

JURIDICAL REVIEW OF THE WINNING OF THE EMPTY BOXES IN REGIONAL HEAD ELECTIONS

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ABSTRAK

Pemilihan Kepala Daerah atau biasa yang dikenal dengan “Pilkada” dilakukan secara langsung oleh penduduk daerah administratif setempat yang memenuhi syarat. Pemilihan kepala daerah dilakukan satu paket bersama dengan wakil kepala daerah. Kepala daerah dan wakil kepala daerah yang dimaksud mencakup Gubernur dan wakil gubernur untuk provinsi, Walikota dan wakil walikota untuk kota, dan Bupati dan wakil bupati untuk kabupaten. Berkaitan dengan pilkada. Secara Undang-Undang kemenangan kotak kosong diperbolehkan berdasarkan Pasal 54 D (2) Undang-Undang Nomor 10 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota menjadi Undang-Undang. Namun yang menjadi pertanyaan selanjutnya adalah pejabat yang ditunjuk pemerintah berdasarkan kemenangan kotak kosong tersebut mewakili kepentingan hukum. Hal tersebut belum diatur oleh pemerintah, sehingga diperlukan revisi Undang-Undang terbaru untuk mengetahui hal tersebut.

Kata kunci: Pemilihan, Kepala Daerah, Kotak Kosong

ABSTRACT

Elections for Regional Heads or commonly known as “Pilkada” are carried out directly by residents of the local administrative area who meet the requirements. The election of regional heads is carried out in a package together with the deputy regional heads. The regional heads and deputy regional heads in question include the governor and deputy governor for the province, the mayor and the deputy mayor for the city, and the regent and deputy regent for the district. Regarding the elections, By law, winning the empty box is allowed based on Article 54 D (2) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and the Mayor becomes Law. However, the next question is that the official appointed by the government based on the winner of the empty box represents legal interests. This has not been regulated by the government, so it is necessary to revise the latest Law to find out about it.

Keywords : Election, Regional Head, Empty Box

A. INTRODUCTION

The phenomenon of empty squares appearing simultaneously in regional head elections (Pilkada) is undeniable because it raises questions. Is it true that only in the area in question there is only one pair of candidates, so they have to fight the empty boxes. Many other questions address this fact. The decentralization of power is intended to give autonomy rights to the regions by the center with the mandate to accelerate the improvement of people's welfare.¹ One of the driving factors is the development of political education that can shape the political culture of civil society participants. The role of a good civil society can minimize the single interpretation of the point of view of the unilateral interests of power holders in the region, on the other hand opening up a wider democratic space that is more dignified for the political participation of all citizens.

Every country adheres to a system of government that is in accordance with the state philosophy and its constitution. Indonesia has a state philosophy, namely Pancasila and the 1945 Constitution, that's why Indonesia adheres to a government system that is in accordance with the state philosophy, namely Pancasila and the 1945 Constitution. According to the rules to be stipulated by law. Regions that are autonomous will be held by regional representative bodies, therefore the regions are also jointly based on deliberation.² In Article 18A of the 1945 Constitution, it is mandated that the relationship of authority between the central government and provincial, district and city regional governments is regulated by law by taking into account the

specificities and diversity of regions.³

In the context of managing regional government in line with the Republic of Indonesia's 1945 Constitution, the government's legal and political stances toward regional governments that can control and manage their own governmental matters.⁴ According to the principle of autonomy and co-administration, are directed at accelerating the realization of social welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness, taking into account the principles of democracy, equity, justice, privileges, and the specificity of a region within the system of the Unitary State of the Republic of Indonesia.⁵

As an example, there was a Simultaneous Pilkada, in the Pilkada event there were 13 regions where only a single candidate participated. One of them is the mayoral election held in the city of Makassar. The Pilkada was followed by a single candidate, namely the Munafri Arifuddin-Andi Rahmatika Dewi (Appi-Cicu) pair. In the Makassar City Pilkada event, the vote count showed that the pair Munafri Arifuddin-Andi Rahmatika Dewi lost to an empty box. This pair won around 46% of the votes while the empty boxes were supported by around 53% of the votes. Law Number 10 of 2016 concerning Pilkada has indeed regulated what if the Pilkada is only followed by a single candidate. Article 54D stipulates that the winner of the Pilkada with a single candidate must obtain more than 50 percent of the valid votes.⁶

¹ Wafia Silvi Dhesinta, "Calon Tunggal Dalam Pemilihan Umum Kepala Daerah dan Konsep Demokrasi (Analisis Terhadap Pemilihan Kepala Daerah Kabupaten Blitar Tahun 2015)," *Jurnal Cita Hukum*. Vol. 4, No. 1 Juni (2016).

² Nunung Munawaroh, "Peran Pemerintah Daerah Dalam Pelaksanaan Pemerintahan Yang Baik good Governance Di Bidang Pembinaan Dan Pengawasan Indikasi Geografis", *Jurnal Media Birokrasi*, Vol. 1 No. 2 Tahun 2019.

³ Iza Rumesten, "Fenomena Calon Tunggal dalam Pesta Demokrasi", *Jurnal Konstitusi*, Vol. 13, No.1, Maret 2016.

⁴ Khairul Fahmi, "Menelusuri Konsep Keadilan Pemilihan Umum Menurut UUD 1945," *Jurnal Cita Hukum*, Vol. 4, No. 2, Desember 2016.

⁵ Achmad Arifulloh, "Pelaksanaan Pilkada Serentak Yang Demokratis, Damai Dan Bermartabat", *Jurnal Pembaharuan Hukum*, Vol. 3 No. 3 Tahun 2016.

⁶ Bimo Wiwoho "Kotak Kosong Menang, Wali Kota Makassar di Tangan Kemendagri" <https://www.cnnindonesia.com/nasional/20180709093718-32-312619/kotak-kosong-menang-wali-kota-makassar-di-tangan-kemendagri> Diakses 16 November 2022.

In the following election, a losing candidate pair may run again if no more than 50 percent of votes are obtained. Article 25 paragraph 1 of PKPU Number 13 of 2018 stipulates that if the number of votes in the empty column is greater than the number of votes in the Candidate Pair photo column, the KPU shall determine the holding of re-election in the next simultaneous election. Section 1 of Article 13 PKPU of 2018 Section 25 of the said that if the number of votes in the blank column is more than the number of votes cast in the column of photographs of the candidates then in the next elections CPM Will decide on recall. at the same time. Meanwhile clause 2 reads: The next simultaneous elections referred to in clause 1 may be held in the following year or on the calendar established by laws and regulations.

Based on the description of the background above, the formulation of the problem to be examined is how is the government under an official appointed by the central government in winning the empty box in the local elections?

One of the things highlighted by the researcher in this paper is whose empty box represents whose legal interest. Indeed, the Pilkada Law stipulates, if no pair has been elected, the government assigns officials to run the government, but the officials who are promoted do not have legal interests for the community, therefore it is necessary to revise the Law so that empty boxes are removed from elections in regional elections because has no legal interests for the community, especially for the Indonesian constitution.

B. RESEARCH METHODS

1. Types Of Research

To answer the problems that have been formulated, the type of research method used is the normative legal research method, namely research on library materials which are basic data which in science are classified as secondary data. Normative law research serves to provide juridical arguments when there is a vacuum,

ambiguity, and conflict of norms.⁷

2. Form of Research

The form of research used in this study by its nature is descriptive research because it provides the data under study maybe about humans, conditions, or other phenomena with the aim primarily to reinforce hypotheses, strengthen old theories, or to develop new theories.⁸ The data obtained both primary data and secondary data were compiled and analyzed. The primary data relates to the theory of industrial relations between companies and workers and/or trade unions. Meanwhile, secondary data was obtained from interviews with sources and informants.

3. Research Approach

In this research, the tool used in data collection is a qualitative approach, namely research procedures that produce descriptive data. In legal research there are several approaches and with this approach the researcher will obtain information from various aspects regarding the issue being sought for an answer. The approach used in legal research is as follows:

a. Legal Approach

Conducted by reviewing all laws and regulations related to the legal issues being handled.

b. Case Approach

This is done by conducting a study of cases related to the issues at hand and has become a result that has permanent legal force

c. Library data

Searching from library data through labor law books, journals and the internet related to winning blank boxes in regional head elections.

⁷ Pasek Diantlia,I Made, *Metodologi Penelitian Hukum Normatif,Dalam Justifikasi Teori Hukum*, (Jakarta : Prenada Media Group,2016), hlm. 12.

⁸ Sehat Damanik, *Hukum Acara Perburuhan, Menyelesaikan Perselisihan Hubungan Industrial*, Cet IV, (Jakarta : Dss Publishing, 2007), hlm. 21.

C. RESULTS AND DISCUSSION

The procedure for implementing PILCADA regarding the same candidate for empty boxes according to the PILCADA Law and Rules is based on Constitutional Court Decision No. 100/PUU-XIII/2015 in conjunction with the provisions of Article 14 paragraph (1). General elections. has been followed. KPU Regulation Number 13 of 2018 which confirms the observation of KPU Regulation Number 14 of 2015 concerning the Election of Governors and Deputy Governors and Deputy Governors and/or Mayors and Deputy Mayors. Countries that only talk about the legal system are influenced by democratic processes that offer a one-candidate contest and an empty box. Finally these problems can be traced to three namely the influence of a candidates victory in the case of a permanent regional head vacancy in an area and the victory of an empty box without a permanent regional head. In that space.⁹

This provision refers to KPU Regulation Number 13 of 2018 Article 25 paragraph (3), which states that:

"In the event of a stipulation of holding simultaneous elections for the next period as referred to in paragraph (1), the Aceh Provincial KPU/KIP or Regency/Municipal KPU/KIP through the KPU shall coordinate with the ministry in charge of domestic affairs for the assignment of acting Governor and Deputy Governor, acting Regent and Deputy Regent, or acting Mayor and Deputy Mayor."

The assignment referred to in the provisions of this article is of course not a definitive official who is elected through a democratic process, but a task-executing official who is appointed by the Minister of Home Affairs to fill a temporary vacancy. It's just that the problem is, the

emptiness that occurs in this context is not a vacancy for a moment or temporarily, but a vacancy for a long period of time.

The urgency of conducting this research is to obtain a scientific study that the empty box policy in regional head and deputy regional head elections in local election events has an impact on legal interests, especially for the community, in this case the empty box has succeeded in winning votes rather than the single candidate that has been carried out party. In the law, it is allowed, but officials who are promoted by the government to run the government have no legal interest for the people who win the empty box in the regional election.

The Empty Box is not "unlawful" if the knot is interpreted as a form of failure of the leadership of regional leaders, together with the "numb" morality of political party elites due to the failure of the function and role of cadre formation, regeneration and political education, so that they are unable to present new prospective leaders as a complete representation of civil society's political rights quality from the previous election to the next election. People who have the right to be elected but have lost their chance, and people who have the right to vote but are not concerned about voting, because there is only 1 (one) pair of candidates, now there is "candy" in democratic space those who please voice their aspirations through "action" choose an Empty Box

The winning of the blank box in regional elections is regulated in Article 54 D (2) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors become law, which contains "if the vote acquisition of a pair of candidates is less than as referred to in paragraph (1), the pair of candidates who lose in the election may nominate again in the next election". Based on this, if the single candidate being promoted loses, the government will assign an official, in this case an acting mayor, based on Article 54 D (4) Winning the Empty Box in the Pilkada is regulated in Article

⁹ Ahmad Gelora Mahardika, "Fenomena Kotak Kosong Dalam Pemilukada Serta Implikasinya Dalam Sistem Ketatanegaraan Indonesia", Jurnal Adhyasta Pemilu, Vol. 1 No. 2 Tahun 2018.

54 D (2) Law Number 10 of 2016 concerning the Second Amendment On Law Number 1 of 2015 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Law, which contains "In the event that no pair of candidates has been elected to the election results referred to in paragraph (2) and paragraph (3), the Government assigns the Acting Governor, Acting Regent, or Acting Mayor".¹⁰

Regarding a single candidate against an empty box, it has been regulated in Article 54 C paragraph (1) and Article 54 C paragraph (2) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in lieu of Laws Number 1 of 2014 concerning the Election of Governors, Regents and Mayors becomes Law.

The regional head election (Pilkada) referred to in this writing is carried out directly by residents of the local administrative area who meet the requirements. Regional head elections are carried out in a package together with deputy regional heads. Regional heads and deputy regional heads in question include governors and deputy governors for provinces, regents and deputy regents for districts/mayors and deputy mayors for cities. In writing the election of the regional head in question, namely the mayor for the city area based on Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and the mayor becomes law.¹¹

The problem of empty boxes in regional election contestation is related to the configuration of political party forces, which in the future will lead to narrowing the support or providing recommendations for the regional head candidates to be carried. This raises a problem

when the configuration of political parties in an area only raises one regional head candidate who has the support of all political parties, resulting in a single candidate. Even so, there are pathways for nominating independent candidates, but they must meet very strict requirements and criteria.

In the event that there are more blank columns or better known as empty boxes, Article 25 paragraph (1) and (2) of the General Election Commission Regulation Number 13 of 2018 concerning Amendments to the General Election Commission Regulation Number 14 of 2015 concerning Election of Governors shall apply and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor with One Candidate Pair ("PKPU 13/2018") which regulates:

- (1) If the number of votes in the empty column is greater than the number of votes in the Candidate Pair photo column, the Aceh Provincial KPU/KIP or Regency/Municipal KPU/KIP shall stipulate a re-election in the next simultaneous election.
- (2) The next simultaneous elections as referred to in paragraph (1) may be held in the following year or carried out according to the schedule in accordance with the provisions of the laws and regulations.

Meanwhile, there is a judicial review through the Constitutional Court Decision Number 14/PUU-XVII/2019 regarding the phrase "next election" in Article 54D paragraphs (2) and (3) of Law 10/2016 which reads:

- (2) If the number of votes acquired by a pair of candidates is less than as referred to in paragraph (1), the pair of candidates who lost the election may nominate again in the next election.
- (3) The next election as referred to in paragraph (2) shall be repeated in the following year or carried out according to the schedule contained in the statutory regulations.

¹⁰ *Ibid*

¹¹ Roffi Aulia Rahman, "Calon Tunggal Pilkada: Krisis Kepemimpinan dan Ancaman Bagi Demokrasi", *Jurnal Konstitusi*, Vol. 19 No. 1 Tahun 2022.

Article 54D paragraph (3) of Law 10/2016 indicates that there are 2 options for the KPU in determining the time for re-election of regional heads in the event that an election attended by one pair of candidates has not resulted in an elected pair of candidates, namely the next election will be held the following year, which means it will be held one year then after the election which was attended by one pair of candidates failed to get the selected pair of candidates; or The next election will be held following the schedule contained in the statutory regulations in casu Article 201 Law 10/2016.¹² Thus, the Constitutional Court emphasized that re-election could be held the following year or according to the schedule determined by the statutory regulations submitted to the KPU as the regional election organizer. Furthermore, the Constitutional Court explained that "the next election" must be understood and carried out through 2 stages, namely the "preparatory stage" and the "organization stage". an opportunity for a single candidate pair who previously did not win a majority when faced with an empty column.¹³

In the event that no pair has been elected as a result of the above incident, the KPU in coordination with the Ministry of Home Affairs will assign an acting Governor, acting Regent, or acting Mayor to run the government. In the event that the KPU chooses to hold the next simultaneous local elections according to a predetermined schedule, Article 201 paragraph (8) of Law 10/2016 shall apply, namely:

"National simultaneous voting in the Election of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor in all regions of the Unitary State of the Republic of Indonesia will be held in November 2024."

So according to the term of office of a regional head in a leadership period of 5 years,

¹² Nur Rohim Yunus, "Saat Kotak Kosong Memenangkan Pilkada", Jurnal Adalah Buletin Hukum dan Keadilan, Vol. 2 No. 7e Tahun 2018.

¹³ *Ibid*

regions with a single candidate who fail will be led by an appointed official for 5 years, because the next regional election schedule will be held in 2024. However, it should be noted, the appointed official has limited authority and cannot decide on strategic authority, i.e. prohibited :

1. carry out employee mutations;
2. cancel permits issued by previous officials and/or issue permits that are contrary to those issued by previous officials;
3. make policies regarding the expansion of regions that are contrary to the policies of previous officials; And
4. make policies that conflict with government administration policies and development programs for previous officials.

The provisions above can be waived after obtaining written approval from the Minister of Home Affairs. Based on this, holding Pilkada with candidate contestants against empty boxes can be a waste and a pointless thing if the winner of the empty box contestation, the course of democracy will be slightly hampered because the regional leaders are not the candidates the citizens want. Therefore it is necessary to have a revision of the implementation in the next regional election.

D. CONCLUSION

It is necessary to review the normative regulations regarding elections with a single candidate pair, so that the image of political parties is trusted by the public, given the negative factors that arise as the cause of the majority of political parties carrying a single candidate pair. In addition, political costs are expensive due to the "dowry" system, so the next election must create political costs that are cheaper and don't spend a lot of state money. For the Ruling of the Constitutional Court Number 100/PUU-XIII/2015, in addition to being followed up on the scale of implementing regulations, namely the General Election Commission Regulation Number 13 of 2018 concerning Amendments to the General Election Commission Regulation Number 14 of 2015 concerning the Election of

Governors and Deputy Governors, Regents and Deputy Regents, and/or mayors and deputy mayors with one pair of candidates, then in the future this needs to be followed up at the statutory level, through revisions, whether deleting, changing, adding, or inserting articles in the provisions governing the determination of pairs of candidates in Article 49 up to Article 54 of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors to Become Laws.

REFERENCE

BOOK

Damanik, Sehat. *Hukum Acara Perburuhan, Menyelesaikan Perselisihan Hubungan Industrial, Cet IV*. 2007. Jakarta : Dss Publishing.

Pasek Diantlia, I Made, *Metodologi Penelitian Hukum Normatif, Dalam Justifikasi Teori Hukum*. 2016. Jakarta : Prenada Media Group.

JOURNAL

Arifulloh, Achmad. “Pelaksanaan Pilkada Serentak Yang Demokratis, Damai Dan Bermartabat”. *Jurnal Pembaharuan Hukum*. Vol. 3 No. 3 Tahun 2016.

Dhesinta, Wafia Silvi. “Calon Tunggal Dalam Pemilihan Umum Kepala Daerah dan Konsep Demokrasi (Analisis Terhadap Pemilihan Kepala Daerah Kabupaten Blitar Tahun 2015)”. *Jurnal Cita Hukum*. Vol. 4, No. 1 Juni (2016).

Fahmi, Khairul. “Menelusuri Konsep Keadilan Pemilihan Umum Menurut UUD 1945”. *Jurnal Cita Hukum*. Vol. 4. No. 2. Desember 2016

Mahardika, Ahmad Gelora. “Fenomena Kotak Kosong Dalam Pemilukada Serta Implikasinya Dalam Sistem Ketatanegaraan Indonesia”. *Jurnal Adhyasta Pemilu*. Vol. 1 No. 2 Tahun 2018.

Munawaroh, Nunung . “Peran Pemerintah Daerah Dalam Pelaksanaan Pemerintahan Yang Baik good Governance Di Bidang Pembinaan Dan Pengawasan Indikasi Geografis”. *Jurnal Media Birokrasi*. Vol. 1 No. 2 Tahun 2019.

Rahman, Roffi Aulia. “Calon Tunggal Pilkada: Krisis Kepemimpinan dan Ancaman Bagi Demokrasi”. *Jurnal Konstitusi*. Vol. 19. No. 1 Tahun 2022.

Rumesten, Iza. “Fenomena Calon Tunggal dalam Pesta Demokrasi”. *Jurnal Konstitusi*, Vol. 13. No.1. Maret 2016.

ARTICLE

Bimo Wiwoho “Kotak Kosong Menang, Wali Kota Makassar di Tangan Kemendagri” <https://www.cnnindonesia.com/nasional/20180709093718-32-312619/kotak-kosong-menang-wali-kota-makassar-di-tangan-kemendagri>. Diakses 16 November 2020