



Legal Vacuum Regarding the Election of the Head of the District Which is Followed by Only a Single Candidate

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Abstract This study seeks to examine the legal vacuum surrounding regional head elections that feature only a single candidate, as well as the legal implications that arise from this scenario. In a democratic system, the principle of popular sovereignty necessitates a fair and free electoral process; however, the absence of clear regulations for regional head elections with a solitary candidate can jeopardize the integrity of this principle. Employing a normative legal methodology with both legislative and conceptual approaches, this study investigates various regulations that govern regional head elections and assesses how this legal vacuum impacts the electoral process and the constitutional rights of citizens. Additionally, the study identifies several strategies to address the legal vacuum, which include establishing clear legal provisions for the election process involving a single candidate, implementing a plebiscite mechanism, and enhancing transparency throughout the electoral process. The findings suggest that a more definitive and explicit legal framework is essential to uphold the principle of popular sovereignty in regional head elections featuring a single candidate.

Keywords: Legal, Vacuum, Election, Candidate.

1. INTRODUCTION

In the principle of popular sovereignty (democracy), the people are viewed as the holders of the highest power in a state. Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states, "Sovereignty resides in the hands of the people and is exercised according to the Constitution." The meaning of the phrase "sovereignty in the hands of the people" is that the people have the authority, responsibility, rights, and obligations to elect leaders who will form a government tasked with managing and serving all layers of society, as well as selecting representatives who will oversee the running of the government. In modern democratic systems, the legality and legitimacy of the government are essential factors. On one hand, the government must be formed according to the provisions of the constitution and existing laws to be considered legally valid. On the other hand, it must also possess legitimacy, meaning that in addition to being valid, it must also gain the trust of the people (Marzuki, 2014). Thus, every democratic government that claims to be rooted in the people must align with the results of general elections (elections), which are fundamental elements in the modern democratic system. Therefore, elections become a prerequisite in a democratic state as a form of implementing popular sovereignty. Elections essentially serve as a mechanism that allows the people to exercise their sovereignty and function as a democratic institution.

Elections allow the people to choose individuals for specific political positions, both in the legislative and executive branches. In the legislative branch, representatives are elected to serve in the People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD) at the provincial and district/city levels. Meanwhile, in the executive branch, the leaders directly elected by the people consist of the President and Vice President, Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Vice Mayors (Asshiddiqie, 2006). The role of Regional Heads is crucial in executing regional tasks, especially regarding local autonomy. In this regard, the success of executing regional tasks greatly depends on the Regional Head as the manager of the respective region (Sinaga, 2023).

An individual's success in performing their duties in a position is influenced by the qualities they possess. The same goes for Regional Heads, whose success in carrying out their duties heavily relies on their qualities. The definition of the Election of Regional Heads and Vice Regional Heads is regulated in Article 1 paragraph (1) of Government Regulation of the Republic of Indonesia Number 6 of 2005 concerning the Election, Ratification, Appointment, and Dismissal of Regional Heads and Vice Regional Heads in conjunction with Government Regulation Number 49 of 2008 concerning Amendments to Government Regulation Number 6 of 2005. The implementation of popular sovereignty at the provincial and/or district/city levels based on Pancasila and the 1945 Constitution in the election of Regional Heads and Vice Regional Heads is fundamental. In local politics, the election of regional heads (Pilkada) holds equal value to the election of DPRD members. This equality is reflected in the parallel positions of Regional Heads and the DPRD. Article 59 of Law Number 12 of 2008 on the Second Amendment to Law Number 32 of 2004 on Regional Government states as follows:

- (1) Participants in the election of Regional Heads and Vice Regional Heads consist of Pairs of candidates proposed collectively by political parties or a coalition of political parties, and individual candidates supported by a certain number of people.
- (2) Political parties or coalitions mentioned in paragraph (1) letter a can register pairs of candidates if they meet the requirement of acquiring at least 15% (fifteen percent) of the total DPRD seats or 15% (fifteen percent) of the total valid votes in the DPRD member election in the relevant region.

Law Number 10 of 2016 on the Election of Governors, Regents, and Mayors serves as a constitutional mandate to provide certainty regarding the mechanism for electing Regional Heads and to guarantee the democratic process in election administration. This law also serves

as the basis for conducting simultaneous regional elections. Although the election system has undergone various improvements through legal amendments to better align with community aspirations, the provisions of Article 52 paragraph (2), which state that "the KPUD must establish at least two pairs of Candidates for Regent and Vice Regent and pairs of Candidates for Mayor and Vice Mayor," have led to issues.

This provision sparked controversy due to the emergence of single-candidate phenomena in several regions. According to Djayadi Hanan, there are three factors causing the emergence of single-candidate phenomena. First, there are tightened requirements through regional head election laws passed by the DPR and Government, specifically Law Number 8 of 2015, where independent candidates must show public support of 6.5 to 10 percent, evidenced by Identification Cards (KTP) (Manullang, 1973).

Disputes in elections are a series of resolutions to violations that occur in the election process, which can begin from the planning stage, preparation, to the vote counting stage. Violations in elections may include administrative violations or criminal violations (Komisi Pemilihan Umum, 2015). However, Law Number 10 of 2016 does not yet regulate disputes in the election of regional heads followed by a single candidate. Regulations regarding disputes in regional elections with only one candidate are essential to avoid procedural confusion in dispute resolution, particularly when disputes arise in such elections. Legal issues may arise if the losing candidate sues the empty box, primarily regarding who can represent it.

The lack of regulatory provisions governing disputes in regional elections featuring a single candidate raises concerns about the potential erosion of democratic values. This scenario might compromise the credibility of the election outcomes and present risks to human rights, including those of the individual candidates participating in this democratic procedure. Based on the brief overview presented, the author of this study will discuss the legal vacuum in the election of regional heads with only one single candidate, as well as the implications of this legal vacuum on the regional head election process and efforts to address the legal vacuum regarding the election of regional heads with only one single candidate.

2. METHOD

The normative legal research method is a vital approach in legal studies that emphasizes the examination of legal documents and norms. Its primary objective is to analyze applicable legal rules and how these rules are interpreted or implemented within specific contexts. In normative legal research, the main sources of reference include laws, regulations, and various

forms of legal literature. The method is particularly relevant for investigating theoretical and conceptual legal issues, such as the legal vacuum in regional head elections where only a single candidate participates. It also addresses the implications of such a legal vacuum on the electoral process and explores potential solutions to this issue. One prominent method employed in this research is the statutory approach (Firdaus, 2015), which involves scrutinizing and analyzing various regulations related to specific legal questions, such as Law No. 10 of 2016 concerning the Election of Governors, Regents, and Mayors, along with other relevant regulations. By utilizing this approach, researchers can effectively discuss the legal vacuum present in regional head elections with only one candidate, and the consequences of this situation and strategies to resolve the legal void associated with these elections.

3. RESULTS AND DISCUSSION

Legal Vacancy in Regional Head Elections Contested by Only One Single Candidate

One of the fundamental principles emphasized in the amendments to the 1945 Constitution is the principle of the rule of law, as stated in Article 1 paragraph (3), which declares, "The State of Indonesia is a state based on law." Historically, the concept of a rule of law (*rechtsstaat*) represents the ideal pursued by the nation's founders, as explained in the general explanation of the 1945 Constitution before its amendments, which indicates that the State of Indonesia is based on the law (*rechtsstaat*), rather than mere power (*machtsstaat*).

Elections serve as a means for the people to exercise their sovereignty. The principle of popular sovereignty signifies that the people hold the highest authority within the state and that they determine the form and implementation of governance. This is also reflected in the conduct of general and regional head elections as manifestations of the principle of popular sovereignty. Ideally, the purpose of general elections is to ensure that the transition of governmental power occurs regularly and peacefully, by the mechanisms guaranteed and stipulated by the constitution (Lutfi, 2010).

The rule of law necessitates recognition of the principle of the supremacy of law, both normatively and empirically. Normative recognition of the supremacy of law is manifested in the establishment of hierarchical legal norms, with the supremacy of the constitution at its peak. Empirical recognition is reflected in the behavior of the government and society, basing their actions on legal rules. Therefore, every governmental action must be based on valid and written legislation that is enacted before administrative actions. Consequently, all administrative actions must adhere to existing legal regulations or established rules and procedures. The

principle of the supremacy of law must always be integrated with the principle of democracy or popular sovereignty, which guarantees public participation in the decision-making processes of the state. Therefore, every legislation implemented must reflect a sense of justice for society. Laws and regulations should not be established or applied unilaterally by rulers or merely for the interests of a ruling elite. The law aims to ensure justice for all members of society, thus, the developed rule of law must be a democratic rule of law (*demokratische rechtsstaat*), rather than merely an absolute rule of law (*absolute rechtsstaat*).

Law Number 10 of 2016 on the Election of Governors, Regents, and Mayors serves as a constitutional mandate to provide certainty regarding the mechanisms for electing regional heads and concurrently guarantees the democratic process in elections. This law also serves as the basis for conducting simultaneous regional elections. Despite improvements made to the election system through amendments to Law Number 10 of 2016 to refine its implementation to better align with societal aspirations, the provisions of Article 52 paragraph (2), which states that "the KPUD must establish at least two pairs of candidates for Regent and Vice Regent, and pairs of candidates for Mayor and Vice Mayor," have indeed caused issues in its implementation.

This has sparked controversy as, in reality, regional elections in some areas have been contested by only a single candidate, making the Constitutional Court (MK) the most appropriate body to resolve disputes arising from regional head elections (*pilkada*). Resolving election disputes at the MK is crucial because the court serves to protect the constitutional rights of citizens. The election of regional heads is part of the constitutional rights of every citizen, as regulated in Articles 27 paragraph (2), 28C paragraph (2), 28D paragraphs (1) and (3), as well as Article 28E paragraph (1) of the 1945 Constitution. Therefore, the MK, which plays a role in upholding the Indonesian constitution and protecting constitutional rights, is more suited to handle this dispute. Should the resolution of *pilkada* disputes occur in other judicial realms, there is a likelihood that the case will eventually be referred to the MK on grounds of constitutional rights violations, adding complexity to the judicial processes and legal frameworks in Indonesia. Thus, resolving *pilkada* disputes at the MK is deemed appropriate since the court functions as the guardian of the constitution and has the responsibility to ensure and protect the constitutional rights of citizens (Miha, 2015).

In Decision Number 97/PUU-XII/2013, the Constitutional Court highlighted the provisions within Articles 49 paragraph (9), 50 paragraphs (8) and (9), 51 paragraph (2), and 52 paragraph (2) of Law No. 8 of 2015, which dictate that if by the end of the registration

extension period there exists only one pair of candidates for Regent/Vice Regent or Governor/Vice Governor, then the pilkada must be postponed. The KPUD is to only establish two pairs of candidates. The MK declared those provisions unconstitutional as they contradicted Article 1 paragraph (2) and Article 18 paragraph (4) of the 1945 Constitution. Contradicting Article 1 paragraph (2), the MK asserted that those provisions did not provide a solution to the legal vacuum that arises when the minimum requirement of two pairs of candidates is not fulfilled. This legal vacuum could threaten the rights of the people as holders of sovereignty, both their right to vote and to be elected, as the people cannot exercise these rights.

Additionally, these provisions also contradict Article 18 paragraph (4) of the 1945 Constitution, which mandates that regional head elections must be conducted democratically. Elections must create space for the people to express their sovereignty, both in the right to vote and to be elected. Thus, regional head elections must be conducted with guarantees of democratic contestation, where the rights of the people as sovereign must not be ignored or eliminated.

The MK emphasized in its ruling that as the guardian of the constitution, the Court must not allow violations against the constitutional rights of citizens, particularly relating to the exercise of popular sovereignty. Postponing regional head elections until the next election solely due to the absence of two candidate pairs is considered detrimental to the constitutional rights of citizens, namely their rights to vote and to be elected. Therefore, to ensure the constitutional rights of citizens remain guaranteed, regional head elections must proceed even if there is only one candidate pair, after earnest efforts to meet the requirement for two candidate pairs. Furthermore, the MK stated that regional head elections with a single candidate pair should be regarded as a last resort and should be conducted to fulfill the constitutional rights of citizens. In this regard, the appropriate mechanism is to hold a plebiscite, whereby voters are given the option to either approve or disapprove the candidate pair. If the majority votes "agree," then the candidate pair is established as the elected regional head and vice regional head. Conversely, if the majority votes "disagree," the election is postponed until the next simultaneous elections. Such postponement does not contradict the constitution, as the decision reflects the collective choice of the people who opted not to approve.

It is important to note that general elections are a means for the people to express their sovereignty. The concept of popular sovereignty states that the people hold the highest power within a state, and they determine the manner and form of governance. General elections and

regional head elections are implementations of the principle of popular sovereignty. Ideally, the purpose of general elections is to ensure a regular and peaceful transition of governmental power, according to the mechanisms outlined in the Constitution (Latif, 2014).

The intention of general elections (Pemilu) as an essential means for the people to express their sovereignty reinforces that the people have the highest power within a state and are entitled to determine the manner and form of governance. Elections and regional head elections (pilkada) are concrete manifestations of popular sovereignty, enabling the people to directly elect their leaders or through their representatives. The primary objective of elections is to ensure that the transition of governmental power occurs in a regular, peaceful manner, and by the mechanisms specified in the constitution, thereby creating a legitimate and representative government while guaranteeing the constitutional rights of the people to participate in the political process and determine the direction of state policies.

Legal politics focuses on the current legal conditions in Indonesia, referring to existing legal principles. Legal politics as a direction for legal development policy aims to assess necessary changes to existing laws to meet the evolving needs of society. Legal politics reflects the existence of the state and government in formulating legal policy, including determining which laws need to be changed or maintained, as well as what needs to be regulated to ensure orderly governance and the achievement of state objectives. The 1945 Constitution states that Governors, Regents, and Mayors must be elected democratically. The phrase "elected democratically" in Article 18 paragraph (4) does not necessarily require direct elections by the people; however, a democratic election process may still be applied even if the elections are conducted indirectly, provided the mechanism remains democratic.

The legal landscape in Indonesia focuses on the enforcement and advancement of current laws to bring about necessary changes, ensuring that the law continues to address the evolving needs of society. As a legal development policy, legal politics aims to evaluate and determine necessary changes to existing laws, whether they need to be amended, retained, or restructured to maintain government order and achieve state objectives. In regional head elections, the 1945 Constitution mandates that Governors, Regents, and Mayors must be elected democratically, as reflected in Article 18 paragraph (4). Although the phrase "elected democratically" does not compel direct popular elections, the principles of democracy can still apply in elections conducted indirectly, as long as the mechanism reflects public involvement in decision-making and allows them to express their sovereignty. Therefore, what is essential

is to ensure that the election process continues to create legitimate representation and reflect fair democratic principles.

The MK decision allowing a regional head election with only one candidate pair asserts that every citizen is free from discriminatory treatment and has the right to legal protection. In this case, regions with only one candidate pair are regarded equally with other regions having two or more candidate pairs in the 2015 regional elections. The 1945 Constitution explicitly outlines the constitutional rights of citizens that must be protected without discrimination, including in the context of regional head elections. The MK ruling directed that general elections should proceed even if only one candidate pair is present, ensuring the fulfillment of citizens' constitutional rights and avoiding legal vacuums. However, before that, maximum efforts must be undertaken to ensure that there are two candidate pairs (Hardiyanto et al., 2016).

Legal politics regarding regional head elections (Pilkada) with a single candidate must continue to adhere to the principle of popular sovereignty articulated in Article 1 paragraph (2) of the 1945 Constitution, which states that sovereignty resides with the people. This implies that in every regional head election, the people must possess the right to vote and to be elected. This principle guarantees that the pilkada serves not only as an administrative procedure but also as a means of realizing the people's sovereignty in determining their leaders. A regional head election with only a single candidate poses risks of undermining popular sovereignty if the people's right to vote is not respected. Therefore, even if only one candidate is registered, the election procedures must continue to facilitate the people's rights to determine their choices. One proposed solution is a mechanism such as a blank box or other options that allow people to express their opinions, even in the absence of alternative candidates. With a blank box option, the public retains the choice to reject a single candidate if they feel the candidate does not meet their expectations. It is essential to have clear legal procedures regarding this matter. For instance, if the election result with a single candidate demonstrates a majority rejection from the people (through the "disagree" option on the blank box), then the pilkada may be postponed or held again to provide opportunities for other candidates to compete. Steps such as these would ensure that the pilkada process continues to reflect democratic principles and respect the political rights of the people, even in a single-candidate situation.

Implications of Legal Vacuum on the Regional Head Election Process and Efforts to Overcome Legal Vacuum Regarding Regional Head Elections Contested by Only One Single Candidate

The Regional Head Election (Pilkada) is a crucial democratic mechanism within the Indonesian governance system, aimed at providing space for the people to elect leaders who will govern their regions, reflecting the principle of popular sovereignty. However, situations can arise where only a single candidate is presented for election, creating legal and political challenges. This legal vacuum can significantly impact the execution of Pilkada, citizens' constitutional rights, and the validity and legitimacy of the elected government. Understanding the implications of a legal vacuum in cases with only one candidate and exploring potential remedies is essential, as upholding democracy and protecting political rights must remain a priority. Therefore, effective and comprehensive legal solutions are needed to ensure Pilkada can occur fairly, legitimately, and by the democratic principles enshrined in the 1945 Constitution.

Popular sovereignty is a fundamental principle of democracy that mandates every citizen's right to freely and fairly elect their leaders. In regional head elections, the presence of only one registered candidate restricts the constitutional rights of citizens to express their opinions and choose candidates. The absence of regulations regarding single candidates potentially limits citizen participation in democratic processes, conflicting with the fundamental principle of democracy, which should allow individuals to choose freely among various candidates. Consequently, the existence of a single candidate can undermine the essence of the right to vote, subsequently threatening the very sovereignty of the people, which should be the determining factor in any election.

The legal vacuum surrounding the provisions for single candidates in regional head elections creates considerable uncertainty in their execution. The ambiguity stems from the absence of definitive regulatory frameworks governing electoral processes in instances where a single candidate is registered. This lack of clarity raises questions regarding the legal validity and procedural mechanisms that must be adhered to during such elections. This uncertainty could incite debate among various stakeholders regarding the acceptability and validity of pilkada with only one candidate. Additionally, doubts may arise about who holds the authority to decide whether the election should proceed or be postponed, thus disrupting legal and political stability at the regional level, where clear rules should exist to ensure smooth democratic processes.

The lack of legal clarity regarding single candidates in regional head elections may lead to injustice and discrimination between regions with multiple candidates and those with only one. This situation risks unfair treatment of regions with a single candidate, as their citizens may not have the opportunity to choose from a range of candidates. Although equality of rights for all citizens is a fundamental democratic tenet, this legal vacuum could lead to disparate treatment across regions, potentially constituting discrimination. Citizens in areas with a single candidate may feel disadvantaged compared to those in regions with multiple candidates available for selection. Therefore, having legal mechanisms in place to ensure fair and equal treatment for all Indonesian citizens in regional head election processes is crucial.

Legal vacuums concerning single-candidate elections can result in delays in conducting *pilkada*, hindering the timely progression of democracy. Such postponements could lead to a leadership vacuum at the regional level, given the critical role of the regional head in governance. Any delays in elections may adversely affect the efficiency of regional governments, particularly if interim leadership cannot optimally perform its duties or if essential decisions cannot be made during that period. Furthermore, such delays may disrupt development processes within the region that should be advanced by the elected regional head. Hence, sustaining democracy and ensuring effective governance requires legal frameworks capable of addressing issues related to single candidates in *pilkada*.

To prevent legal vacuums in regional head elections with single candidates, clear and specific regulations regarding the procedures for such elections are necessary. Laws or regulations relevant to *pilkada* should include provisions that accommodate the existence of single candidacies, yet do so according to standardized procedures that uphold democratic principles. For instance, implementing mechanisms like "blank options" or plebiscites could allow people to express their agreement or disagreement with a single candidate. By establishing these clear regulations, selecting a regional head can still fulfill the principle of popular sovereignty, despite the presence of only one candidate, as it would give citizens a platform to voice their opinions regarding the candidate in question.

To ensure that regional head elections with single candidates align with democratic principles, more detailed regulations regarding their implementation must be established. For example, if there is only one registered candidate, voters should be presented with the option to choose between "agree" or "disagree" with that candidate. These rules must explicitly state that if the number of "disagree" votes exceeds, the election will be postponed or rerun at a specified time, providing opportunities to seek alternative candidates. The formulation of such

regulations aims to maintain a voting process that reflects the people's will, preventing uncertainty or ambiguity in the execution of pilkada with a single candidate.

Before conducting pilkada with a single candidate, the General Election Commission (KPU) and local governments must exert considerable efforts to ensure that more than one candidate exists. This process may involve enhancing the candidate registration system, clarifying the registration criteria, and providing incentives or support for prospective candidates. For example, this could encompass better educating alternative candidates about the pilkada process and the benefits of their participation. Through diligent efforts from the KPU and local governments to avert single-candidate situations, popular sovereignty can be upheld, ensuring that citizens have choices and are not left in circumstances that diminish their political rights.

One solution to address the issue of regional head elections with a single candidate is the implementation of a plebiscite or referendum. Through a plebiscite, citizens are granted the right to indicate whether they approve or disapprove of the existing single candidate. Should the majority vote against the candidate, the election can be postponed or rerun, allowing for the emergence of alternative candidates. This plebiscite mechanism empowers the people to actively decide on the suitability of the single candidate, while also ensuring that democracy unfolds according to the majority's will. Consequently, the principle of popular sovereignty remains intact, even when only one candidate is registered.

Transparency in the electoral process and a clear understanding of single-candidate pilkada mechanisms are paramount to maximizing community participation. The KPU and relevant institutions need to conduct effective and open outreach regarding the procedures to be followed in the election, as well as explain the reasons and consequences of having only a single candidate registered. Increasing transparency includes providing clear information concerning the available options for voters, such as the use of a blank option or plebiscite, and the procedures that will follow should the single candidate not be approved. With robust socialization, citizens will better understand the existing situation and be able to participate more actively in the democratic process.

The Constitutional Court (MK) plays a crucial role in resolving disputes related to regional head elections, especially in cases of uncertainty regarding single candidates. The MK can offer binding constitutional interpretations on how elections with a single candidate should be conducted, ensuring that the process aligns with the principles of popular sovereignty and

constitutional stipulations. If there is a legal vacuum enveloping the situation of a single candidate, the MK may issue definitive rulings to address this vacuum, such as determining valid procedures for conducting pilkada under such conditions. Clear and decisive rulings from the MK would provide legal clarity, thus ensuring that the election process proceeds fairly and transparently while maintaining public trust in the existing democratic system.

4. CONCLUSION

In a democratic rule of law system, the principle of popular sovereignty must be respected, particularly in the execution of regional head elections (Pilkada), which serve as a means for the people to express their constitutional rights. Elections featuring a single candidate risk sidelining the people's rights to choose and be chosen, which are fundamental to popular sovereignty. Therefore, even in the presence of a single candidate, democratic mechanisms such as a blank ballot or plebiscite must be implemented to allow the people to determine their leadership. The Constitutional Court's decision mandating the conduct of Pilkada, even with just one candidate pair and with efforts made to meet the minimum requirement of two candidates, is a crucial step in maintaining the integrity and fairness of the electoral process. Legal politics, grounded in the fundamental principles of the 1945 Constitution, assert that regional head elections must not be held in a manner that overlooks the constitutional rights of the people, ensuring that the legal system facilitates a transparent, fair, and aspirational democratic process.

The legal vacuum concerning regional head elections with a single candidate poses a serious issue that can threaten popular sovereignty and justice in the democratic process. This situation generates legal uncertainty, which may diminish public participation, create discrimination between regions, and lead to delays in Pilkada execution, adversely affecting regional government stability. Hence, clearer and more stringent regulations regarding the procedures for regional head elections with a single candidate are essential, including mechanisms like blank ballots or plebiscites that allow citizens to express their views on the sole candidate. Proactive efforts from the General Election Commission (KPU) and local governments are critical to ensuring a competitive pool of candidates. In instances of legal ambiguity, the Constitutional Court plays a pivotal role in providing binding rulings, ensuring the lawful conduct of Pilkada in alignment with democratic principles. Thus, addressing the issue of legal vacancies is crucial for sustaining a smooth, just, and enduring democracy in Indonesia.

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