



Embodiment *Electoral Justice* Through Reconstruction & Strengthening Women's Representation in Legislative Elections in Indonesia Following Constitutional Court Decision Number 128/PUU-XXIV/2026

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Abstract

Women's representation in general elections in a democratic country is an important instrument in the principle of electoral justice and inclusive democracy. The Republic of Indonesia has implemented affirmative action for women through Law Number 7 of 2017 concerning General Elections in Article 245 concerning the representation of women in the list of legislative candidates of at least 30%. This norm is weakened in its implementation when this Article does not explain the further mechanism regarding strict sanctions in the event of a violation of the law, thus raising issues regarding the effectiveness of the norm. This study aims to analyze how the regulation of women's representation quotas before and after the Constitutional Court Decision Number 128/PUU-XXIV/2026 and its implications for the realization of women's representation. electoral justice in the Indonesian election system. This study uses a normative juridical method with a legislative approach, a case approach, a conceptual approach, and a comparative approach. The results of the study indicate that Article 245 of the Election Law before the Constitutional Court's decision was imperfect law because it only contains the obligation to fulfill the women's quota without clear legal consequences if violated. This condition results in low levels of compliance by political parties with affirmative action policies for women and has the potential to hinder the fulfillment of women's political rights. Following Constitutional Court Decision No. 128/PUU-XXIV/2026, the General Elections Commission (KPU) authorized the disqualification or exclusion of political parties from electoral districts that did not meet the quota of at least 30% women's representation. Therefore, this decision constitutes a form of constitutional enforcement which strengthens the protection of women's political rights while realizing the principle of electoral justice in the Indonesian election system.

INTRODUCTION

General elections (pemilu) are a political contestation event commonly held in a democratic country. The term democracy comes from the Greek, namely *demos* And *kratos* which means government by the people, which can be interpreted as meaning that the government is run according to the wishes of the people.¹ Democracy is a system of government in which the people participate in governing by electing their representatives. Elections are a manifestation of the implementation of democracy, realizing the goal of guaranteeing popular sovereignty, the right to freedom of expression, and justice, which must be implemented by state officials. Indonesia holds political contests every five years,

¹ Putri Yunita Sari & Siti Tiara Maulia, 2024, "General Elections as a Form of Democracy in Indonesia", *Journal of Practice Learning and Educational Development*, Vol.4, No.2, 2024, hlm.137.

consisting of presidential and vice-presidential elections, legislative elections, and elections for regional heads and deputy heads.

The provisions for elections in Indonesia are regulated in the Constitution of the Republic of Indonesia in Article 22E paragraph (1) to paragraph (6). These paragraphs explain that (1) General elections are held directly, generally, freely, secretly, honestly and fairly every five years, (2) General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional People's Representative Council, (3) Participants in general elections to elect members of the People's Representative Council and members of Regional People's Representative Council are political parties, (4) Participants in general elections to elect members of the Regional Representative Council are individuals, (5) General elections are held by a national, permanent and independent general election commission, (6) Further provisions regarding general elections are regulated by law.² Elections are a means of implementing people's sovereignty which is carried out on the principles of direct, general, free, secret, honest and fair.³

Indonesia is a country that adheres to Pancasila as its philosophy and foundation. In this context, elections are a pillar of Indonesia's Pancasila democracy system because this democracy allows people to exercise their political rights in the form of voting, the right to be elected and the right to vote to determine the political direction of the country and the form of representation of the noble values of Pancasila, especially the 4th principle of Pancasila. The election system in Indonesia uses an open proportional system which is currently regulated in Article 168 paragraph (2) of Law Number 7 of 2017 concerning General Elections which has been amended by Law Number 7 of 2023. Article 168 paragraph (2) stipulates that: "*The elections to elect members of the DPR, provincial DPRD, and district/city DPRD are carried out using an open proportional system.*" An open proportional representation system is a general election system in which voters can directly choose individual legislative candidates, rather than simply choosing a party symbol or ballot number. The goal of implementing this system is to create sufficient fairness and equality for legislative candidate competition and increase transparency in elections.

In the Constitutional Court decision Number 114/PUU-XX/2022 concerning the judicial review of Article 168 paragraph (2) of Law Number 7 of 2017 concerning General Elections, it provides a great opportunity for the people to channel their sovereignty and guarantee their representation fairly and directly because in an open proportional system the election of legislative candidates depends on the direct votes of voters rather than their position on the candidate list so that the election system using open proportional can encourage them to be more active in interacting with the community⁴. However, it cannot be denied that the implementation of this open proportional system still has weaknesses, especially in the issue of fulfilling women's representation in legislative elections. In fact, women's representation as an effort to realize gender-based justice is regulated in Law Number 7 of 2017 concerning Elections, Article 245, which states, "The list of prospective candidates as referred to in Article 243 contains at least 30% (thirty percent) of women's representation.

The problem is that even though women's representation has been stated to be at least 30% in the list of prospective candidates, Article 245 stands without sanctions and strict legal consequences which can have implications for systemic discrimination against women's

² Maulida Khairunnisa & Siti Fatimah, 2023, "Open and Closed Proportional Systems in Elections in Indonesia and Their Advantages and Disadvantages", *Tana Mana Journal*, Vol.44, No.1, 2023, hlm.1.

³ Mukhlis, Et. Al., 2023, "Democratic System in General Elections in Indonesia", *Journal of Education and Teaching*, Vol.2, No.2, 2023, hlm.3

⁴ Rahma Shakira, Et. Al., 2025, "The Impact of the Election System on Women's Political Representation in the PDI-P: A Case Study of Election Mechanisms and Party Strategies in Fulfilling Gender Quotas", *Journal of Social Sciences, Politics, and Humanities*, Vol.5, No.1, 2025, hlm.9.

gender to advance into the political realm and violate the rights of voters, especially female voters, to be presented with female representatives on the ballot. The Constitutional Court has issued Constitutional Court Decision Number 128/PUU-XXIV/2026 concerning the judicial review material Article 245 of Law Number 7 of 2017 concerning General Elections on May 25, 2026 which granted the Petitioner's request in part and stated that Article 245 of Law Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditional binding legal force as long as it is not interpreted as, "The list of prospective candidates as referred to in Article 243 contains female representation of at least 30% (thirty percent) and in the event that the provision of female representation of at least 30% (thirty percent) is not fulfilled, the KPU, Provincial KPU, Regency/City KPU shall disqualify or not include the political party participating in the general election in the relevant electoral district.

Due to this, the author is interested in researching "Manifestation of *Electoral Justice* Through Reconstruction & Strengthening Women's Representation in Legislative Elections in Indonesia Following Constitutional Court Decision Number 128/PUU-XXIV/2026".

RESEARCH METHOD

This research was conducted using a normative legal research method. Normative legal research is a process of discovering and discussing legal norms and principles to address emerging legal issues.⁵ This research was conducted by collecting legal materials, both primary and secondary legal materials in the form of legal documents such as laws and regulations (the 1945 Constitution of the Republic of Indonesia and Law No. 7 of 2017 concerning Elections), court decisions (in this case the Constitutional Court decision Number 128/PUU-XXIV/2026) and legal doctrines (*electoral justice* And *constitutional enforcement*). This research is then linked to the representation of gender quotas so that by examining the legal norms that regulate women's representation in elections and the development of gender doctrine. *electoral justice* And *constitutional enforcement* in Indonesian constitutional law.

The approaches used include *statute approach* to review laws and regulations relating to elections and affirmative action policies for women, *case approach* to analyze the legal considerations in Constitutional Court Decision Number 128/PUU-XXIV/2026, *conceptual approach* to study the concept of electoral justice, *constitutional enforcement*, *affirmative action*, And *state omission* which develops in legal doctrine, as well as *comparative approach* to compare the regulations and enforcement mechanisms for women's representation quotas in several countries. The legal materials used consist of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections and its amendments, Constitutional Court decisions, and other related regulations, and secondary legal materials in the form of books, scientific journals, research results, and opinions of relevant experts. The analysis of legal materials is carried out prescriptively through the methods of legal interpretation and legal argumentation in order to formulate an ideal concept for strengthening women's representation quotas. *electoral justice* through *constitutional enforcement* towards affirmative action policies for women in the Indonesian electoral system.

THEORETICAL STUDY

1. Draft *Electoral Justice*

The right to be elected is the right to obtain equal access to elected government positions.⁶ In the context of the right to be elected, candidates have rights that include being

⁵ Peter Mahmud Marzuki, 2014, *Legal Research*, 6th edition, Kencana Prenada, Jakarta, p.3.

⁶ Dicky Eko Prasetyo, Muh. Ali Masnun, and Hananto Widodo, "Affirmative Action for Persons with Disabilities to Ensure the Right to Be Elected in General Elections," Nusantara Science and Technology

listed on the ballot and being elected based on a properly counted vote. In an election, if a person has met the requirements stipulated by law, namely by receiving a majority of votes or being nominated on a list by a political party that has obtained a certain proportion of the vote, then they are entitled to hold that office.⁷ In a democratic country, the right to be elected is a right guaranteed by the state charter. Without this guarantee, the core meaning/essence of the election process is merely an illusion. The right to be elected is closely related to the procedures, mechanisms, and administrative processes of the selected candidates and must be implemented in accordance with applicable election administration laws.⁸

In context *Electoral Justice* or electoral justice, there are three main aspects of legal protection in the election process. First, protection involves respect for human rights and dignity equally. Second, in the right to be elected, legal protection is affirmed through the provision of opportunities. Equal rights for every citizen in holding political office free from discrimination. Third, guaranteeing the right to be elected for marginalized groups so they are given equal opportunities to fight for their aspirations and rights.⁹ This also applies to women's representation in legislative elections as an effort to realize electoral justice.

2. *Affirmative Action & Women's Representation*

Term *affirmative action* Affirmative action is often used in the public sector, where the government issues specific policies that provide special treatment to certain groups. These policies include quotas in state and government institutions. There are various views regarding this theory. *affirmative action* This is what experts have suggested. According to Marquita Sykes, *affirmative action* is a series of public policies intended to eliminate all forms of discrimination¹⁰. A professor of jurisprudence stated that *affirmative action* as a policy issued to defend the rights of certain groups who are deemed not to have adequate representation in important positions due to discrimination. In the history of legal and political development in Indonesia, the regulation *affirmative action* which can be implemented in Indonesia is based on the constitution Article 28 H paragraph (2) regarding the right of every person to receive special treatment in order to achieve equality and justice, this is also in line with the previous article, namely Article 27 paragraph (1) where every person has equality before the law and government, which means there is no distinction between men and women¹¹.

Affirmative action It can also be said to be a form of positive discrimination. The Indonesian state has begun to focus on improving gender equality, especially by providing more open opportunities and access for women as a group that is often marginalized. This can be seen in the efforts to strengthen women's participation in the political sphere, supported by Law Number 39 of 1999 concerning Human Rights (HAM Law) in Article 3 paragraph (3), which states that everyone's human rights and freedoms must be protected.

Without discrimination. Furthermore, Article 43 also reinforces this, stating that every government position is open to all citizens, implicitly explaining that political rights are

Proceedings 1, no. 1 (May 2, 2025): 205

⁷ Dicky Eko Prasetyo, Et. Al., "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review*, Vol. 7, No. 1, 2025, hlm.176 6

⁸ Rahmat Bagja, Et. Al., 2025, "Towards Electoral Justice : Redesigning an Ideal System for Enforcing Electoral Administrative Law in Indonesia", *Leg Law Journal*, Vol. 8, No. 2, 2025, hlm.783

⁹ Attila Mraz, 2021, "How to Justify Mandatory Electoral Quotas : A Political Egalitarian Approach", *Legal Theory Journal*, Vol. 27, No. 4, 2021, hlm.286

¹⁰ Hendri Sayuti, 2013, "The Essence of *Affirmative Action* in Indonesian Law (Empowerment Efforts for the Marginalized), *Menara Journal*, Vol.12, No.1, 2013, p.41.

¹¹ Angela Ranina & Andina Elok, 2021, "The Implementation of Affirmative Action by Political Parties as an Effort to Increase Women's Representation in Legislative Institutions", *Republic*, Vol. 5, No. 1, 2021, hlm.18.

equal for everyone. More specifically, Article 46 regulates women's rights, stating that general elections must ensure women's representation. *affirmative action* For women, there are several benefits to be gained if the implementation process is carried out in an inclusive manner. First, it opens up opportunities for women to represent their community in government. Second, it creates increasingly progressive political freedom for women, which is one indicator of a country's progress¹².

RESULTS AND DISCUSSION

Imperfect Law Article 245 of the Election Law and Women's Representation in Legislative Elections

Political participation is a fundamental aspect of the implementation of a democratic system, reflecting the extent to which citizens contribute to the decision-making process related to government. From a gender equality perspective, women's political participation in government is a constitutional right that must be fulfilled by the state and also serves as an instrument to promote inclusive public policies that are responsive to the needs of vulnerable groups¹³. The problem of gender representation in Indonesia actually has a long historical background and it can be said that this issue... *affirmative action* become an issue "never ending story". If we look back through historical flashbacks, the regulation of gender quotas in political participation in elections in Indonesia began when Indonesia ratified the *Convention on the Political Rights of Women (Convention on The Elimination of All Forms of Discrimination Against Women)* which was ratified in Law Number 12 of 2005 concerning Ratification *International Covenant on Civil and Political Rights* which makes equality through *affirmative action* This is crucial. This is stated in Article 3 of Law No. 12 of 2005, which affirms equal rights between men and women as a resolution for women.

to obtain the right to enjoy civil and political liberties and have freedom over human rights. Then, this transformation of gender equality was strengthened through the second amendment to the 1945 Constitution of the Republic of Indonesia which gave birth to provisions regarding "special treatment" in Article 28I paragraph (2) "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment.". In addition, the quota for women's representation has undergone several developments in the Indonesian election system, as outlined in the table below:

Table 1. Election System

Election	Information	Nature of Obligation
2004	Provisions of Article 65 Paragraph (1) UU 12/2003 that state: "Every Party Political Election participants can nominate candidates Member DPR, DPRD Province, and the Regional Peoples's Representative Council Regency/City for every Electoral District taking into account representation women at least 30%	The existence of phrase "paying attention" can be understood that the quota for women's representation of at least 30% is only "optional" or not mandatory for political parties, the meaning of which is not does not give rise to any legal consequences at all and political parties can still submit their candidate lists even if they do not meet the quota. representation of 30%.

¹² Muahammad Faisal, 2024, "2 Decades. *Affirmative Action* Women's Representation in Indonesian Politics (Women's Obstacles in Patriarchal Culture), *Journal of Legal Communication & Information*, 2024, p.59.

¹³ Reski Amalia Nasir, Et. Al., 2025, "The Role of Women in Local Political Participation (Case Study of the Sidenreng Rappag Regency DPRD), *Journal of Law, Humanities, and Politics*, Vol.5, No.6, 2025, hlm.2

2009	Provisions of Articles 53, 54 & 55 UU 10/2008 states: "The list of prospective candidates in each electoral district must contain at least 30% representation." women's names The candidates on the list of prospective candidates are arranged in sequential order. For every 3 prospective candidates, there must be at least 1 female prospective candidate	The phrase "pay attention to changed to "...load..." with the obligation to implement zipper system It means imperative. Zipper system Understood as mechanism which places female legislative candidates in each group of 3 candidates so that for every three candidate names there must be at least one woman. ¹⁴ This system is also known as placement mandate in policy gender quotas. In this change of phrase, coercive power becomes stronger and imperative.
2014	Provisions of Articles 54 & 55 and 56 Law No. 8 Year 2012 stated: " <i>The list of prospective candidates in each electoral district must contain at least 30% female representation.</i> ".	Article 56 (2): In every 3 prospective candidates, female prospective candidates can be placed in order 1, or 2, or 3 and so on, not only in order numbers 3, 6, and so on. Quota 30% representation of women in each electoral district and zipper system it means imperative but still without sanctions
Decision K 20/PUUXI/2013	The Constitutional Court's decision states the phrase 'or' deep Explanation of Article 56 paragraph (2) UU 8/2012 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as 'and/or'. Therefore, the Explanation of Article 56 paragraph (2) Law No. 8 of 2012 becomes: "In every 3 prospective candidates, women can be placed in order 1, and/or 2, and/or 3 and so on next,"	In amar the balanc The Constitutional Court clarified the meaning of former The law requires political parties to not only place one woman at the "last" position among three prospective candidates, but also to open up the opportunity for women to be placed first or second among three prospective candidates. This decision is imperative but still without any sanctions. firm.
2019	Provisions of Articles 244, 245 & 246 UU 7/ 2017 " <i>List of prospective candidates in each electoral distric load women's representation at least 30%</i> "	Imperative in nature but without further regulations regarding sanctions
2024	Law 7/2017 has not undergone any changes and remains guided by Articles 244, 245, 246 of the Law No. 7 of 2017.	This regulation has not undergone any substantive changes, indeed this regulation is imperative but is not followed by any clear norms if Based on the arguments of the Applicant's application, the Constitutional Court in its order his considerations a violation occurred
Decision MK 128/PUU- XXIV/2026	MK grant the Applicant's request in part with Change norma affirmative from merely an administrative obligation to an obligation accompanied by consequence law in the form of disqualification in the relevant electoral district	Based on the arguments of the Applicant's application, the Constitutional Court in its order his considerations, Courthas stated that if political parties participating in the election do not meet the minimum requirements, then the KPU according to the level must disqualify the participation of the

political party concerned in the
election contest in the electoral
district
What is meant is

Long before the issuance of Constitutional Court Decision number 128/PUU-XXIV/2026, the Constitutional Court had made efforts to realize *electoral justice* through several decisions regarding women's representation in legislative elections. For example, in Constitutional Court Decision Number 22-24/PUU-VI/2008, the Constitutional Court stated *affirmative action* through providing opportunities for women to advance in elections is a form of positive discrimination in gender equality which is justified by the constitution Article 28H paragraph (2) of the UUD NRI. In addition, the recent Constitutional Court Decision Number 169 / PUU-XXII / 2024 explains regarding women's representation of at least 30% where the figure of at least 30% is interpreted that the requirement for 1 woman for every 3 legislative candidates for both the DPR and DPRD is a basic milestone in providing opportunities to overcome the imbalance in representation of men and women in representative institutions. This is based on statistical data obtained from the Indonesian Central Statistics Agency in 2026 showing that the number of Indonesian men is 144,864,000 and women is 142,334,400.¹⁵ Overall, there is no significant difference in numbers between men and women. However, when viewed from the perspective of political participation, there is a significant difference in the percentage of women's and men's representation in representative institutions. This 30% female representation requirement is of course based on considerations and based on the capacity of women themselves to achieve *affirmative action* which upholds the dignity and honor of women¹⁴.

Indonesia itself has established regulations regarding the quota for women's representation through Law No. 7/2017 concerning Elections, specifically in Article 245. However, there are two significant legal loopholes in the article. First, the Election Law does not explicitly explain the sanctions applied if the 30% quota as stipulated is not met, thus potentially creating a bad precedent that legitimizes political parties to continue to ignore the quota for women in future elections. Second, the Election Law does not regulate how the calculation method for this 30% quota.

The weakness of Article 245 implicitly contradicts Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Sovereignty rests with the people and is implemented according to the Constitution," which can be interpreted to mean that elections as an instrument for implementing people's sovereignty must be subject to and comply with the procedures determined by the constitution¹⁵. This has implications for the absence of firmness and strict sanctions */imperfect law* which is a legal setback so that the right to obtain legal certainty as mandated in the constitution Article 28D paragraph (1) "*Everyone has the right to fair legal recognition, guarantees, protection, and certainty as well as equal treatment before the law.*" has lost its meaning in the election process. Based on the facts that occurred in the field during the election, there were still several political parties that did not implement the mandate of Article 245, where political parties that did not meet the 30% vote quota were still designated as Permanent Candidate Lists (DCT). Therefore, if examined further, the unclear sanctions in Article 245 have a great potential for political parties to ignore the obligation of a 30% quota for women because the absence of strict sanctions will cause political parties to assume that this is merely a formality and passing the Permanent Candidate List by the KPU can be interpreted as a flawed affirmative process.

¹⁴ Chintya Insani Amelia, 2022, "The Problem of Women's Representation in Filling Membership of the General Election Commission of the Republic of Indonesia", *Constitution Journal*, Vol. 1, No. 2, 2022, hlm.195

¹⁵ Decision Number 128/PUU-XXIV/2026

Based on data from the Civil Society Coalition Concerned about Women, the Permanent Candidate List (DCT) announced by the Indonesian General Elections Commission (KPU) for the 2024 Election, from 84 regions In the election (electoral district) 17 of the 18 political parties failed to fulfill their women's affirmative action obligations as can be seen in the table below¹⁶

Table 2. Permanent Candidate List (DCT)

No.	Name of Political Party	The number of electoral districts does not meet the 30% quota. Woman
1.	National Awakening Party (PKBP)	29 electoral districts
2.	Indonesian Democratic Party of Struggle (PDI)	26 electoral districts
3.	Democratic Party	24 electoral districts
4.	Functional Group Party (Golkar)	22 electoral districts
5.	Great Indonesia Movement Party (Gerindra)	22 electoral districts
6.	Nusantara Awakening Party (PKN)	21 electoral districts
7.	Indonesian People's Wave Party (Passion)	19 electoral districts
8.	National Mandate Party (PAN)	17 electoral districts
9.	National Democratic Party (NasDem)	16 electoral districts
10.	Crescent Star Party (PBB)	16 electoral districts
11.	United Development Party (PPP)	12 electoral districts
12.	Indonesian Republican Guard Party (Garuda)	9 electoral districts
13.	Labor Party	6 electoral districts
14.	United Indonesia Party (Perindo)	5 electoral districts
15.	Ummat Party	5 electoral districts
16.	Indonesian Solidarity Party (PSI)	4 electoral districts
17.	People's Conscience Party (Hanura)	Not meeting in some electoral district
18.	Prosperous Justice Party (PKS)	Fulfilling all electoral districts

Based on the analysis of the Permanent Candidate List above for the 2024 election, it shows that as many as 17 of the 18 political parties participating in the 2024 election did not meet the requirement of at least 30% female representation in a number of regions.

The Indonesian House of Representatives elections. In fact, only the Prosperous Justice Party (PKS) met the women's quota requirement in all 84 electoral districts of the Indonesian House of Representatives. These findings indicate that the affirmative action policy in Article 245 of the Election Law has not been fully followed by an effective compliance mechanism, thus giving rise to problems. *electoral justice* in the legislative nomination process.

In fact, if you look at it through *original intent* In the drafting of the Election Law, prospective candidates for the DPR election should be compiled into a list of prospective candidates by each political party. The list of prospective DPR candidates is determined by the central level of the political party participating in the election. The list of prospective candidates should contain a maximum of 100% (one hundred percent) of the total seats in each electoral district. Likewise, the list of prospective candidates should contain at least 30% (thirty percent) of female representation. The names of the candidates in the list of prospective candidates are arranged according to their sequential numbers in the candidate talent list, with at least 1 (one) female prospective candidate. The existence of Article 245 in the Election Law, which requires a 30% quota for women without being followed by the implementation of secondary norms in the form of sanctions or the imposition of legal consequences, is ineffective.

¹⁶ Ajid Fuad Muzaki: "Only One Party Complies with the 30% Women's Nomination Requirement for Each DPR Electoral District." <https://rumahpemilu.or.id/hanya-satu-partai-patuhi-pencalonan-30-perempuan-tiap-dapil-dpr/>, accessed on May 25, 2026

From the perspective of state administrative law, administrative sanctions in the form of refusal of registration do not have to be placed in separate provisions like criminal sanctions which are of a criminal nature. *last resort*. Refusal of registration is an administrative legal consequence inherently tied to norms that regulate specific requirements. Therefore, separating the norm requiring the 30% quota for women's representation from the norm that regulates the legal consequences for violations has the potential to create unclear norms and reduce legal certainty. Such a situation contradicts the principle of clarity of formulation, which is one of the principles in the formation of legislation¹⁷.

The absence of an explicit regulation authorizing the General Elections Commission (KPU) to reject the registration of candidates who do not meet the women's representation quota has created doubts about the implementation of its electoral law enforcement function. This situation demonstrates a legislative weakness, as lawmakers have failed to link legal obligations with legal consequences. violations. This situation arises because the legislators failed to adequately integrate mandatory norms (primary norms) with sanctions (secondary norms). Therefore, the Constitutional Court has the authority to address this deficiency through a conditional unconstitutional ruling to ensure the effectiveness of the norms and uphold constitutional supremacy.

Implications of Constitutional Court Decision Number 128/PUU-XXIV/2026

Decision Court Constitution Number 128/PUU-XXIV/2016 can have significant implications for the transformation of women's representation in the election system in Indonesia, especially in the concept of *embodi mentelectoral justice* In Indonesia, which guarantees equality in every electoral process, strengthening women's representation can balance aspirations. from the perspective of the interests of men and women who in everyday life are vulnerable marginalized groups so that the aspirations accommodated in legislative institutions can be balanced. In addition, the enactment of the Constitutional Court Decision Number 128 / PUU-XXIV / 2026 signifies a new chapter in fulfilling gender equality in Indonesia which is also in line with the constitutional mandate. Following this Constitutional Court decision, the House of Representatives then accommodated the contents of the decision in the revision of the Election Law as a form of constitutional guarantee of women's political participation so that it will minimize distortions in the fulfillment of women's political rights in legislative elections in Indonesia. This has implications for strengthening inclusive democracy in Indonesia because through the Constitutional Court Decision Number 128 / PUU-XXIV / 2026 this means expanding political access for groups that have been underrepresented. As is known, the current state of democracy in Indonesia is quite complex and tends to change according to the social dynamics that continue to develop in society. On the one hand, Indonesia has adopted and implemented various democratic principles such as free general elections, freedom of speech and the press, and the establishment of independent democratic and judicial institutions¹⁸. However, in the context of its implementation There are still shortcomings in the process of implementing this democracy, especially regarding the inclusiveness of the democracy being implemented.

This decision, if properly accommodated, will be the first step toward achieving inclusive democracy. Inclusive democracy emphasizes that all levels of society, without exception, including groups marginalized in the political sphere in Indonesia, have the opportunity to advance in Indonesian elections. In Indonesian elections, the minimum requirement for

¹⁷ Ida Budhiati, *Et. Al.*, 2025, "Norma Tanoa Sanksi: The Polemic of "Gender Quota" in the Law and Its Implications for the KPU as a Self-Regulatory Body", Indonesian Election Governance Journal, Vol.6, No.1, 2025.

¹⁸ Frans Samuel Junero Butarbutar & Irwan Triadi, 2024, "Implementation of Democratic Principles in the Constitutional Law System", Journal of Law and Constitutional Studies, Vol.2, No.3, 2024, p.265

women's representation of at least 30% is still far from being achieved because women still face structural, cultural, and institutional barriers that prevent the level of representation in legislative institutions from reaching the ideal 30%¹⁹. Therefore, affirmative action policies that require women's representation in legislative candidacy are a constitutional instrument to expand women's political access and reduce inequality in representation²⁰. Through Decision No. 128/PUU-XXIV/2026, the Constitutional Court not only strengthened the validity of the women's quota norm but also ensured an effective law enforcement mechanism for its fulfillment. This is also in line with the concept *electoral justice* which requires equality and opportunity for every citizen to actively participate in election contests.

The second implication is the strengthening of the General Elections Commission's (KPU) authority. Due to the lack of a clear legal basis for rejecting registration, the KPU now has the legitimacy to enforce the law administratively following Decision Number 128/PUU-XXIV/2026. Previously, the absence of legal norms that further regulate sanctions related to gender representation quotas led the KPU to adopt two policies: implementing the *activism* or be actively prepared by completing the regulations regarding sanctions in the General Election Commission Regulations (PKPU) for the 2014 and 2019 elections and secondly implementing the mode *restraint* where the KPU tends to follow the Election Law without including the sanctions that follow²¹. In the 2024 election, the mode *restraint* This can be seen from the time of the KPU issued PKPU 10/2023 where the election construction was slightly different compared to the 2009 election where in 2009 the legal consequence of not fulfilling the women's quota was that political parties were asked to submit their reasons to the KPU. Meanwhile, in the 2024 Election, Article 40 paragraph (1) of PKPU 10/2023 states that parties that do not fulfill the quota are asked to return the files. The return is excluded if the political party is willing to cross out its candidates and adjust the number of electoral districts. So the crossing is no longer carried out by the KPU but from the willingness of the political party as regulated in Article 40 paragraph (3) letter b PKPU 10/2023 "*that the return will not be made if: [...] the political party is willing to cross out electoral districts that do not meet the requirements on the list of prospective candidates and adjust the number of electoral districts in the application letter.*"

This Constitutional Court ruling could then have implications for strengthening the KPU's position as an independent election organizing body responsible for maintaining the quality of democracy in Indonesia. *electoral justice* The General Elections Commission (KPU) is not merely an institution that organizes the procedural stages of elections but also ensures the inclusive and fair conduct of elections. The KPU's strengthened function following this ruling is that it has the legitimacy and right to reject or exclude candidates who do not meet the minimum 30% quota for women's representation, subject to oversight and administrative law enforcement by the KPU. This will undoubtedly have implications for political parties' increased commitment to recruiting, developing, and nominating female candidates to increase gender-based political participation in this political contest.

To accommodate Decision No. 128/PUU-XXIV/2026, Indonesia can look to Finland, which boasts a much higher rate of female representation in parliament than Indonesia due to its high level of female political participation. In 2019 (the year of the Finnish parliamentary elections), women's representation reached 47% of parliamentary seats²². Finland in its

¹⁹ Aqilla Zati Bayani, *Et. Al.*, 2025, "Transformation of Indonesian Democracy: Towards Inclusive and Participatory Political Sustainability", *Scientific Journal of Democracy Forum*, Vol.19, No.2, 2025, p.541.

²⁰ Burlian Sanjaya, *Et. Al.*, 2025, "Representation of Women as Election Organizers in Jambi Province: Challenges and Strengthening Strategies", *Journal of Political Issues*, Vol.7, No.1, 2025, hlm.8.

²¹ Ida Budhiati et. Al., *Op. Cit.*, p. 104

²² Rahmadhanya Elwinner Huzaima Sibarani, 2024, "Comparison of Women's Electoral Quota Arrangements and the Condition of Women's Representation in Parliament: Case Study of Indonesia, East Timor, and

electoral law/*Election law* has regulated the requirements that candidates must meet if their names are to be included on the candidate list, so that the decision on nominations does not rest solely with political parties. Furthermore, Indonesia can also emulate the implementation of elections in Costa Rica, where based on the 2009 electoral code reform, Costa Rica adopted the concept of *gender parity* namely a 50:50 representation quota between men and women. The similarity with Indonesia only lies in the implementation. *zipper system* where the list of candidates must be compiled alternately and parties are required to place women as number one candidates in a number of specific electoral districts so that women are not only placed in less strategic positions²³. The State of Costa Rica does not only apply declarative norms, but also applies coercive power, not just relying on the voluntary compliance of its political parties. Directorate of Election Registration and *Supreme Electoral Tribunal* (TSE) has the authority to reject candidate lists that do not meet parity and zipper system requirements. In other words, political parties cannot participate in the election if their candidate lists violate the rules on women's representation²⁴.

Therefore, Indonesia should also implement the same approach by imposing coercive administrative sanctions to increase political party compliance and increase women's representation in political contests and legislative bodies. This decision is expected to ensure fair and inclusive elections in Indonesia.

CONCLUSION AND SUGGESTION

Conclusion

Based on the research results, the regulation of women's representation as a form of *electoral justice* in the election contestation in Indonesia, its development has undergone a significant transformation, especially after the Constitutional Court Decision Number 128/PUU-XXIV/2026, which is a form of legal construction regarding the weaknesses in the existing regulations in Law Number 7 of 2017 concerning General Elections, specifically in Article 245, which explicitly states that women's representation must be at least 30% in legislative nominations. The absence of strict sanctions if political parties do not meet the quota of women's representation of at least 30% has caused the norms regarding women's representation to be only *imperfect law* which means it is only in the form of written legal regulations without any applicable legal consequences so that it has the potential to cause political parties to ignore the representation of women in nominations in legislative elections.

Suggestion

Decision No. 128/PUU-XXIV/2016 marked a turning point in the process of strengthening affirmative action policies for women in politics in Indonesia. The Constitutional Court's ruling not only reaffirmed legal obligations but also strengthened women's political rights by affirming the principle *electoral justice* to realize an inclusive and representative democracy. To realize and implement this Constitutional Court decision, lawmakers are expected to immediately accommodate Constitutional Court Decision Number 128/PUU-XXIV/2026 through a revision of the Election Law to ensure sustainable women's representation. Furthermore, the General Elections Commission is expected to draft regulations that strictly regulate administrative sanctions related to violations of the quota for women's representation of at least 30%. Finally, political parties, as political forums, are expected to realize this women's representation through cadre development, political

Finland", The Indonesian Journal of Socio-Legal Studies, Vol.3, No.2, 2024, p.10.

²³ Thea Ridley-Castle, 2024, "Pursuing Parity: Examining Gender Quotas Across Electoral System", *Electoral Reform Society*, 2024.

²⁴ UN Women, 2023, Legislated Gender Quotas for Local Government, <https://localgov.unwomen.org/quota-analysis>, accessed on May 28, 2026.

education, and continuous recruitment of women into their parties.

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