

# Legal Review of Individual Candidate in Direct Elections

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## Abstract

One element of the absolute existence of a state is sovereign, in which Indonesia adheres to the sovereignty of the people is reflected in direct democracy one of which is the Election of Regional Head and Deputy Regional Head. Decision of the Constitutional Court Number 5/PUU-V/2007 opens the widest possible opportunity for prospective individual candidate to go forward as a candidate for the head area. Law Number 8 of 2015 is the replacement of Law Number 1 of 2015 and Law Number 1 of 2014 on the Election of Regional Head and Deputy Head of Region where the participating proposed by a political party, coalition of political parties, or individuals who registered or register at the General Election Commission (Komisi Pemilihan Umum or KPU). In addition to the study of law governing local elections, this study also presented some obstacles for independent candidates in local elections. Where, researchers used a normative law research methods with the approach of legislation (statue aproach). Legal materials collected through the inventory and identification procedures of legislation and classification and systematization of legal materials suitable research problems.

**Keywords:** Election, Residents, Democracy, Constitution, Law, candidate

## 1. INTRODUCTION

One element of the absolute existence of a state is sovereign, in which Indonesia adheres to the sovereignty of the people. Popular sovereignty is manifested in the general will is the will of all the people together as one nation that leads to a common interest or public interest. Thus, the Act should reflect the public interest is determined directly by the people in a meeting (direct democracy). One characteristic of a democratic constitutional state is a general election to elect a leader directly. There are several types of elections, the general election of President and Vice President, Legislative Elections, and Election of Regional Head. Earlier, the Regional Head and Deputy Head of Region elected by the Regional Representatives Council (DPRD). Election of Regional Head and Deputy Head of Direct or often called elections Direct is a democratic mechanism in the context of recruitment of leaders in the region, where the population as a whole have the right and freedom to choose the candidates they support <sup>[6]</sup>. Based on Law Number 32 of 2004, participants of the elections are a couple of candidates proposed by political parties or coalition of political parties.

Furthermore, the letentuan amended by Law Number 12 of 2008 which states that the elections can also be derived from pairs of independent candidates backed by a number of people. Arrangements regarding the election of Regional Head also reinforced by the Government Regulation in Lieu of Law Number 1 of 2014 which was converted into Law Number of 2015. Law Number 1 of 2015 relating to the elections of Governors, Regents and Mayors changed again with Law Number 8 of 2015 <sup>[7]</sup>. The new system of independent candidacy in these elections open a democratic space that spawned local currents healthy competition as an effort to find a qualified leader figure, in order to meet the region amid global flows.

The phenomenon of independent candidates can not be detached from the realities of the political party, which continues to make the public lose confidence. Pros and cons of independent candidacy appears on this phenomenon. Some argue that the phenomenon can impact deparpolisasi adverse political party. Others actually welcomed the independent candidate in this election because it will expand the democratic space. The emergence of independent candidates are also considered to be an excellent reflection of the political parties to seriously carry out its functions, especially regeneration to appear with the prospective head region of credible and competent so that the government filled by leaders who are able and willing to provide services and policies that suit the needs of the real society.

## 2. LITERATUR REVIEW

### 2.1 Election of Regional Head and Deputy Regional Head (Election)

Election of Regional Head and Deputy Regional Head (elections) is a very important instrument in the regional administration based on the principles of democracy in the region, because this is a manifestation that the people as sovereign determine the policy of the state. This connotes that the ultimate power to govern the State is on the people. Through elections, people can choose who is the leader and his deputy in the process of channeling aspirations, which in turn determine the future direction of a countr. <sup>[1]</sup>

According to Article 1 paragraph (1) of Law Number 8 of 2015 concerning the elections, hereinafter referred to as Election is the implementation of the sovereignty of the people in the province and district/city to elect the Governor and the Deputy Governor, the Regent and Vice Regent, as well as the Mayor and Deputy

Mayor are direct and democratic<sup>[8],[10],[12]</sup>.

Direct local elections have their benefits and expectations for growth, deepening and expansion of local democracy.<sup>[2]</sup>

- a. Open a wide space for citizen participation in the democratic process and determine the political leadership at the local level than the system of representative democracy more putting the power to determine the political recruitment in the hands of a few people in Regional Representatives Council (oligarchic).
- b. Direct elections allows the emergence of competent candidates in a more open space than the frequent closure of representative democracy.
- c. Allowing citizens to actualize their political rights are better without must be reduced by the interests of the political elite as a visible appearing in the system of representative democracy.
- d. Enlarge hope to gain a leading figure aspirational, competent and legitimate.
- e. Check and balance in the area between the Regional Head with Regional Representatives Council, the balance of power will minimize implementation of power as it appears in the form of a monolithic political.

## 2.2 Principles of Direct Election

The principle of election Direct has been established in Article 2 of Law No. 1 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on Governors, Regents and Mayors Being Act which states, "Regional Head and Deputy Head of Region selected in one pair of candidates conducted democratically based on the principles of direct, public, free, confidential, honest, and fair."<sup>[3]</sup>

## 2.3 Objectives Implementation of Direct Election

Direct election is actually a response to constructive criticism on the implementation mechanism of indirect democracy is often called a representative democracy. This means that the people do not directly articulate its interests to the public policy agenda, but rather representations on a small number of people. The idea of direct elections is considered as a form of direct democracy.<sup>[3]</sup>

Direct local elections aims to select Regional Head and Deputy Regional Head directly as a solution of representative democracy that has been running long enough. People in a region can choose their own leaders and expected to be able to channel the aspirations of the people and really become a leader who understands the agenda of regional autonomy so it can run as appropriate, people's expectations.

## 2.4 Importance of Direct Election

There are five considerations importance of holding elections of regional heads straight for the development of democracy in Indonesia.<sup>[3],[6]</sup>

- a. Direct election is a response to the demands of the people's aspirations.
- b. Direct election is a manifestation of the constitution and Law Dasar 1945.
- c. Direct election as a learning tool for people's democracy or political (civil education).
- d. Direct elections as a means to strengthen regional autonomy.
- e. Direct election is an important means for the regeneration process of national leadership.

## 2.5 Regional Head Election Law Direct

Legal arrangements direct regional head elections have undergone several changes and improvements, which include<sup>[8],[9]</sup>:

- a. Law No. 22 of 2014 On the Election of Governors, Regents and Mayors.
- b. Law No. 1 of 2015 successor Law No. 22 of 2014 On the Election of Governors, Regents and Mayors.
- c. Law No. 8 of 2015 successor Law No. 1 of 2015 On the Election of Governors, Regents and Mayors.

## 2.6 Individual Candidates

The emergence of independent candidates in elections as a follow-up of the Constitutional Court Decision No. 5/PUU-V/2007 which gives the sense in which independent candidates can compete in the recruitment of the nomination and the deputy head of the region through the mechanism of elections without political parties use as a media struggle<sup>[4]</sup>.

Fondness community will be an independent candidate at least expected to achieve several goals. First, break partitokrasi (democratic political parties) in order to lower the aspirations of getting a place in the political process. Second, it allows the candidate of the people who are considered more qualified than just public figures who carried a handful of elite political party. Third, encourage internal democratization of political parties.<sup>[4]</sup>

## 2.7 Individual Requirements

To register as a candidate for governor and lieutenant governor candidate, a person must disqualify support as stipulated in Article 41 of the Election Act. Individual candidate requirements in detail stipulated in Article 41

paragraph (1) and (2) of Law No. 8 of 2015<sup>[10]</sup>. To province with a population of more than 6,000,000 (six million) lives up to 12,000,000 (twelve million) people must be supported by at least 7.5%. This provision is based on the Decision of the Constitutional Court in Case No. 60/PUU-III/2015 turned into a matter of the percentage of support based on the number of people who have had the right to vote as stipulated in the list of voters remain in the regions concerned in the previous general election. Independent candidates become candidates for regional head and deputy regional head shall gather the support of their constituents<sup>[10]</sup>.

This support can be done with the attached affidavit of support in the identity card. If you have fulfilled the requirements of the terms that have been collected submitted to the Regional Election Commission (Election Commission) to be verified, and further examination of the terms that have been attached by a pair of candidates of regional head and deputy. If it has passed the verification, then the Election Commission set a pair of candidates at least two (2) candidates who poured in Minutes Determination candidate pair. The next process is done openly lottery to assign the serial number of pairs of candidates.

### 3. RESEARCH OF METHOD

In this study, researchers used a method of normative legal research (normative law research) using case studies of normative legal behavior in the form of products, for example, reviewing the legislation. The approach method in this research is the approach of legislation (statue approach). Legal materials collected through the inventory and identification procedures legislation, as well as the classification and systematization of legal materials suitable research problems. In particular normative legal research legal research resources obtained from the literature instead of the pitch (legal material) and secondary data. Here are some of the ingredients of existing laws in this study<sup>[5]</sup>:

- a. Primary legal materials, which are materials that have legal authorization. The primary legal materials consisting of:
  - Law Dasar 1945.
  - Law Republic of Indonesia Number 22 Year 2014 regarding the Election of Governors, Regents and Mayors.
  - Law Republic of Indonesia Number 8 Year 2015 on the Amendment of Act No. 1 of 2015 Concerning Determination of Government Regulation in Lieu of Law on Calom Governors, Regents and Mayors.
  - Law Republic of Indonesia Number 23 Year 2014 on Regional Government.
  - Election Commission Regulation No. 12 Year 2015 on Amendment Election Commission Regulation No. 9 Year 2015 On The nomination of the election of Governor and Vice Governor, Regent and Vice Regent, and /or the Mayor and Deputy Mayor.
  - Constitutional Court Decision No. 5/PUU-V/2007 on Case Decision Application Filing Law No. 32 of 2004.
- b. Materials Secondary law, namely the legal materials that are closely related to the primary legal materials and can help analyze and understand the primary legal materials. Among the secondary legal materials in this study are books, theses, journals and documents to review on matters relating to research problems.
- c. Tertiary Legal Materials, legal materials which provides an explanation of primary legal materials and secondary law.
  - Law Dictionary
  - Indonesian dictionary
  - Study of the theory of literature, scientific papers and other written sources.

On normative legal research, data management is done by mensistematia materials written law. This is done by classifying systematizing legal materials to facilitate the work of analysis and construction. Descriptive qualitative analysis of data can not be calculated. Legal materials were then conducted discussions, inspection, and clustering in specific parts to be processed into information data. Results of analysis of legal materials interpreted in the form of a systematic interpretation, grammatical and teleological. Here are the stages of research conducted:

- a. Preparation Research  
Doing the preparation of pre-proposals for research, followed by the preparation of the study, in consultation with the main supervisor, approved by the supervising research, making data collection instruments both literature and field data, paperwork permit research.
- b. Implementation Research  
To study conducted by studying reference literature, research reports associated with this research, as well as searching for data in the form of regulations that control of this problem being studied to do in the library.
- c. Report Writing  
Perform data processing and analysis of data obtained through library research and field research, consultation with the supervisor, drafting a research report.

d. Writing End Research

The research report, revising research reports and conduct the research report.

#### 4. RESULT AND DISCUSS

Three districts in Daerah Istimewa Yogyakarta (DIY) Indonesia will hold the elections simultaneously on December 9, 2015. The elections that took place in the region of DIY, in the previous period the number of pairs of candidates reached 8 pairs of candidates. The District/City who are conducting the elections are 3 city ( Sleman, Gunung Kidul, Bantul) from 5 district, only 1 district (Gunung kidul) that received support from the submission file will paslon individuals. The eight pairs consist of seven pairs of nominated political parties, while a pair of paslon from an independent. Indonesian people who are interested in being a couple of candidates to advance in the election of individual candidates, now they can find out what the minimum support that must be met if they want to run away from individual candidates. The amount of this support that seems burdensome to enroll candidates in the elections. Besides individual candidates must also take into account dealing with the Defender who has a financial capital, social culture, a network of bureaucracy and politics. If an individual candidate is not stronger capital of the Defender, the chances of winning will be small.

That is because all the elections since the 2005-2015 title of the pairs of independent candidates compete failing to seek sympathy of voters compared to the candidates who come from a political party or coalition of political parties. Overall, only recorded nine pairs of independent candidates were elected in the elections throughout 2005 to 2015, and even then has included a couple who was re-elected in the next period. The number of pairs of independent candidates in the election period 2008-2015 is understandable, because when that happens after the euphoria of the Constitutional Court, Decision (No.5/PUU-V/2007) which allow an individual candidate can go forward as a candidate head area. Therefore, the individual candidates who feel confident progress through the non-party political lines, busy to enroll in the elections this time<sup>[11]</sup>.

However, it appears that in 2015 they began to think logically to progress through the individual. Given limited resources, political owned (networks, machines, political, and financial) may be a reason to not go forward along the pathway often referred to these dependent pathway. Opportunities for potential path forward in the selection of an independent regional heads (elections) is an opportunity and a chance to be able to step into leadership in the region, beyond the political path is an absolute requirement for candidates for the leadership of regional heads must have a political vehicle in carrying out the competition. Independent candidates regarded as rival political parties, a matter of winning or losing independent candidate in the elections (local elections) in a city or county is not a gal that important, because the most important in the context of the consolidation and strengthening of democratic values at the local level is where the candidate of independent paths in the future is expected to improve the recruitment system of political parties based solely on the power of money is not empowerment prospective constituents or strength figures. The political weight not different among candidates from individual lines (independent) or political parties, because in the end returned to figuritas candidate concerned.

In terms of opportunity, independent district head candidate and political parties alike have a chance to record a figure that has carried a high elektabilitas. Despite recording simultaneous elections in 2015 showed that a majority of independent candidates defeat. The local elections is one of the instruments to fulfill the political decentralization which made possible the transfer of the locus of power from the center to the regions. The holding of the local elections is the embodiment of the people's sovereignty can be enforced. Legal arrangements concerning the election of regional heads and pay attention to the development of positive dynamics for the realization of democratic life in Indonesia. The dynamics of the legal and political life in terms of the election of regional heads directly, pay attention to the positive developments which the mandate of its constitution, the Constitution of 1995 has set the political rights of citizens are equal before the law and the government has been accommodated, responded to, and implemented consistently without discriminatory treatment, Here is the legal basis and mechanism of independent candidates in local elections<sup>[7],[10],[11],[12]</sup>:

**a. Constitutional Court Decision on Case No. 5/PUU-V/2007<sup>[11]</sup>**

The jurisprudence of the birth of a regulation of independent candidates in the election of Regional Head at the time of the Constitutional Court issued Decision No. 5/PUU-V/2007, which allows independent candidates to participate in the local elections. The Constitutional Court's decision raises more stringent quality competition between independent candidates and candidates of political parties. Constitutional Court decision to allow independent candidates is reinforced by using the testimony of witnesses (expert) presented in trial. The information and the Constitutional Court in making its decision are the affidavits received by the Constitutional Court on June 14, 2007 which contains:

- Political parties have so far experienced a crisis of leadership candidates as evidenced by the difficulty promoting highly qualified candidates in the leadership capabilities and levels of popularity.
- The presence of independent candidates may be motivated parties to develop an effective system of

cadres, to the success of winning political competition.

- If only a few people who do not belong to a party, the independent candidates representing minority groups and where many people who belong to a party wearing the independent candidates serves as a safety valve for the possible high number abstentions, that is, those who did not vote because they do not have a choice in elections.
- During duty of political parties to overcome the "crisis". Where the leaders and the political leadership and the government of Indonesia should be considered as failed and a solution to this problem can not completely rely on political parties. Thus, the institution of independent candidate elections (Elections) and the local elections (elections), will be more promising for the improvement of democracy and the State.

Based on consideration of the law in the Constitutional Court Decision on Case No. 05/PUU-V/2007, then some further adjustment possibilities of post Decision of the Constitutional Court are as follows<sup>[11]</sup>:

- To avoid a legal vacuum, hence the need for a new legal norms formed by the removal of phrases that can prevent the emergence of an independent or regional head candidate filing monopoly solely by political party or coalition of political parties.
- When assessed an urgent need and a temporary emergency law that is expected has not yet finished, then the President can take action to issue a Government Regulation in Lieu of Law (decree).
- Making changes to Law No. 32 of 2004, so that the provisions of individual candidates accommodated. Then issued Law No. 12 of 2008 relating to the requirements of individual candidates.

**b. Law No. 8 of 2015**<sup>[7]</sup>

Law No. 8 of 2015 contains the amendments to the Law No. 1 of 2015 concerning the Stipulation of Government Regulation substitute Law No. 1 of 2014 on the Election of Governors, Regents and Mayors into law the elections that states that candidates for Governor and candidates for Governor is a participant elections proposed by a political party, coalition of political parties, or individuals who are enrolled or enrolling in the General Election Commission (KPU). Provisions indicate that the head of the region, either through individuals or through political parties are allowed by law and are equally unconstitutional to ensure equality. In detail Article 41 of Law No. 8 of 2015, stated as follows:

- (1) Independent candidate can enroll as a candidate for governor and vice governor candidate if qualified support with conditions:
  - a. Province with a population of up to 2,000,000 (two million) people must be supported by at least 10% (ten percent);
  - b. Province with a population of more than 2,000,000 (two million) lives up to 6,000,000 (six million) people must be supported by at least 8.5% (eight and a half percent);
  - c. Province with a population of more than 6,000,000 (six million) lives up to 12,000,000 (twelve million) people must be supported by at least 7.5% (seven point five percent);
  - d. Province with a population of more than 12,000,000 (twelve million) people must be supported by at least 6.5% (six and a half percent); and
  - e. The amount of support referred to in letters a, b, c, and d are spread in more than 50% (fifty percent) of districts/cities in the province in question.
- (2) Candidates can register as an individual Candidate Regent/city and Vice Regent , if qualified support with conditions:
  - a. District/city with a population of up to 250,000 (two hundred and fifty thousand) must be supported by at least 10% (ten percent);
  - b. Districts/cities with population of more than 250,000 (two hundred and fifty thousand) to 500,000 (five hundred thousand) must be supported by at least 8.5% (eight and a half percent);
  - c. Districts/cities with population of more than 500,000 (five hundred thousand) to 1,000,000 (one million) people must be supported by at least 7.5% (seven point five percent);
  - d. District/city with a population of more than 1,000,000 (one million) people must be supported by at least 6.5% (six and a half percent); and
  - e. The amount of support referred to in letters a, b, c, and d are spread in more than 50% (fifty percent) of the sub-districts/cities in question.
- (3) Support as referred to in paragraph (1) and (2) is made in the form of letters of support that is accompanied by a photocopy of Electronic Identity Card, family card, passport, and/or other identification in accordance with the provisions of the legislation.
- (4) Support as referred to in paragraph (3) is only given to one (1) pair of independent candidates.

Based Constitutional Court's decision can be interpreted that Article 41 paragraph (1) and paragraph (2) Law regional elections even provide legal certainty, but ignore justice so as to hinder the fulfillment of the

principle of equality before the law. Therefore, the percentage of support required for citizens who want to nominate themselves as candidates for regional head or vice head of the region based on the number of residents, but not every resident has the right to vote. Furthermore, the Constitutional Court believes that there should be a fair legal certainty as well as fulfilling the principle of equality before the law and does not preclude the right to equal opportunity in the government, then the basis of calculation to determine the percentage of support for citizens who want to run for regional head and deputy regional head shall use a number of people who have had the right to vote. In this case, represented in the List of Voters (Daftar Pemilih Tetap in Indonesia or DPT) in each of the areas concerned. The voters list in question is the voters list in the previous elections.

According to the Constitutional Court, Article 41 paragraph (1) and paragraph (2) Law regional elections (Pilkada) is unconstitutional conditional (conditionally unconstitutional) along does not mean that the basis for calculating the percentage of support for individuals who want to run for local office or deputy regional head (Governor, Deputy Governor, Regent, Vice Regent, Mayor and Deputy Mayor) is referring to the Data Selector (DPT) in the previous election. In other words, in order to be constitutional, the provisions of Article 41 paragraph (1) and (2) of the Constitution the elections basing the percentage of support for perseorang who want to run for regional heads or deputy heads of districts using the size of the population, must be interpreted using measure the number of people who have had the right to vote as stated in the voters list (DPT) in the respective regions concerned in the previous elections. Thus, Article 41 paragraph (1) and (2) of Law No. 8 of 2015 is considered detrimental to the constitutional rights possessed by the applicant<sup>[7]</sup>. Court Konstitutusional was ultimately in its decision to change the norms related terms support individual candidates as stipulated in Article 41 paragraph (1) and (2) a, b, c, and d, which was originally used benchmark "number of people" to be based "voters list". Given the stages of local elections (elections) has been running, while the Court's decision is not retroactive (non-retroactive), so as not to cause poisoning interpretation, the Constitutional Court confirms that this ruling applies to simultaneous elections after elections 2015.

Based on the evaluation of elections simultaneously in 2015 then a few things have to be revised nomination related rules are as follows<sup>[7]</sup>:

- (1) Article 7 letter r and s Law No. 8 of 2015 related to the requirements of candidates, based on the decision of the Constitutional Court Number 33/PUU-XIII/2015 requirements do not conflict with the incumbent removed, and for members of DPR and DPRD apply provisions similar to the military, Police, civil servants, officials or employees of state-owned enterprises/BUMS and regional heads or deputy regional head who ran in other areas, should resign. Based on the Constitutional Court Decision No. 46/PUU-XIII/2015 then such resignation since been found eligible as a candidate. In the implementation, the Commission issued a letter that SK dismissal in question must be submitted to the Provincial KPU or Regency/City KPU no later than 60 days after it is set as a candidate, while on a trip stages according to the information and results of the monitoring are known to be many candidates have not yet issued a decision dismissal before the limit late submission, this condition will certainly result in a loss of constitutional rights of candidates in question and interrupt the national agenda of regional head and deputy regional head simultaneously in 2015. in response to this the Commission issued a letter that based on the results of coordination with the Provincial election Supervisory Committee or Bawaslu it can be shown that the candidate has a good faith and have been earnestly working to meet these requirements, among others, by showing Statement of Resignation submitted to the competent authority and proof that the mail has been received or delivery receipt mail, but is constrained by the parties involved in the process of issuance of the Decree (Decree) Termination of which are beyond the ability of candidates, the candidate in question remain otherwise eligible. The time limit eligibility and sanctions if overdue should be strictly regulated in the Law on the elections in order to ensure legal certainty and enforcement so that it is not possible occurrence of efforts to "shy away" from these provisions.
- (2) Article 7 letter g and article 45 paragraph (2) of Law No. 8 of 2015 were removed by Constitutional Court Decision No. 42/PUU-XIII/2015, so for ex-convicts openly and honestly told the public that the concerned former prisoners do not necessary lag time has finished running a criminal count of 5 (five) years prior to the relevant designated as a candidate. In their implementation of simultaneous elections in 2015 raised concerns about conditions for prisoners on parole who raises multiple interpretations, so as to ensure the certainty and enforcement hukum parole relevant provisions of this needs to be regulated more clearly in the Election Law.
- (3) Article 41 of Law No. 8 of 2015 related to the requirements for independent candidates as well as the provisions of Article 41 of Law No. 8 of 2015 which should also be changed based on the decision of the Constitutional Court Number 60/PUU-XIII/2015, that a minimal amount of support for independent candidates to be able to enroll between 6.5% to 10% of the voters list (DPT) in the previous general election. This provision is also provided with a percentage of the minimum

amount of support between 3.5% to 6% of the number of DPT in the previous election.

- (4) Article 51 paragraph (2) and Article 52 paragraph (2) of the regulations provides that the Provincial KPU or Regency/City set of at least two (2) pairs candidates for Governor and Deputy Governor or the pairs of candidates Regent and Vice Regent as well as a couple candidate for Mayor and Deputy Mayor of the Decision of the Provincial KPU or Regency/City. This provision should be deleted by Constitutional Court Decision Number 100/PUU-XIII/2015 to accommodate couples single candidate so that the Provincial KPU or Regency / City may establish one (1) pair of candidates if until expiry of the registration there are at least two pairs of candidates, so that this decision is based on article 49 also the paragraph (9) and article 50 subsection (9) deleted related to the re-opening of the registration period for three (3) days. Election arrangements with one pair of candidates is then to be arranged more clearly and specifically related to the mechanism of election in election law in order to avoid multiple interpretations.

Similarly, some of the provisions related to the nomination according to the researcher to do a revision to the elections Law No. 1 of 2015 as amended by Law No. 8 of 2015 concerning the Stipulation of Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors became Act as an evaluation of the problems candidacy at the election simultaneously in 2015 that affect the purpose and quality of the elections simultaneously. With Improvements Act it is expected the organization of elections elections simultaneously in three subsequent periods unison toward national elections in 2019 really can be held with quality, guarantee legal certainty and the rule of law in the implementation of direct democracy in Indonesia.

The regional head and deputy head of the region have a mechanism implementation phases are regulated by Law No. 32 of 2004 on Regional Government, which further stipulated in Government Regulation No. 6 of 2005 on the Election, Legalization, Appointment and Dismissal of Regional Head. Some of the barriers experienced by independent candidates during the local election process and deputy regional head candidate pairs of individuals:

a. Registration

So far, individual candidates are constrained in terms of evidence collection and support, this is due to the schedule given KPU and Regency / City is too narrow to support the number of people who are not a bit. Differences in Commission Regulation No. 12 of 2015 by Law No. 8 of 2015. Where, KPU Regulation No. 12 of 2015 requires independent candidates to submit proof of community support in the form of a signed affidavit or thumbprint. Meanwhile, the Law No. 8 of 2015 pairs of independent candidates submit a support beam in the form of statements of support enclosing a photocopy of identity card (KTP).

b. Candidate Filing and Designation of Candidates

The process of prospective independent candidates as candidates for regional head and deputy head of the region face obstacles in the form of denial of Provincial KPU or Regency / City as a result of the terms of support that has been given previously ineligible. The process of prospective independent candidates as candidates for regional head and deputy head of the region face obstacles in the form of denial of Provincial KPU or Regency / City as a result of the terms of support that has been given previously ineligible.

c. Campaign

Independent candidate, at the time of the campaign is constrained by the amount of support or mass that is less than the candidates nominated by political parties or coalition of political parties more organized.

d. Voting Election of Regional Head and Deputy Regional Head

Voting potential partner individual constrained if the individual candidate is not a public figure or not known to the public so that people would not choose.

e. Stipulation of Candidate Pair of Regional Head and Deputy Regional Head Elected, Ratification and Inauguration

At the moment the pair is elected as independent candidates or win the regional head and deputy regional head as Governor and Vice Governor, Regent and Vice Regent, or Mayor and Deputy Mayor, there can be problems to be faced by the couple, namely:

- (1) Stability of regional governance is compromised, making the regional head of the individual candidate is hard to run his policy because the regional head of the independent candidates do not have the support of Parliament and political parties.
- (2) Potential to lead to abuse of authority and abuse of Parliament and institutionally for each moment can "suppress" the regional head through the threat requesting accountability reports.
- (3) The regional head of independent candidates is "disturbed" individual moral integrity of Parliament is low. Consequently, if the "distress" and then take a compromise, it will lead to corruption, collusion and nepotism .

## 5. CONCLUSION

Based on the results of research that has been done then we got the following conclusions:

- a. Independent candidates to participate in local elections (elections) stems from the Constitutional Court Decision No. 5 / PUU-V / 2007, which has opened opportunities as possible for potential independent candidates to run for head of the region in the implementation of the elections throughout Indonesia. The Constitutional Court (MK) rate, certain articles in Law No. 32 Year 2004 on Regional Government restricts the rights of political every citizen as guaranteed by the 1945 Constitution, especially equality of rights of citizens to obtain opportunities in the government guaranteed Article 28D (1 ) and (3)
- b. The setting of independent candidates in the elections in 2015 regulated by Act No. 8 of 2015 on the Amendment of Act No. 1 of 2015 Concerning Determination of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors Become Law or so-called Election Act states that Candidates for Governor and Vice Governor Candidates are proposed by the participating political party, coalition of political parties, or individuals who are enrolled or enrolling in the General Election Commission (KPU). According to Article 41 paragraph (1) and (2) of Law No. 8 in 2015, independent candidates must be supported by 6.5% to 10% the number of DPT in the previous election. However, Law No. 8 2015 carried out a judicial review at the Constitutional Court (MK) with the Constitutional Court ruling No. 60 / PUU-XIII / 2015 which states that the minimum percentage of support between 3.5% to 6% of the number of DPT in the previous election.
- c. Some of the obstacles for independent candidates in the elections directly in 2015, among others when the pair candidates are registering as a couple candidates of regional head and deputy head of the region, at the time of the determination would be candidates who pass to attend the regional head and deputy head of the region, when they followed a campaign, or on the day of election of pair of candidates of regional head and deputy regional head. Even these obstacles could happen when the private partner has been selected as regional head and deputy regional head.

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