public participation in state policy-making.⁵⁵ The government acts as the executor of the will of the people generated through a democratic process. People's representative bodies and political parties have a major role in policy making, and the press carries out its functions without the threat of censorship or criminalization. An authoritarian political configuration is one that places the government in a dominant position, with strong interference in determining and implementing state policy.⁵⁶ This results in a lack of proportional channels for people's aspirations, and representative institutions and political parties tend to justify government policies as "rubber stamps". The press also has limited freedom and is vulnerable to censorship and criminalization under government control.⁵⁷

To examine the character of the political configuration, it is carried out by examining the indicators of 3 (three) essential pillars, namely (i) the role of political parties and democratic bodies, (ii) freedom of the press, and (iii) the role of the executive. The birth of PKPU No. 10 of 2023 is inseparable from rejection, especially from women's circles, because the content of Article 8 of the PKPU is considered to have the potential to reduce the level of women's representation in elections below 30% (thirty percent).⁵⁸ In the formulation of this PKPU up to the discourse stage of its revision, the DPR was unable to respond to the rejection of the content of Article 8 PKPU. The DPR as the people's representative should have positioned itself as an institution that represents the wishes of the people, especially women's wishes for the provisions that will determine their political representation. In fact, when the proposal to revise the method of calculating 30% (thirty percent) of women's representation was submitted by the KPU to the DPR in the Hearing Meeting of Commission II DPR with KPU, Bawaslu, the Honorary Council of Election Organizers, and the

⁵⁵ Solikhul Hadi, "Pengaruh Konfigurasi Politik Pemerintah terhadap Produk Hukum" (2015) 9:2 ADDIN Media Dialektika Ilmu Islam 383–400.

⁵⁶ *Ibid.*

⁵⁷ Moh Mahfud MD, *Politik Hukum di Indonesia* (Depok: Rajawali Pers, 2020).

⁵⁸ Ogie Nuggraha & Durohim Amnan, "Distorsi Keterwakilan Perempuan Melalui Pasal 8 ayat (2) PKPU Nomor 10 Tahun 2023" (2023) 1:4 Jurnal Hukum Dan Sosial Politik 159–171.

Ministry of Home Affairs in Jakarta on May 17, 2023, the entire Commission II DPR agreed to reject the proposed revision.

If observed further, the reason for the rejection by the DPR can be found in the argument expressed by the Chairman of Commission II of the DPR RI Ahmad Doli Kurnia because the DPR RI considers that the KPU must consistently carry out the stages of the Election as stipulated in PKPU No. 10 of 2023.⁵⁹ The DPR RI justifying the restriction of women's political rights under the pretext of consistency alone further shows the inability of the DPR RI to represent the will of women. Regarding the role of the press, the slow pace of information received by the public regarding the birth of PKPU No. 10 Year 2023 is one clear evidence that the press was unable to reach that direction before. So that what the public knows is only the controversy over women's representation when the PKPU has been passed. Based on the description above, the political configuration during the formation of PKPU No. 10 Year 2023 shows the tendency of authoritarian political configuration character.

Responsive or autonomous legal products reflect the fulfillment of community aspirations, including individuals and social groups. Such legal products are better able to express justice in society and involve community participation and aspirations in the normative process. The judiciary and the rule of law act as instruments to implement the will of society. The formulation is usually quite detailed, preventing arbitrary interpretation based on the will of the ruler or government. Conservative or orthodox legal products reflect the political vision of the dominant state power holder. In its making, the legal product does not pay serious attention to community participation and aspirations, involving mere formality. The law in this product functions as a justification tool to implement the ideology and programs of the government, with a general formulation of material that allows the state ruler to interpret it in accordance with his vision and will through implementing regulations.⁶⁰

⁵⁹ Yosafat Diva Bayu Wisesa, "Komisi II DPR Tolak Revisi PKPU soal Keterwakilan Caleg Perempuan", (17 May 2023), online: *IDN Times* <<https://www.idntimes.com/news/indonesia/yosafat-diva-bagus/komisi-ii-dpr-tolak-revisi-pkpu-soal-keterwakilan-caleg-perempuan>>.

⁶⁰ MD, *supra* note 58.

To analyze the character of legal products, indicators of (i) the law-making process, (ii) the nature of legal functions, and (iii) the possibility of interpreting a legal product are used. The presence of PKPU No. 10 Year 2023 has generated a variety of negative responses, especially from women activists. The character of the legal product that it shows reflects a very dominant political vision of the power holder so that in the process of making it does not accommodate the participation of the community, especially women in earnest. Moreover, the provisions of Article 8 PKPU have the potential to further reduce women's participation in the law-making process by reducing their representation in parliament.

In addition, the replacement of the calculation method of 30% (thirty percent) of women's representation in the PKPU is the result of the KPU's arbitrary interpretation of women's representation that has been expressively *verbis* regulated in Article 245 of the Election Law, which is at least 30% (thirty percent). The provisions regarding women's representation in the law on the election of the DPR and DPRD have not changed since 2003 until now, so the sudden change in the calculation mechanism by PKPU No. 10 of 2023 is an example of arbitrary interpretation by the authorities according to their own vision and will. Based on this description, it can be said that the character of PKPU No. 10 Year 2023's legal products is conservative or orthodox.

IV. ANALYSIS OF THE EXISTENCE OF SUPREME COURT DECISION NO. 24/HUM/2023 ON WOMEN'S REPRESENTATION IN PARLIAMENT

The presence of PKPU 10/2023, especially regarding the provisions of Article 8 paragraph (2), has an impact in the form of ambiguity on the projection of women's representation, which will be assumed not to meet the mandatory 30% (thirty percent) quota as stipulated in the legislation. In order to guarantee and ensure the opportunity for women to participate in the political contestation, the Coalition for Women's Representation consisting of the Association for Elections and Democracy, the Indonesian Women's Coalition, Hadar Nafis Gumay, Titi Anggreni and Wahid Suaib submitted a judicial review of the provisions of Article 8 paragraph (2)

PKPU 10/2023 to the Supreme Court. The judicial review of PKPU 10/2023 was submitted on June 5, 2023, which was received by the Supreme Court Registrar on June 16, 2023 with register number 24/HUM/2023. In the end, through a long process, the judicial review application submitted by the Coalition for Women's Representation was decided on August 29, 2023.

The Coalition for the Advancement of Women's Representation filed a material review of the provisions of Article 8 paragraph (2) of PKPU 10/2023 against the Election Law and the Law on the Ratification of the Convention on the Elimination of All Forms Against Women. The reasons for the petition (*posita*) described by the petitioner are as follows in essence:

1. Article 8 paragraph (2) of KPU Regulation No. 10 of 2023 is contrary to the 1945 Constitution of the Republic of Indonesia

The argument against the protection of women's rights guaranteed by affirmative action through the Constitution is the fundamental basis explained by the Applicant in this material test. The Applicant relies on the constitutional rights contained in the 1945 Constitution of the Republic of Indonesia, especially Articles 27 paragraph (1) and 28H paragraph (2), which are described in the Petition as follows:

"Article 8 paragraph (2) is contrary to the guarantee and protection of women's constitutional rights stipulated in Article 27 paragraph (1) of the 1945 Constitution and Article 28H paragraph (2) of the 1945 Constitution because the provision does not provide guarantees for special measures in order to realize fair and equal representation of women because it has an impact on the nomination of women in 38 (thirty-eight) provinces".

The reference to Articles 27 paragraph (1) and 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia in this test actually emphasizes the concept of affirmative action that must be used as a lens in the formulation of the quota of women in the nomination of women in Parliament. The reason for the petition clearly outlines two things, namely:

"That the non-fulfillment of the calculation of the rounding of the fulfillment of women's representation which cannot reach the minimum amount of 30% has harmed the guarantee and protection of women's equal rights in law and government and must uphold the law guaranteed in Article 27 paragraph (1) of the 1945 Constitution".

"That the non-fulfillment of the calculation of the rounding of the fulfillment of women's representation which cannot reach a minimum of 30% is not in accordance with the guarantee and protection of women's rights to everyone is entitled to receive convenience and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice guaranteed in Article 28H paragraph (2) of the 1945 Constitution".

Therefore, the constitution through the 1945 Constitution of the Republic of Indonesia has provided a clear and firm basis for provisions relating to how to view equality and the treatment that should be carried out by policy makers towards women's representation in political contestation in Indonesia.

2. Article 8 paragraph (2) of KPU Regulation Number 10/2023 is contrary to the Election Law.

The applicant's argumentation outlines that through the existence of PKPU 10/2023 which the applicant explains in more detail through the form of a projective calculation table on how the projection of women's representation when using KPU logic through the rounding down and up mechanism will result in women's representation that is not in accordance with the mandate of the Election Law. The applicant in his petition elaborates as follows:

"...the contradiction between the norms in Article 8 paragraph (2) letter a of KPU Regulation Number 10 of 2023 is a serious violation that results in the loss of women's political rights to become candidates for DPR and DPRD members, therefore it should be corrected by the Supreme Court".

The applicant also emphasized that if the provisions of Article 8 paragraph (2) PKPU 10/2023 do not comply with the provisions of the Election Law regarding the quota of women's representation, then this makes the process of nominating legislative members legally flawed.

3. Article 8 paragraph (2) of KPU Regulation Number 10 Year 2023 is contrary to Law Number 7 Year 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women.

The Applicant's further argument is constructed through the compatibility of the provisions of Article 8 paragraph (2) of PKPU 10/2023 with the Law on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women. Simply put, PKPU 10/2023 does not consider the following provisions in the Law, namely:

"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".

Article 3 as outlined above emphasizes the obligation of the state to be proactive and ensure appropriate measures towards ensuring the development and advancement of women.

"Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards, these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved".

"States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies".

The provisions of Article 4 and Article 7 described sequentially above provide a clear understanding of (i) special measures through special measures in achieving equal treatment and opportunities for men and women and (ii) the right of women to be involved in elections or other democratic election mechanisms. The provisions of Article 8 paragraph (2)

PKPU 10/2023 substantively do not reflect what are temporary special measures and affirmative action to achieve equality and equality in the context of women's candidacy and representation in parliament.

B. Legal Consideration

The legal considerations of a decision are an important aspect in seeing how the construction of legal arguments prepared by the judge in examining, adjudicating and deciding a case. When examined, the argumentation described in the legal construction of Supreme Court Decision Number 24/HUM/2023 is quite simple. The Panel of Judges only needs to compatibility between Article 243, Article 244 and Article 245 of the Election Law with Article 8 paragraph (2) PKPU 10/2023 to find the coherence of these norms. The Panel of Judges in its consideration elaborated that:

"...if the allocation of seats in each Electoral District as stipulated in Appendix I of KPU Regulation Number 6 of 2023 is calculated (calculated) as a percentage, then the results of the calculation of the number of prospective candidates do not meet the exact calculation of 30% (thirty percent), and if it is connected to the provisions of Article 8 paragraph (2) letter a of KPU Regulation Number 10 of 2023, then the percentage of women's representation in several electoral districts with the number of prospective candidates is less than 30%".

These two arguments are an important construction in the Decision, which shows that both qualitatively and quantitatively, PKPU 10/2023, especially regarding the provisions of Article 8 paragraph (2), does have a fragile argumentative basis which will ultimately have a negative impact on women's representation in parliament.

C. Court Decision

The judicial review of Article 8 paragraph (2) of PKPU 10/2023, which the Coalition submitted for the Advancement of Women's Representation, contains the following verdict:

1. Granting the Petitioner's petition for judicial review: I. Association For Elections And Democracy (Perludem), II. Coalition Of Indonesian Women (KPI), III. Hadar Nafis Gumay, IV. Titi Anggraini, V. Wahidah Suaib, the following:
2. Stating that Article 8 paragraph (2) of the General Election Commission Regulation Number 10 of 2023 concerning the Nomination of Members of the House of Representatives, Provincial Regional House of Representatives, and Regency / City Regional House of Representatives is contrary to higher legislation, namely Law Number 7 of 2017 concerning General Elections and has no binding legal force to the extent that it is not interpreted as "In the event that the calculation of 30 percent of the number of female candidates in each electoral district results in a fractional number, rounding up is carried out" so that the Article a quo reads in full:

"In the event that the calculation of 30 percent (thirty percent) of the number of female candidates in each electoral district results in a fractional number, rounding up is carried out"
3. Ordering the KPU RI to revoke Article 8 paragraph (2) of the General Election Commission Regulation Number 10 of 2023 concerning the Nomination of Members of the House of Representatives, Provincial House of Representatives, and Regency / City Regional House of Representatives;
4. Ordering the Registrar of the Supreme Court to send excerpts of this decision to the State Printing Office to be included in the State Gazette;
5. Ordering the Respondent to pay court costs in the amount of Rp 1,000,000 (one million rupiah).

The decision on the case indicates at least 2 (two) important essential things, namely (i) justification of the incompatibility between Article 8 paragraph (2) PKPU 10/2023 with the phrase "...contrary to higher laws and regulations, namely Law Number 7 Year 2017 concerning General Elections..." in point 2 of the Decision and (ii) the mandate that must be carried out by the addressee of the decision, which in this case is KPU RI as the phrase

"Ordering the KPU RI to revoke...". In point 2 of the Decision and (ii) the mandate that must be carried out by the addressee of the decision, in this case the KPU RI as the phrase *"Ordering the KPU RI to revoke ..."*, this indicates that the KPU RI must revoke because of the discrepancy and improve the provisions of Article 8 paragraph (2) PKPU 10/2023 as part of presenting fair legal certainty for election participants, especially women.

VI. CONCLUSION

Political contestation of women has always been an important concern that always gets attention ahead of the elections. This is because from several election events that took place, the quota of women could not always be fulfilled both qualitatively and quantitatively. This urgency has led to the choice of positive discrimination policies as mandated by the 1945 Constitution and the Election Law. However, the provisions of Article 8 paragraph (2) PKPU 10/2023 became debatable when the substance of the provision did not heed the provisions of the Law above it, which was eventually tested at the Supreme Court. This study found that (i) the difference in the method of calculating the women's quota in Article 8 paragraph (2) PKPU 10/2023 with the Election Law has indicated a form of legal political policy choice in the form of an authoritarian political configuration and a conservative or orthodox character of legal products and (ii) the existence of Article 8 paragraph (2) PKPU 10/2023 which is considered not fulfilling the rules of conformity to the hierarchy of laws and regulations has made the Coalition for Women's Representation conduct a material review at the Supreme Court with the verdict granting all requests from the Petitioner. This decision is also an important marker of women's rights in politics that must be specifically protected through positive discrimination policies (affirmative action).

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