

Independent Candidate in Regional head election in Indonesia

Dr (cand). Cakra Arbas, SH.I, M.H^{1*}, Prof. Dr. Husni Jalil, SH, MH², Prof. Dr. Suhaidi, SH, MH³.

1. Doctoral student of legal science, Faculty of Law, University of Sumatera Utara, Medan, (Indonesia). And working as Civil Servant, District Government of Aceh Tamiang, Aceh, (Indonesia).
2. Promotor
3. Co Promotor

*E-mail of the corresponding author: c4k124@rocketmail.com

Abstract

Regional head election (election), as stipulated in Law No. 12 Year 2008 concerning Regional Government, has provided space for independent candidates, and it is not contrary to the constitution of Indonesia that the Constitution of the 1945 Indonesian Constitution. The position of independent candidates in the election is a form of appreciating rights political rights for every citizen, who wants to be a leader, but limited or no political support from political parties.

Keywords: Independent Candidate, Regional Head Election, Indonesia.

Introduction

Democracy comes from the Demos-Cratos (people-power, government) also Demos-Cratein (folk-master, rule). Democracy is the government of the country where the power lies in the hands of a large number of people and the exercise of power in the interest of "everyone".¹ But, here began to appear also race for the position, emerging leaders fake, false leaders, who deceive the eyes of the people with false promises that the state will be chaotic and the emergence anarchis.

Immanuel Kant² argued that human beings are born equal, and all the will and the will of society and the state have to go through based on the law and that everyone has to face the others in addition to using its own right.

One form of the creation of a democratic system of government is the existence of a general election, in terms of local governance, particularly for autonomous regions in Indonesia known as regional head election (election), which is implemented directly.

When the passage of the democratic system of government, it will at the same time also add interest to participate in a democratic society, both as participants who will be selected as well as the participants who will vote in the election, this can not be avoided because it is a logical thing that happens in the system of government democracy, in other words, the public has been given the space and deepest appreciation to the success of the democratic system of government.

Democracy when it is associated with the Indonesian nation, of course, there are corridors that must be maintained, so as to implement democracy in the system of government, it is not contrary to the constitution is implemented in Indonesia, namely the 1945 Indonesian Constitution. One form of the creation of a democratic system of government is the existence of a general election, in terms of local governance, particularly for autonomous regions in Indonesia known as regional head election (election), which is implemented directly.³

¹ M. Solly Lubis, *Ilmu Negara*, Mandar Maju, Bandung, 2007, p. 59.

² *Ibid.*, p. 48.

³ Cakra Arbas, etc, *Independent Candidates of Regional-head election in Aceh*, IOSR-JHSS, Volume 20, Issue 1, Ver.II (Jan 2015), p. 35.

Regional head election (election) in the context of Indonesia, as stipulated in Law No. 12 Year 2008 on Regional Government, has given space for independent candidates,¹ and it is not contrary to the constitution of Indonesia that the 1945 Indonesian Constitution.

As stated by Wirjono Prodjodikoro,² the constitution contains the main rules (fundamental) of the pillar or the joints of the first to establish a large building called the state, the joints must be strong and it certainly will not be easy to collapse, so that the building still standing strong country. In Indonesia, a written constitution (Grondwet, Dutch) is applied at the present time is that the Constitution of the 1945 Indonesian Constitution.

In terms of political wisdom and purpose of the state, the Constitution of the 1945 Indonesian Constitution is also the parent provisions in our country. Obviously in the preamble of the Constitution of the 1945 Indonesian Constitution called the main line for the political wisdom of our government which is also a destination country, namely the opening paragraph-IV, namely "*Establishing an Indonesian state government to protect the people and the country of Indonesia and to promote the general welfare, the intellectual life of the nation, and participate in the establishment of world order based on lasting peace and social justice*".

Constitution contains an overview and desires of a nation state structure and the description of the constitutional framework, while the ordinary law only regulates further implementation of the provisions contained in the Constitution. In the context is, the 1945 Indonesian Constitution determining the purpose and the main lines of government policy, while the ordinary law is a legal instrument for forward and manage the implementation of what has been outlined it.³

As defined in the legislation hierarchy Indonesia, the highest peak of legislation is the position of the Constitution of the 1945 Indonesian Constitution, then the MPR Decree (MPR), and which is then followed by the new law, and so on down to the lows in regulation,⁴ then it is duly enacted law principle "*Lex Superior derogat legi inferiori (Legi Minor) the lower regulation must not conflict with higher laws*", because it is a principled legal principle, that the higher laws (super) can cancel (ejecting) regulations lower (inferior, minor).

Application of democracy, specifically with regard to local government, precisely in regional head election (election), we are familiar with the application of the system of direct election, also provided space for candidates who will participate in the election of a non-party or independent candidate. Independent candidates also synonymous with individual candidates, only individual candidates using phrases juridical-normative, while independent candidate is the phrase is more commonly known in the community, and is an aspiration that is born of the community.⁵

Independent candidates, an independent candidate who can follow the election even without the support of political parties. Through amendments to the Law No. 32 Year 2004 concerning Regional Government into Law No. 12 Year 2008 concerning Regional Government, particularly with regard to given space independent candidate in the general election of Regional Head directly, a new step in realizing democratization.

Position of independent candidates in the election is a form of appreciating political rights for every citizen, who wants to be a leader, but limited or no political support from political parties. According to Hans Kelsen,⁶ political rights we interpret as the possibilities open to citizens who participate in the government, in the formation of the "will" of the state.

¹ Article 59 paragraph 1 point b, Law No. 12 Year 2008 concerning Regional Government, said that "*Participants Election of Regional Head and Deputy Head of the Region are: (b) pairs of independent candidates supported by a number of people*"

² Wirjono Prodjodikoro in M. Solly Lubis, *Hukum Tata Negara*, Mandar Maju, Bandung, 2008, p. 27.

³ *Ibid.*, p. 33.

⁴ Law No. 12 Year 2011 concerning the Establishment of legislation, in particular on Article 7 paragraph 1, which reads "*type and hierarchy of legislation are as follows: a. the 1945 Indonesian Constitution, b. Decree of the Council of the Assembly c. Law / Government Regulation in Lieu of Law, d. Government regulations, e. Presidential Decree, f. Provincial Regulation, g. District Regulation*".

⁵ Cakra Arbas, *Jalan Terjal Calon Independen Pada Pemilukada di Provinsi Aceh*, Sofmedia, Jakarta, 2012, p. 72.

⁶ Hans Kelsen, *Teori Umum tentang Hukum dan Negara*, Nusa Media, Bandung, 2011, p. 127.

According to Syamsul Wahidin,¹ the existence of an independent candidate is like choice, true given space independent candidates will be closer to the object of the invention or rather search a formal leader who gained strong public recognition. It is more appropriate choice than to given space the submission of candidates of political parties maze-deliberately complicated and requires certain items to go through the candidates to obtain the support of political parties.

Implementation of the election could actually be followed by the participants, which consists of pairs of candidates proposed by political party or coalition of political parties, and independent candidates (individual) which is supported by a number of people.² Of 2 (two) variables, explicitly stated that the selection of participants may consist of couples who supported political parties and non-parties (independent).

Independent candidate (individual) is the candidate who will participate in the election, but without formal legal supported by political parties. In Law No. 12 Year 2008 concerning Regional Government, explicitly mentioned about the position of the independent candidates, namely in Article 56 paragraph (1 and 2), which reads:

"(1) Regional Head and Deputy Head of been in a couple of candidates who conducted democratically based on the principles of direct, general, free, confidential, honest, and fair. (2) Pairs of candidates referred to in paragraph (1) proposed by a political party, coalition of political parties, or individuals who are supported by a number of people who meet the requirements as provided in this law"

Automatically, it can be concluded that the election can follow not only the candidates that consists of a political party only, but can also be followed by all the people who do not belong to a political party or independent candidate (individual).

Formulation of The Problem

Based on the above exposure to the issues to be analyzed in this paper is why emerging independent candidate in the regional head election in Indonesia?

Research Methods

This study is a normative law, the type of data used are secondary data, which consists of primary legal materials (various forms of legislation), consisting of secondary law (collection of data on the results of scientific work of scholars and research results are relating to the status of an independent candidate in the regional head election in Indonesia), consisting of tertiary legal materials (materials that provide information about the primary legal materials and secondary legal materials, such as dictionaries and encyclopedias).

Results and Discussion

Independent Candidates On Election in Indonesia

Discussion of independent candidates in the regional head election in Indonesia began when a member of the District Council Central Lombok, filed a judicial review of Law No. 32 Year 2004 concerning Local Government in particular Article 56 paragraph 2,³ Article 59 paragraph 1, 2, 3, 4, 5,⁴ Article 60 paragraph 2, 3, 4, 5,¹ with the

¹ Samsul Wahidin, "Silang Tafsir Akomodasi Calon Independent", (Jawa Pos, Friday May 9, 2008).

² Article 59 paragraph 1 point (a) and (b), Law 12 Year 2008 concerning Regional Government.

³ Article 56 paragraph 2 of Law No. 32 Year 2004 concerning Regional Government, which reads "*The pair of candidates referred to in paragraph (1) shall be filed by a political party or coalition of political parties*".

⁴ Article 59 of Law No. 32 Year 2004 concerning Regional Government, paragraph (1) which reads "*Participants election of Regional Head and Deputy Head of Region is partner in pairs of candidates proposed by the political party or coalition of political parties*", paragraph (2): "*A political party or coalition of political parties referred to in paragraph (1) may register a pair of candidates if they meet the requirements of the acquisition of at least 15% of the total seats in parliament, or 15% of the accumulated acquisition of valid votes in the general election of members of parliament in the area concerned*", paragraph (3): "*A political party or coalition of political parties shall open the widest possible opportunity for potential independent candidates who qualify as referred to in Article 58 and further process the intended prospective candidates through a democratic and transparent mechanism*", paragraph (4): "*In the process of establishing a political party candidate pairs or coalition of political parties pay attention to the opinions and responses of society*", paragraph (5): "

1945 Indonesian Constitution, in particular Article 18 paragraph 4,² Article 27, paragraph 1,³ Article 28D paragraph 1 and 3,⁴ Article 28 paragraph 2.⁵

In his petition stated that the Articles of the Law No. 32 Year 2004 concerning the Regional Government only gives the right to a political party or coalition of political parties to propose / submit candidate pairs Regional Head and Deputy Head and completely close the opportunity independent candidates. Also linked the permissibility of independent candidates in the election in the province of Aceh in 2006.⁶

The Constitutional Court, through a panel of judges, of which 6 (six)⁷ judges of the Constitutional Court an opportunity for independent candidates (individuals) to participate in a regional head election. Constitutional Court expressly provide legal certainty through the decision of the Court 5 / PUU-V / 2007 on judicial review of Law No. 32 Year 2004 concerning Local Government to the 1945 Indonesian Constitution.

Constitutional Court Decision 5 / PUU-V / 2007, which was read on July 23, 2007, stating that the election that just opens the door for candidates of political parties opposed to the constitution. This is because the chances of independent candidates has been opened in Aceh Province, that the development of the election arrangements as practiced in Aceh has created a new reality in the dynamics of the state administration have resulted in constitutional awareness nationally, which is opening up opportunities for independent candidates in the election.⁸ It can be analyzed that the province has become the epicenter of the Indonesian political system changes.

If we align the second paragraph of Article 56 in conjunction with Article 59 paragraph 1 and paragraph 2 of Law No. 32 Year 2004 concerning Regional Government and Article 67 paragraph 2 of Law No. 11 Year 2006

A political party or coalition of political parties at the time of registering pairs of candidates must submit: 1. nomination ... etc., 2. ... etc".

¹ Article 60 of Law No. 32 Year 2004 concerning Regional Government, paragraph (2) which reads "*The results referred to in paragraph (1) shall be notified in writing to the head of a political party or coalition of political parties that propose no later than 7 (seven) days from the closing date of registration*", paragraph (3): "*If a candidate is not eligible spouse or rejected because not qualify as referred to in Article 58 and / or Article 59, a political party or coalition of political parties that nominate candidates are given the opportunity to supplement and / or improve the nomination and the requirements prospective partner or a new candidate no later than 7 (seven) days from the time of notification of the results of the research requirements by the Election Commission*", paragraph (4): "*Election Commission conducts research on the completeness and / or repair requirements pair of candidates referred to in paragraph (3) and at the same notify the results of the study no later than 7 (seven) days to the leader of the political party or coalition of political parties that propose*", paragraph (5): "*If the results of the candidate pairs file referred to in paragraph (3) are not eligible and was rejected by the party Election Commission political or coalition of political parties can no longer file a pair of candidates*".

² Article 18 paragraph (4) of the 1945 Indonesian Constitution which reads "*Governors, Regents and Mayors as the respective heads of the provincial government, county and city elected democratically*".

³ Article 27 paragraph (1) of the 1945 Indonesian Constitution which reads "*All citizens are equal before the law and in government and shall abide the law and government, without exception*"

⁴ Article 28D of the 1945 Indonesian Constitution, paragraph (1) which states that "*Everyone has the right to recognition, security, protection and legal certainty, and equal treatment before the law*", paragraph (3): "*every citizen has the right to obtain equal opportunities in government*".

⁵ Article 28 Paragraph (2) of the 1945 Indonesian Constitution, which reads "*Everyone is entitled to be free from discriminatory treatment on any basis and is entitled to protection against discriminatory treatment of it*"

⁶ Quote from the Constitutional Court decision 5 / PUU-V / 2007 dated July 23, 2007, p. 7 and 9.

⁷ Occurs Dissenting Opinion of Constitutional Court judges against this petition, see the Constitutional Court decision 5 / PUU-V / 2007. Among them by, H. Achmad Roestandi, stating "I would argue that it is irrelevant if the procedures for the election of Regional Head in Aceh, as stated in Law No. 11 Year 2006 concerning the Government of Aceh used as a comparison, let alone be a reference. I also disagree with the nomination procedures in Aceh Regional Head different from the procedures in other areas, is considered as a matter of discrimination. The exclusivity of NAD in the nomination Regional Head, due to the condition that had not been possible for Aceh to be with the other regions. In addition, the specificity was related to the substance of the MoU. Constituent very aware of this. The procedure for election of Regional Head as the only valid one (eenmalig), as defined in Article 256 of Law No. 11 Year 2006 concerning the Government of Aceh".

⁸ Quote from the Constitutional Court decision 5 / PUU-V / 2007 dated July 23, 2007, p. 56.

concerning the Government of Aceh, both stem from the same legal basis, namely Article 18, Paragraph 4 of the Constitution of the 1945 Indonesian Constitution. Therefore opinion Constitutional Court, if these provisions apply both together but for different regions will lead to a result dualism in carrying out the provisions of Article 18, Paragraph 4 of the 1945 Constitution such dualism can create unequal status between Indonesian citizens who reside in the Province of Nangroe Aceh Darussalam and who reside in other provinces in Indonesia.¹

According to the Constitutional Court by the 1945 Indonesian Constitution, there is no rule that requires candidates for Regional Head comes from a political party. Naturally, when the Constitutional Court the opportunity for independent candidates to participate in the election because of consistent and in accordance with constitutional. According to Harun Alrasyid² view that the law does not provide opportunities for independent candidates is contrary to the 1945 Indonesian Constitution.

Judicial Review of the petition addressed to the Constitutional Court, dated February 5, 2007, which is done by Lalu Ranggawale, which postulates that a conflict Section on Law No. 32 Year 2004 concerning Regional Government by the 1945 Indonesian Constitution. Furthermore, the Constitutional Court on 23 July 2007 by the decision of the Constitutional Court decision No. 5 / PUU-V / 2007, stating that the election that just opens the door for candidates of political parties opposed to the constitution. Thus, the position of an independent candidate in the election later accommodated.

The position of the independent candidates who affirmed the Constitutional Court decision 5 / PUU-V / 2007 will certainly have implications for the law, at least will have implications on two fundamental issues, including:³

1. Permissibility of independent candidates to participate in the election is a measure of the success of the government to fulfill the political interests of people who have not been up, in other words the government has heard the complaints of political society to the political system that does not favor them.
2. The Constitutional Court has gradually changed the substance and the election mechanism. Fundamental changes occurred in the political equality of the two parties or unequal gap between political actors due to the political channel is only recognized if through political channels. Thus, the decision of the Constitutional Court as a tool for every citizen to have political equality in order to exercise control over public decisions and public decision makers that have been owned by a political party.

Referring to Law No. 24 Year 2003 concerning the Constitutional Court in conjunction with Law No. 8 Year 2011 concerning the Constitutional Court, in particular in Article 47 which reads "The Constitutional Court had permanent legal power since completed pronounced in plenary session open to the public". Thus, allowing for independent candidates that have become a fact of law since the decision of the Constitutional Court was read on 23 July 2007. Furthermore, the chances of becoming Regional Head through independent candidates have constructed the Constitutional Court as constitutional rights of citizens.

Conclusions and suggestions

Based on previous descriptions associated with the existing problems, the authors concluded that an independent candidate in the regional head election in Indonesia, actually arise because of the judicial review of Law No. 32 Year 2004 concerning Local Government in 2007. But essentially, independent candidates had already accommodated in Aceh election of 2006. In the development of the election arrangements as practiced in Aceh has created a new reality on the dynamics of the state administration have resulted in constitutional awareness nationally, namely the opening of opportunities for independent candidates in the election. On the other hand, the election which only provides opportunities for candidates of political parties is contrary to the constitution. According to the Constitutional Court by the Constitution of Indonesia, there is no rule that requires candidates for Regional Head comes from a political party. Therefore, the Constitutional Court the opportunity for independent candidates to participate in the election because of consistent and in accordance with constitutional.

¹ Akil Mochtar, "Peran Calon Independen Dalam Demokrasi Indonesia", paper in National Workshop for Independent Candidate, on March 26, 2010 at Jakarta, p. 4.

² Harun Alrasyid, "Keterangan saksi ahli", the Constitutional Court decision 5 / PUU-V / 2007, p. 50.

³ Suharizal, *Pemilkada: Regulasi, Dinamika, dan Konsep Mendatang*, Raja Grafindo Persada, Jakarta, 2011, p. 66.

After a discussion and analysis of the issues that have been mentioned previously, the authors suggest that it can be the establishment of a legal norm in the implementation of elections, rule of law can be written in the form of legislation on Local Government, as well as legislation on the Governing of Aceh. So that when the head of terrain is derived from independent candidates, but the relationship between the Executive and the Legislative should can work in harmony. The essence of the election is how when running the Regional Head of government, as well as the welfare of society.

References

- Arbas, Cakra, (2012). *Jalan Terjal Calon Independen Pada Pemilukada di Provinsi Aceh*, Jakarta: PT. Sofmedia.
- Kelsen, Hans, (2011). *Teori Umum Tentang Hukum dan Negara*, Bandung: Nusa Media.
- Lubis, M. Solly, (2007). *Ilmu Negara*, Bandung: Mandar Maju.
- _____, (2008). *Hukum Tata Negara*, Bandung: Mandar Maju.
- Suharizal, (2011). *Pemilukada: Regulasi, Dinamika, dan Konsep Mendatang*, Jakarta: Raja Grafindo Persada.
- The 1945 Indonesian Constitution.
- Law No. 12 Year 2011 concerning the Establishment of Legislation
- Law No. 12 Year 2008 concerning Regional Government.
- Law No. 11 Year 2006 concerning Government of Aceh.
- Law No. 32 Year 2004 concerning Regional Government.
- Constitutional Court decision No.5/PUU-V/2007.
- Akil Mochtar, (2010), Peran Calon Independen Dalam Demokrasi Indonesia, paper in National Workshop for Independent Candidate, on March 26, 2010 at Jakarta.
- Arbas, Cakra, etc, (2015). Independent Candidates of Regional-head election in Aceh, *IOSR Journal Of Humanities And Social Science*, Volume 20, Issue 1, Ver. II.
- Samsul Wahidin, (2008), Silang Tafsir Akomodasi Calon Independent, Jawa Pos, Friday May 9, 2008.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:

<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Academic conference: <http://www.iiste.org/conference/upcoming-conferences-call-for-paper/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

