

RECRUITMENT OF CANDIDATE OF REGION HEAD BASED ON LAW NUMBER 10 OF 2016

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ABSTRACT

In the 1945 Constitution of 1945, Article 22E states that general elections shall be held directly, publicly, freely, secretly, honestly and fairly every five years, to elect members of the People's Legislative Assembly, Regional Representative Council, President and Deputy-President and House of Representatives Area. Elections are organized by an election commission, permanent and independent. Recruitment of Candidates for Regional Heads Based on Law Number 10 Year 2016 regarding the Second Amendment to Law Number 1 Year 2015 on Stipulation of Perpu.1 of 2014 on the Elections of Governors, Regents and Mayors Becoming Laws. Election Candidates under Article 39 are: (a) Candidate Pair of Governor and Candidate of Deputy Governor, Candidate Pair of Regent and Candidate of Deputy Regent and Candidate Pair of Mayor and Candidate of Deputy Mayor combined by Political Party or combination of Political Party; and/or (b) a pair of individual candidates supported by the number of persons. Arrangements for the future are about the merging of regional head candidates from political parties and individuals (independent), so the concept of candidacy that needs to be regulated in the law for the election of regional heads in the future is composed of four nominating concepts: (1) political parties; (2) Combined political parties; (3) Individual candidates (independent); (4) Combined candidates of association with a political party and/or a coalition of political parties.

Keywords: Recruitment, Candidate, Head of Region.

INTRODUCTION

Indonesia is a country that upholds the values of Democratic Law based on Pancasila and the Constitution of 1945 of the Republic of Indonesia (Padmo, 1982; Philipus, 1987; Sjachran, 1985), upholds human rights, protects the whole Indonesian nation and the entire Indonesian, promotes the common prosperity, educates the nation and realizing social justice¹.

Democracy viewed from the institutional aspect is the primacy of the continuing democratic political practices, so that there are political parties, elections and free press. In a country that embraces constitutionalism (constitutional democracy) one characteristic is its passive nature of government, in the sense that the government is only the executor of the various wishes of the people formulated by its representatives in parliament. The state has a smaller role than the people's role.

In the future development of a democracy state, it is time for democratic practices to be abandoned and replaced by a real democracy, a democracy that places the people as the main determinant in the administration of the state both in government, politics, economy and socio-culture. Therefore, democracy in essence cannot be separated from "people" and "people's sovereignty" (Juanda, 2004).

The most fundamental thing in democracy is the participation of the people, as well as collective agreements or consensus to achieve the goals that formulated together. The development of decentralization demands a democratic process not only at the central level but at the regional level, such as governor elections, mayoral elections and chairman of village elections.

At the level of its implementation, the organizer of elections, especially the election of Regional Heads regulated by law in a system of Indonesian constitutional system (Wirjono, 1989)², is always changing. Law on local governance organizing the election of regional heads, prior to the amendment of the Constitution of 1945 for the first time Law no. 1 of 1945 known as the National Committee of the Region, until the Law on Local Government no. 22 of 1999 and the Law on Local Government no. 32 of 2004, which was amended by Law on the Election of Regional Head no. 10 of 2016.

Thus based on the descriptions above, the author is interested in researching the recruitment system of candidates for the regional head. It is important to be studied and analysed with various problems that arise especially to the void of norms regulating the candidates of regional heads derived from a combination of individuals with political parties and or a combination of political parties.

DISCUSSION

Recruitment of Candidates of Regional Head by the Law Number 10 of 2016

Candidates from Political Parties and Combined Political Parties

In accordance with the provisions of Law Number 10 of 2016 about the Second Amendment to Law Number 1 of 2015 on the Stipulation of legislation number 1 of 2014 on the Election of Governors, Regents and Mayors Become Laws Article 40 and Article 40A regulate: Article 40:

A Political Party or a coalition of Political Parties may register a pair of candidates if they are complete the terms of acquisition of at least 20% (twenty percent) of the total of parliamentary seats or 25% (twenty five percent) of the accumulation of valid votes in the election of members of the Parliament in the region concerned.

Article 40 A:

- Political Parties who can register a pair of candidate as referred to in Article 40 shall be valid Political Parties in accordance with the provisions of legislation.
- In a dispute over the management of a Political Party as referred to in paragraph (1), the management of the Central Political Parties who may register the pair of candidate is the management of the Central Political Party which has obtained the decision of the Party Court or other titles and registered and stipulated by the decision of the minister who organize the government affairs in the field of law and human rights.

Based on Article 40 above, Political Party or coalition of Political Parties may register a pair of candidate if it has complete the requirements of the acquisition of at least 20% (twenty percent) of the seats of the Regional Parliament or 25% (twenty five percent) of the accumulation of valid votes in the election of members of the Regional Parliament in the region concerned. In the Political Party or coalition of Political Parties in proposing a pair of candidate using the provision of obtaining at least 20% (twenty percent) of the seats of the Regional

Parliament as referred to in paragraph (1), if the result for the number of seats of the Regional Parliament is fractions then the acquisition of the number of seats is calculated by rounding up so as not to harm the party concern. And in the case of Political Party or coalition of Political Party proposing a pair of candidate to use the provision of obtaining at least 25% (twenty five percent) of the accumulated valid vote as referred to in paragraph (1), that provision applies only to Political Parties obtaining seats in the Regional Parliament.

Meanwhile, Political Party or coalition of Political Parties may only propose 1 (one) pair of candidate. The calculation of the percentage of the number of seats, excluded for the seats of members of the Papua Parliament and the adopted West Papua Parliament.

Furthermore, in Article 40A above, it is stipulated that Political Party which can register a pair candidate as referred to in Article 40 shall be a valid Political Party in accordance with the provisions of legislation. But if there is the dispute of management of political party, the management of the Central Political Parties may register the pair the candidate is the management of the Central Political Party which has already obtained a decision of the Party Court or other title and registered and stipulated by a ministerial decree which organized the government affairs in the field of law and human rights.

The decision of the Part Court or any other title or court decision that has obtained a permanent legal force shall be registered to the ministry which organize the government affairs in the field of law and human rights no later than 30 (thirty) working days as counted from the formation of a new management and shall be determined by decision of minister who organize the government affairs in the field of law and human rights no later than 7 (seven) working days as counted from the receipt of the requirements.

Individual Candidate

Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 on Stipulation of legislation number 1 of 2014 On the Election of Governors, Regents and Mayors Becoming Laws, Article 41 provides:

- Individual candidates may register as Candidate of Governor and Deputy Governor if fulfil the qualified support of the number of people, who have the right to vote and be included in the permanent voters list in the last election or the last previous election in the area concerned.
- Individual candidates may register as Candidate of Regent and Candidate of Deputy Regent as well as Candidate Mayor and Candidate Deputy Mayor if fulfil the qualified support of the number of residents who have the right to vote and included in the permanent voters list in the relevant area in the previous elections or the last previous election in the area concerned.

Based on the provisions of Law Number 10 of 2016 above, the amount of population support for the submission of pair of individual's candidates is between 10%, 8.5%, 7.5% and 6.5%³ in accordance with the large number of residents in a region. In this case the formula applies: the greatest of the population of an area, the smaller the percentage requirement of the amount of support required by the pair of individual candidate. Implementation of Regional Head Election after the implementation of Law Number 10 of 2016, it appears that the appearance of the pair of individual candidate almost occurred in all regions. This indicates that the high enthusiasm of the community to become participants of local elections through a personal channel.

Based on the election of regional heads (Regional Election) simultaneously in 2017, in general, there is 328 pair of candidates competing in elections concurrently 2017. This is evident from the data of 'Mapping Readiness of Simultaneously Election 2017' as of 29 September 2016 from the Ministry of Internal Affairs, where some of pair of candidate compete to elections through independent channels. There are 80 pairs of candidates who take the independent path alias non-political, consisting of 4 pair of candidates at the provincial elections, 63 pair of candidates at the regency level and 13 pair of candidates at the city level.

Overall, there is 328 pair of candidates participating in 101 Regional Election of various levels. Consisting of 25 pair of candidates for governor and deputy governor, 246 pair of candidates for regent and deputy regent and 57 pair of candidates for mayoral and deputy mayors. Among 328 pair of candidates, among them 104 pair of candidates from incumbent. The 104 incumbent candidates consist of 10 candidates in the province, 70 candidates in the regency and 24 candidates at the city level. There are 43 women who participate in elections in 2017 in various regions, consisting of 4 women at the provincial level, 28 women in the regency level and 11 women at the city level. There are 7 regions that hold elections in 2017 with one pair of candidate. The 7 single-shot elections consisted of election in Tebing Tinggi city, regent election of Pati, regent election of Landak, regent election of Tambraw, regent election of Kulon Progo and regent election of Buton and the regent election of Tulang Bawang Barat.⁴

The requirement of minimum support for individual candidates who want to participate in the elections is too heavy. This is evident from the 17 provinces that will hold 2018 Governor Election; there are eight individual candidates who register. However, of the eight candidates, only three candidates are declared acceptable. West Kalimantan, West Nusa Tenggara and South Sulawesi. The rest, stated not qualified because of its heavy requirements for individual candidates.

Based on Law Number 10 of 2016 on Regional Election, the minimum support of individual who participate in the Regional Election is about from 6.5 percent to 10 percent of the total voters (the last regional election of Permanent Voters List). Details are 10 percent for the number of DPT is 2 million, 8.5 percent for the number of DPTs between 2 million-6 million, 7.5 per cent for the number of DPTs of 6 million-12 million and 6.5 percent for the total number of Permanent Voters List of more than 12 million.⁵

Therefore, to fulfil the minimum support, individual candidates must work hard because of relying on their own modalities. This is absolutely different from the candidates who carried by political parties. It is difficult to participate as an individual candidate because of the heavy requirement, making the individual candidate burden more and multiply.

Recruitment of Future Region Head

Recruitment of Candidates for Regional Heads Based on Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 on Stipulation of legislation number 1 of 2014 on the Elections of Governors, Regents and Mayors Becoming Laws. Election Participants under Article 39 are: (a) A Pair of Candidate of Governor and Candidate of Deputy Governor, a Pair of Candidate of Regent and Candidate of Deputy Regent and a Pair of Candidate of Mayor and Candidate of Deputy Mayor proposed by Political Party or combination of Political Party; and/or (b) a pair of individual candidates supported by a number of persons.

If the pair of candidates do not complete the 100% candidate requirements of the political party or coalition of political parties and the requirements of individual candidates, it is necessary to be further regulated by combining candidate requirements from political parties or coalition of political parties with the requirements of individual candidates, so that Law Number 10 of 2016 About the Second Amendment to Law Number 1 of 2015 About Stipulation of legislation number 1 of 2014 About the Election of Governors, Regents and Mayors Becoming Laws need to be changed. The authors offer the improved arrangements for the future about the merger of regional head candidates from political parties and individuals (independent), so the concept of candidacy that needs to be regulated in the law of regional elections in the future is:

- Candidates from political parties
- Coalition of political parties
- Individual candidates
- Combined candidates with political parties and/or coalition of political parties

This combination of individual candidates and political parties is a candidate for the Combination that embraces the Party and the individual. This is a new concept in the world of politics where this combination is political necessities for candidates of regional head who want participate for win with a better cause than the nomination of political party or sole proprietorship.

The combined concept of an individual candidate with a political party and/or a coalition of political parties are as follows:

- If the pairs of candidate coming from a Political Party or a coalition of Political Parties does not fulfil the acquisition requirements of at least 20% (twenty percent) of the total seat of the Regional Parliament or 25% (twenty-five percent) of the accumulation of valid votes in the election of Regional Parliament in the related area. Then the pair of candidate can complete it by seeking support from the requirements of individual candidates. The shortcomings should be calculated based on the value of seats in the related area.
- If an area has a population of 2,000,000, then 10% out of 2,000,000 is 200,000.
- If in the area, the number of seats in the DPRD is 40 seats, while the requirement for the nomination of candidates from a political party and/or a coalition of political parties is 20%. So $20\% \times 40 = 8$ Seats.
- That is, the correlation between 8 seats to 10% of the population, then $200,000/8 = 25,000$. This means the value of 1 seat is 25,000.
- If the pair of candidate carried by political party and/or a coalition of political parties only has 7 seats, then he should seek 1 more seat through a letter of support totalling 25 thousand.

CONCLUSION

Recruitment of Candidates for Regional Heads Based on Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on Stipulation of legislation number 1 of 2014 on the Elections of Governors, Regents and Mayors Becoming Laws. Election Participants under Article 39 are: (a) Pair of Candidate of Governor and Candidate of Deputy Governor, Pair of Candidate of Regent and Candidate of Deputy Regent and Pair of Candidate of Mayor and Candidate of Deputy Mayor proposed by Political Party or combination of Political Party; and/or (b) a pair of individual candidates supported by a number of persons. Improvement of future arrangements is about combining regional head candidates from political parties and individuals (independent), so the concept of candidacy that needs to be regulated in the law of

regional head election in the future is composed of four concepts of nomination, they are: (1) Candidates of the political party; (2) Combined political parties; (3) Individual candidates (independent); (5) A combination of individual candidates with political parties and/or coalition of political parties. This combination of individual candidates and political parties is a candidate for the Combination that embraces the Party and the individual. This is a new concept in the world of politics where this combination is a political necessity for candidates of regional head who want to participate for a win with a better cause than the nomination of a political party or sole proprietor.

ENDNOTE

1. Review the fourth paragraph of Constitution of 1945 of the Republic of Indonesia.
2. We enter the Constitutional Law, if we discuss about norms of legal that organize the relation between legal subject of people or not with some people or not or law agency of state or a part of a state.
3. This provision does not apply at Aceh that requires individual support is 3% from the number of population of Aceh area based on the provision of article 68 chapter 1, legislation number 11 of 2006.
4. <https://news.detik.com/berita/d-3309318/pilkada-serentak-2017-diikuti-80-pasangan-calon-independen>, accessed on 29th January 2018.
5. <http://nasional.kompas.com/read/2017/11/29/23211861/perludem-syarat-calon-perseorangan-di-pilkada-terlalu-berat> accessed on 29th January 2018.

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