POSITION OF SINGLE CANDIDATE IN THE ELECTION OF HEAD OF REGION CONCURRENTLY IN PERSPECTIVE OF DEMOCRACY

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Abstract: This study aims to know and analyze; (1) the position of the sole candidate for regional head in the election and (2) the concept of regulating single candidates in the election, based on the democratic perspective. This research is normative research. The sample in this study is the sole candidate of regional head in Indonesia. Research method is done through problem approach which is approach of legislation and conceptual approach. The legal substances that have been collected are analyzed by using descriptive qualitative analysis. The results of this study are: (1) The existence of the Single Candidate of the Regional Head in the Election of the Head of Region simultaneously based on the Decision of the Constitutional Court Number 100 / PUU-XIII / 2015 and Law Number 10 of 2016 Selection of Head of Region with the sole candidate is the election conducted in a democratic perspective caused by the decision of the Constitutional Court (MK) by placing a Plebiscite as the basis for issuing an improper verdict permissible single candidate in the elections simultaneously held by electoral mechanism, because plebiscite to ask the people as voters to decide whether to “agree” or “not agree” with the candidate pair. So this cannot be said to remain in the perspective of democracy because society is not choosing to agree or disagree over the policy changes; and (2) The concept of regulating a single candidate in the election of a Regional Head based on a democratic perspective is a change of Law Number 10 of 2016 by considering the Stipulation of a single candidate as the winner of the Regional Head Election (acclamation), Single Candidate Pair is declared dead and unable to nominate self-returning, Candidate Doll is another form of single candidate, as well as the determination of the maximum limit of support from the political party path.

Keywords: single candidate, election of regional head, perspective democracy

I. INTRODUCTION

The Unitary State of the Republic of Indonesia (NKRI) is a unitary state managed based on democratic understanding. Democracy itself there are two types of direct democracy and indirect democracy. Direct Democracy is a system of government that embodies sovereignty in
the hands of the people of a country, every citizen can have equal rights to elect and be elected and can convey his opinion directly to his leader.

The election of regional heads is the direct election of regional heads by the community as a manifestation of democracy. Prior to 2005 the Election of Regional Head (or commonly named as Pilkada) was elected by the Regional House of Representatives (Regional People’s Legislative Assembly or called DPRD). Since the enactment of Law Number 32 Year 2004 regarding Regional Government, the regional head was elected directly by the people through the election of Regional Head and Deputy Regional Head or abbreviated to Pilkada and in June 2005. Pilkada implementation is considered to be one of the most democratic processes affecting the people, because through this mechanism the people can determine their local leaders directly. Local leaders directly elected by the people are expected to better understand the wishes of the people so as to bring positive changes to the lives of people in the region.

In the 1945 Constitution of the Republic of Indonesia, as stipulated earlier, it is stipulated that the governors, regents and mayors respectively as provincial, district and municipal government heads shall be elected democratically. As the implementation of Article 18 Paragraph (4) of the amended 1945 Constitution of the Republic of Indonesia, there has been promulgated a law on Regional Government governing the election of regional heads, both provincial and district / city.

Further stipulated in Article 1 number (2) of Law No. 8 of 2015 concerning the Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors into Law which reads: “The election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor hereinafter referred to as Elections shall be the implementation of the people’s sovereignty in the provinces and districts / municipalities to elect the Governor and Vice Governor, Regent and Deputy Regent and Mayor and Deputy Mayor Directly and Democratic”. Election of regional heads simultaneously carried out in accordance with the mandate of Law No. 8 of 2015 on the Election of Governors, Regents, and Mayors. In the Act it is explained that the election of governors, regents, and mayors implemented simultaneously and aims to save the State budget. Implementation of the election of regional head of 2015 becomes interesting to be studied as the initial wave in the design Pilkada will be done in the next year 2017 and 2018. Based on Article 51 Paragraph (2) and Article 52 Paragraph (2) of Law Number 8 Year 2015 regarding Regional Head Election underlying the implementation and mechanism applicable in the Year 2015 which is different from the previous period, such as related to single nomination which only there is one candidate for regional head candidate, who joined enliven the election competition.

Pilkada with a single candidate is not regulated in Law No. 8 of 2015. The law only regulates minimum followed by two candidate pairs. Pilkada phenomenon with a single candidate is possible because of the absence of candidates who have the potential to compete with certain candidates such as incumbent or certain figures who by potential competitors cannot be defeated, the opponent will feel futile because against strong figures because it will only experience failure and loss. Even political parties and certain political party associations do not want to propose candidate pairs with the intention that the election of regional heads in certain areas cannot be implemented and postponed to the next election. Call it the pilkada Mataram 2015 ago, political parties and a coalition of political parties that Democratic Party and PDI-P
Struggle party does not want to propose the candidate pairs. This resulted in the GOLKAR Party was forced to nominate the candidate dolls, whereas Chairman of the DPD II Golkar Party is a Mayor Candidate who must give up his own party carrying other candidates. Other causes are also due to the difficult and complicated fulfillment of requirements for individual candidates in the regional head election resulting in the hope of achieving the formula “at least two candidate pairs” is also difficult to achieve.

The problem that arises in Law no. 8 year 2015 is not regulating about a single candidate has resulted in a legal vacuum (Rechtvakum). The weak regulation of the elections followed by single candidates implicating the planned delays of the first wave of elections in 2015, so that a few months later judicial review by the Constitutional Court on the Application of Effendy Gazali et al. On September 29, 2015, the Constitutional Court Decision Letter no. 100 / PUU-XIII / 2015 which permits regions with a single candidate to conduct regional head elections with a single candidate after the KPU provide an extension of registration time.

Decision of the Constitutional Court Number: 100 / PUU-XIII / 2015; in essence declare the sole candidate of the Regional Head after the maximum effort to have two Pairs of Candidates (Paslon) of the Regional Head by the KPUD, but only the single candidate pairs-that’s all, then the single candidate is still included in the Pilkada with the ballot plebiscite design or referendum; asking voters to make their choice “agree” or “disagree.” Whereas allowing a single candidate actually undermines democracy that calls for healthy competition.

The issuance of Decision of the Constitutional Court Number 100 / PUU-XIII / 2015 which allows the pilkada with single candidate does not solve the problem of democracy in the region, because democracy should presenting fair competition among candidate pairs. But there is no competition. Society is not served on the options for a number of candidate pairs. People are forced to choose between agreeing and disagreeing with the satisfaction of choosing only one candidate pair. Moreover, single candidates are not only the result of no more credible and credible figure but single candidates are also by the design of a candidate for the regional head to get support from a number of existing political parties in order to close the possibility for other candidates to get support at least 20 percent party votes in the legislature.

From some of the above problems, the authors are interested to conduct this research with the title: Position of Single Candidate in the Election of Head of Region Concurrently in Democratic Perspective.

II. RESEARCH METHODS

This research is done through a problem approach with statutory approach (Approach) by reviewing all laws and regulations relating to legal issues being dealt with, this approach also aims to know the synchronization of legislation vertically or horizontally, vertical view of how hierarchical legislation, while horizontally studied the extent to which the rules governing the various fields have a functional relationship consistently. The objective is that in this research can know weakness in legislation which is used in arranging certain fields that is Law Number 32 Year 2004 about Local Government, Law number 8 year 2015 About election of Governor and Vice Governor, Regent and Deputy Regent, Mayor and Deputy Mayor. Decision of the Constitutional Court number 100/PUU-XIII/2015. In addition there is also a conceptual approach (Conceptual Approach) approach is moved from the views and doctrines that developed in the science of law, by studying the views and doctrines in the science of law researchers will find
ideas that give birth to understanding - legal understanding, legal concepts, legal principles relevant to the issues at hand.\(^1\)

The types and sources of legal materials include; (1) binding primary legal materials such as basic norms and rules, basic rules, statutory regulations, un-codified legal material and jurisprudence. That is Law No. 8 of 2015 On the election of the Governor and Vice Governor, Regent and Deputy Regent, Mayor and Deputy Mayor and Law 10 of 2015 on the second amendment of Law No. 1 of 2014 On the election of Governors, Regents and Mayors, (2) secondary legal materials that provide explanations of primary legal materials, such as draft laws, research results or opinion of legal experts. In the study the authors use books, papers, and research results in the field of law, (3) legal materials tertiary that provides guidance and explanation of primary and secondary legal materials, such as legal dictionaries, encyclopaedias.

The technique of collecting legal materials using Document Study is the first step of every legal research (both normative and sociological) because legal research always departs from the normative premise. Legal Material Analysis that has been collected is analysed by using descriptive qualitative analysis, which is analysis by describing and reviewing the literature material of literature in the form of statement or words carefully and systematically.

III. DISCUSSION

3.1 Position of Single Candidate for Regional Head in the Local Election from Democratic Perspective

3.1.1 Single Candidate Arrangement in Concurrent Regional Head Election According to the Constitution

In the Basic Law of the Republic of Indonesia of 1945 (the 1945 Constitution of the Republic of Indonesia) there has not been any explicit regulation of single candidate candidacy in the election of regional heads simultaneously. The regulation of the election of regional heads in the Law of the Unitary State of the Republic of Indonesia is still limited to the assertion that the regional head elections are conducted democratically.

Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia as stated earlier, provides that the Governors, Regents and Mayors respectively as provincial, district and municipal government heads are elected democratically. As the implementation of Article 18 Paragraph (4) of the amended 1945 Constitution of the Republic of Indonesia, there has been promulgated a law on Regional Government governing the election of regional heads, both provincial and district / city.

In Article 18 paragraph (4) of the 1945 Constitution states governors, regents and mayors are elected directly through the election. In the Opening of the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia as one of the democracy references in Indonesia states that “afterwards to establish an Indonesian state government that protects the whole nation of Indonesia and the whole of Indonesia’s blood sphere and to promote the general welfare of the intellectual life of the nation and participate in carrying out the order a world based on the freedom of perpetual peace and social justice, then the national independence of Indonesia was formulated in a 1945 Constitution that sovereign people based on the Supreme Godhead, a just and civilized humanity, the unity of Indonesia, populist led by wisdom and wisdom in consultation and representation and social justice for all the people of Indonesia”.

\(^1\)Salim dan Erlies Septiana Nurbani, *Penerepan Teori Hukum*, Raja Grapindo Persada, 2013, p 5-6
According to C. F Strong democracy is a system of government in which the majority of its members are adults of the political society who participate on the basis of a representative system which ensures that the government is ultimately accountable for those actions of the majority. In the perspective of democracy as set forth in the 1945 Constitution above only provides guidance that the election of regional heads can be implemented in a democratic system either directly or indirectly in the implementation of local election in the form of election in the legislative where the head of the region is elected by representatives of the people in the Provincial DPRD or directly elected by the people. As far as the authors of the 1945 Constitution are concerned, until the 4th amendment has not been drawn or there is a special affirmation of the possibility of regional head election followed by only one candidate pair.

a. Single Candidate In Law 32 Year 2004

Furthermore, Law no. 32 of 2004 on Regional Government, it is determined that the regional head and deputy head of the region shall be elected directly by the people. Changes in the way the local election is intended to be appropriate and can achieve the objectives of regional autonomy. The selected regional head is expected to be perfectly suited to the aspirations and able to meet the expectations of the people in the region. Heads of regions directly elected by the people are expected to be really on the side of the people, not just the political elite.

Law No. 32 of 2004 on regional heads is the first legal norm governing the direct election of regional heads, where previously the election of regional heads was conducted indirectly. From 2004 to 2015 local elections were held directly in all provinces and municipalities in Indonesia, and then in 2015 the first regional elections were held simultaneously. In the law 32, although the regulation of regional head election has not been presented the election of regional heads followed by a single candidate or candidate pairs, so there is no one article that regulate or explain the implementation of the head of the region followed by a single candidate.

b. Single Candidate in Law No. 8 of 2015

In Article 1 paragraph (1) of Law no. 8 of 2015 stipulates that the election of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor hereinafter referred to as Elections shall be the implementation of the people’s sovereignty in the provinces and districts/cities to elect the Governor and Vice Governor, Regent and Vice Regent, and Mayor and Vice Mayor directly and democratically.

Based on Article 5 of Law no. 8 of 2015 on the Amendment to Law No. 1 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors into Law, explained that in general the stages of Pilkada are directly divided into 2 (two) stages of preparation stage and stage of implementation.

One of the events that occurred during the Pilkada simultaneously one of them is at the registration stage was only one pair of candidates who register, and it is in Law no. 8 of 2015 on Amendment to Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors into Law, has not been regulated explicitly in relation to the existence of only one registrant, so there is some interpretation of the legal standing of this single candidate.

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2 Janedjri M. Gaffar, 2013, Politik Hukum Pemilu, Konpress, Jakarta, p. 121.
3 Ibid
c. Single Candidate of Constitutional Court Decision Number 100 / PUU-XIII / 2015

Decision of the Constitutional Court Number 100 / PUU-XIII / 2015 dated 29 September 2015 whose substance reverses the national political situation by allowing the implementation of the 2015 Serial Election with one candidate pair to open up a new chapter in political contestation in Indonesia. The previous paradigm that the elections as a manifestation of democracy and the means of people’s voice aspiration in the transition process of regional leadership must be implemented by choosing between several candidate pairs to be changed by a vote can be held only on one pair of candidates and become the obligation for KPU as a state institution that serves as pilkada organizers at a time to carry it out properly.

The process of the occurrence of the Single Candidate Pair has different patterns in each region. However, if categorized based on administrative process, there are 2 patterns that occur. The first, on the registration process will be a candidate pair of regional heads in the Election Commission there is only one candidate pair will register until the selection and announcement process. Secondly, in the registration process, there will be more than one prospective candidates registering, but in the selection process and announcement only produce one candidate pair who pass the selection and eligible to follow the election process.

In the first pattern, there are some indications that indicate a scenario politically worked by some political groups in the related areas to thwart the election of election by conditioning the administrative process of the election does not meet the requirements of the Act. As a result, the implementation of the pilkada should be postponed and provide a space to re-dynamic the political constellation at the local level. In situations where the candidate pairs will be incumbent, there is an indication of a very strong domination of the candidate’s pairs so as to cause prospective candidate couples who potentially undo the intention of registering.

In the second pattern, the same indication is found in the first pattern, but the form is that the candidates who have registered have resigned during the selection process or do not complete the requirements so that eventually fall in the selection process. It has not been found factually whether there is an involvement of the organizers in the process so that the applicants who have completed the terms also fall in the selection process because they do not meet the requirements.

The Constitutional Court as an institution authorized to adjudicate the Law on the Regional Candidate Pair at the Serkak Regional Head Election. Surely it gives fresh air to the Candidate Pair whose area alone only passes the selection of the Election Commission because there is no other applicant or other candidate Candidate exit. The emergence of a Single Candidate Pair is not without a cause that is conflict-prone. Therefore, ultimately it becomes a new issue if the Constitutional Court’s decision is executed by still conducting the simultaneous Pilkada implementation in the area of the Single Candidate Pair.

The simultaneous preparation of elections in 2015 spawned a prolonged political polemic. At some point even able to build a new dynamics pattern in political process in Indonesia. Through a long process with the lawsuit sued in the Constitutional Court can ultimately create a new concept and method in the process of politics in Indonesia. Implementation of stages of preparation and implementation of elections simultaneously that have been implemented in general can be said smoothly, but the dynamics of politics that developed with the efforts of some parties who conduct the material test Act no. 8 of 2015 in the Constitutional Court to make political constellation in the region leads to sharpening after the Constitutional Court issued the Constitutional Court Decision Number 100 / PUU-XIII / 2015 dated September 29, 2015.
The main decision is to permit the region to be elected but there is only one candidate pairs to register or be determined, the area can still follow the next process (unanimous voting) without delay. As stated in Law no. 8 of 2015 of Article 49, Article 50, Article 51, and Article 52, that the regions which are in the registration stage of less than 2 candidate pairs and the process of determining the participant are also less than 2 candidate pairs are obliged to postpone the election to the requirements of the Act fulfilled becomes void. In general, the Constitutional Court ruling provides space for the creation of new and more aggressive ideas on political ideas from each contestant. For example, candidates for electoral contestants can consolidate politics by gathering all political parties that have the right to promote and register candidate pairs of election candidates so as to minimize the emergence of other competitors.

But on the other hand, the Constitutional Court’s decision can also eliminate counter-productive political behavior such as political consolidation until there is a sharp pengkubuan and lead to the process of postponing the elections due to unwillingness to compete with incumbent candidates. This reluctance usually arises because of suspicions that the incumbent candidate will cheat by taking advantage of his position as incumbent. The impact of postponing pilkada itself is not only limited to administration, but politically, socially, economically, and culturally will be widespread if viewed from various point of view.

d. Implementation of Regional Head Election Based on Law Number 10 Year 2016

The technical conducting agency that carries out the Law Act no. 10 of 2016 on the Election of Governors, Regents and Mayors is the Regional General Election Commission (KPUD) Provincial, District and City which have been granted authority as the organizer of the election of the Regional Head. Direct election of heads of regions and vice regional heads known widely as ‘Pilkada’, is organized by an independent body, the Regional Election Commission (KPUD), which is responsible to the DPRD.

This is based on the consideration that the KPUD is an independent institution in the regions that have experience in the direct election (DPR, DPD, DPRD and Presidential Election), so there is no need to re-establish a new institution as the executor of the election of Regional Head and Deputy Regional Head. In addition to the consideration of efficiency, facilities and infrastructure of existing elections can still be used again. The authority of Provincial, Regency and Municipal Election Commission is limited to the determination of the elected candidates with Minutes which furthermore the Regional General Election Commission shall submit to the DPRD to process the proposal to the Government for approval.

As for the results of the research note that in the election of regional heads simultaneously in 2015 held in 9 Provinces, 36 Cities and 224 Districts that follow the Democratic Party contest at the end of the year ie on December 9, 2015. However, after the registration period there are 11 areas there is one pair of candidates, while the area is, Regency of Asahan (North Sumatra), Serang Regency (Banten), Tasikmalaya Regency (West Java), Surabaya City, Blitar Regency, Pacitan Regency, Purbalingga (Central Java), Minahasa Selatan, Middle East North, Samarinda, and Mataram. There is even one area that has no candidate at all that is East Bolaang Mongondow Regency.

Based on (Election Supervisory Board called Bawaslu’s) recommendation, the KPU plenary meeting decided to extend the registration period. So the remaining seven areas still have a single candidate, the seven areas are Tasikmalaya (Jabar), Surabaya, Blitar, Pacitan (East Java), Mataram (NTB), Samarinda (East Kalimantan) and North Central Timor (NTT) .12 Following up, KPU issued Circular Letter no. 449 / KPU / VIII / 2015 addressed to the regional KPUs in
the seven regions. The contents, given the election registration of election participants from 1 and end 3 August 2015.\(^4\)

However, until the last day of the registration of election candidates in 2015, on Monday (3 August 2015), of the 269 regions that will hold elections, in seven districts there is only one candidate pair. Based on the General Election Commission (KPU) data, until the final election registration deadline there is only one candidate pair in Blitar, Pacitan, Tasikmalaya, North Central Timor, Mataram, Samarinda and Surabaya.

Seeing this situation, the Government of the Republic of Indonesia discussed the issue of a single candidate and finally elected the option of extending the registration of the second phase from Sunday 9 August to Tuesday 11 August. The final result of registration of election candidates only four regions with a single candidate election. The areas are Tasikmalaya Regency, Mataram City, North Central Timor District, and Blitar Regency. However, against the City of Mataram, the Election Supervisory Committee granted the Salman and Jana couples’ dispute request to become a competitor of the incumbent pair of Abduh and Mohan. The situation is backed by the turmoil of candidates from the Golkar Party, which ultimately declared officially that the two candidates carried by the Golkar Party, thus leaving only three regions. The three regions, will then conduct the election of regional heads with one candidate pair only, then the term that emerges is a single candidate head of the region. Based on the phenomenon of the single candidate is then emerged new legal problems faced by the state when examined more in terms of normative.

In the provisions of Law no. 8 In 2015 it can be said in a solemn manner, that the law requires the election of regional heads held simultaneously in 2015 are required to have at least two candidate pairs in each region. It is closely related that the general election as well as the election of regional heads is a political contestation of some of the candidate’s proposals. The provisions are regulated in Article 51 paragraph (2) and Article 52 paragraph (2) of Law no. 8 of 2015. The provision states that the minutes of the stipulation of the event made by the Election Commission should establish at least 2 pairs of candidates for regional head. So it is clear that each region must have a candidate of regional head of at least two candidate pairs. However, the rules in the Law on Regional Head Election do not provide a position for regions that have only one candidate pairs of regional heads.

Seen das, there is a phenomenon that occurs in the community that is a single candidate in the election of regional heads. The areas are Tasikmalaya Regency, North Central Timor District, and Blitar Regency. Such conditions call for national concerns when referring again in the provisions of Article 3 of Law no. 8 of 2015 that the election will be held simultaneously on December 9, 2015.

Against the condition of the single candidate it can be said that Law no. 8 Year 2015 considered less anticipatory and solutive anticipate problems that arise so that there is a void of norms. This is because the phenomenon of a single candidate actually occurs at the beginning of the registration and not in the period of verification data of candidates for regional head, as seen by the number of areas until the expiration of the registration period does not meet the minimum number of two pairs of candidates for regional head. If the reading of the provisions of Law no. 8 Year 2015, the process of submission of candidates for regional head shall start from the stages of opening of registration until the registration period of the regional head candidates has expired only 3 (three) days after the announcement of the registration. This is complicated by no additional enrollment mechanism. The renewal of registration is coming from the General

\(^4\) Polemik Calon Tungal Pilkada Serentak, Kompas Print, August 23, 2015.
Election Commission (KPU). However, during the renewal period the registration did not result in an increase in candidates for the three regions. While the normative rules of the a quo Act do not provide answers to emerging problems.

In response to such conditions, the KPU issues Regulation of the General Elections Commission no. 12 of 2015 on Amendment to KPU Regulation no. 9 of 2015 concerning the Candidate of the Election of the Governor and the deputy of the Regent and Deputy Regent, and / or Mayor and Deputy Mayor. The solution is given as contained in Article 89 of PKPU. 12 of 2015 by extending the registration period of candidate pair maximum of 3 days. However, if until the expiration of the registration period there is only one candidate pair, then the election will be postponed and will be held in the next election. If in the registration process there are at least 2 candidate pairs, then it can be continued in the research stages of candidate requirements. However, after a study, there is only one candidate pair that meets the requirements or cancellation of the candidate pair, the provisions of Article 89A and Article 91 shall apply, namely the delay in the election of regional head. The postponement of the regional head election will be held in 2017.

At the ideal level, delaying the election of regional heads as a sole candidate is a setback to the implementation of democracy and human rights violations. Given one of the values of democracy according to Henry B. Mayo in his book Ni’matul Huda is organizing the succession of the leadership on a regular basis (orderly succession of rulers). Delays in the election of regional heads disrupt the transitional leadership system in the regions. If the implementation of regional head election is postponed, then the position of regional head will be filled by the executor of task (PLT) with limited authority. So it is not impossible that the spirit of development in the region will be hampered which can then lead to the non-fulfillment of citizens’ rights. Although we cannot deny that in the implementation of democracy in the area of contestation is necessary. For that, it is necessary to strive to realize a participatory democracy and in line with the wishes of the people. So that more participation of the community will certainly provide a balance in the process of democracy.  

This is in line with human rights violated by the delay in the implementation of regional head elections for regions that have only one candidate pairs. The existence of single candidate problems caused by non-anticipatory normative rules of local elections should not be a legitimacy of the government to do abuse of power, namely the neglect of human rights for ‘the candidate’ as well as for the community in the region. This is because the framework of the implementation of the state of Indonesia is democracy.

To this condition, the Constitutional Court through its decision Number 100 / PUU-XIII / 2015 decides that the articles petitioned are contradictory to the 1945 Constitution. The Court considers that there is no necessity of the candidate pair of at least 2 (two) candidate pairs, as stipulating 1 (one) candidate pair of regional head. So that a single candidate should not be interpreted as the determination of a single candidate of regional head as the elected regional head without going through the stages of election of regional head. More clearly in the decision, the Court declares that Article 49 Paragraph (9), Article 50 Paragraph (9) and Article 51 Paragraph (2) and Article 52 Paragraph (2) of the Regional Head Election Law are contradictory to the 1945 Constitution and have no binding legal force as long as not understood including the definition of a pair of candidates for regional head.

With regard to electoral mechanisms, the Court states that for elections which are only followed by one candidate pair, the manifestation of the contestation is more appropriate when paired with a plebiscite that asks the people as voters to decide whether to “agree” or “disagree” with the candidate pair. So that the community can determine, if the number of votes more agree to the candidates for the head of the region then the candidate head of the region is elected by the community to lead the area. However, if the number of votes that declare disagreed with the regional head more than agree then the delays of regional head election.

The delay, according to the Court is not contrary to the Constitution. Because, basically the people have decided the delay through the vote “disagree” is. The mechanism was judged by the Court to be more democratic than declaring “win by acclamation” without asking people’s opinions if the candidate has no competitors. The Court affirmed that the emphasis on the “democratic” character becomes substantial because it is a constitutional order, in this case Article 18 Paragraph (4) of the 1945 Constitution. Under such a mechanism, constitutional mandate demands the fulfillment of the constitutional rights of citizens, in this case the right to be elected and to vote, as well as a mandate for elections to be implemented democratically can be realized.

In its verdict, the Court also affirmed that the election which only one candidate pairs should be placed as a last resort, solely to fulfill the constitutional rights of the citizens. Note that previous election organizers have made a serious effort to find at least two candidate pairs.

Seeing the opinion of the Constitutional Court can be seen that there are political rights of citizens who are being fought without reducing the value of democracy itself. The nature of the contestation of a competition or election cannot be hampered by the lack of candidates registering in the elections because the implementation of popular sovereignty is not distorted by simply delaying the election of the next election year. The delay will have implications for delays in voter rights and reduce the democratic side of the elections. In interpreting the contestation, the Court does not agree with the application of uncontested election as applied in the United States, England, Canada, and Singapore, which is more synonymous with the acclamation of approval without involving the voice of the people. The meaning of contestation is not only limited by the presence of candidate pairs, but can also be manifested in the form of choice agree or disagree. If the candidate head of the region can be applied as the head of the elected area. However, if many people choose not to agree then the election is delayed in the next election.7

Such a model of interpretation, indicating a paradigm shift in the Court in which anyone can compete with candidate pairs. That is the constitutional policy of the Court that changed the candidate’s election regime to the choice of a referendum, even though it is only placed as an ‘emergency exit’. This means that pilkada with a single candidate is the last attempt after all phases of candidates ‘failed’ to present 2 or more.8

The Constitutional Court ruling provides two simultaneous implications for the simultaneous pilkada system, namely direct implications and indirect implications. Immediate implications of the Constitutional Court’s decision about a single candidate are as follows: First, the existence of a new mechanism in the implementation of the upcoming elections. Given the opportunity for one pair of candidates to participate in simultaneous electoral contestation through the mechanism of choosing “agree” or “disagree” means a new mechanism for

8 Ibid
determining the leader in the region in the pilkada simultaneously. According to some, this mechanism is also called the referendum mechanism. Nevertheless, according to the judge of the Constitutional Court, Suhartoyo, when reading the verdict, said that this pattern is not contradictory to the constitution because the public has conveyed their rights through approval or disapproval of the single candidate.9

Second, the arrangement through PKPU on a single candidate. Due to the election exercise with only one candidate pairs of regional heads, the KPU must make regulations on a single candidate. Following up the Decision of the Constitutional Court No.100 / PUU-XIII / 2015, KPU re-issued KPU Regulation no. 14 of 2015 on the Election of Governor, and Vice Governor, Regent and Vice Regent, and / or Deputy Mayor and Deputy Mayor with One Pair of Candidates. The provision, clearly changing the previous KPU regulations that require delays in the election of regional heads in the next pilkada in the next that there is a referendum mechanism.

3.1.2 Prospective Single Election Candidates of 2015

Based on KPU data from 268 districts which held the 2015 joint elections after extending the registration period up to three times of renewal, as the implementation of recommendation from Bawaslu to fulfill the requirement of the law until delay leaving only 3 regions with single candidate that is, Tasik Malaya Regency, Middle East Regency North NTT Provincial, Blitar Regency of East Java. While under the terms of a single candidate has not been fully regulated and confirmed if it does not meet at least two candidate pairs, the implementation of pilkada in the area will be delayed until the next round of elections which will be held in 2017.

The Constitutional Court ruling as a legitimate interpreter of the 1945 Constitution, a single candidate new polemic becomes answered by adding a new understanding of Article 18 Paragraph (4) of the 1945 Constitution, that the election with “one pair of candidates includes and / or becomes a part which is democratically elected.10 From the practice side of the Constitutional Court ruling is unusual and unknown ever applied in Indonesia, considering the method used to choose a single candidate by using the Plebiscite method that has been the method on the desired or unwanted in the case of constitutional amendment or separation and grafting a region into part or part of the Neraga section, not to elect a leader to be exercised in a democratic election contest to be followed by a sovereign people to determine who will lead the region.

a. Regions with single candidates on pilkada concurrently in 2015

1) Blitar Regency East Java Province

Couple Rijanto-Marhaeinis Urip Widodo carried PDIP and Gerindra Party declared as sole candidate by Election Commission of Blitar Regency after 3 times the renewal period of registration without an opponent. Since the other party until the registration is closed, none of them register the candidate pair. In the final process of the Pilkada district of Blitar the pair was declared victorious against an empty box with 85.16 percent of the vote saying it agreed and 14.84 percent of the votes declared disagree, 8 percent of the votes were not from 964,928 voters registered as permanent voters.

2) Regency of Tasikmalaya West Java Province

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10 Zaman Kamarul Rambe Pilkada serentak, Jakarta, expoce, 2016. P. 235
Until the determination of candidate pair by Election Commission of Tasikmalaya Regency pair Uu Ruzhanul Ulum-Adi Sugianto (RIDHO) is declared as single kand candidates in elections simultaneously in 2015 which carried by PDIP and PKS. While the big coalition consisting of PKB, PAN of Golkar Party, PPP, Democrat, P Nasdem Hanura and PKS prefer not to register their candidates with consideration to delay the election until 2017 considering RIDHO partner is considered as a very strong partner. However, after the decision of the Constitutional Court Election of Tasikmalaya Regency finally continued with the election of single candidates. Participation of voters in Tasikmalaya Regency Election based on KPU data was followed by 58 percent voters who voted, 67.42 percent of voters agreed and 32.58 percent of voters declared themselves disagree.11

3) Timur Tengah Utara Regency East Nusa Tenggara Province

Couple incumbent Raymundus Sau Fernandes-Aloysius Kobes who is a pair of candidates who carried the winning election party PDIP without opponents until the registration is closed. The high electability of the candidate pairs makes other parties prefer not to register their candidates. The Timur Tengah Utara Regency Regional Head Election, NTT was finally won by a single candidate to defeat his opponent’s empty box with 79.97 percent of voters agreeing and 20.03 percent of voters using his right to vote disagree.

b. Regional Regions with Single Candidates in Serial Election 2017

1) Buton Regency Southeast Sulawesi Province

The Samsu Umar Abdul Samun-La Bakry pair were promoted by the seven Golkar Party, Democratic Party, PAN, PKB, Hanura Party, UN, Nasdem Party without opponent until the closing of candidate registration period, then determined by Buton Election Commission and declared as sole candidate against empty box. The pair won narrowly colored by large voters who favored empty squares as opposed to voting in favor of a vote of 44.02 per cent of voters opting for disagreement or selecting empty squares, while 55.08 agreed, a fairly low voter turnout rate of 51.04 per cent of 71,358 voters set by KPUD Buton in the Permanent Voter List.

2) Tebing Tinggi North Sumatra Province

The incumbent candidate Umar Zunaidi Hasibuan-Oki Doni, who has been staying as a strong candidate by getting the majority of the rulers of the Democratic Party, Gerindera Party, Nasdem Party, Hanura Party, PKB, Golkar Party, PPP, PKPI and PDIP finally declared as the sole candidate without there are other candidate pairs up to the final registration period. In the process of appointing the candidate to win a landslide victory against a blank box with 71.38 percent of the vote, while voting voters who opted for a blank box of 28, 61 percent voted disagreeing, with low voter participation of 55.8 percent using voting rights of the 107,458 voters registered in the Permanent Voter List (DPT) by the Tebing Tinggi Election Commission, in the amount of voters who have the right to vote 44.2 choose not to use their voting rights on the day of voting and vote counting.12

3) West Tulang Bawang Regency, Lampung Province

Umar Ahmad SP-Fauzi Hasan’s partner, became the most special candidate for regional head. Couple-incubator couples in Tulang Bawang Barat regency, Lampung province, are supporting 10 political parties: PKS, Democrat, PPP, PDIP, Gerindra, Golkar, PAN, PKB, Hanura, and Nasdem. A total of 30 seats, aka 100 percent of the vote, provide

11 http://detik.com 2015
12 http://pilkada2017.kpu.go.id
support to the couple. The magnitude of the support of the political party which carried the pair has proven with a landslide victory with 96.75 percent of voters voting in favor, while voters who voted for empty boxes amounted to 3.25 percent of the votes of 197,541 registered voters in the DPT with a fairly high participation rate of 88.4 percent with 11.6 voters who did not exercise their suffrage.

4) Sorong City of West Papua

The majority of the parties in the Sorong City Council brought the pair of Lambertus Jitmau-Hj Phima Iskandar with eight parties: Golkar Party, Hanura Party, Democratic Party, PKB, PDIP, GERINDERA, Nasdem and PAN. As with other single candidates in other areas the couple also received high support from voters who exercised their right to vote in the second round of elections in 2017 with 79.80 percent of the vote, beating the empty box with 20.20 percent of the vote. Of the total number of voting users of 34,845 voters or with a participation rate of 71.73 percent of the vote, and 28.27 voters who did not exercise suffrage.

5) Jayapura City

Followed by a single candidate Benhur Tomi Mano-Rustam Saru who carried Hanura Party, Gerindera Party, Party Nasdem, PDIP, PAN, Golkar Party, PKPI. Follows as many as 123,885 voters registered as voters in the elections of Jayapura City, with voter participation rate of 50.09 percent of the total number of voters, voters who did not exercise suffrage were overwhelming at 49.1 percent of the total number of DPTs. At the Plenary of KPUD Kota Jayapura the pair were declared elected candidates with 84.78 percent of votes voted in favor, and 15.22 percent of votes voted for empty boxes.

6) Tambaraw Regency, West Papua

Couple incubators Bupati Tambaraw, West Papua, Gabriel Asem and his partner Mesak Yekwan, in the next sequence. The couple was promoted by Nasdem, PDIP, Golkar, Democrat, Gerindra, PKS, PKB and Hanura. A total of 19 seats in the DPRD Tambaraw or equivalent to 95 percent of the vote, support it. As a result PAN and PPP are not supportive of the couple, cannot carry the candidate as opposed, because PAN only has 1 seat and PPP without winning seats with 90.06 percent of votes agreed with the acquisition of 14,608 votes, where voters who declare disagree or choose empty box 9.94 percent of the votes.

7) Pati Regency, Central Java

In Pati regency, Central Java, Haryanto, incumbent regent, paired with Aiful Arifin supported by eight political parties: PDIP, Gerindra, PKS, PKB, Democrat, Golkar, Hanura and PPP. Both received support for 46 seats, equivalent to 92 percent of the vote. The four-seater NasDem party cannot nominate another couple. The minimum requirement of carrying candidates in Pati is 10 seats. Just a note, PAN at Pati did not get a seat. Based on the plenum of the KPUD, the pair won with 74.52 percent of the votes agreed, and 25.48 percent of voters voted against, with 68.7 percent voter turnout from 1,035,6663 voters registered in the DPT, quite high by 31.3 percent of voters.

8) Landak Regency, West Kalimantan

In Landak District, West Kalimantan, Margret Natasa-Herculanus Heriadi’s candidate pair, received 32 seats, alias 92 percent of the vote. Karolin is the daughter of West Kalimantan governor, Cornelis. He paired with Herculanus the incumbent Vice Regent. Support by PDIP, Democrat, PKB, Golkar, Hanura, Nasdem, Gerindra and PAN, leaving only 3 PPP seats in DPRD Landak. PPP cannot nominate others because the minimum requirement to nominate a couple of seven seats. The couple received
considerable support with 96.62 per cent of votes voted in favor and 3.38 per cent of voters using their right to vote voted against 257,222 registered voters in the DPT, as high as voter turnout reached 92 per cent or 237,354 voters, with a golput rate of 7.7 percent of voters not using the right to vote.

3.1.3 Direction of Regulation on the Implementation of the Election of Single Candidate Head

Based on the analysis the various rules of Direct Election of Regional Heads simultaneously as discussed above become a logical consequence with amended Law no. 1 year 2014 on the election of governors, regents and mayors by Law no. 8 of 2015 on Amendment to Law no. 1 of 2015 on Stipulation of Government Regulation in Lieu of Law no. 1 Year 2014 became the Law and last changed again by Law no. 10 Year 2016. But the implementation process has arisen various complications caused by the canalization of the national political camp on 2 large camps. One of the complications that arise is the emergence of a Single Candidate Pair or no competition due to only one candidate pair who passed the selection of the Election Commission, so administratively the Election Commission should reverse the registration schedule until its implementation if it does not meet the maximum result.

The process of the occurrence of the Single Candidate Pair has different patterns in each region. However, if categorized based on administrative process, there are 2 patterns that occur. The first, on the registration process will be a candidate pair of regional heads in the Election Commission there is only one candidate pair will register until the selection and announcement process. Secondly, in the registration process, there will be more than one prospective candidates registering, but in the selection process and announcement only produce one candidate pair who pass the selection and eligible to follow the election process.

In the first pattern, there are some indications that indicate a scenario politically worked by some political groups in the related areas to thwart the election of election by conditioning the administrative process of the election does not meet the requirements of the Act. As a result, the implementation of the pilkada should be postponed and provide a space to re-dynamic the political constellation at the local level. In situations where prospective candidate pairs are incumbent, there is an indication of strong dominance of the candidate’s pairs, causing other potential candidates to undo their intention of registering.

In the second pattern, the same indication is found in the first pattern, but the form is that the candidates who have signed up resign during the selection process or do not complete the requirements so that eventually fall in the selection process. It has not been found factually whether there is an involvement of the organizers in the process so that the applicants who have completed the terms also fall in the selection process because they do not meet the requirements that apply.

But in the midst of the polemic that occurred, the Constitutional Court as an institution authorized to adjudicate the law provides a decision to allow the implementation of elections in areas that occur in the Single Candidate Pairs in 2015 simultaneous Pilkada. However, not necessarily be executed directly, due to carry out the mandate of decision Makah The Constitution requires implementation rules as legal umbrella. Implementation of the stages of preparation and implementation of elections in conjunction in 2015 in general can be said smoothly, but the political dynamics that developed with the efforts of some parties who conduct the material test Act No. 8 of 2015 in the Constitutional Court to make political constellation in
the region leads sharply after the Constitutional Court issued the Constitutional Court Decision Number 100 / PUU-XIII / 2015 dated September 29, 2015.

The main decision is to permit the region to be elected but there is only one candidate pair to register or be determined, the area can still follow the next process (unanimous voting) without delay. As stated in Law no. 8 of 2015 of Article 49, Article 50, Article 51, and Article 52, that the regions which are in the registration stage of less than 2 candidate pairs and the process of determining the participant are also less than 2 candidate pairs are obliged to postpone the implementation of regional election until the requirements of the Act fulfilled becomes void.

However, to implement the mandate of the Constitutional Court’s decision as the implementation rule of the election of a single candidate should be made a new regulation, because in Law no. 8 Year 2015 has not set it. So that at the time of the election of regional heads simultaneously in 2015 the Government through the KPU to overcome it finally issued the Regulation of the General Election Commission Number 14 Year 2015 on the Election of Governor and Deputy Governor, Regent And Vice Regent, And / Or Mayor And Deputy Mayor With One Pair Candidate as the rules of pilkada execution simultaneously with single candidates and for the elections simultaneously in 2017 The Government and the Parliament have agreed on the regulation in the form of Law as the implementation rule of the election is through Law Number 10 Year 2016 on the Second Amendment to Law Number 1 Year 2015 About Determination of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors Became Act.

3.2 The Concept of Single Candidate Arrangement in the Election of Head of Region Based on Democracy Perspective

3.2.1 Criticism of the Constitutional Court’s Verdict and Law. No. 10 of 2016 as the Legal Basis for the Implementation of Head of Region With Single Candidate

The decision of the Constitutional Court is a response from the petition for judicial review of Law no. 8/2015 on the Pilkada proposed by Effendi Gazali Cs. As a result of the emergence of legal issues that do not provide a way out when the terms of two candidate pairs are not met in the implementation of elections, the decision was taken because the postponement of the elections only because a single candidate is considered not to solve the problem. “Because it is not impossible, in the election results of the delay there is only one single candidate.” That decision raises the risk of political liberalization to win one candidate pair. The trick, can be done by the owners of capital by controlling most political parties with the aim to close the opportunity of other candidates.13

The Constitutional Court’s ruling on single candidates and individual candidate requirements is an important moment for improved governance in local elections (Pilkada) in Indonesia. The Constitutional Court decided to invite every region that has only one candidate pair or better known as a single candidate to continue to hold elections, with mechanisms of voters to vote, “agree” or “disagree”. In addition, the Constitutional Court decided to change the terms of individual candidate support initially based on the percentage of the number of inhabitants, to the percentage of the number of voters in the area.

From the legal considerations underlying the consideration of the Constitutional Court there are weaknesses that should be the subject of future studies in order to improve the local election system that is still dominated by the presence of a single candidate. Because the

presence of a single candidate can not only improve the election of regional heads but also has an impact on the development of national politics system in almost all regions.

Regardless of the consideration of the Constitutional Court which has issued a verdict which resulted in the election of the regional head followed by only one candidate pair which was held by choosing to agree or disagree with other words the candidate pair against the empty box has changed the meaning of democracy itself such as:

Firstly, the candidate pairs are the spouses determined by the KPU by fulfilling a number of requirements ranging from candidate requirements to the requirements of candidacy\(^\text{14}\), both the determination of the candidate pair as a result of being carried out by a political party and the support of the support conditions when registering through an individual or independent candidate. As defined in the law of 10 year 2016 article 40 (1).

While the rival is an empty box completely free of all the requirements that have been determined both by law and that has been set in the rules governing the requirements of candidates or the terms of candidacy. But in the context of the election of the head of the existence of an empty box is equated with political a opponent who incidentally is a figure of a candidate who has a level of regional head parts election and popularity that can be measured scientifically. Unlike the case with empty squares that are merely a box that is completely intangible in reality implicitly.

Based on law number 10 of 2016 those participants who get more than 50% of the votes validly declared as elected candidates. It would be illogical and scientific if the KPU declared the empty box to be the winner of the election. In the case that the winning requirement will remain in force, including the minimum voter turnout or minimum vote limit. Voting is important to give people the opportunity to participate in legitimating candidates running, and the opportunity to evaluate or reject the candidate in the election (the right to descent). If a single candidate is wanted by voters and represents the same interests of the electorate, a single candidate will surely be elected.

Secondly, the implementation of the election budgeting stage of regional head election is irrelevant to the principle of effective selection and equitable effectiveness. Where the selection of elections at each stage followed by a single candidate treats the candidate empty box equally.

a. Candidate stages, with one candidate pair, if the KPU’s decision resulting in an injury-free box cannot file a dispute, as other parties may file a dispute report to the election supervisory body. It is in fact unconstitutional, as regulated in laws and regulations concerning electoral justice.

b. At the Campaign stages, candidate pairs are required to submit the Campaign Fund Early Rules as set forth in the law as well as elaborated in detail by the PKPU on the Campaign of the regional head and deputy regional head, which is then required to report periodic and periodic campaign funds. By empty box of course it can not be done. Whereas in the regulation of law number 10 of 2016 emphasized that participants who do not report campaign funds get sanction in the form of cancellation of candidates.

c. Arrangement of counting, where each pair of candidates is required to present a witness in their respective TPS in charge of witnessing the process of execution of voting and vote counting. While empty boxes have absolutely no witnesses that can be presented in the process.

\(^\text{14}\) PKPU number 4 year 2017
d. In the process of recapitulation and stipulation of election result which by law is given to submit General Results General Dispute (PHPU) to the Constitutional Court as an institution which has the authority to resolve the dispute on the result of regional head election.

Thirdly, the Constitutional Court ruling has not yet considered the aspect of political development, if a single candidate is born out of a conspiracy of political parties because of a process of transactions that occurred since the beginning of planning for the elections to be followed by a single candidate, the voters and the public will find their own way of criticism and resistance to make choices different. There is a space and corrective mechanism that the public can provide. Although the practice of politic work that does not provide democratic space is done by elements or groups of party elites to intercept other candidates with various motivations and modes which by KPU declared eligible as the candidate pairs then carry out the election against the empty box and managed to win the election. A single candidate may be confirmed as a winner with a minimum requirement of 50% participation or minimum vote count. Or it could be the choice of opening the registration of new candidates and the single candidate should not participate as well as in the village head election.

Because building coalition communications will not be complicated for political parties to prepare for participation in elections. The voter turnout is the percentage of registered voters present and arriving using their voting right. Unauthorized votes are still counted as voter participation using the right of voice even if the vote is not valid. The calculation is obtained from the number of voters using their rights divided by the number of registered voters.

The practice that occurs based on the research results indicates that the existence of a single candidate, although it has been determined by the decision of the Constitutional Court, needs a revision of the Electoral Law so that the single candidate problem is solved and does not become a problem and can be legally accounted and viewed in accordance with the reason of democracy as well as in accordance with the academic study.

What is important to improve is the requirement of nomination of many candidates who ultimately cannot advance into the election event in because of this. There should be a simplification, for example, on the condition that the nomination to be advanced is supported by at least two parties, for which through the political party path. And the individual requirement is further simplified by 2% direct support from the community by using ID cards as proof of their support. Also to think about is the requirement for civil servants that the author feels very incriminating candidates.

The Constitutional Court Decision, which is subsequently set forth in Law No. 10 of 2016, results in the existence of a single candidate legally valid as the election candidate pair as described in Article 54c.

a. An empty box as a result of an unconstitutional condition

Whereas minimum election requirements for the election can be implemented by the law is minimally followed by at least two pairs of candidates for regional head and vice regional head in a regional election in each region. The provision as a constitutional requirement that must be fulfilled.

(1) The election of 1 (one) candidate pair shall be conducted in the event of fulfilling the condition: after the delay and until the end of the registration renewal period, there shall be only 1 (one) candidate pair registering and based on the result of the research the candidate pair is eligible; b. there are more than 1 (one) candidate pair who register and

based on the result of research there is only 1 (one) candidate pair which is declared eligible and after the delay until the end of registration re-registration there is no candidate pair who register or candidate pair who register based the results of the study are not eligible which resulted in only 1 (one) candidate pair; c. since the determination of the candidate pairs up to the time of the start of the campaign there are candidate pairs remaining absent, the Political Party or the Combined Political Party does not propose the candidate/spouse of the replacement candidate or the proposed candidate/spouse candidate is not eligible resulting in only 1 (one) candidate pair; d. since the start of the Campaign period until the voting day there is a candidate pairs that are permanently absent, the Political Party or the Political Party Combinations does not propose the candidate/spouse of the replacement candidate or the proposed candidate/spouse candidate is declared to be ineligible resulting in only 1 (one) pair candidate; or e. there are candidate pairs subject to cancellation sanction as election participants resulting in only 1 (one) candidate pair. (2) The election of 1 (one) candidate pair shall be carried out by means of a ballot containing 2 (two) columns consisting of 1 (one) column containing the photograph of the candidate pair and 1 (one) “blank” column.

In letter (1) of article 54C mentioned “on the fulfilment of the conditions” is the fulfilment of the provisions of the law followed by at least two candidate pairs or more, this article implies imposing empty squares as participant eligible to be eligible participants. Where the condition of the empty box as an election participant due to non-fulfilment of the election requirements of the regional head followed by at least two candidate pairs after the registration.

It confirms that the membership of the empty box becomes valid due to the non-fulfilment of the provisions of the law and obtains the same meaning and existence as any other matter stipulated through the plenary mechanism of the (General Election Commissions/KPU) stating the single candidate pair against the empty box which will consequently be in the ballot printing where the candidate single juxtaposed with empty box.

b. Empty Box as a Result There is No Maximum Support Limit

In law No. 10 of 2016 has been prescribed with a minimum number of two candidates for election, but does not limit the maximum percentage of support that can anticipate the occurrence of a single candidate, as evidenced in article 40. Until October 1, 2016, according to the data of eight candidate pairs the head of the region (five of them incapacitated) as already getting half the victory at the time of registration of the candidate. They are a candidate pair, who managed to get support from 8-10 political parties’ owners of more than 80 per cent of seats in the DPRD. The eight couples will certainly not get a competitor, alias as a single candidate. The reason, in the area there is no prospective individual who signed up. In addition, the vote of non-supporting political parties is not enough to carry the candidate. In accordance with the provisions of the regional elections Law, candidate pairs should receive 20 per cent of DPRD seats or 25 per cent of the votes valid.

A single candidate in the 2017 elections is still likely to increase, until the administrative examination deadline on October 24. With a note when in the administrative examination, there are candidates who died. In the elections of 2015, from 269 districts, three districts of Blitar, Tasikmalaya and North Central Timor are in danger of being postponed to the second round in 2017. Thirdly, despite the extension of registration, there are no additional candidates. In fact, the construction of Law no. 8/2015 on regional elections requires at least two pairs of candidates
for regional heads. Then the Constitutional Court with consideration to give certainty the passage of democracy, decided elections still held even with only single candidate. Through the decision of MK No.100 / PUU-XII / 2015 in voting cards for regions with single candidates, there is only the option of agreeing or not to the candidate, like a referendum.

The Constitutional Court’s decision was then adopted in Article 54c of Law no. 10/2016 about Pilkada. The article mentions the election of single candidate pairs can be implemented if after the delay and extends the registration still there is only one pair of candidates who register. Then from the results of the study, the candidate pair is eligible.

In the 2017 election of 101 electoral districts, the only candidate is not just three, but eight. That is when the registration is extended to the time according to the rules; there will be no competitors who register. Because the remaining political parties are not enough votes to nominate candidates. While the registration period for independent or independent candidates has also been closed.

The emergence of a single candidate in the election simultaneously this time is a mature plan, to close the contestation. Many factors lead to the emergence of a single candidate. When looking with a positive glasses, could be spelled out, the most worthy candidate is just the couple.

Legalization of single candidates from the beginning is feared will give birth liberalization of capital owners to “buy” political parties in order to only nominate one couple only. In this way victory and power will be more easily achieved. Whereas regional elections is essentially giving the choice of regional leaders who have the best vision and mission for their region in an honest, fair and transparent contestation. Power is a tool-not a goal-given to elected regional heads to implement the vision and mission of prospering the local community. Political parties that make the policy for individual candidates as an alternative difficult to emerge. Further, political parties conspire carry only one partner for their political interests, not for the benefit of the people.

While the other option, is to facilitate the emergence of individual candidates. There is no need to support a 6.5-10 percent ID card from a fixed voter list like the current requirement. Return to the previous rule, i.e. 3-6.5 percent. But the most fundamental is to re-question the commitment of political parties, as a pillar of support for democracy. The extent to which political parties have done their duty in political education, channel aspirations, including the cadre of candidate leaders.

Political parties cannot keep dodging, instead of making democratic decisions, but actually consciously are killing the meaning of democracy itself.

3.2.2 The Concept of Single Candidate Arrangement in the Election of Head of Region Based on Democracy Perspective

The problems related to the existence of a single candidate of regional head that emerged in the implementation of regional head election simultaneously in 2015 should be responded immediately by the government and the central House of Representatives. However, the immediate attitude to be taken is not allowed out of the rule of law in force. It is in accordance with the Indonesian Constitution that the state of Indonesia is based on the law; it is set forth in Article 1 paragraph (3) of the 1945 Constitution. One of the principles that support the establishment of this modern state is the supremacy of law. Therefore, the law becomes a frame in one of the implementation of state is the implementation of state administration system in Indonesia.
The solution to the phenomenon of single candidate of regional head in the regional head election simultaneously in 2015, carried out with the concept of issuing the KPU Regulation no. 14 of 2015 to carry out the election of a single candidate even though it appears to have exceeded the regulated authority. This is because the regulation on the acceleration of regional head election on December 9, 2015 is determined in Article 201 Law no. 8 of 2012. While the KPU Regulation is not a Government Regulation implementing the regional head election law. KPU Regulation is only a technical regulation to carry out the election.

In terms of regulatory power, the KPU Regulation is under the law. This is because the KPU Regulation is a technical matter of the implementation of law, not related to substantial matters which should be regulated in law. While the single-candidate phenomenon contains substantial matters that the legislators have missed. The negligence can be seen from the absence of any reference to article and paragraph in Law no. 8 Year 2015 which can be used as the basis for making the regulation to postpone the election.

The provisions contained in Article 48, Article 49, and Article 52 of Law no. 8 Year 2015 only recommends delays in a matter of days for the registration period of candidate pairs. Such conditions make the KPU have a quick step in anticipating the emerging issues regarding the phenomenon of a single candidate, but the solution provided by the KPU goes beyond what is contained in the law.

KPU regulations are only temporary; this is related to the period of the KPU regulation itself. The period of KPU regulation is only until 2017. While the phenomenon of single non-specific candidate takes place in the 2015 regional head election simultaneously. If the policy is stipulated in the 2015 regional head election, then the election of single-pointed regional heads will continue to be postponed until the number of candidate pairs is eligible for two pairs to cause stages in the area will be left behind from other regions. The single candidate does not meet the minimum requirements so that the election of the regional head can not be held. Substantively, the provision affirms that competition or competition in the election of regional heads is very important. Competition can only happen if the election of the regional head is followed by at least two candidate pairs.

That is in line with the warnings of Elkit and Svenson, who say that elections will only be competitive if voters have a choice between meaningful alternative political alternatives. It is further said that the law (de jure) and reality (de facto) do not set restrictions in the context of excluding candidates on the basis of political reasons. Referring to that opinion, the quality of the competition the better if the number of candidates more and more. Competition is useful to test and strengthen the candidate’s commitment to the people, with the program in the campaign stage. Only through the people’s competition can judge the candidates.

The injustice contained in the KPU Regulation can indeed occur. This is because the nature of the KPU Regulation itself only regulates technically. KPU regulations do not seem to consider fair treatment of the basic rights of citizens, namely voting and voting rights, the right to equal treatment before the law, and political and governmental rights for single candidate pairs as well as for communities in areas where there are single candidate pairs. Such conditions are certainly contrary to the perspective of a democratic constitutional state, that the principles of democracy must be upheld. Where respect for the rights of citizens is a manifestation of the

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Consignment of Indemnity in Land Procurement for Public Interest (A Case Study in Dusun Jeranjang, West Lombok District)

The issuance of KPU Regulation no. 14 of 2015 is an improper solution with respect to the material content of the a quo KPU rules which exceeds the authority. The purpose of exceeding the authority can be known by conducting a review of the content material of legislation. Article 8 of Law no. 12 of 2011 concerning the Establishment of Laws and Regulations governing the types of laws and regulations other than those mentioned in Article 7 paragraph (1). This type of legislation is recognized and legally binding as long as it is commanded by a higher legislation or is established on the basis of authority. The regulation is as follows: Rules stipulated by the People’s Consultative Assembly, the People’s Legislative Assembly, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank Indonesia, the Ministers, the Commission, the Institution or the equivalent Commission established by law or government by order of law, Provincial DPRD, Governor, Regency/Municipal DPRD, Regent/Mayor, Village Head or equivalent. Unfortunately, Law no. 12 Year 2011 does not determine exactly what the content material of the various types of regulations, and how the gap or hierarchy and the position of those regulations against the rules set out in Article 7 paragraph (1) of Law no. 12 Year 2011.

Jimmly Asshiddiqie argues that there are ministerial level officials such as the Governor of Bank Indonesia, the Chief of the Indonesian Police, the Indonesian Armed Forces Commander, and the Attorney General, who may also be given regulatory authority. Included in this category are independent institutions such as the Election Commission, the National Commission on Human Rights, the Indonesian Broadcasting Commission, and so on. Such body or institution may issue its own rules, provided that the regulatory authority is granted by law. Therefore, it becomes an important legal umbrella of the law given to a regulation issued by independent institutions, and is no exception to the regulations issued by the KPU.

The basis for considering the KPU Regulation is one of them is Law no. 8 Year 2015. However, the provision on suspension of regional head election for regions with one candidate pair is not granted by a quo law. Delays are only related to extending candidate submissions during the verification period.

Furthermore, the provision on the decision of the election of regional heads on the condition of a single candidate for regional head which requires a delay without being governed by the law above it, has an impact on the general binding interests as well as the rights of the community in the region, as well as for people in the region with one candidate pair. Therefore, it should be noted again Soehino opinion, that one of the material content of the law that is binding in general. It is understood also by what is presented by Bagir Manan and Kuntana Magnar, that the content of the law is determined by one of them based on the benchmark concerning basic rights or human rights.

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20 Ni’matul Huda Opchit, p. 97.
The discourse that later appeared in the media was the insistence on the government to issue Perppu for single candidate election conditions in 2015. The unclear condition of the government’s stance to issue the Perppu was enlivened with further legal problems by the Constitutional Court. Why is that, because the Court makes new norms as a way out of a single candidate’s polemic standoff. The Court not only canceled but also gave the previously non-existent norm. Moreover, the decision was only followed up by the General Elections Commission Regulation (PKPU). Compared with the arrangement of other candidates who are not single candidates using the Act of course PKPU is not at the level of the Act. As the nature of the Constitutional Court Decision is final and binding. In its function as guardian of constitution, the Constitutional Court is in the line of “negative legislators”. However, against the Constitutional Court Decision No. 100/PUU-XIII/2015 The Court has established a new norm that single candidates must be plebiscite contested, ie voters agree or disagree or the concept of a referendum.

On the one hand, conditional constitutional provisions for single candidates to be contested can essentially affect or implicate other legal provisions relating to the governance of the election of regional heads. This is one of the weaknesses of the Constitutional Court’s verdict which always states a section as constitutionally conditional. Changes to one rule will cause other provisions to be vulnerable to disharmony between provisions, including triggering a legal void in the legislation.

The exact legal implication, due to the Constitutional Court Decision related to the single candidate of regional head, the most fundamental in the Law on Regional Head Election lies in the a quo law situation experiencing legal vacuum for single candidate in governance of elections.

So that the issuance of Legislation should be more appropriate, Legislation can be present to answer this issue quickly. This regulation will be a protective mechanism to protect the constitutional rights of voters and candidates for an honest, fair and democratic election. Because it will provide more strong legal guarantees. However, the decision of the Constitutional Court has been issued and the elections have been held simultaneously, so the legal action that must be immediately implemented is to revise the quo Law by accommodating all provisions in the Constitutional Court’s decision.

The election of regional heads will not only occur in 2015 alone. However, it will be continuously carried out in subsequent years. Therefore, steps should be taken to tackle the future candidate for future heads with long-term solutions. On one side of the Constitutional Court through Decision of the Constitutional Court. 100/PUU-XIII/2015 has given the ‘green light’ of a single candidate for regional head in the election. Therefore, it is urgent that a quick step to follow-up is not calibrated and not integrated with the regulation of a single candidate for the regional head. The concept that can be taken is to revise Law no. 8 Year 2015.

The provisions that need to be regulated in the idea of revision of Law no. 8 of 2015 is to include the condition that if after being attempted to meet at least two candidates for regional heads, then to regions with only one candidate pair of regional heads can continue the local democratic process of electing the regional head. Other provisions related to the mechanisms of campaigning, voting, and dispute over disputes over regional head elections must also be regulated in law.

From the research results can be seen that in following up the decision of the Constitutional Court associated with a single candidate in the elections in 2015, the Government through the KPU only issued a KPU Regulation no. 14 of 2015 but in 2016 the Government and
the Parliament agreed to enact Law no. 10 of 2016 to answer the issue of single candidate of regional head in elections 2017 and so on can be done with some concept among others.

From the above regulation review, the actual concept of election regulation can be done by improving regulations among others.

1. **Determination of Single Candidates as the Winner of Election (Acclamation)**

   Whereas the principle of organizing the election of regional heads simultaneously as an effort of efficiency and effectiveness of the implementation of Election of Regional Head which is a five-year celebration is a fairness to be implemented in order to strive for the struggle for democratization. While the election of candidates with a single candidate where the people are only served on the choice of agree or disagree on one candidate pair that not only eliminates the meaning of democracy but also not in line with the principles of effective and efficient Election of Regional Head implementation.

   The holding of elections which are followed by only one candidate based on the provisions of the Law and the technical regulations implemented by the election have placed Election of Regional Head prospective candidates treated with areas with more than one candidate pair.

   From the budget side of the regional head election will certainly require the same budget, because the KPU will also carry out all stages of the election of regional heads, starting from the determination of voter list, registration and determination of candidates, campaign stages, voting process and vote counting to the stages of recapitulation and determination of the results of the regional election. All of these phases spend a bit of money even the same as the area followed by at least two pairs of candidates for regional head and deputy head of the region. Whereas if the single candidate pair has a high popularity, especially the candidate pairs are incumbent candidates who have proven and tested his leadership ability then it is certain will win the election of a regional head that is only against empty boxes. The logic without any stages The election of the couple’s regional head has certainly been able to convince the regional head election.

2. **A single candidate shall be declared dead and unable to run again**

   The policy to annul the single-candidate pairs in a regional head election is vital to sanction a certain figure who commits a structured, systematic and massive (TSM) consolidated crime to get the majority of support from political parties to block other figures who will be rivals in election of regional head.

   In Act No. 10 of 2016 article 73 it is clearly affirmed that TSM violations have an impact on the cancellation of candidates and the cancellation of the election results. However, it has not been firmly emphasized that the sanctions cannot be re-run, it is caused that the TSM act done before the determination of the candidate cannot be done, and because the element of TSM is required by the element of the candidate pair has been established.

3. **Candidate Puppy is Another Form of Single Candidate**

   Although a single candidate cannot be accommodated due to a condition and situation of politics in the region, there is a tendency to create a puppet candidate as a solution to the problem that is done in a covert manner. With certain intentions, for example not to provide opportunities for other candidates who are considered more powerful than himself, whether caused by not allowing himself to get support from a number of political parties that meet the requirements of 20 parliamentary seats and 25 per cent of votes in previous elections.
Call it election of regional head Mataram city which was held in 2015 ago, where the candidate pair who is the party leader who eventually registers another candidate pair to get an opponent in the election. It does not violate the rules but is not elegant from the logic of politics and democracy. Because purely the existence of a puppet candidate is not much different from a single candidate elections. Equally possible to win elections.

4. There is a Maximum Boundary Determination of Support from the Political Party Path

The provisions of article 40 of Law Number 10 of 2016 which requires a minimum limit of 20 per cent of the seats and 25 per cent of the party’s vote in previous elections have legal consequences by giving maximum opportunity to certain candidate pairs to gain maximum support from political parties have the right support. The opportunity is utilized by a pair of candidates in order to make himself a sole candidate by buying up all political parties with the consideration of single-candidate regional head election has won 50% of the victory compared with other candidate pairs who will spend higher political costs. On the other hand for political parties that do not have a strong candidate to contest in the elections will not provide support to candidates who are not likely to win. The party prefers to provide support for candidate pairs who are likely to win even though the candidate pair has received sufficient support as a condition of candidacy. In the end, the choice of single candidate area head cannot be avoided, especially for the incumbent candidate pair.

IV. CONCLUSION

The existence of the single candidate of the regional head in the simultaneous head elections based on the Decision of the Constitutional Court Number 100 / PUU-XIII / 2015 and Law Number 10 of 2016 the election of the regional head with the sole candidate is the election of the regional head held in a democratic perspective caused by the decision The Constitutional Court (MK) by placing the Plebiscite as the basis for issuing an improper verdict allowed single candidates in a simultaneous elections to be held by electoral mechanism, because of the plebiscite to ask the people as voters to decide whether to “agree” or “disagree” with the candidate pair. So that this cannot be said to remain in the perspective of democracy because society is not choosing to agree or disagree over the policy changes.

The concept of setting a single candidate forward in the elections based on democratic perspective is the amendment to Law Number 10 of 2016 by considering the Stipulation of a single candidate as the winner of the election (acclamation), Single candidate pairs are void and unable to run again. Candidate is other forms of sole candidate, as well as the determination of the maximum limit of support from the political party path.

REFERENCES

