



Individual Candidates in The Regional General Election

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Abstract— This article explores the participation of individual candidates in the Regional Head General Election, following the Constitutional Court's decision Number 5/PUUV/2007, which determined that individual regional head candidates, or Independent Candidates, could take part in the Regional Head Election. The introduction of independent candidates has created significant opportunities for the public to engage directly in the election process. As a result of the Constitutional Court's recognition of Independent Candidates, political parties are now required to acknowledge their presence. This decision offers a new prospect for Independent Candidates to enter the political arena without relying on political party support. Consequently, the inclusion of Individual Candidates in elections represents a novel development in Indonesia's political system. This research falls under normative legal studies, employing a statutory or legislative approach. It confirms that the legal foundation for individual candidates in regional head elections is the Constitutional Court's Decision Number 5/PUUV/2007. The success of individual candidates in these elections is closely linked to the efforts of Lalu Ranggalawe, a Central Lombok DPRD member, who initiated the judicial review at the Constitutional Court.

Keywords— Individual Candidates, MK Decisions, Regional Elections.

I. INTRODUCTION

Elections are the cornerstone of every democracy, particularly for citizens of a republic like Indonesia. Implementing democracy through elections serves to replace the monarchical appointment system, which is often seen as producing authoritarian leaders. Elections function as a mechanism for political change, enabling a shift in public policy concepts and directions to maintain orderliness. Additionally, elections serve as a means for the people to delegate a portion of their sovereignty to election participants, allowing them to make and implement political decisions that align with the people's wishes. The electoral system comprises a set of methods that regulate how citizens select their representatives for executive and legislative positions. This system is crucial in countries with representative democracies, as it affects the proportionality of election results. Given this background, this research focuses on resolving disputes over election results in Indonesia from a law enforcement perspective. [1]

At the outset of the General Election, Political Parties served as the primary requisite for Legislative Candidates to participate. This necessity arises from the role of political parties as organizations aimed at securing power through elections.[2] However, issues emerged when parties failed to fulfill their roles and functions adequately in upholding and protecting the spirit of democracy. Consequently, with the advent of the direct election system in Indonesia, political parties ceased to be the sole players in electoral politics, particularly at the local level. Following the Constitutional Court's Decision Number 5/PUUV/2007 dated 23 July 2007, regarding Individual Candidates, citizens can now engage in electoral contests without the backing of political parties.[3]

Considering the legal and political advancements aimed at fostering a more effective and accountable regional government administration that aligns with public aspirations, regional head elections should be conducted with greater transparency and community involvement. Consequently, the election process for Regional Heads and Deputy Regional Heads, as stipulated in Law Number 23/2014 on Regional Government, requires amendments to allow individual candidates to participate. No implicit regulations mandate that regional head candidates must originate from political parties, creating an opportunity for independent candidates to enter regional head elections. It is anticipated that these individual nominations will result in regional leaders who are more responsive, competent, and committed to enhancing the public welfare. Moreover, the inclusion of independent candidates in regional elections provides an alternative to accommodate the political rights (HAM) of all Indonesian citizens (WNI) who choose not to run through political parties.[4]

The involvement of citizens in governance ultimately places ultimate authority in their hands, characterizing a democratic state. According to Abraham Lincoln, democracy is a government that originates from the people, is administered by the people, and exists for the people. Lincoln's prerequisites for a democratic government imply that the people have the right to hold governmental positions, those in power derive their legitimacy from the populace, and once elected, they must fully dedicate their leadership to serving the people. This aligns with the thoughts of J.J. Rousseau, who asserted that the government, as the head of state organizations, is established and determined by the sovereign—the people as a whole—through their collective will.[5]

II. LITERATURE REVIEW

Drawing upon several prior studies, the author can reference these to gather information for the creation of a journal. Below are summaries of some previous research articles:

A. Individual Candidates

The presence of independent candidates serves the purpose of ensuring equal opportunities for citizens to participate in elections without the need to affiliate with political parties. By allowing independent candidates to compete, it is anticipated that this will contribute to a more balanced and healthy political ecosystem, especially in relation to the dominant role of political parties. It is undeniable that there has been significant public disappointment with political parties. Many feel that these parties have failed in their responsibilities to educate the populace politically, to effectively absorb public aspirations, and to act as channels for aggregating various interests and objectives within society.[6]

B. Political parties

Political parties, as key components of political infrastructure, play a crucial role in democracy. This significant role leads to the formation of many political parties. Article 56 paragraph (2) of Law Number 32/2004 on Regional Government historically states, "Candidate pairs as referred to in paragraph (1) are proposed by Political Parties or a combination of Political Parties," indicating that Regional Head Candidates must be nominated by a political party or a coalition of political parties to participate in Regional Elections. This highlights the dominant role of political parties in Regional Elections.

The political policy evolved with the enactment of Law Number 12/2008, which is the Second Amendment to Law Number 32/2004, concerning Individual Candidates in Regional Head Elections. Democratic principles are applied in administering regional government, meaning that regional head candidates in post-conflict regional elections must be elected democratically. For many citizens in democratic countries, elections are regarded as the primary and fundamental benchmark of democracy.[7]

C. Regional Government

Law Number 23/2014, which has been amended several times and most recently by Law Number 6/2023 regarding the determination of Government Regulations in lieu of Law Number 2/2022, is hereinafter referred to as the Law on Regional Government. This Law replaces Law Number 32/, which also underwent several amendments, with the latest being Law Number 12/2008. Chapter XVIII of the Law on Regional Government regulates villages. Villages, formed within regency/city areas, have authority according to the provisions of laws and regulations concerning villages. The

Central Government, provincial regional governments, and district/city regional governments may delegate some of their governmental affairs to villages.[8] The funding for these delegated governmental affairs, if assigned by the Central Government, is covered by the APBN.[9] Conversely, if assigned by the Provincial Regional Government, the funding is sourced from the provincial APBD, and for affairs assigned by the Regency/City Regional Government, the funding is charged to the district/city APBD.

D. Elections

Elections serve as a mechanism for enacting political change, allowing for the transformation of public policy concepts and directions to ensure orderliness. Additionally, they function as a process whereby the populace delegates a portion of its sovereignty to election participants, enabling these representatives to make and implement political decisions reflecting the people's will. The electoral system comprises various methods governing how citizens select their representatives in executive and legislative bodies.[10] This system is crucial in nations adhering to representative democracy, as it significantly impacts the proportionality of election outcomes.²

III. METHOD

This type of study is classified as normative legal research. It involves examining literature, statutory regulations, and Constitutional Court decisions pertinent to the research subject to find solutions to the research questions. The data sources for this research include primary, secondary, and tertiary legal materials. Data collection is performed through library research methods, which incorporate books, scientific journals, mass media, the internet, and other relevant references. The research employs a case approach. Qualitative descriptive analysis techniques are used to group and interpret the collected data systematically, based on legal theories and principles found in legal science, to derive significant and scientific conclusions that address the formulated research problems.

IV. RESULT AND DISCUSSION

Sovereignty, as an element of a modern state, is defined as the holder of the highest authority within the state. It often signifies a country's independence, indicating that there is no foreign interference in its governance. This implies that the government has the autonomy to regulate its organizations and citizens.[11] Immanuel Kant articulated that the state's purpose is to enforce laws and ensure the freedom of its citizens. Here, freedom is understood as being within the confines of legislation, and the law is created by the people themselves through a state institution. Thus, the law reflects the will or desires of the people, making them the ultimate bearers of sovereignty. The term "constitution" is derived from the French word "constituer," which means to form. It signifies the establishment or declaration of a state. The term "Constitution" is a translation from the Dutch term "Gronwet," where "wet" translates to law and "grond" means ground or base. In constitutional classifications, the 1945 Constitution of Indonesia is considered rigid because its amendment procedures are stringent and necessitate a special process. This process often involves the people directly through a referendum, required when constitutional changes demand the direct opinion of the populace.

The 1945 Constitution, while notoriously difficult to amend, allows for changes through a specified procedure. Article 37 of the Constitution provides the steps for amendments, requiring proposals to be submitted in writing and detailing the specific sections to be altered. These proposals can only be included in the MPR session agenda if supported by at least one-third of the MPR members. Additionally, at least two-thirds of the MPR members must be present for any amendment to be considered, and a decision to amend requires approval from at least fifty percent plus one of all MPR members.

Democratic theory holds that governments derive their authority from the consent of the governed. President Abraham Lincoln famously expressed this principle with the phrase, "government of the people, by the people, and for the people" (Stephenson, 2001:16). The choice of the electoral system is a crucial institutional decision in implementing democracy. A democracy fundamentally requires the selection and establishment of an electoral system to elect its legislative body. Political crises in democratic countries often serve as catalysts for changes to the electoral system. However, political reformers may also advocate for such changes as part of a political agenda, even in the absence of a crisis. [12]

The emergence of individual candidates in regional head elections offers a direct path for leaders to arise from outside political party circles. This change allows the community to move beyond being mere spectators or voters for party-nominated candidates. Instead, they can actively participate in politics by nominating and voting for their candidates or even by running as candidates themselves. Independent candidates embody participatory democracy, which is created directly by and for the people. This situation demonstrates how democracy can provide various leadership options to the public, addressing concerns about the credibility of political parties, which often generate public distrust. Such skepticism is understandable, given that political parties and their members have frequently been involved in actions that starkly contrast with societal norms.[13]

The issuance of Constitutional Court Decision Number 5/PUUV/2007 on July 23, 2007, marked a new phase for Indonesia's political system. This ruling validated the participation of individual candidates in regional elections, eliminating the need for political parties as intermediaries. The decision emerged from a judicial review request of Law Number 32/2004, filed by Lalu Ranggalawe, a member of the Central Lombok Regency DPRD. As a result, changes to the regulations governing regional election participants in Law Number 32/2004 became necessary.

The debate over individual candidates in regional head elections peaked with the Constitutional Court's Decision Number 5/PUUV/2007, which allowed individual candidates to participate in these elections. This ruling indicated that the nomination process for regional heads was no longer solely under the control of political parties, as individual candidates could now run. This decision has undeniably intensified the competitive quality between individual candidates and those from political parties. [14]

According to Arbi Sanit (2017:18), independent candidates are public figures who participate in elections without the backing of political parties. These individuals, often referred to as independent or individual candidates, rely on social mechanisms and their own capabilities. In various parts of the country, independent candidates have surfaced to represent minority groups' aspirations, although achieving success in national and regional elections remains challenging (as noted in Constitutional Court Decision Number 5/PUUV/2007). The enactment of Law Number 12/2008, which amended Law Number 32/2004 concerning Regional Government, addresses this issue. Specifically, consideration letter b of Law Number 12/2008 states: "To achieve democratic regional leadership that upholds the principles of equality and justice, regional head elections must provide equal opportunities to all eligible citizens." [15]

Following the Constitutional Court decision Number 5/PUUV/2007, independent candidates were further governed by Law Number 12/2008, which amended Law Number 32/2004 on Regional Government for the second time. Individual or independent candidates wishing to participate in the Regional Head elections must meet the criteria outlined in Article 59 paragraph 2A of Law Number 12/2008, which stipulates:

- a. Provinces where the population is up to 2,000,000 (two million) people are required to have support of at least 6.5% (six point five percent).
- b. Provinces with a population between 2,000,001 (two million and one) and 6,000,000 (six million) people must be supported by at least 5% (five percent).
- c. Provinces that have populations ranging from 6,000,001 (six million and one) to 12,000,000 (twelve million) people must receive support of at least 4% (four percent).
- d. Provinces with populations exceeding 12,000,000 (twelve million) people must be backed by at least 3% (three percent).

It is indicated that the KPUD must include independent candidates in the selection process for Regional Heads and Deputy Regional Heads as mandated by statutory regulations. [16]

Over time, various provisions within the Law on Regional Government have been either repealed or amended by different legislative acts, specifically:

1. Law Number 2/2015 concerning Stipulation of Government Regulations in Lieu of Law Number 2/2014 concerning Amendments to Law Number 23/2014 concerning Regional Government into Law;
2. Law Number 9/2015 concerning Second Amendment to Law Number 23/2014 concerning Regional Government;
3. Law Number 17/2019 concerning Water Resources;
4. Law Number 2/2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in the Context of Facing Dangerous Threats 50 National Economy and/or Financial System Stability becomes Law;
5. Law Number 6/2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2/2022 concerning Job Creation into Law; And
6. Law Number 1/2022 concerning Central and Regional Financial Relations.

Furthermore, the Constitutional Court has been approached thirteen times for a judicial review of the Law on Regional Government. [4] Of the thirteen requests, three decisions granted the judicial review of the Law on Regional Government. These are Decision Number 7/PUUXIII/2015, 137/PUUXIII/2015, and 56/PUUXIV/2016. Decision Number 7/PUUXIII/2015 pertains to the electoral districts of main districts/cities and districts/cities formed before the general election. Decision Number 137/PUUXIII/2015 declared that the phrases "Regency/City and Regional Regulation" in Article 251 paragraph (2) and (4), "Regency/City and/or Regional Regulation" in Article 25 paragraph (3), "district/city Regional Government administrators cannot accept the decision to annul the Regency/City Regional Regulation and;" and "Regency/City or Regional Regulation" in Article 251 paragraph (8) of the Law on Regional

Government, are contrary to the 1945 Constitution of the Republic of Indonesia and therefore have no binding legal force.

Similarly, Decision Number 56/PUUXIV/2016 invalidated the phrases "Provincial Regulation and" in Article 251 paragraph (1) and (4) and "Provincial Regulation and" in Article 251 paragraph (7), as well as Article 251 paragraph (5) of the Law on Regional Government, declaring them unconstitutional and without binding legal force.

In light of these decisions, the drafting of amendments to the Law on Villages must consider the entire content of the Law on Regional Government to ensure consistency and avoid any overlap. This synchronization aims to guarantee legal certainty and fulfill the community's sense of justice.

V. CONCLUSION

The conclusions that can be drawn from the above explanation are as follows: (a) The legal foundation for regulating independent candidates in post-conflict regional elections is provided by Article 18, paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 59, paragraph (1) of Law Number 12/2008, which constitutes the Second Amendment to Law Number 32/2004 concerning Regional Government. The issuance of this law was in response to Constitutional Court Decision Number 5/PUUV/2007 regarding Individual Candidates. (b) Despite the legal framework guaranteeing the rights of independent candidates, they encounter numerous challenges when participating in post-conflict regional elections. These challenges include the absence of a political machinery, bearing the necessary political costs personally, and, if elected, the necessity to balance power with legislative members due to their lack of political support within the legislature..

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