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THE RIGHT OF LEGISLATIVE MEMBERS TO RUN FOR OFFICE IN REGIONAL HEAD ELECTIONS FOLLOWING CONSTITUTIONAL COURT DECISION NO. 176/PUU-XXII/2024

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Abstract

Constitutional Court Decision No. 176/PUU-XXII/2024 modifies the status and restrictions on the right of elected legislative candidates to resign in order to run in regional head elections. This study aims to analyze the status and limitations of the rights of elected legislative candidates, as well as the constitutional implications of this decision on the people's mandate and the conduct of elections. This study employs a normative legal research method with a descriptive type and an applied normative approach through the statute approach and the case study approach. Data were obtained from primary and secondary legal sources as well as interviews with election organizers.

The results of the study indicate that Constitutional Court Decision No. 176/PUU-XXII/2024 restricts the right of elected legislative candidates to resign in order to run for other public offices as a form of protection for the people's mandate. Resignation remains possible if the elected candidate receives a government appointment to a position that does not require a general election. This decision has implications for strengthening the principles of popular sovereignty, the rule of law, the integrity of electoral democracy, and legal certainty. Its implementation requires clear technical guidelines so that election administrators can consistently apply the provisions regarding resignation and government appointments.

Keywords: *Constitutional Court ruling, elected legislative candidates, right to resign, people's mandate, regional head elections.*

A. INTRODUCTION

Regional head elections (Pilkada) are one of the instruments for exercising popular sovereignty in determining regional leaders. Over time, regulations regarding the participation of legislative members in regional head elections have undergone significant changes, particularly concerning the obligation to resign from legislative office. These changes reflect efforts by lawmakers and the Constitutional Court to strike a balance between protecting citizens' political rights to be elected, ensuring legal certainty in candidacy, and upholding the principles of justice and equality in electoral competition. At the outset of direct regional elections under Law No. 32 of 2004, legislative members running for regional head were not yet required to resign permanently. This situation had the potential to create a conflict of interest, as a legislative member could retain their position while participating in the regional election contest. Subsequent developments were marked by Constitutional Court Decision No. 27/PUU-VII/2009 and regulatory changes governing leave mechanisms, culminating in Constitutional Court Decision No. 66/PUU-XI/2013, which subsequently became the basis for regulations regarding the obligation of permanent resignation for legislative members running in regional elections.

The issue becomes more complex when the provisions regarding resignation are applied to legislative candidates who have already been declared elected. In an open proportional representation electoral system, the election of legislative candidates is not only tied to political parties but also to the votes cast by voters for specific candidates. Therefore, the resignation of an elected legislative candidate to participate in other political contests raises questions regarding the continuity of the mandate granted by voters. This phenomenon can create a situation where legislative elections become a sort of arena for gaining political legitimacy before moving on to other public offices. In this context, the issue of "reserve seats" arises that is, a situation where election to a legislative seat can be viewed as a political safety net, even though the candidate in question, either from the outset or after being declared the winner, chooses to run for another public office. Several incidents in Lampung Province during the 2024 General and Regional Elections revealed that some elected legislative candidates chose to run in regional elections, including Jihan Nurlela, Ririn Kuswantari, and Nanda Indira Bastian.

This situation subsequently took on a new constitutional dimension through Constitutional Court Decision No. 176/PUU-XXII/2024. This decision restricts the right of elected legislative candidates to resign in order to run for other public offices. The Court distinguishes resignation due to non-elective government assignments from resignation undertaken to run for public office through general elections. With this restriction, elected legislative candidates can essentially no longer freely exercise their right to resign in order to switch to other political contests. A problem then arises because, on the one hand, the right to be elected is a constitutional right of citizens, while on the other hand, candidacy in regional elections requires resignation from legislative office. Thus, Constitutional Court Decision No. 176/PUU-XXII/2024 creates both a common ground and a tension between individual political rights and the protection of the people's mandate.

These restrictions are fundamentally based on the consideration that once a person is declared an elected legislative candidate, their position is no longer merely a matter of individual rights. That election has established a representative relationship between the elected candidate and the voters who cast their ballots for them. Therefore, the exercise of the right to resign in order to run for another public office must be viewed within the framework of protecting the sovereignty of the people. In an open proportional electoral system, voters' votes are directly linked to the specific candidates who receive them; thus, the resignation of an elected candidate has the potential to affect the substance of political representation. Constitutional Court Decision No. 176/PUU-XXII/2024 thus shifts the regulatory focus from the freedom of elected candidates to resign toward restricting that right in order to protect the voters' mandate and the integrity of electoral democracy. A number of studies on political rights and the conduct of elections have fundamentally addressed the relationship between the right to be elected, popular sovereignty, and mechanisms of political representation. Similarly, the issue of the resignation of legislative members who run in regional elections has evolved alongside

changes in legislation and Constitutional Court rulings. However, legal developments stemming from Constitutional Court Decision No. 176/PUU-XXII/2024 present a relatively new issue, as this decision not only pertains to candidacy requirements but also alters the legal framework regarding the right to resign for elected legislative candidates. This issue becomes even more relevant when considered in the context of the open proportional electoral system and the Interim Replacement (PAW) mechanism, as the resignation of an elected candidate can result in a change in who ultimately occupies the seat won through the voters' votes. Thus, there remains a need for a study that specifically analyzes the legal standing of elected legislative candidates following Constitutional Court Decision No. 176/PUU-XXII/2024, as well as its implications for the people's mandate and the mechanism for replacing elected candidates.

The limitations of this study highlight the need to view Constitutional Court Decision No. 176/PUU-XXII/2024 not merely as a ruling that restricts the right to resign, but as a paradigm shift in the relationship between candidates' political rights and voters' constitutional rights. This study posits that the central issue extends beyond whether an elected legislative candidate retains the right to run in regional elections; it also concerns how that right is restricted when its exercise has the potential to undermine the effectiveness of the public mandate granted through elections. Therefore, this study aims to analyze the status and limitations of the right of elected legislative members to run in regional elections following Constitutional Court Decision No. 176/PUU-XXII/2024, as well as its constitutional implications for the protection of the people's mandate, political practices within the party system, and the mechanism for replacing elected legislative candidates in the open proportional electoral system.

Based on these issues, this study aims to analyze the status and limitations of the right of elected legislative candidates to run in regional elections following Constitutional Court Decision No. 176/PUU-XXII/2024, as well as to analyze the constitutional implications of that decision regarding the protection of the people's mandate and the mechanism for replacing elected legislative

candidates. This study employs a normative legal research method using a statutory approach and a case-based approach, supported by empirical data gathered through interviews with election organizers. This research is important to provide an understanding of the limits on the exercise of political rights by elected legislative candidates while assessing the extent to which such restrictions can maintain a balance between the right to be elected, popular sovereignty, legal certainty, and the integrity of electoral democracy.

B. RESULTS AND DISCUSSION

1. The Status and Limits of Legislative Members' Right to Run for Office in Regional Elections Following Constitutional Court Decision No. 176/PUU-XXII/2024

The right to be elected is one form of political right guaranteed under Article 28D, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This right provides every citizen with the opportunity to participate in government, including through candidacy in general elections and regional head elections. However, the right to be elected is not an absolute right. Article 28J, paragraph (2), of the 1945 Constitution of the Republic of Indonesia provides a constitutional basis for restrictions on the exercise of every person's rights and freedoms, provided that such restrictions are established by law and are intended to ensure respect for the rights of others and to meet fair demands based on moral considerations, religious values, security, and public order in a democratic society. Thus, restrictions on political rights are fundamentally justifiable as long as they have a clear legal basis and constitutional purpose.

In the context of legislative candidacy in Regional Head Elections, this issue becomes more complex when a legislative candidate has already obtained the status of an elected legislative candidate. Prior to Constitutional Court Decision No. 176/PUU-XXII/2024, an elected legislative candidate who wished to run in a Regional Head Election could, in principle, still withdraw their candidacy as long as they met the requirements set forth in applicable laws and regulations. This situation posed a problem because a legislative candidate who had received votes and been declared elected in the general election already had a representative

relationship with the voters, yet at the same time could still shift their political allegiance to run for another political office.

Constitutional Court Decision No. 176/PUU-XXII/2024 subsequently amended this framework. The Court did not eliminate an individual's political right to run for public office, but it restricted the use of the right to resign for elected legislative candidates who wish to run for another office that is also filled through a general election. This restriction is based on the consideration that an individual who has attained the status of an elected official is no longer acting solely within the sphere of individual political interests but has received a mandate from the public through the election. Conversely, for government positions obtained through appointment rather than through general elections, resignation remains permissible. This distinction indicates that the Court differentiates between a transition to a position that also derives from an electoral mandate and a transition to a non-electoral government position.

This shift in legal interpretation has implications for the conduct of the 2024 Regional Head Elections in Lampung Province. Prior to the enactment of Constitutional Court Decision No. 176/PUU-XXII/2024, there were several legislative candidates or incumbent legislators who switched to running in the Regional Head Elections. This phenomenon highlights the connection between legislative candidacy and regional head candidacy, which must be viewed not only from the perspective of individual political rights but also from the perspective of the continuity of the people's mandate. Several names associated with this phenomenon are listed in the following table.

Table 1. Legislative Candidates/Legislators Running in the 2024 Regional Elections in Lampung Province

No.	Name	Status in the 2024 Election	2024 Regional Election Candidacy	Notes
1	Jihan Nurlela	Elected Candidate for the DPD RI	Candidate for Vice Governor of Lampung	Participated in the regional election after being declared elected
2	Nanda Indira Bastian	Candidate for the Lampung Provincial Legislative Council Elected	Candidate for Regent of Pesawaran	Resigned to run in the regional election
3	Ririn Kuswantari	Candidate for Provincial Legislative Council Member Lampung Province	Candidate for Vice Regent Central Lampung	Running in the 2024 Regional Elections
4	Dewi Handajani	Not a legislative candidate elected in 2024	Regent Candidate of Tanggamus	Used as a comparison

Source: Data from interviews with the Lampung Provincial KPU.

Based on the table, it is evident that the transition from legislative contests to regional elections is a phenomenon occurring in the political landscape of Lampung Province. However, the positions of each individual within this phenomenon are not entirely the same. Jihan Nurlela and Nanda Indira Bastian are examples of elected legislative candidates who subsequently ran in regional elections. Their status as elected legislative candidates is significant because, at that stage, the candidates are no longer merely exercising

their political rights to obtain office but have earned the voters' trust, resulting in the legal consequence of their elected status. Meanwhile, the positions of Ririn Kuswantari and Dewi Handajani have distinct characteristics, allowing us to observe that the legal issues arising after Constitutional Court Decision No. 176/PUU-XXII/2024 specifically relate to the status of being elected and the consequences of the mandate obtained through the election.

This issue is particularly relevant in an open proportional legislative electoral system, which provides voters with significant leeway to choose the candidates of their choice. In such a system, the relationship between legislative candidates and voters is more individualized, as the number of votes a candidate receives determines which candidates win seats. Therefore, once a candidate has received enough votes to be declared elected, a representative relationship exists between that candidate and the voters who cast their ballots for them. Resigning after being declared elected in order to participate in another electoral contest is no longer merely a personal political decision but can affect the fulfillment of the mandate granted by the voters.

From this perspective, Constitutional Court Decision No. 176/PUU-XXII/2024 can be understood as an effort to balance two constitutional interests: the individual's right to be elected and the public's right as the sovereign to receive political representation in accordance with the mandate granted through elections. The Court does not negate the right to run for other political offices, but it imposes restrictions on the mechanism for resignation once an individual has attained the status of an elected legislative candidate. These restrictions are crucial to prevent the use of a legislative position as a temporary stopgap before moving on to other political contests, as well as to ensure that the voters' mandate is not treated as a political interest that can be unilaterally abandoned.

Thus, Constitutional Court Decision No. 176/PUU-XXII/2024 reflects a paradigm shift in how the status of an elected legislative candidate is viewed. Before attaining the status of an elected candidate, an individual enjoys the freedom to make political choices and exercise the right to be elected. However, upon receiving the votes that make them an elected legislative candidate, there are legal

consequences in the form of a binding obligation to the voters' mandate. Therefore, restrictions on resigning to pursue another political office also obtained through general elections can be viewed not as a deprivation of political rights, but as a form of protection for the people's mandate and the integrity of the democratic process. These restrictions also demonstrate that the exercise of the right to be elected must be balanced against the interests of the public as the holders of sovereignty, so that individual political freedom can still be guaranteed without neglecting legal certainty, justice, and the sustainability of political representation.

2. Constitutional Implications of Constitutional Court Decision No. 176/PUU-XXII/2024 on the People's Mandate, Political Practices, and the Replacement of Elected Legislative Candidates

Constitutional Court Decision No. 176/PUU-XXII/2024 has constitutional implications that not only relate to restrictions on the right of elected legislative candidates to resign but also touch upon the principle of popular sovereignty in the conduct of elections. The Court essentially ruled that Article 426(1)(b) of Law No. 7 of 2017 on General Elections is conditionally inconsistent with the 1945 Constitution of the Republic of Indonesia, provided that it is not interpreted to mean that the resignation of an elected candidate is due to receiving an assignment from the state to hold a position not obtained through general elections. Consequently, resignation to run for another political office one also obtained through a general election can no longer be considered a valid reason.

The first implication of this ruling is the strengthening of protection for the people's mandate. In a democratic system, the votes cast by voters do not end with the voting process but gives rise to a representative relationship between voters and the candidates who receive votes and are declared elected. Especially in an open proportional representation system, voters cast their ballots directly for candidates, so a person's election is the result of electoral support individually granted by the public. The Court considered that the resignation of an elected legislative candidate without a justifiable reason has the potential to render voters' votes meaningless and

create legal uncertainty regarding the fulfillment of the mandate that has been granted.

From this perspective, the restrictions established by the Court are not intended to deprive an individual of their political right to be elected, but rather to ensure that the exercise of that right does not disregard the constitutional rights of the people as the holders of sovereignty. A legislative candidate who has not yet attained the status of an elected official is, in principle, still within the realm of political competition and retains the freedom to make their own political choices. However, after securing a sufficient number of votes and being declared an elected candidate, their status changes because a mandate from the people is inherent in that status. Therefore, resigning to participate in another electoral contest is no longer merely a matter of the candidate's individual interests but also concerns the interests of the voters who have entrusted them with that mandate.

The second implication relates to political practices within the party system. Prior to the restrictions imposed by Constitutional Court Decision No. 176/PUU-XXII/2024, the provisions regarding the replacement of elected candidates due to resignation did not provide clear limitations on the grounds for resignation. This situation created an opportunity for elected legislative candidates to use their election to a legislative seat as a political stepping stone before subsequently switching to run in regional elections. The Court determined that this situation had the potential to give rise to unhealthy political practices and could undermine respect for the people's vote.

This restriction also sends a constitutional message that a legislative position should not be treated as a temporary political post that can be abandoned when an opportunity arises to secure another elected office. In this context, the Constitutional Court's ruling establishes a boundary between individual political freedom and the responsibility toward the mandate that has been received. An individual's freedom to make political choices remains recognized; however, when such choices are made after receiving a mandate from the people, there are consequences that must be taken into account. Thus, this ruling serves as an instrument to safeguard the integrity of

political competition while preventing the use of election results as a means to gain political advantage in subsequent contests.

The third implication relates to the mechanism for interim replacement, or the replacement of elected legislative candidates. Prior to Constitutional Court Decision No. 176/PUU-XXII/2024, the resignation of an elected candidate was one of the circumstances that could serve as the basis for a replacement, as stipulated in Article 426(1)(b) of the Election Law. Following this ruling, the replacement mechanism can no longer be separated from the underlying reasons for the resignation. This means that the presence of a replacement candidate cannot be viewed merely as an administrative solution to a vacant seat but must first be assessed in light of the legitimacy of the reasons causing the elected candidate to no longer hold that position.

This change is particularly significant in an open proportional representation system because the replacement of an elected candidate fundamentally concerns not only the relationship between the candidate and the political party but also the relationship between the candidate and the voters. The mandate obtained through the voters' votes must be respected and cannot be easily set aside merely due to other political interests. Thus, the mechanism for replacing an elected candidate must be treated as an exceptional measure and implemented based on reasons with a clear legal basis. This is necessary to ensure that replacement does not become a tool that actually diminishes the significance of the voters' voices.

These implications can be observed in the context of the 2024 General Elections and Regional Head Elections in Lampung Province. The phenomenon of elected legislative candidates subsequently running in regional elections demonstrates that the issue of resignation is not merely a matter of legal norms but has tangible consequences for the relationships among candidates, political parties, election organizers, and voters. The presence of legislative candidates who have secured a mandate yet subsequently switch to running in regional elections highlights the potential for tension between a candidate's individual interest in obtaining a political office and the voters' interest in receiving the representation they chosen. It is in this context that Constitutional Court Decision No. 176/PUU-XXII/2024 establishes clearer constitutional boundaries regarding this practice.

Furthermore, this decision also has implications for legal certainty in the conduct of elections. Prior to this decision, the phrase "resign" in Article 426(1)(b) of the Election Law did not provide sufficiently clear limitations regarding the grounds that an elected candidate could use to resign. The Court subsequently provided a constitutional interpretation by limiting resignation to situations where an elected candidate receives a government appointment to a position not obtained through a general election. This interpretation provides clearer parameters for election organizers in determining whether a resignation is acceptable or not.

Nevertheless, this restriction must still be accompanied by clear technical regulations to prevent new problems from arising during implementation. This particularly concerns coordination among election organizers, political parties, and state institutions in determining the status of an elected candidate who submits a resignation. Clarity regarding the procedures, acceptable grounds, and legal consequences of resignation is necessary to ensure that the Constitutional Court's Decision does not remain merely at the normative level but can be consistently applied in the conduct of elections.

Thus, Constitutional Court Decision No. 176/PUU-XXII/2024 carries broader constitutional implications than merely restricting the right of elected legislative candidates to resign. The decision reinforces the principle of popular sovereignty by prioritizing the will of the voters as an interest that must be protected after the election process is complete. At the same time, the decision sets limits on political practices that could potentially turn election victory into a means of moving on to other electoral contests. Therefore, the restriction on resignations can be understood as an effort to maintain a balance between individual political rights, the interests of political parties, and the public's right to political representation in accordance with the mandate granted through elections.

C. CONCLUSION

Based on the results of the research and discussion regarding the Constitutional Implications of Constitutional Court Decision No. 176/PUU-XXII/2024 on Restrictions on the Right to Resign of Elected Legislative Candidates in Regional Head Elections, the following conclusions can be drawn:

1) Constitutional Court Decision No. 176/PUU-XXII/2024 has shifted the legal paradigm regarding the status of elected legislative candidates within Indonesia's constitutional system. Prior to this decision, the right to resign was viewed as part of an individual's political rights that could be exercised freely as long as applicable administrative requirements were met. However, following this decision, the Constitutional Court affirmed that legislative candidates who have been declared elected no longer hold the status solely as individuals exercising their political rights, but have become holders of the people's mandate who derive their legitimacy through general elections.

   This change in legal status implies restrictions on the right to withdraw one's candidacy. The Constitutional Court held that political rights are not absolute rights but may be restricted provided that such restrictions have a constitutional basis, aim to protect the public interest, and are implemented in a proportionate manner. In the context of Constitutional Court Decision No. 176/PUU-XXII/2024, these restrictions are imposed to protect the constitutional rights of voters who have entrusted their mandate to elected legislative candidates through general elections. Thus, in principle, elected legislative candidates may not resign to run in regional head elections, except under specific circumstances justified by law, such as a government appointment to a position not obtained through the general election process.

   The General Election Commission has also implemented this ruling by adjusting the administrative mechanisms for candidacy, including the application of technical guidelines based on Constitutional Court Decision No. 176/PUU-

XXII/2024. This demonstrates that the Constitutional Court's decision not only changes legal norms conceptually, but also influence the practice of conducting regional head elections as part of the implementation of the principles of the rule of law and constitutional democracy.

2) Constitutional Court Decision No. 176/PUU-XXII/2024 has significant constitutional implications for the practice of democracy in Indonesia. The decision strengthens the protection of the people's mandate by establishing the voters' voices as a constitutional value that must be respected. In an open proportional electoral system, the relationship between voters and elected legislative candidates is a representative relationship arising from the direct conferral of a mandate. Therefore, the resignation of an elected legislative candidate before assuming office is viewed as potentially undermining the meaning of political representation established through the general election process. In addition to strengthening the protection of the people's mandate, this ruling also enhances the integrity and quality of electoral democracy. Restrictions on the right to resign prevent the practice of using legislative elections as a means to boost popularity prior to running in regional head elections and reduce the potential for transactional politics in political recruitment processes by political parties. On the other hand, the ruling provides legal certainty for election organizers in conducting administrative verification of prospective regional heads who are elected legislative candidates.

   Constitutionally, Constitutional Court Decision No. 176/PUU-XXII/2024 reflects a shift in the orientation of legal protection from safeguarding the individual interests of candidates toward protecting the constitutional interests of the people as the holders of sovereignty. Thus, this decision strengthens the principle of popular sovereignty, enhances public confidence in election results, and reaffirms that the mandate granted through elections must be respected as part of the implementation of constitutional democracy.

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