

## ***Legal Implications of the Constitutional Court Decision Number 60/PUU-XXII/2024 on the Simultaneous Regional Head Elections in 2024***

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### ***Abstract***

*The purpose of this study is to analyze the legal implications of the Constitutional Court's decision Number 60/PUU-XXII/2024 on the simultaneous regional head elections in 2024. Recently, the Constitutional Court issued Decision Number 60/PUU-XXII/2024, which is a test of Article 40 paragraph (3) of Law Number 10/2016 on the election of Governors, Regents, and Mayors against the 1945 Constitution of the Republic of Indonesia, which was submitted by the Labour Party and Gelora. This research is normative juridical research. The approaches used include the conceptual approach, statute approach, and case approach. Covering primary, secondary, and tertiary legal materials. The results of this study concluded that Decision Number 60/PUU-XXII/2024 juridically and sociologically has implications for the simultaneous regional elections in 2024. There are direct and indirect implications, directly with the formation of a new PKPU, namely Number 10 of 2024 as the basis for holding simultaneous elections in 2024, and indirect implications such as strengthening local democracy, strengthening political parties, and Constitutional Court Decision Number 60/PUU-XXII/2024 indirectly setting a precedent for Decision Number 62/PUU-XXII/2024 regarding the elimination of the presidential threshold. This research can contribute to changes in regulations or technical regulations that must be made by the General Elections Commission (KPU) and the government after the Constitutional Court's decision and provide recommendations to policymakers in designing regulations by the Constitutional Court's decision. In addition, it contributes to the development of the theory of democracy and elections, especially related to the principles of free and fair elections and electoral justice.*

*Keywords: Constitutional Court Decision; Democracy; Regional Head Elections*

## **1. INTRODUCTION**

The Constitutional Court recently issued an important ruling that affects the landscape of the 2024 simultaneous regional elections. The decision was the result of a lawsuit filed by the Labour Party and the Gelora Party regarding the threshold for the 2024 regional elections. The basic essence of a norm issue that is subject to judicial review is Article 40 paragraph (3) of Law Number 10 Year 2016 on the Second Amendment to Law Number 1 Year 2015 on the Stipulation of Government Regulation instead of Law Number 1 Year 2014 on the Election of Governors, Regents and Mayors. In this norm, the petitioners argued that the article had closed the space for the community to be able to actively participate in politics. So in its decision, the court stated that Article 40 paragraph (3) of Law Number 10 of 2016 was contrary to the 1945 Constitution insofar as it was not interpreted based on the decision of the Constitutional Court.<sup>1</sup>

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<sup>1</sup> Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024

With this decision, Indonesia as a country based on law,<sup>2</sup> of course, must comply with the Constitutional Court's decision, because the Constitutional Court's decision is final and binding.<sup>3</sup> Final means there are no further legal remedies, and binding means are generally applicable.<sup>4</sup> In addition, Indonesia also adheres to a democratic system, which is believed to be a system of government by placing the welfare of the people.<sup>5</sup> The concept of a democratic system places where people can participate in political decision-making, whether through elections, referendums, or other means of participation.<sup>6</sup> The basic principle of democratic values according to Mohammad Hatta is the sovereignty of the people, where the government is run in accordance with the will of the majority while respecting the rights of minorities.<sup>7</sup>

In the implementation of popular sovereignty in the region, namely by holding direct regional elections (Pilkada). This is a manifestation of popular sovereignty that the people who choose are the local community.<sup>8</sup> Pilkada has a crucial role in maintaining the circulation of democracy to get a leader in accordance with the will of the people and gain strong legitimacy among the local community. The legal basis for the implementation of regional elections is contained in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which basically states that regional heads at both the provincial and district/city levels are elected democratically. The constitutional basis for the implementation of simultaneous elections in Indonesia in 2024 is based on Article 18 paragraph (4).<sup>9</sup>

Along with the dynamics of the regional elections that will be held on 27 November 2024 and the development of state administration in Indonesia, the Constitutional Court (MK) granted the applicant in part regarding the threshold for regional head candidates in 2024. This decision is in the spotlight for the Indonesian people, because if you look at previous cases that have been decided by the Constitutional Court, they tend to be contradictory decisions such as decision Number 90/PUU-XXII/2024. Therefore, with this decision, the Constitutional Court has returned its spirit as the guardian of the Constitution.<sup>10</sup>

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<sup>2</sup> Pasal 1 Ayat 3 Undang-Undang Dasar Tahun 1945

<sup>3</sup> Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia," *Jurnal Konstitusi* 20, no. 2 (June 1, 2023): 294, <https://doi.org/10.31078/jk2026>.

<sup>4</sup> Yuswanto Yuswanto and M. Yasin Al Arif, "Diskursus Pembatalan Peraturan Daerah Pasca Putusan MK No. 137/PUU-XIII/2015 Dan No. 56/PUU-XIV/2016," *Jurnal Konstitusi* 15, no. 4 (2018): 722, <https://doi.org/10.31078/jk1542>.

<sup>5</sup> Pasal 1 Ayat 2 Undang-Undang Dasar Tahun 1945

<sup>6</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum tata Negara* (Jakarta: Rajawali Pers, 2015), 414.

<sup>7</sup> Arief Firdaus, Achdiyat Sulaeman, and Mochamad Zakaria, "Demokrasi Indonesia Gagasan Pendiri Bangsa : Demokrasi Berdasarkan Pancasila," *Innovative: Journal Of Social Science Research* 4, no. 6 (December 24, 2024): 13, <https://doi.org/10.31004/innovative.v4i6.16756>.

<sup>8</sup> Ari Priyanto et al., "Reviving House of National Representatives Power: A Normative Analysis Through the Lens of Fiqh Siyasah Dusturiyah," *Mimbar Keadilan* 18, no. 1 (January 31, 2025): 146, <https://doi.org/10.30996/mk.v18i1.12648>.

<sup>9</sup> Naya Amin Zaini, "Penegakan Hukum Pilkada Serentak 2024 Di Indonesia," *JPeHI (Jurnal Penelitian Hukum Indonesia)* 5, no. 01 (July 11, 2024): 49, <https://doi.org/10.61689/jpehi.v5i01.580>.

<sup>10</sup> Pramesti Ratu Fiqih, Adellia Mahardhika Widodo, and Anisa Miftahul Firdaus, "Analisis Penerapan Rule Of Law Oleh Mahkamah Konstitusi Sebagai The Guardian Of Constitution (Studi Kasus Putusan MK Nomor 90/PUU-XXI/2023),"

The content contained in Decision Number 60/PUU-XXII/2024, is an explanation of the threshold amount that must be obeyed by a political party or a coalition of political parties participating in the regional election in order to register their political party cadres as candidates for regional heads. The decision was also read out by the constitutional judges on 20 August 2024.

After the reading of the decision, this has affected the dynamics of regional elections in Indonesia and will minimize the existence of single candidates. Where in the previous election there were 25 single-status regional head pairs in the regions that held the 2020 Pilkada and all of them won.<sup>11</sup> For this reason, the Constitutional Court's decision Number 60/PUU-XXII/2024 has a direct impact on the regional elections, namely reducing the number of single candidates to 6.78% compared to 9.26% in 2020.<sup>12</sup>

Considering the dynamics and complexity that exist so that there is an urgency of this issue, this study aims to analyze how the Legal Implications of the Constitutional Court Decision Number 60/PUU-XXII/2024 on the implementation process, openness of democratic space for simultaneous regional head elections in 2024. Previously there have also been several relevant studies discussing the decision of the Constitutional Court Decision Number 60/PUU-XXII/2024 including. Research by Else Suhaimi<sup>13</sup> (2023), discusses the impact of thresholds on the presidential system in Indonesia. However, the study has a weakness in that it focuses too much on certain aspects of politics, such as political dynasties or party ideology, without considering other factors that can affect political dynamics, such as social conditions. In addition, the research mostly explains the phenomenon without offering concrete solutions or recommendations.

Research by Kadimuddin Baehaki<sup>14</sup> (2024), discusses the consequences of the Constitutional Court's decision regarding the threshold in the nomination of regional heads. However, this research has a weakness in that the author does not discuss in depth how the Constitutional Court's decision Number 60/PUU-XXII/2024 is implemented in practice in the field. Then the author focuses too much on legal analysis without providing a broader context of the political and social implications of the decision.

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*DISCOURSE: Indonesian Journal of Social Studies and Education* 1, no. 3 (July 10, 2024): 240, <https://doi.org/10.69875/djosse.v1i3.126>.

<sup>11</sup> "Ini 25 Calon Tunggal Kepala Daerah di Pilkada 2020 | tempo.co," Tempo, September 14, 2020, <https://www.tempo.co/politik/ini-25-calon-tunggal-kepala-daerah-di-pilkada-2020-582673>.

<sup>12</sup> Kompas Cyber Media, "Calon Tunggal Berkurang Signifikan Usai MK dan KPU Jadi 'Game-Changer' Pilkada 2024 Halaman all," KOMPAS.com, September 24, 2024, <https://nasional.kompas.com/read/2024/09/25/05585431/calon-tunggal-berkurang-signifikan-usai-mk-dan-kpu-jadi-game-changer-pilkada>.

<sup>13</sup> Else Suhaimi, "Implikasi Politik Ambang Batas Pencalonan Pejabat Publik Terhadap Penyelenggaraan Negara Di Indonesia," *Jurnal Hukum Tri Pantang* 7, no. 2 (2021), <https://doi.org/10.51517/jhtp.v7i2.330>.

<sup>14</sup> Kadimuddin Baehaki, "Implikasi Politik Putusan Mahkamah Konstitusi Nomor:60/PUU-XXII/2024 Terkait Ambang Batas Pencalonan Kepala Daerah," *YUSTISI* 11, no. 3 (October 1, 2024): 451–60, <https://doi.org/10.32832/yustisi.v11i3.17912>.

Research by Waisai<sup>15</sup>(2024), discusses the potential of the Constitutional Court Decision No. 60/PUU-XXII/2024 on politics in Indonesia. However, this study has shortcomings, namely that the research focuses more on normative and legal analysis, so it is less supported by empirical data that shows the real impact of the Constitutional Court Decision No. 60/PUU/XXII/2024 in the context of regional head elections. There is also too much focus on legal and policy aspects, without considering the social, cultural, and economic factors that also impact on electoral dynamics at the regional level. This can lead to a lack of comprehensive understanding of the situation. Research by Sulton Fikri<sup>16</sup> (2024), discusses the relationship between society and the state in social contract theory in relation to the Constitutional Court's decision. However, this study has a shortcoming in that it does not discuss in detail the practical challenges and obstacles that may be faced by small parties and independent candidates after the removal of the nomination threshold. For example, the issue of access to resources and media may remain a hurdle for them. It also fails to highlight the risk of potential political fragmentation due to the increased number of competing parties, which could lead to conflict and instability.

Looking at some of the descriptions of relevant previous research, it can be thoroughly understood that in this study there is a novelty that will analyze the legal implications of the Constitutional Court's decision Number 60/PUU-XXII/2024 on simultaneous regional head elections in 2024. Then this research will provide answers to previous studies that have not further elaborated on the practice of the Constitutional Court's decision, from the neglected sociological aspects and highlighting the potential for political fragmentation. Thus, the purpose of this study is to analyze the legal implications of the Constitutional Court's decision Number 60/PUU-XXII/2024 on simultaneous regional head elections in 2024 and the Constitutional Court's decision Number 60/PUU-XXII/2024 indirectly sets a precedent for decision Number 62/PUU-XXII/2024 regarding the abolition of the presidential threshold.

## 2. METHOD

The type of research used in this research is normative juridical, which is a type of research that relies on legal norms. This type is used to analyze various legal aspects based on primary, secondary, and tertiary legal materials.<sup>17</sup> In this case, the approach taken is a conceptual approach, namely to identify legal concepts that are relevant to the research, both in terms of doctrine or theory. Furthermore, the statute approach is used to explain the relevant laws and regulations and inventory the laws and regulations. The case approach This approach is used to apply in the practice by analyzing the pattern of application of law in society, namely the decision of the constitutional court number 60 / PUU-XXI / 2024 and its implications for

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<sup>15</sup> Jeffry Yuliyanto Waisapi, "A Juridical Analysis of the Implications of Constitutional Court Decision No. 60/PUU/XXII/2024 Paving the Way for Political Parties Without Regional Representative Council Seats in Nominating Regional Heads," *Journal of Law, Politic and Humanities* 4, no. 6 (October 7, 2024): 2520–23, <https://doi.org/10.38035/jlph.v4i6.781>.

<sup>16</sup> Sulton Fikri, "Analisis Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024 Terhadap Hak Politik Dalam Perspektif Teori Kontrak Sosial," *Amsir Law Journal* 6, no. 1 (October 31, 2024): 40–55, <https://doi.org/10.36746/alj.v6i1.589>.

<sup>17</sup> Muhammad Syahrums, S. T. (2022). *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis*. CV. Dotplus Publisher.

simultaneous regional head elections in 2024. The data used in this research is secondary data in the form of primary legal materials such as Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors, and the Constitutional Court Decision Number 60/PUU-XXII/2024. Secondary legal materials include journals, theses, dissertations, and scientific papers, then tertiary legal materials include legal dictionaries. The data collection technique in this research is literature review through document collection. The data collected will be analyzed descriptively.

### 3. RESULT AND DISCUSSION

The Indonesian state has held the principle of being a state based on law.<sup>18</sup> The term rule of law was first popularised by British constitutional law scholar Albert Venn Dicey. Dicey used the term in 1885 to describe the constitutional substance of the values of order, formal equality, and individual liberty which he believed were implicit in English common law and which formed the essential basis of the English constitution.<sup>19</sup> Dicey further said that a country is said to be a rule of law if it fulfills its elements, namely (1) The absolute predominance of law (2) Equality before the law (3) The concept according to which the constitution is the result of the recognition of individual rights by judges.<sup>20</sup>

As a state of law (*rechtsstaat*) not a state of power (*machtsstaat*). Where in the state of law is known as the limitation of power. These restrictions are carried out in order to prevent abuse of power. Then also this idea became the forerunner of constitutionalism or (constitutional state). Thus, the idea of the rule of law in Indonesia is theoretically appropriate and can be said to be a modern legal state, namely a democratic legal state, and places the welfare of the people as the main goal (*welfare-state*).<sup>21</sup>

It is a logical consequence that every state administration must be based on the law.<sup>22</sup> One of them is the process of elections and local elections. In its long history, elections have been held 13 times, either directly or indirectly.<sup>23</sup> Elections were originally to elect parliament, which then also shifted to elections to elect the president and vice president or also to elect regional heads through regional elections.<sup>24</sup>

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<sup>18</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II* (Jakarta: Sekretariat jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006), 11.

<sup>19</sup> Martin Loughlin, "The Rule of Law: A Slogan in Search of a Concept," *Hague Journal on the Rule of Law* 16, no. 3 (December 1, 2024): 511, <https://doi.org/10.1007/s40803-024-00224-5>.

<sup>20</sup> Allan R. Brewer-Carias, *Judicial Review In Comparative Law* (USA: Cambridge University, 1989), 7.

<sup>21</sup> Patawari, *Konsep Negara Hukum Dan Keterwakilan rakyat (Perbandingan Sistem Parlemen Beberapa Negara)* (Perpustakaan Nasional: Katalog Dalam Terbitan (KDT), n.d.), 16.

<sup>22</sup> Syahrul Ibad, "Hukum Administrasi Negara Dalam Upaya Penyelenggaraan Pemerintahan Yang Baik," *HUKMY: Jurnal Hukum* 1, no. 1 (April 30, 2021): 51, <https://doi.org/10.35316/hukmy.2021.v1i1.55-72>.

<sup>23</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revisi (Jakarta: Gramedia Pustaka Utama, 2008), 473.

<sup>24</sup> Galang Asmara, "Pemilihan Umum Serentak Berdasarkan Putusan Mahkamah Konstitusi Nomor 55/PUU-XVII/2019 Dan Implikasinya Terhadap Perkembangan Ilmu Hukum Tata Negara Indonesia," *JAPHTN-HAN* 1, no. 1 (January 31, 2022): 147, <https://doi.org/10.55292/japhtnhan.v1i1.13>.



In the frame of a democratic state, it provides an understanding that the people as the holder of sovereignty have the right to determine the direction of policy based on the law.<sup>25</sup> When in the process of implementing the government, of course, it must be organized by the people with constitutional procedures, namely with the principle that every citizen has the right to vote and be elected universally and with equal suffrage.<sup>26</sup>

The history of Indonesian state administration after the amendment of the 1945 Constitution of the Republic of Indonesia states that there are institutions that are directly elected by the people, either the executive or the legislature. In the scope of the central election used to elect the President, Vice President, DPR, and DPD through the election mechanism. Then in the scope of the region both at the provincial and district/city levels, namely electing the Governor, Mayor, Deputy Mayor, and DPRD through the election mechanism.

The concept of popular sovereignty in a democratic system regulated in the 1945 Constitution of the Republic of Indonesia needs to use elections as one of the instruments to realize democracy (*electoral democracy*). The discussion of electoral democracy is placed as one aspect of the local election, which is a type of democracy by casting a direct vote (*electoral vote*).<sup>27</sup>

The implementation of people's sovereignty as contained in the 1945 Constitution of the Republic of Indonesia is the simultaneous regional head elections in 2024. According to the Constitutional Court Decision number 55/PUU-XVII/2019, the regulation of regional elections is part of the regional section, so the regulation is not part of the Election Law.<sup>28</sup>

The regional election is a process of activities with the aim of electing local governments at the provincial, regency/city level in Indonesia. The concept of organizing elections democratically is regulated in Article 18 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia, which states “*Governors, Regents, and Mayors as Heads of Provincial, Regency, and City Regional Governments are elected democratically*”. The article provides an understanding that the process of implementing the elections must certainly adhere to the principles of direct, general, free, secret, honest, and fair (*luberjurdil*).<sup>29</sup>

By conducting periodic regional head elections, it has a positive impact on democracy in Indonesia.<sup>30</sup> However, this does not go perfectly, because if we look at the norms of Article 40

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<sup>25</sup> Vasileios Adamidis, “Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness,” *Politics* 44, no. 3 (August 1, 2024): 387, <https://doi.org/10.1177/02633957211041444>.

<sup>26</sup> Pasal 43 ayat 1 Undang-undang Nomor 39 Tahun 1999

<sup>27</sup> Gotfridus Goris Seran, “Konstitusionalitas Dan Desain Pemilukada Langsung Serentak Nasional,” *Jurnal Konstitusi* 16, no. 3 (October 8, 2019): 660, <https://doi.org/10.31078/jk16310>.

<sup>28</sup> Adnan Muksin and Siti Hasanah, “Kajian Yuridis Tahapan Pemilihan Kepala Daerah Serentak Tahun 2024,” *Politea : Jurnal Politik Islam* 6, no. 2 (November 24, 2023): 75, <https://doi.org/10.20414/politea.v6i2.8524>.

<sup>29</sup> Dr Ridwan Syaidi Tarigan M.H S. H., *Kewenangan Penyelesaian Perselisihan Pemilihan Kepala Daerah Serentak* (HISTORIE MEDIA, 2024), 200.

<sup>30</sup> Rudi Santoso, Ari Priyanto, and Rita Zaharah, “Legal Implications Of Constitutional Court Decision Number 65/PUU-XXI/2023 Concerning Implementation Of Campaigns In Places Of Worship And Education: Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 65/PUU-XXI/2023 Tentang Pelaksanaan Kampanye Di Tempat Ibadah Dan Pendidikan,” *Constitutional Law Society* 2, no. 2 (September 30, 2023): 200, <https://doi.org/10.36448/cls.v2i2.57>.

paragraph (3) of Law Number 10 Year 2016 there are various legal problems. Here, if we observe grammatically, the article reads “*A political party or a coalition of political parties may register a candidate pair if it has met the requirements of obtaining at least 20% (twenty percent) of the number of seats in the Regional People's Representative Council or 25% (twenty-five percent) of the accumulated valid votes in the general election of members of the Regional People's Representative Council in the area concerned*”. The existence of this clause certainly makes it difficult for small parties to nominate their party cadres as regional heads, hence the judicial review filed by the Labour Party and Gelora Party.

### **3.1 Legal implications of the decision of the Constitutional Court Number 60/PUU-XXII/2024**

The Constitutional Court has issued Decision Number 60/PUU-XXII/2024, which is a review of Article 40 paragraph (3) of Law Number 10/2016 on the election of Governors, Regents, and Mayors against the 1945 Constitution of the Republic of Indonesia. In its legal considerations, the Constitutional Court stated that Article 40 paragraph (3) of Law 10/2016 is unconstitutional because it has limited and negated the rights of political parties or coalitions of political parties that have valid votes in the elections as determined in the norms of its body with an explanation stating that ‘only political parties that have seats in the DPRD have the right to propose candidate pairs for Regional Head / Deputy Regional Head.

Constitutional Court Decision Number 005/PUU-III/2005 is closely related to Decision Number 5/PUU-V/2007. This is because Decision No. 5/PUU-V/2007 states that the norm of Article 59 paragraph (2) of Law 32/2004 is ‘A political party or coalition of political parties may register a candidate pair if it meets the requirements of obtaining at least 15% (fifteen percent) of the total number of seats in the DPRD or 15% (fifteen percent) of the accumulated valid votes in the general election of DPRD members in the region concerned’. The ruling was then normalized by the legislators in Law 1/2015 by determining the minimum percentage limit as set out for the first time in Article 40 paragraph (1) of Law 1/2015, which was then permanently used until Law 10/2016.

If we look at the decision, it certainly has an impact on the mechanism of simultaneous elections in 2024. The implications given are direct and indirect. The direct implications are. Regulations through PKPU regarding the nomination threshold for governors, deputy governors, mayors, deputy mayors and regents, and deputy regents.

As for those that have an indirect impact on this mahkamah decision in the form of. First, strengthening local democracy. This is one of the implications where in the previously tested norms to be able to carry regional head candidates political parties must meet the existing threshold. Then Article 40 paragraph (3) of Law Number 10 of 2016 is declared conditionally unconstitutional because according to the court, the article limits the intent of the alternative provisions set out in the body of the article norm, which in principle regulates the percentage of

the number of accumulated votes in the DPRD elections in the region that wants to propose its candidates in the election contest. Therefore, the provisions of Article A quo have lost their existence and are irrelevant if maintained, so the court must declare that Article A quo is contrary to the 1945 Constitution. Then in more detail, the court provided a formulation related to the requirements for political parties to be able to nominate regional heads. Through its decision, the court explained the details as follows;

Provisions for political parties or a coalition of political parties that want to nominate their candidates as Governor / Deputy Governor must pay attention to the following provisions: a. *Every province that has a population of 2,000,000 people, who have then been registered as permanent voters, then a political party or a coalition of political parties must get a minimum valid vote of 10% of the province;* b. *Every province that has a population of 6. 000,000 people, who have then been registered as permanent voters, then a political party or a coalition of political parties must get a minimum of 8.5% of the valid votes from the province;* c. *Every province that has a population of 6,000,000 - 12,000,000 people, who have then been registered as permanent voters, then a political party or a coalition of political parties must get a minimum of 7.5% of the valid votes from the province;* d. *Every province that has a population of > 12,000,000, which has then been registered as a permanent voter, then a political party or a coalition of political parties must get a minimum valid vote of 6.5% of the province;*

Then more detailed provisions are also outlined in the decision, namely political parties or a coalition of political parties that want to nominate candidates for Regent / Deputy Regent, The Mayor/Deputy Mayor must pay attention to the provisions: a. *Every regency/city that has a population of 250,000 people, who have then registered as permanent voters, then a political party or a coalition of political parties must get a minimum of 10% of the valid votes from the Regency / City;* b. *For every regency/city that has a population of >250,000-500,000 people, who have registered as permanent voters, then a political party or a coalition of political parties must get a minimum of 8.5% of the valid votes from the regency/city;* c. *Every regency/city that has a population of >500,000 -1,000,000 people, who then have registered as permanent voters, then a political party or a coalition of political parties must get a minimum of 7.5% of the valid votes from the regency/city;* d. *Every regency/municipality that has a population of >1,000,000 people, who then have registered as permanent voters, then a political party or a coalition of political parties must get a minimum of 6.5% of the valid votes from the regency/municipality;"*

If we look at it using a democratic perspective, the essence of the creation of law as conveyed by Jeremy Betham in his theory of utility states "*The greatest happiness of the greatest number.*"<sup>31</sup> The decision provides happiness for the community and political parties to be able to play a greater role in the simultaneous elections in 2024.

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<sup>31</sup> Robert Schütze, "British Utilitarianism after Bentham: Nineteenth-Century Foundations of International Law II," August 1, 2023, 4, <https://doi.org/10.1163/15718050-bja10090>.



Second, strengthening political parties. The decision that has opened access for small parties to nominate their party cadres as candidates for regional heads, is one of the impacts for political parties to strengthen the political party regeneration system so that ideologically, politically, and organizationally it is able to represent them.<sup>32</sup> With the strengthening of political parties, this can erode pragmatism in the party.<sup>33</sup>

Third, reducing the number of single candidates. In line with the court's decision to lower the threshold for regional head candidacy, the mechanism in the 2024 simultaneous regional elections will certainly minimize the number of single candidates or fight empty boxes.<sup>34</sup> Based on data from 2015, the 2024 simultaneous regional elections have the lowest percentage of single candidates. In 2020, there were 25 single candidates spread across 270 regions (9.26%), while in 2024, there were 43 single candidates spread across 545 regions (7.89%).<sup>35</sup>

If we look at the current conditions with the presence of Constitutional Court Decision Number 60/PUU-XXII/2024, it will certainly have legal implications for the dynamics of the 2024 elections. The position of the Constitutional Court's decision as a source of law in its implementation can form regulations or revise the law based on the Constitutional Court's decision.<sup>36</sup>

### **3.2. The Relevance of the Constitutional Court Decision Number 62/PUU/XII/2024 on the Elimination of the Threshold for Regional Head Candidates**

Although the Constitutional Court's decision No. 60/PUU-XXII/2024 does not have direct implications for the presidential threshold, the Constitutional Court's decision can be used as a precedent that reducing or even eliminating the nomination threshold in elections is very possible considering that it is not a provision regulated in constitutional norms but only regulated in statutory norms and as institutional engineering.

As well as the hopes of many parties to lower the presidential nomination threshold, the Constitutional Court in early 2025 through decision No. 62/PUU-XXII/2024, finally granted a judicial review of Article 222 of Law No. 7/2017 on Elections. By declaring the provisions of the article unconstitutional, the Court not only lowered the Presidential Threshold but abolished it, and the Constitutional Court's decision No. 60/PUU-XXII/2024 became part of the decision as argued by the petitioner in decision No. 62/PUU-XXII/2024.

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<sup>32</sup> Aprista Ristyawati, "Penguatan Partai Politik sebagai Salah Satu Bentuk Pengadministrasian dan Pelembagaan Sistem Demokrasi," *Administrative Law and Governance Journal* 2, no. 4 (November 16, 2019): 713, <https://doi.org/10.14710/alj.v2i4.710-120>.

<sup>33</sup> Febriansyah Kurniawan and Retno Sari Handayani, "Pelaksanaan fungsi partai politik dan dampaknya pada konsolidasi demokrasi," *Jurnal Ilmiah Mimbar Demokrasi* 21, no. 2 (April 19, 2022): 72, <https://doi.org/10.21009/jimd.v21i2.26013>.

<sup>34</sup> Rofi Aulia Rahman, Iwan Satriawan, and Marchethy Riwan Diaz, "Calon Tunggal Pilkada: Krisis Kepemimpinan Dan Ancaman Bagi Demokrasi," *Jurnal Konstitusi* 19, no. 1 (March 28, 2022): 58, <https://doi.org/10.31078/jk1913>.

<sup>35</sup> Kompas Cyber Media, "JPPR: Jumlah Paslon Tunggal pada Pilkada 2024 Paling Rendah Sejak 2015," KOMPAS.com, September 1, 2024.

<sup>36</sup> Labib Muttaqin, Sudjito Atmoredjo, and Andy Omara, "The Relationship between Pancasila and Constitutional Court Decisions as a Source of Law in Indonesia: Relasi Pancasila dengan Putusan Mahkamah Konstitusi Sebagai Sumber Hukum di Indonesia," *Jurnal Konstitusi* 21, no. 1 (March 1, 2024): 79, <https://doi.org/10.31078/jk2115>.

The abolition of the presidential threshold is actually also relevant and logical when compared to countries that adhere to a presidential system that does not have a presidential threshold. Decision Number 60/PUU-XXII/2024 shows the direction of the Constitutional Court's policy which tends to reduce or remove the nomination threshold, at the regional level. Although Decision No. 60/PUU-XXII/2024 did not completely remove the threshold in regional elections, it lowered the requirement. Meanwhile, Decision No. 62/PUU-XXII/2024 expressly abolished the threshold for nominations for president and vice president. Taking these two decisions into account, there is a strong argument that the threshold in local elections should be abolished for consistency and to promote more inclusive democratization.

In countries with presidential systems such as the United States, Brazil, Peru, Mexico, and Colombia. As a result, presidential threshold rules are not known in these countries.<sup>37</sup> These countries are more focused on the issue of coalition presidentialism, not the presidential threshold. Seeing that the Constitutional Court more often rejects / or does not accept material review requests regarding the presidential threshold. The author sees that there needs to be a new framework used by the Constitutional Court in deciding the presidential threshold issue.

The implementation of the presidential threshold is also considered to discriminate against political parties, especially for small parties that cannot nominate their best cadres in the presidential election contest.<sup>38</sup> As a result, the existing power tends to be co-opted by some political elites.<sup>39</sup> As many as 32 judicial reviews have been filed to test the constitutionality of Article 222 of Law No. 7/2017, and this is the most norms filed during the establishment of the Constitutional Court. In the judicial reviews filed, the Court has always held that the minimum percentage threshold for nominating presidential and vice-presidential candidates (presidential threshold) is a legal policy of the legislator. Moreover, in several previous decisions, the Court has held that the legal policy of the legislator cannot be assessed or tested for constitutionality unless the legal policy product clearly violates morality, and rationality, and causes intolerable injustice.

Therefore, this is the reason according to the Constitutional Court to shift from its stance in Decision Number 62/PUU-XXII/2024 where the Constitutional Court abolished the presidential threshold. According to Mahfud MD, the Constitutional Court's decision is a bold decision because it applies judicial activism, which has been the aspiration of the public.<sup>40</sup> The doctrine of judicial activism makes judges not only function as the mouthpiece of the law (*la bouche de la*

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<sup>37</sup> Abdul Ghoffar, "Problematisasi Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain," *Jurnal Konstitusi* 15, no. 3 (November 19, 2018): 498, <https://doi.org/10.31078/jk1532>.

<sup>38</sup> Dani Amran Hakim and M. Yasin al Arif, "Questioning Presidential Threshold in Indonesia: Constitutional Analysis and Democracy Implementation," *Veteran Law Review* 7, no. 1 (May 31, 2024): 82, <https://doi.org/10.35586/velrev.v7i1.7591>.

<sup>39</sup> Marcus Mietzner, "Authoritarian Innovations in Indonesia: Electoral Narrowing, Identity Politics and Executive Illiberalism," *Democratization* 27, no. 6 (August 17, 2020): 2, <https://doi.org/10.1080/13510347.2019.1704266>.

<sup>40</sup> "Ramai-ramai Tanggapi Putusan MK Hapus Presidential Threshold: Apa Kata Yusril Ihza, Mahfud Md, hingga Perludem | tempo.co," *Tempo*, January 3, 2025, <https://www.tempo.co/politik/ramai-ramai-tanggapi-putusan-mk-hapus-presidential-threshold-apa-kata-yusril-ihza-mahfud-md-hingga-perludem-1189464>.

*loi*) or apply the law according to the sound of the law (*rechtstoepassing*), but also function to find the law (*rechtsvinding*) and create law.

Then the decision Number 60/PUU-XXII/2024 and Number 62/PUU-XXII/2024 also has other implications such as political fragmentation, increasing the cost of elections where the increase in candidates will make costs increase, decreasing the quality of candidates, and money politics.<sup>41</sup> But like the legal adage *Lex semper dabit remedium*, which means the law always provides a solution. To overcome political fragmentation, there needs to be reform of the party system that encourages party consolidation but is not too large, so as to avoid options, so there needs to be regulation of the maximum number of coalitions. To reduce the rising cost of elections, campaign spending can be limited through stricter regulations. The state can also provide campaign funds for candidates with strict supervision to reduce dependence on large financiers. In addition, limiting the number of paid advertisements and replacing them with public debate-based campaigns and free digital platforms can reduce political costs without reducing the quality of competition. To overcome the declining quality of regional head candidates, political parties must implement a transparent competency and track record-based selection mechanism. Money politics can be eradicated with firmer and more effective law enforcement, the electoral law enforcement apparatus must really see and work effectively against any violations in the election.<sup>42</sup> Regardless of the various labels or predicates, this progressive decision must be able to answer the legal needs that exist in society.<sup>43</sup>

In simple terms, when we correlate it with the context of regional elections, of course, this is equally related to the threshold in running for regional head or President and Vice President. With the decision Number 62/PUU-XXII/2024 which has abolished the presidential threshold. So it becomes a logical consequence perhaps if in the future it not only lowers the threshold for regional elections but can also remove the threshold in regional head elections (Pilkada). This is necessary in order to maintain the consistency of democratic principles that uphold openness and equal access for all candidates, both at the national and regional levels.<sup>44</sup>

#### 4. CONCLUSION

Based on the description above, this research can be concluded as follows. The decision of the Constitutional Court Number 60/PUU-XXI/2024 has legal implications, among others. First, the KPU must obey and comply with the decision issued by the Constitutional Court because the

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<sup>41</sup> Ari Priyanto, Mirah Satria Alamsyah, and M. Yasin Al Arif, "The Effectiveness of Implementing a Closed-List Proportional System in Selecting Legislative Members from the Perspective of Islamic Law," *KnE Social Sciences* 9, no. 3 (January 11, 2024): 434, <https://doi.org/10.18502/kss.v9i2.15001>.

<sup>42</sup> Lily Faizal, "The Problems in Implementing the Function of the Integrated Law Enforcement Center (Gakkumdu) as an Election Law Enforcement Institution," *As-Siyasi: Journal of Constitutional Law* 3, no. 2 (December 25, 2023): 210.

<sup>43</sup> Muhammad Zulfa Aulia et al., "The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication: Penggunaan Frasa Hukum Progresif Dalam Putusan Mahkamah Konstitusi: Konteks, Makna, Dan Implikasi," *Jurnal Konstitusi* 20, no. 3 (September 1, 2023): 427, <https://doi.org/10.31078/jk2034>.

<sup>44</sup> Dian Fitri Sabrina Brett Inder, "Concentration of Power in Nomination of Presidential Candidates in Indonesia," 383, accessed October 6, 2024, <https://doi.org/10.1177/20578911231199530>.

Constitutional Court's decision is final and binding, which must be made in the new PKPU as the basis for organizing simultaneous elections in 2024. Second, the Constitutional Court issued decision number 60/PUU/XXII/2024 which will open the tap of democracy in Indonesia. Third, with this decision, political parties, both large and small parties, are aggressively conducting kaderisasi to be able to produce leaders who have the capacity and credibility to be promoted as candidates for regional heads. Fourth, this also has implications for the suppression of single candidates in the election contestation, so that the community is given the diversity of candidates available to be elected in accordance with the wishes of the people. Apart from decision number 60/PUU-XXII/2024, the court also issued decision number 62/PUU-XXII/2024 which abolished the presidential threshold. Perhaps in the future, this could be an idea in reviving Indonesian democracy. Therefore, after the presidential threshold is abolished, it is appropriate that the threshold in the regional elections is also removed, not only lowered so that democracy in Indonesia will be more inclusive and equitable.

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