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A Juridical Analysis of Constitutional Court Decision Number 12/PUU-XXII/2024 Regarding the Resignation of Legislative Candidates Participating in Regional Head Elections: A Perspective from *Siyasah Dusturiyah* (Islamic Constitutional Law)

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ABSTRACT
This study examines the legal issue concerning the resignation requirement for elected legislative candidates who nominate themselves in regional head elections based on Constitutional Court Decision Number 12/PUU-XXII/2024. The research problem arises from the ambiguity of Article 7 paragraph (2) letter s of Law Number 10 of 2016 on Regional Head Elections, particularly regarding the legal position of elected legislative candidates who have not yet been inaugurated. This study aims to analyze the legal considerations of the Constitutional Court in deciding the case and to examine the decision from the perspective of siyasah dusturiyah. The research employs normative legal research using statutory, conceptual, and case approaches. The legal materials consist of legislation, Constitutional Court Decision Number 12/PUU-XXII/2024 and its dissenting opinion, constitutional law literature, and Islamic political jurisprudence literature. The findings indicate that the Constitutional Court rejected the petition on the grounds that elected legislative candidates who have not been inaugurated do not yet possess the constitutional rights and obligations of legislative members. The Court emphasized formal legal certainty, the protection of candidates' political rights, and the continuity of electoral stages, but did not provide a substantive solution for protecting voters' mandates. From the perspective of siyasah dusturiyah, the decision is formally justifiable but does not fully reflect the principles of trust, consultation, justice, and public welfare. An elected legislative candidate has morally and politically received a mandate from the people and should not treat legislative office merely as a reserve option. This study implies the need for the legislature to formulate clearer rules concerning the status, obligations, and legal consequences applicable to elected legislative candidates who nominate themselves in regional head elections. Such regulation is necessary to protect political rights, preserve voters' mandates, and ensure legal certainty.

Keywords: *Constitutional Court Decision, Elected legislative Candidate, Resignation, Regional Head Election, Siyasah Dusturiyah, Political Trust*

INTRODUCTION

Indonesia is a constitutional democracy that recognizes popular sovereignty as a fundamental principle of state administration, as stipulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. General elections constitute a principal mechanism for exercising popular sovereignty and ensuring political participation within a constitutional democratic system (Agustin et al., 2024). From the perspective of *siyasah dusturiyah*, political power is also regarded as a trust (*amanah*) that must be exercised with justice, consultation (*syura*), and public responsibility (Kamizi et al., 2025). Therefore, individuals who obtain an electoral mandate bear a political and moral responsibility to respect the trust granted by voters.

The 2024 Legislative Election was held on February 14, 2024. Under General Elections Commission Regulation (PKPU) Number 3 of 2022 concerning the Stages and Schedule for the 2024 General Election, the inauguration of members of the House of Representatives (DPR) and the Regional Representative Council (DPD) was scheduled for October 1, 2024, while the inauguration of members of the Regional People's Representative Councils (DPRD) followed the expiration of the respective terms of office of the incumbent members (Komisi Pemilihan Umum Republik Indonesia, 2022). Meanwhile, the registration of candidate pairs for the 2024 simultaneous regional head elections was conducted from August 27 to 29, 2024, and the

determination of candidate pairs took place on September 22, 2024, as regulated by PKPU Number 8 of 2024 and the relevant election schedule (Komisi Pemilihan Umum Republik Indonesia, 2024a; Komisi Pemilihan Umum Republik Indonesia, 2024b)

The close timing of these electoral stages created a legal issue concerning elected legislative candidates who had not yet been inaugurated but sought to participate in the regional head election. This issue was examined by the Constitutional Court in Decision Number 12/PUU-XXII/2024 concerning Article 7 paragraph (2) letter s of Law Number 10 of 2016. The Constitutional Court rejected the petition, holding that elected legislative candidates who had not yet been inaugurated had not acquired the constitutional rights and obligations attached to legislative office (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). The decision is significant because it distinguishes the legal status of elected candidates from that of incumbent legislative members in relation to the obligation to resign when participating in regional head elections.

The issue is relevant not only from the perspective of constitutional and electoral law but also from that of *siyasah dusturiyah*. Recent studies on electoral governance emphasize the importance of political rights, fairness, transparency, and public participation in maintaining the integrity of elections from the perspective of *siyasah dusturiyah* (Agustin et al., 2024). Furthermore, the concept of political power in *siyasah dusturiyah* emphasizes *amanah* (trust), justice, *syura* (consultation), and social responsibility as principles governing the exercise of political authority (Kamizi et al., 2025). More specifically, recent legal scholarship concerning the resignation of elected legislative candidates argues that restrictions on resignation are closely related to the protection of the people's mandate and the prevention of political power abuse (Faturrohman et al., 2025). Accordingly, this article analyzes the legal considerations underlying Constitutional Court Decision Number 12/PUU-XXII/2024 and examines the decision from the perspective of *siyasah dusturiyah*, particularly the principles of *amanah*, *syura*, and *'adalah*.

The 2024 Simultaneous Regional Elections were held on November 27, 2024, in 37 provinces and 508 regencies and municipalities (Komisi Pemilihan Umum Republik Indonesia, 2024a). The scale and timing of the elections created a legal issue concerning elected legislative candidates who had obtained a mandate from voters but had not yet been inaugurated when they sought to participate in the regional head election. This issue attracted public and legal attention because the registration of regional head candidates was scheduled for August 27–29, 2024, while the inauguration of members of the DPR and DPD was scheduled for October 1, 2024. The situation consequently raised questions concerning the legal status of elected legislative candidates and the continuity of the mandate granted by voters.

The legal issue arose from Article 7 paragraph (2) letter s of Law Number 10 of 2016, which requires members of the DPR, DPD, and DPRD who seek to run for regional head positions to submit a written resignation from their legislative positions (Undang-Undang Republik Indonesia Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi U, 2016). However, the provision does not expressly regulate elected legislative candidates who have been declared elected but have not yet been inaugurated. The issue was subsequently brought before the Constitutional Court by Ahmad Alfarizy and Nur Fauzi Ramadhan in Case Number 12/PUU-XXII/2024 (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). The Constitutional Court rejected the petition and held that elected legislative candidates who had not yet been inaugurated had not acquired the constitutional rights and obligations attached to legislative office (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). Contemporary reporting also documented the debate surrounding whether elected legislative candidates should be required to resign before participating in the 2024 regional elections, demonstrating the practical significance of the constitutional issue (Muliawati, 2024).

The Constitutional Court delivered its decision on February 29, 2024, and rejected the petition in its entirety (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). In its reasoning, the Court held that elected legislative candidates who had not yet been inaugurated had not acquired the rights, obligations, and responsibilities constitutionally attached to members of the DPR, DPD, or DPRD. Consequently, the resignation requirement under Article 7 paragraph (2) letter s of Law Number 10 of 2016 could not be extended to elected legislative candidates who had not yet assumed legislative office. Nevertheless, the Court considered it necessary for the KPU to require elected legislative candidates who intended to participate in regional head elections to submit a written statement declaring their willingness to resign if they were subsequently inaugurated as legislative members. This approach sought to distinguish the legal status of elected candidates from that of incumbent legislative members while maintaining the continuity of the electoral process. However, subsequent legal scholarship has argued that the ruling leaves a degree of legal uncertainty concerning the status of elected legislative candidates who seek to participate in regional head elections before their inauguration (Rahmatullah & Hidayat, 2024).

A significant aspect of the decision is the dissenting opinion of Constitutional Justice M. Guntur Hamzah. Unlike the majority, Justice Guntur Hamzah considered that Article 7 paragraph (2) letter s should also encompass elected legislative candidates who had been formally determined as elected by the KPU but had not yet been inaugurated (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). He emphasized that although such candidates had not yet acquired the formal rights, obligations, and responsibilities of legislative office, they had already obtained a political mandate from voters through the official determination of election results and were therefore substantively approaching legislative office (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). From this perspective, allowing elected legislative candidates to participate in regional head elections without a resignation requirement could create unequal treatment between incumbent legislative members and elected candidates and could affect the integrity of the people's mandate. Rahmatullah and Hidayat (2024) similarly argue that the dissenting opinion highlights the potential for dual political status, conflicts of interest, and distortion of legislative representation when elected candidates move directly into regional executive contests without relinquishing their legislative mandate. They further identify the issue as one capable of generating legal uncertainty and opportunities for abuse of political power.

The contrast between the majority and dissenting opinions demonstrates that the legal status of elected legislative candidates who have not yet been inaugurated remains an important constitutional and electoral issue. The majority emphasized the formal distinction between being elected and being inaugurated, whereas the dissenting opinion placed greater emphasis on the substantive political mandate already obtained from voters (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). This difference provides an important basis for further analysis of the decision from the perspective of *siyasah dusturiyah*, particularly concerning the principles of *amanah*, justice (*'adalah*), and accountability in exercising political authority.

Subsequent developments demonstrated that Constitutional Court Decision Number 12/PUU-XXII/2024 did not fully resolve the legal issue concerning elected legislative candidates who sought to participate in regional head elections. Perludem criticized the General Elections Commission (KPU) for interpreting the decision as meaning that elected legislative candidates were not required to resign, arguing that the Court's decision was intended to provide protection for voters and preserve the electoral mandate (Perludem, 2024). The issue was subsequently addressed through Constitutional Court Decision Number 176/PUU-XXII/2024, delivered on March 21, 2025. The Court held that resignation from an elected legislative position is justified when it results from a state assignment to an appointed position rather than from participation in another election (Putusan Mahkamah Konstitusi Nomor 176/PUU-XXII/2024, 2025). This development demonstrates the importance of protecting the electoral mandate and ensuring legal certainty in representative democracy (Ananda et al., 2026).

Beyond positive law, this issue can also be examined through the Islamic scholarly tradition, particularly the principles of leadership and public responsibility. In *Al-Ahkam al-Sultaniyyah*, Al-Mawardi explains that political leadership has both religious and worldly functions and must be exercised to maintain religion, regulate worldly affairs, uphold justice, and protect public welfare (Al-Mawardi, 2016). Contemporary scholarship similarly emphasizes that Al-Mawardi conceptualizes political authority as an *amanah* that must be exercised with justice (*al-'adl*) and directed toward public welfare (*maslahah*) (Ahmad, 2025). Therefore, an electoral mandate should not be understood merely as a political opportunity but as a public responsibility that requires accountability and commitment to the interests of the people. This principle is consistent with the Prophetic tradition narrated by Ibn 'Umar:

كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ

This means: "*Each of you is a shepherd, and each of you is responsible for those under his care*"(Al-Bukhari, 2002; Muslim ibn al-Hajjaj al-Qushayri, 2007).

This hadith emphasizes that leadership in Islam is not merely a position obtained through political competition but an *amanah* for which a person is accountable before both the people and Allah SWT. Therefore, abandoning an electoral mandate for personal or political interests may raise ethical concerns from the perspective of Islamic political thought, particularly regarding the principles of responsibility and *Amanah.*

A more explicit perspective can be found in Ibn Taymiyyah's *Al-Siyasah al-Syar'iyyah*, which emphasizes that the exercise of public authority requires both competence (*al-quwwah*) and trustworthiness (*al-amanah*). This principle is reflected in Qur'an Surah Al-Qasas, verse 26:

إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

Meaning: "*Indeed, the best person you can take as a worker is someone who is strong and trustworthy.*" (Kementerian Agama Republik Indonesia, 2019; Ibn Taymiyyah, 1998).

The principles of *al-quwwah* and *al-amanah* indicate that holders of public authority must possess both the competence to perform their responsibilities and the integrity to maintain the trust placed in them. From

the perspective of *siyasah dusturiyah*, these principles are relevant to assessing the responsibility of elected legislative candidates toward the electoral mandate entrusted to them (Ibn Taymiyyah, 1998).

The importance of maintaining *amanah* is further reinforced by the Prophetic tradition narrated by Abu Hurairah:

إِذَا ضُيِّعَتِ الْأَمَانَةُ فَانْتَظِرِ السَّاعَةَ

This means: *"When a trust is neglected, then await the Hour." The Prophet further explained that the neglect of* amanah *occurs when authority is entrusted to those who are not qualified to hold it* (Al-Bukhari, 2002; Hadith No. 6496).

Furthermore, Ibn Taymiyyah asserts that justice *('adalah)* is the primary pillar upon which a state stands, and that the unjust administration of public office poses the most serious threat to a legitimate system of governance. The significant insights of Al-Mawardi and Ibn Taymiyyah, reinforced by scriptural evidence (*dalil naqliy*), provide a robust jurisprudential foundation within the framework of *Siyasah Dusturiyah* (Islamic constitutional law/politics) for evaluating the phenomenon of elected legislative candidates resigning, which is the subject of this study.

Previous studies have examined the resignation of elected legislative candidates from constitutional and Islamic legal perspectives. Faturrohman et al. (2025) analyzed the limitations of the right of elected legislative candidates to resign under Constitutional Court Decision Number 176/PUU-XXII/2024 from the perspective of *siyasah dusturiyah*, emphasizing the principles of *amanah*, justice, and the protection of popular sovereignty. Ananda et al. (2026) examined the constitutional considerations and implications of the meaning of "state assignment" in Constitutional Court Decision Number 176/PUU-XXII/2024, particularly concerning the resignation of elected legislative candidates. These studies demonstrate that the issue has been examined in relation to Constitutional Court Decision Number 176/PUU-XXII/2024; however, the specific legal considerations underlying Constitutional Court Decision Number 12/PUU-XXII/2024 and their analysis through the principles of *amanah*, *syura*, and *'adalah* remain insufficiently explored. Therefore, this study addresses the research gap by focusing specifically on Decision Number 12/PUU-XXII/2024 and examining its legal considerations from the perspective of *siyasah dusturiyah*, particularly in relation to the protection of popular sovereignty, electoral mandates, and accountability in public office.

Based on the background described above, this study seeks to examine two main issues: first, the legal considerations underlying Constitutional Court Decision Number 12/PUU-XXII/2024 concerning the requirement for elected legislative candidates to resign when participating in the 2024 simultaneous regional head elections; and second, how the decision concerning the resignation of elected legislative candidates is viewed from the perspective of *Siyasah Dusturiyah* (Islamic constitutional law), particularly in relation to the principles of *amanah*, *syura*, and *'adalah*.

METHOD

This study employs normative legal research, which examines secondary legal materials, including legislation, court decisions, and legal doctrines, as the primary sources of analysis. This research is prescriptive, aiming not only to describe the applicable law but also to provide a normative assessment of the legal issues examined. According to Marzuki (2017), normative legal research is a process of identifying legal rules, principles, and doctrines to resolve legal issues.

This study applies three approaches: the statute approach, the conceptual approach, and the case approach. The statute approach examines the consistency of Constitutional Court Decision Number 12/PUU-XXII/2024 with Law Number 10 of 2016 concerning Regional Head Elections, Law Number 7 of 2017 concerning General Elections, and other relevant regulations. The conceptual approach analyzes the issue through the concepts of *syura*, *amanah*, and *maslahah* within *fiqh siyasah*. The case approach examines the Constitutional Court's legal reasoning (*ratio decidendi*) and dissenting opinion rather than merely its final ruling (Marzuki, 2017).

The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 10 of 2016, Law Number 7 of 2017, and Constitutional Court Decision Number 12/PUU-XXII/2024, including the dissenting opinion of Constitutional Justice M. Guntur Hamzah. Secondary materials comprise constitutional law books, *fiqh siyasah* literature, scholarly journals, theses, and other relevant academic works. Tertiary materials include the *Kamus Besar Bahasa Indonesia* (KBBI), legal and Arabic dictionaries, Islamic law encyclopedias, and other reference sources. The classification of primary, secondary, and tertiary legal materials follows (Soekanto & Mamudji, 2010).

RESULTS AND DISCUSSION

Legal Reasoning in Constitutional Court Decision Number 12/PUU-XXII/2024 Regarding the Requirement

for Elected Legislative Candidates to Resign If They Run in the 2024 Simultaneous Regional Head Elections

Constitutional Court Decision Number 12/PUU-XXII/2024 emerged against the backdrop of a scheduling conflict between the certification of the 2024 legislative election results and the opening of the registration period for the 2024 simultaneous regional head elections—two stages that, for the first time, occurred in close succession within a single national political cycle. Ahmad Al Farizy and Nur Fauzi Ramadhan, two students from the Faculty of Law at the University of Indonesia who were registered voters, challenged Article 7, paragraph (2), letter s of Law Number 10 of 2016 concerning regional head elections. They argued that this provision allowed legislative candidates who had been elected but not yet inaugurated to register as candidates for regional elections without the obligation to resign—a situation they contended could undermine legal certainty for voters and compromise the principles of a fair and honest election, as guaranteed under Article 28D, paragraph (1) and Article 22E, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Ultimately, the Constitutional Court rejected the petition in its entirety (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024).

1. Considerations Regarding Consistency with Prior Jurisprudence

In its legal considerations, the Constitutional Court referred to Decisions Number 33/PUU-XIII/2015 and 45/PUU-XV/2017, which established the obligation of incumbent DPR, DPD, and DPRD members to resign when running for regional head positions. The Court considered Article 7 paragraph (2) letter s of Law Number 10 of 2016 to be closely related to this established jurisprudence and therefore rejected the petition in Decision Number 12/PUU-XXII/2024 (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024).

However, the petition concerned a different legal subject, namely elected legislative candidates who had been declared elected but had not yet been inaugurated. Unlike incumbent legislators, their constitutional rights and obligations as members of the legislature had not yet attached. Therefore, applying the reasoning of the earlier decisions to this category of candidates requires a contextual distinction. This distinction is important because the 2024 electoral cycle placed the legislative and regional elections within a closely connected electoral period, creating a legal issue concerning the continuity of the electoral mandate and voters' representation (Taufani, 2025).

Accordingly, the central issue is not whether incumbent legislators must resign when running for regional office, but whether the same requirement may be extended to elected legislative candidates who have not yet assumed office. This study examines whether the Court's reasoning adequately addresses this distinct legal situation and assesses it further through the principles of *amanah*, *syura*, and *'adalah* within *siyasah dusturiyah*.

2. Considerations Regarding the Legal Status of Elected Legislative Candidates Not Yet Inaugurated

The Court holds that candidates for the House of Representatives (DPR) and Regional House of Representatives (DPRD) who have been declared elected based on vote recapitulation results do not yet possess the constitutional rights and obligations officially inherent to a legislator, as such status only arises upon inauguration (Putusan Mahkamah Konstitusi Nomor 12/PUU-XXII/2024, 2024). On this basis, the Court deems the petitioner's concerns regarding the potential for abuse of power by elected candidates to be excessive. Nevertheless, the Court provides a directive that the General Elections Commission (KPU) should require elected candidates who choose to run in regional head elections (pilkada) to submit a written statement expressing their willingness to resign should they be officially inaugurated as legislators.

This consideration rests on formal-procedural logic: that official authority is deemed to exist only upon the completion of the inauguration procedure, rather than from the moment election results are determined. This approach aligns with the principle of legal certainty in a formal sense, which emphasizes that the rights and obligations of legal subjects must be clearly defined. However, when viewed through the lens of legal certainty as articulated by Gustav Radbruch, such formal certainty represents only one of three fundamental legal values—values that must remain in balance with justice and utility. An overemphasis on formal certainty risks compromising the utility of the law for those who are genuinely aggrieved—in this case, the voters who have granted their electoral mandate (M. B. Firdaus, 2025). The Constitutional Court's directive to the General Elections Commission (KPU)—requiring candidates to submit a written statement expressing their willingness to resign—reveals that the Court itself acknowledges a clear normative gap. Consequently, it opted to address this issue through the technical policies of the election administration body, rather than by expanding the constitutional interpretation of the norms under review.

It is observed that this reasoning reveals an ambivalent stance by the Court: on one hand, it rejected the petitioner's request for a "conditional interpretation"—arguing that the legal status of an elected candidate is not yet fully established—while, on the other hand, it acknowledged the existence of risks that necessitate mitigation through administrative instruments. This position indicates that the Court had not yet fully resolved the tension between formal legal certainty and substantive legal utility in the case at hand. Subsequent developments proved that the mechanism involving a written declaration was, in practice,

insufficiently binding; consequently, the same issue resurfaced, ultimately prompting the Court to provide a definitive response through its ruling in Case Number 176/PUU-XXII/2024.

3. Considerations Regarding the Principle of Equality Before the Law and in Government

The Court is of the opinion that granting the petitioner's request for a "conditional interpretation" could potentially undermine the guarantee of equality for citizens before the law and in government, as stipulated in Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to the Court, requiring an individual to resign before officially assuming office could, in fact, infringe upon the constitutional rights of the elected candidate to have equal opportunity in government.

This reasoning effectively shifts the focus of the argument—moving from the protection of voters' rights to the protection of the individual rights of the elected candidate. When examined through the lens of the theory of popular sovereignty—which posits that supreme power originates from the people and is exercised through a representative mechanism entrusted by the voters—the granting of an electoral mandate establishes a relationship of trust between the voters and the elected representative. Consequently, disregarding the implications of such a mandate should be viewed as a constitutional issue, rather than merely a matter concerning the individual rights of the elected candidate. In his concept of the "social contract," Rousseau asserts that the "general will"—formed through a representative process—is binding and cannot be reduced to the personal interests of those who receive the mandate (Alrah, 2019). Thus, by prioritizing the individual rights of an elected candidate over the certainty of the voters' mandate, the Court's reasoning risks obscuring the essence of the representative relationship, which serves as the foundation for the legitimacy of power in a constitutional democracy.

It is observed that, in its reasoning, the Court prioritized the principle of equality before the law over the aspect of accountability for an electoral mandate. Yet, these two principles could have been balanced proportionally without negating one another; limiting an individual's political rights for the sake of ensuring the integrity of a public mandate is a common practice in various electoral legal systems—including the requirement for incumbent legislators to resign, a provision the Court previously upheld in Decision Number 33/PUU-XIII/2015.

4. Considerations Regarding Alignment with the Schedule for Simultaneous Regional Elections

In addition to the three points above, the Court also considered how the resignation requirement aligns with the schedule for the 2024 simultaneous regional elections, as established by prevailing laws and regulations. The Court concluded that extending the resignation obligation to include elected candidates who have not yet been inaugurated could potentially disrupt the certainty of the election schedule and the procedural stages that have been systematically organized by the election authorities.

This consideration highlights the aspect of legal certainty in a technical-administrative sense—namely, ensuring that the stages of the electoral process are not disrupted by sudden changes in legal norms. An examination of Law Number 7 of 2017 concerning General Elections reveals that the various stages of both general and regional elections are designed as an interconnected, sequential process; thus, the Constitutional Court's concern regarding potential disruptions to the schedule is not unfounded. Nevertheless, this argument does not directly address the substance of the constitutional issue raised by the petitioner. Administrative scheduling certainty and the legal status of an elected candidate are matters of different orders: the former pertains to the technical execution of the election, while the latter concerns the constitutional rights and obligations of citizens.

This reasoning reflects a tendency on the part of the Court to prioritize the smooth technical administration of elections over a thorough resolution of the core constitutional issue at the heart of the petition. Consequently, this argument is insufficient to serve as the primary basis for dismissing the petition.

Dissenting Opinion of Constitutional Justice M. Guntur Hamzah

Regarding the majority decision, Constitutional Justice M. Guntur Hamzah offered a dissenting opinion, arguing that the petition should have been granted in part. He proposed expanding the interpretation of Article 7, paragraph (2), letter s of the Regional Election Law to include elected legislative candidates who have not yet been inaugurated. Justice Guntur Hamzah maintained that a candidate declared elected by the General Elections Commission (KPU) already possesses, in substantive terms, a level of political influence equivalent to that of an incumbent legislator; therefore, the inauguration is merely an administrative formality rather than the true substance of the mandate granted by the people.

This dissenting opinion warrants analysis because it directly challenges the core premise of the majority's reasoning—which posits that constitutional rights and obligations only arise upon an official inauguration. By prioritizing the substance of an electoral mandate over procedural formalities, Guntur Hamzah's opinion aligns with the view that popular sovereignty should not be reduced to a mere administrative procedure; rather, it must be understood as a relationship of trust that becomes binding the

moment the people cast their votes. The existence of this dissent serves as compelling evidence that the constitutional issues addressed in Ruling No. 12/PUU-XXII/2024 had not been fully resolved within the Constitutional Court itself. This was subsequently confirmed when, on March 21, 2025, the Court issued Ruling No. 176/PUU-XXII/2024, which explicitly declared that the resignation of an elected candidate to run in a regional election constitutes a violation of the voters' constitutional rights.

Based on the above overall analysis, it can be concluded that the legal reasoning of the Constitutional Court in Decision Number 12/PUU-XXII/2024 is built upon four primary arguments: consistency with prior jurisprudence; the formal threshold for the emergence of constitutional rights and obligations, which begins upon inauguration; the priority given to the principle of equality before the law; and the necessity for a definitive technical schedule for the administration of elections. These four arguments consistently prioritize legal certainty in a formal and procedural sense. Meanwhile, the aspect of legal utility for voters—the core of the petitioner's argument—is addressed through an administrative mechanism (a requirement to submit a statement of willingness to resign) rather than through a constitutional reinterpretation of the underlying norms.

The primary finding of this research is that, by mandating the resignation of elected legislative candidates who choose to run in regional head elections (*pilkada*), the Constitutional Court acknowledges a genuine legal issue arising from the concurrent scheduling of the 2024 general elections and regional elections. However, the Court opted for a minimalist approach, delegating the resolution to the technical policies of election administrators rather than establishing a directly binding constitutional norm. This finding diverges from the conclusion reached by Prasetio et al. (2025), who argued that such a practice aligns with the theory of constitutionalism; furthermore, this is underscored by the fact that the same issue subsequently required a more definitive resolution by the Court in Decision Number 176/PUU-XXII/2024. The tension between formal legal certainty and substantive legal utility—a tension left unresolved in this decision and further highlighted by the presence of a dissenting opinion—serves as a crucial foundation for further discussion on how these considerations might be examined through the perspective of *siyasah dusturiyah* (Islamic constitutional law).

***Siyasah Dusturiyah* (Islamic Constitutional Law) Perspective on Constitutional Court Decision Number 12/PUU-XXII/2024 Regarding the Resignation of Elected Legislative Candidates**

Siyasah dusturiyah (constitutional *fiqh siyasah*) is a branch of Islamic political jurisprudence (*fiqh siyasah*) that examines the relationship between those in power and the citizenry. It encompasses the structuring of state institutions, the formulation of legal regulations, and the imposition of limits on the authority of government officials to ensure that they remain within the parameters of *Sharia* (Islamic law). This field of study goes beyond merely asking whether a policy was enacted through the correct procedures; it further evaluates whether the substance of such a policy truly upholds the trust placed by the people in their state authorities. This analysis focuses on three fundamental principles: *amanah* (trust/accountability), *syura* (consultation), and *'adalah* (justice)—as articulated by Al-Mawardi in *Al-Ahkam as-Sulthaniyyah* and Ibn Taymiyyah in *As-Siyasah asy-Syar'iyyah*. These principles directly address the core issue at hand: the point at which an individual becomes bound by the people's mandate, and the extent to which the state is obligated to safeguard that mandate.

The Constitutional Court's Decision Number 12/PUU-XXII/2024 can be situated within the concept of *wilayat al-mazalim* a framework for an institution tasked with rectifying governmental actions or policies that cause harm to the public. In the context of a modern constitutional order, the Constitutional Court performs the function of judicial review, assessing legislation against the 1945 Constitution. Consequently, the Court acts not only as an interpreter of the Constitution but also as an institution that ensures that the exercise of state power does not deviate from the principles governing the protection of citizens' rights. Positive law views this position as an intermediate space not explicitly addressed in Article 7, paragraph (2), letter s of Law Number 10 of 2016. In *Fiqh Siyasah* (Islamic political jurisprudence), there is no such thing as a "void" or empty space; Al-Mawardi defines a public office as a *wilayah*-an entrusted authority aimed at both upholding religious affairs and regulating communal life. Consequently, it is inherently a burden of responsibility rather than a piece of private property that the holder is free to relinquish at will (Jaidi et al., 2024).

From the perspective of *siyasah dusturiyah* (constitutional governance/policy), the crucial benchmark for evaluating the ruling is not merely whether the Constitutional Court granted or denied the petition, but rather whether its reasoning and legal consequences continue to uphold the public interest (*maslahah 'ammah*). A denial of the petition can be considered consistent with *siyasah dusturiyah* if the Court upholds the limits of its judicial authority, refrains from establishing new legal norms through its rulings, and leaves the refinement of regulations to the legislative body. Nevertheless, the ruling leaves an unresolved issue, as the legal gap concerning elected legislative candidates who seek to run for other offices has yet to be addressed with a definitive normative solution.

Thus, the primary finding from the perspective of *siyasah dusturiyah* is the tension between formal legality and substantive public interest. Formally, the Court possesses the authority to review Article 7, paragraph (2), letter s of the Regional Election Law and is entitled to deny the petition. Substantively, however, the existence of this legal gap regarding elected legislative candidates potentially diminishes the integrity of the political mandate, creates uncertainty for voters, and affects the fairness of the regional election process. Consequently, while the ruling cannot be definitively labeled as contrary to the principles of *siyasah dusturiyah*, it fails to fully resolve the underlying issue from the standpoint of the public interest.

1. The Principle of *Amanah* (Trust)

A weakness in the Constitutional Court's reasoning—when viewed through the lens of *Amanah*—lies in the insufficient distinction between the formal inception of legal authority and the emergence of an ethical responsibility toward the electorate. While the argument that an elected candidate has not yet been inaugurated is relevant for assessing the potential for the abuse of power, it fails to address whether the receipt of public support has already created a moral obligation to fulfill representative functions. Research by Firdaus et al. (2024) interprets al-Mawardi's thought as a power dynamic rooted in reciprocal obligations between a leader and the community. Meanwhile, Maryuni (2022), through an examination of the works of Ibn Taymiyyah, frames *amanah* as a form of credibility that precludes the exploitation of a position for pragmatic, self-serving interests. Drawing on these perspectives, this study interprets being elected as the starting point for ethical accountability distinct from the commencement of formal constitutional authority. Consequently, the absence of an official position does not equate to an absence of responsibility.

The requirement for a letter of resignation serves as a safeguard aligned with the concept of *amanah* (trust/mandate), specifically by preventing the exploitation of a legislative position while a candidate participates in a regional head election. However, this instrument primarily governs the relationship between the candidate and the election authorities; it does not address accountability toward the constituents who originally cast their votes. Drawing on Maryuni's interpretation of Ibn Taymiyyah, the concept of *amanah* demands credibility manifested through conduct and therefore cannot be reduced to a mere administrative formality. This finding resonates with Noviyanti's critique that seeking a new office potentially sidelines the mandate of one's constituents. Consequently, the limitation of this safeguard lies in its narrow scope: while the letter addresses potential conflicts of interest regarding one's current position, it fails to ensure transparency concerning the reasons for the transition or the continuity of representation.

The principle of *amanah* does not automatically imply that every elected legislator who runs for a regional executive office is betraying the public. Such a judgment requires an examination of the underlying reasons, the level of transparency, and the impact of the transition on the public interest. Maryuni explains that, according to Ibn Taymiyyah, the suitability of an official should be assessed based on their competence for a specific role and the utility they provide; thus, a shift in function could, in theory, be justified if it is grounded in a commitment to public service. Nevertheless, the mere claim of being capable of performing a new role cannot absolve an individual of the responsibilities tied to their previous election. Unlike the majority opinion of the Constitutional Court, which does not view the absence of specific regulations as a breach of a*manah* this study posits that a change in office is an action that requires ethical justification. The implication is that criticism should focus on the inadequacy of accountability mechanisms, rather than on unsubstantiated accusations regarding the personal intentions of individual candidates.

Thus, the ruling aligns with the mandate to prevent conflicts of interest in public office, yet it does not fully accommodate the mandate that arises from the electoral process itself. The reason for this is clear: the Court views the formal inauguration as the critical threshold for the exercise of authority, whereas the concept of a "mandate"—as an ethical category—also encompasses the trust established *before* that authority is actually exercised. The scholarship of al-Mawardi and Ibn Taymiyyah suggests that public power must be directed toward the common good, rather than serving the personal interests of those who hold it. Consequently, it is recommended that there be transparent accountability regarding the reasons behind a candidate's shift in candidacy—without conflating this ethical obligation with a formal legal requirement, which has yet to be established.

2. The Principle of *Syura* (Consultation)

The Court's reasoning—which leaves the assessment of a candidate's capability and integrity to the voters—resonates with the principle of *syura*, as it acknowledges the public's role in determining leadership. However, a limitation arises when it is assumed that the freedom to vote is, in itself, sufficient to protect the public; in reality, voters in a legislative election may not be aware of a candidate's intention to subsequently shift to a regional executive contest. Candra (2017) explains that, in the thought of Ibn Taymiyyah, *musyawarah* (consultation) is an integral part of exercising power, directed toward the common interest. Similarly, Firdaus et al. (2025) highlight the significance of the relationship between those who grant a mandate and those who receive it, as discussed in the works of al-Mawardi. Within this framework, this study interprets the

transparency of information as a necessary condition to ensure that public participation does not end merely with the casting of a vote. The implication is that respecting the will of the people should also entail providing access to information regarding the reasons for—and the consequences of—a candidate's shift in their electoral bid.

The *syura* (consultation) perspective necessitates a distinction between public consent for representative functions and consent for executive leadership. An individual deemed fit for a legislative role does not automatically gain justification to abandon that mandate in order to pursue an executive election (*pilkada*), as the offices sought through these respective electoral processes are distinct. Research on al-Mawardi defines legitimacy as a relationship that gives rise to reciprocal rights and obligations; this relationship serves here as a normative analogy—rather than an institutional equivalent—between the *ahl al-hall wa al-'aqd* (those with the authority to appoint/bind) and the Indonesian electorate. Noviyanti's (2025) critique regarding the sidelining of the people's mandate reinforces the necessity for this separation. Consequently, securing new support for an executive election does not automatically absolve an individual of accountability for their prior legislative mandate. A limitation here is that classical thought does not directly address the replacement of an elected official within the context of a modern electoral system.

Strengthening *syura* is more appropriately directed toward public transparency and providing a space for constituent feedback, rather than requiring individual authorization from every single voter. Al-Mawardi's framework illustrates a selection mechanism through representation, while Candra emphasizes *musyawarah* (deliberation) as a component of policymaking for the common good; neither provides a direct basis for an individual citizen to exercise a veto over a candidate's shift in candidacy. Therefore, this research suggests that candidates should be required to disclose their current elected status, their reasons for pursuing an executive election, and the implications regarding their replacement. This proposal represents a conceptual development of *syura* rather than an obligation mandated by Constitutional Court Decision No. 12/PUU-XXII/2024. The implication is that the public is afforded the opportunity to evaluate a candidate's consistency without establishing a consent procedure that lacks a legal basis within the aforementioned ruling.

3. The Principle of *'Adalah* (Justice)

The Constitutional Court's ruling aligns with the principle of *'adalah* (justice) regarding the proportional treatment of individuals who have not yet assumed office versus those who already hold office. An elected candidate who has not yet been inaugurated does not possess the same official authority as an incumbent legislator; therefore, imposing identical obligations requires sufficient justification. The Court also links this protection to the principle of equality before the law and equal opportunity in governance. Research by Firdaus et al. (2025) identifies justice as a crucial element of the legitimacy of power according to al-Mawardi, while Candra (2017) explores the relationship between the concept of *amanah* (trust/mandate) and the fair application of law in the thought of Ibn Taymiyyah. Consequently, a distinction in status does not automatically constitute discrimination. This implies that a *siyasah dusturiyah* (constitutional politics) critique should not disregard the political rights of a candidate solely to strengthen the protection of voters.

A limitation of the ruling from the perspective of *'adalah*' is the lack of an in-depth assessment regarding the distribution of consequences between the candidate and the electorate. The Court posits that requiring resignation prior to official appointment as a member could potentially undermine the principle of equal standing; however, from the voters' perspective, a change in candidacy could alter the representative relationship they had originally anticipated. In the thought of Ibn Taymiyyah—as discussed by Candra—justice must preclude manipulation for personal gain and remains inseparable from the fulfillment of a mandate (*amanah*). Furthermore, Noviyanti's critique suggests that the protection of the right to be elected must be balanced against the protection of the right to vote. Based on this comparison, this study finds that the ruling's conception of justice leans more heavily toward protecting the status of the candidate than toward addressing the accountability for the consequences of being elected. Nevertheless, this imbalance in argumentation cannot be definitively characterized as an actual detriment to all voters without empirical evidence.

The dissenting opinion of Constitutional Justice M. Guntur Hamzah offers more robust protection by including elected legislative candidates within the scope of the resignation requirement. Normatively, this approach clarifies the consequences of a candidate's decision and limits the opportunity to retain a legislative seat while simultaneously seeking another office. Viewed through the lenses of *amanah* (trust/mandate) and *'adalah* (justice/fairness), this perspective places greater weight on the sincerity of accepting a mandate and the certainty of the consequences of running for office. Nevertheless, the majority's reasoning—that the authority of an office has not yet been vested-remains a significant counterpoint; imposing restrictions too early is not necessarily the fairest option if the burden placed on a candidate's political rights is not taken into account. Consequently, a dissenting opinion should be viewed as an alternative line of reasoning, rather than definitive proof that the majority is necessarily incorrect.

Research Findings

Based on the above analysis, the Constitutional Court's decision in Case No. 12/PUU-XXII/2024 can be understood as formally constitutional, yet not entirely substantive in its resolution. The Court exercised its authority to review Article 7, paragraph (2), letter s of Law No. 10 of 2016 and rejected the petition, as the provision under review was not found to be in conflict with the 1945 Constitution. However, the ruling fails to provide a new framework regarding the status of elected legislative candidates who choose to run for a regional executive position.

From the perspective of *amanah*, elected legislative candidates bear a moral responsibility to honor the mandate given by voters and should not treat a legislative seat merely as a fallback option. From the perspective of *syura* (deliberation/consultation), this issue requires open and participatory legislative discourse, rather than relying solely on judicial rulings. From the perspective of *'adalah*, a balance must be struck between protecting the political rights of candidates, the interests of voters, and ensuring fairness among all participants in regional elections.

A further finding concerns the imperfect synchronization between Law Number 10 of 2016 and Law Number 7 of 2017. The Regional Election Law governs the resignation of legislative members, while the General Election Law regulates the entire process—from the official declaration of elected candidates to their inauguration. When the stages of these two electoral processes occur in close proximity, the discrepancy in terminology creates a legal gray area that could undermine the certainty of the mandate granted by the public.

Consequently, it is recommended that a legislative amendment or definitive legislative interpretation be established regarding elected legislative members who participate in regional elections. Such a provision should stipulate that any elected legislative member who registers as a candidate in a regional election must submit a written declaration of their choice prior to the official confirmation of candidate pairs; furthermore, they shall not be inaugurated if they opt to pursue the regional election, and they must be replaced through a transparent mechanism. This approach respects the right to stand for election while preventing the misuse of a public mandate and ensuring legal certainty for both voters and election organizers.

CONCLUSION

This study concludes that the Constitutional Court's legal reasoning in Decision Number 12/PUU-XII/2024 does not extend the obligation to resign to elected legislative candidates who have not yet been inaugurated, as the constitutional rights and obligations inherent to a legislative office have not yet vested in them. The dismissal of the petition is grounded in jurisprudential consistency, the distinction between legal status before and after inauguration, the protection of equal opportunity in governance, and the need for certainty without the necessity of holding new elections. The findings indicate that this approach prioritizes formal legal certainty and the protection of candidates' political rights over a substantive resolution regarding the safeguarding of the voters' mandate. While the requirement for a written statement of willingness to resign serves as an administrative safeguard against conflicts of office, it fails to resolve the ambiguity surrounding the status of elected candidates or their accountability to the electorate. Consequently, the core remaining issue is the imbalance between the protection of individual political rights and the certainty of fulfilling a representative mandate. From the perspective of *siyasah dusturiyah* (Islamic constitutional law), the decision may be formally justified, yet it does not fully satisfy the requirements of *amanah* (trust), *syura* (consultation), and *'adalah* (justice) in protecting the public interest. Being elected entails an ethical responsibility toward the voters, even before the formal authority of the office has been established; thus, the absence of a legal obligation to resign does not negate the duty to account for a shift in candidacy. Nevertheless, such a shift cannot automatically be deemed a breach of trust without considering the underlying reasons, the level of transparency, and the consequences for the public interest. The conceptual contribution of this study lies in distinguishing between the inception of constitutional authority and the emergence of an ethical responsibility regarding the mandate granted by the people. In practical terms, these findings underscore the need to harmonize the Regional Election Law and the General Election Law through clear regulations regarding the status of candidates, their nomination options, and the legal consequences for elected legislative candidates who participate in regional elections—accompanied by transparent accountability and replacement mechanisms—to ensure that the political rights of candidates, the mandate of voters, and legal certainty are protected in a balanced manner. Based on these findings, it can be concluded that Constitutional Court Decision Number 12/PUU-XXII/2024 is formally constitutional, yet it does not yet offer a fully substantive solution. While the ruling successfully upholds the political rights of elected legislative candidates, it fails to provide sufficient certainty for voters, election organizers, and participants in regional head elections (*pilkada*). Consequently, clearer regulations are required regarding the definition of an "elected legislative candidate," the deadlines and procedures for resignation, the legal consequences of running in a regional election, the mechanisms for replacing candidates who decline to exercise their mandate, and the obligation to publicly

declare one's political stance prior to official candidacy confirmation. Such regulations must safeguard the right to stand for election while simultaneously preventing the abuse of a mandate, preserving the integrity of the electoral process, and ensuring that the votes cast by the public do not lose their political significance.

AI Usage Statement

In preparing this article, the authors used Grammarly to assist with English language editing, grammar checking, and language refinement. All suggestions provided by Grammarly were reviewed, verified, and edited by the authors to ensure accuracy and consistency with the research materials. The authors are solely responsible for the content, accuracy, interpretation, and conclusions of this article.

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