



DOI: [https://doi.org/10.14505/jarle.v11.4\(50\).45](https://doi.org/10.14505/jarle.v11.4(50).45)

Dynamics of Selection of Regional Heads in Indonesia in the Reformation Era

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Suggested Citation:

Wisnaeni, F. 2020. Dynamics of Selection of Regional Heads in Indonesia in the Reformation Era, *Journal of Advanced Research in Law and Economics*, Volume XI, Summer, 4(50): 1490 – 1496, DOI: [10.14505/jarle.v11.4\(50\).45](https://doi.org/10.14505/jarle.v11.4(50).45). Available from: <http://journals.aserspublishing.eu/jarle/index>

Article's History:

Received 10th of March, 2020; Received in revised form 6th of April, 2020; Accepted 25th of May, 2020;

Published 30th of June, 2020.

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Abstract:

The regional head as the organizer of the government in the region is also an extension of the central government, has a pretty heavy task, therefore in order for the State's goals to be achieved, regional heads must be chosen that are truly credible, qualified and qualified, so that it can bring success to regional development in carrying out government affairs as mandated by the Act, which will ultimately have a positive impact, in the form of support for national development. This research is intended to examine, criticize and analyze which are expected to provide solutions related to the development of the authority to form laws in the constitutional system of the Republic of Indonesia. The formulation of the problem in this study are the dynamics of regional elections in Indonesia in the reformation era and the implications of the dynamics of regional elections in the Indonesian constitutional system. The method of approach used in this study is normative juridical, which is an approach that uses the positivist concept which states that law is identical with written norms created and enacted by authorized institutions or officials. The dynamics of regional head elections in Indonesia in the Reformation era include the conditions for pairs of candidates for regional head elections and the mechanism for regional head elections. Pairs of regional head candidates must be proposed by political parties or a combination of eligible political parties.

Keywords: dynamics of selection; regional elections; reformation era.

JEL Classification

Introduction

Government is the activity of organizing the State in order to provide services and protection for all citizens, make arrangements, mobilize all necessary resources, and foster good relations within the state or with other countries. At the local level, of course, building relationships with other local governments (Una, 2004). Regional government is the administration of government affairs by the regional government and regional people's representative councils according to the principle of autonomy and the task of assistance with the principle of broadest autonomy in the system and principles of the Unitary State of the Republic of Indonesia. The Regional Government is the regional head as the organizer of the Regional Government who leads the implementation of government affairs which are the authority of the autonomous region.

Local government in Indonesia is held based on three principles, namely decentralization, deconcentration and agency tasks (Gerritsen & Situmorang, 1999; Usman, 2001). Decentralization means giving rights to the regions to regulate and manage their own regional households (Utomo, 2009). The principle of deconcentration can be interpreted as delegating governmental affairs by the government to local officials, but it is still the responsibility of the central government, both regarding planning, implementation and financing (Marbun, 1982;

Aritonang, 2016). Furthermore, regional heads are the governor, the regent and the mayor. Furthermore, according to Soehino (1980), the task of assistance is a principle of organizing in the area based on the command of the ruler above it or known as task ordered (Alm et al., 2001). The term assignment is also known as self-government, namely the duty to participate in carrying out governmental affairs assigned to the regions by the central government or the regional government above, with the obligation to be accountable to those who assign them.

The regional head as the organizer of the government in the region is also an extension of the central government, has a heavy task. Therefore, in order for the State's goals to be achieved, regional heads must be chosen that are truly credible, qualified and qualified, so that it can bring success to regional development in carrying out government affairs as mandated by the Act, which will ultimately have a positive impact, in the form of support for national development. In the development of the history of Indonesian state administration, from independence to the era of reform, dynamics occurred in the election of regional heads, these dynamics included the requirements for regional head candidates as well as the system of filling their positions. The dynamics are in accordance with the development of state administration and democracy in Indonesia. In the reform era that took place from 1998 to the present, there has been an interesting dynamics in regional elections in Indonesia to study. The formulation of the problem in this study are the dynamics of regional elections in Indonesia in the reformation era and the implications of the dynamics of regional elections in the Indonesian constitutional system.

Research Method

The method of approach used in this study is normative juridical, which is an approach that uses the positivist concept which states that law is identical with written norms created and enacted by authorized institutions or officials. In addition, this concept also views law as a normative system that is autonomous, closed and independent of people's lives (Soemitro, 1982). This research is intended to examine, criticize and analyze which are expected to provide solutions related to the development of the authority to form laws in the constitutional system of the Republic of Indonesia.

The specifications of this study are analytical descriptive, namely describing, describing or revealing data that has relevance to the problem. The type of data from this research is secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material in the form of laws and regulations related to research. Secondary legal material in the form of literature in accordance with the problems studied and tertiary legal material in the form of a legal dictionary. The data collection technique is done through library research. In addition, interviews with related parties were also completed to complete the secondary data. Furthermore the data obtained were analyzed using qualitative.

Regional Head Election System

In most democracies, elections are considered a symbol, as well as a benchmark, of democracy. The results of general elections held in an atmosphere of openness with freedom of opinion and freedom of association are considered to reflect rather accurately the participation and aspirations of the people (Diamantina & Tyesta, 2019). Even so, it was realized that the general election was not the only benchmark and needed to be supplemented by the measurement of several other activities that were more sustainable, such as participation in party activities, lobbying, and so on. The choice of the type of direct election system always considers aspects of legitimacy and efficiency, which are always a trade off (Pramusinto, 2004). That is, choosing a system that has high legitimacy always has very inefficient consequences. Conversely, solely prioritizing efficiency will give birth to the results of low-legitimate local elections (see for instance, Labolo, & Hamka, 2012).

The regional head election system has a significant influence on the character and character of the competition of regional head candidates. The character of competition is the prominent characteristics and tendencies of competition in the elections can also be designed to facilitate certain political behavior because the electoral system can be easily manipulated.

Likewise, the direct local election system has characteristics and tendencies that stand out from the type of competition carried out, therefore the direct local election should carefully calculate these trends and the factors that influence them. To find out the possibility of implementing a direct election system in Indonesia, various types of direct election systems need to be reviewed, including First Past the Post System, Preferential Voting System or Approval Voting System, Two Round System or Run-off system and Electoral College System.

The Dynamics of Regional Head Elections in Indonesia in the Reformation Era

The reform era that began in 1998 has brought fundamental changes to the Indonesian constitutional system, including in the area of regional government. Changes in the area of regional government began with the formation of a new Regional Government Law, Law No. 22 of 1999 concerning Regional Government, which became known as the Regional Autonomy Law. The Regional Autonomy Law is a substitute for Law No. 5 of 1974 concerning Government in the Regions. In Law No. 22 of 1999 adopted the principle of autonomy to the widest extent, where this has an impact on the tendency of the nature of the federation and override the nature of the unitary state. This is evident in the formulation of Article 4 paragraph (1) which states about the formation of the Republic of Indonesia region into a Province, Regency and City which has the authority to regulate and manage the interests of the local community according to their own initiatives based on community aspirations and in paragraph (2) which states that the region each one stands alone and has no hierarchical relationship with each other.

Related to the election of Regional Heads, both Provincial and Regency/City Regional Heads conducted by the local parliament, this is expressly regulated in Article 18 paragraph (1) of Law no. 22 of 1999 which gives authority to the local parliament to elect the Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor. The mechanism for electing regional heads and deputy regional heads is regulated in Article 33 to Article 42 of Law no. 22 of 1999 concerning Regional Government. In accordance with Article 34 paragraph (1) of Law no. 22 of 1999, the election of Regional Head and Deputy Regional Head was held simultaneously. Referring to the sentence simultaneously, it can be said that at that time, the Regional Head and Deputy Regional Head were not proposed in the "one pair" candidate. The organizing committee for the election of regional heads and deputy regional heads is chaired by the Chair of the local parliament with the deputy chair of the committee deputy chairman of the the local parliament. Elections of regional heads and deputy regional heads are carried out directly, publicly, freely, confidentially, honestly and fairly in plenary meetings attended by at least two-thirds of the total number of the local parliament members. Election is done by means of each local parliament member voting for one of the candidates for the regional head and deputy regional head.

The pairs of candidates for regional heads and deputy regional heads who receive the most votes are determined as regional heads and deputy regional heads by the local parliament and endorsed by the President. The term of office of regional head is five years and can be re-elected for one term. The regional head is appointed by the President or other official appointed to act on behalf of the President. Election of Regional Head in Law No. 32 of 2004 regulated in Articles 56 to 119. Different from the election of regional heads based on Law no. 22 of 1999, regional heads and deputy regional heads are elected in a candidate pair which is carried out democratically based on the principle of direct, public, free, confidential, honest and fair. The organizer of the regional head election and the deputy regional head is the Regional General Election Commission which is responsible for the local parliament (Diamantina, 2018). Participants in the regional head election and deputy regional head are candidate pairs proposed in pairs by a political party or a combination of political parties. In this case, a political party or a combination of political parties that can register candidates is a political party that meets the acquisition requirements of at least 15% of the total number of the local parliament seats or 15% of the accumulation of valid votes in the General Election of the local parliament members in the area concerned. In the process of determining pairs of candidates, political parties or a combination of political parties must pay attention to the opinions and responses of the public.

Law Number 1 of 2015 concerning the Establishment of Government in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws. Based on Law Number 1 of 2015 concerning the Establishment of Government in Lieu of Law Number 1 of 2014 Regarding the Election of Governor, Regent and Mayor into Acts, candidates for regional head and deputy regional head may be proposed by Political Parties or a combination of Political Parties. The requirements for a political party or a combination of political parties to be able to propose a pair of candidates is if they meet the acquisition requirements of at least 20% (twenty percent) of the total number of seats in the local parliament or 25% (twenty-five percent) of the accumulation of valid votes in the general election of local parliament members. in the area concerned. From these provisions, it can be interpreted that there is an increase in the number of percentages for political parties or a combination of political parties that will carry the regional head candidate pair. A political party or a combination of political parties can only propose 1 candidate pair and the candidate cannot be proposed again by a political party or a combination of political parties. Another interesting change in Law Number 1 of 2015 concerning the Establishment of the Government in lieu of Law Number 1 of 2014 concerning the Election of Governor, Regent and Mayor into Laws, is the existence of new regulations that allow pairs of candidates for regional head and deputy regional head who not having a political vehicle in the sense that it is not carried by a political party or a combination of political parties (independent candidates) can run as pairs of candidates for

regional head and deputy regional head through individual candidates. The requirements that must be met are to get support spread over more than 50% (fifty percent) of the number of Regencies/Cities in the Province concerned, provided that the amount of support.

Table 1. Table 1. Amount of Support based on Total Population

Total population	Amount of Support
< 2.000.000	6.5%
2.000.000 – 6.000.000	5%
6.000.000 – 12.000.000	4%
> 12.000.000	3%

For individual candidates who can register themselves as Candidates for Regent and Mayor Candidates, the requirement that must be met is to receive support that is spread over more than 50% (fifty percent) of the number of Regencies/Cities in the Province concerned, provided that the amount of support

Table 2. Amount of Support based on Total Population for Individual Candidates

Total population	Amount of Support
< 250.000	6.5%
250.000 – 500.000	5%
500.000 – 1.000.000	4%
> 1.000.000	3%

Support for such individual candidates must be made in the form of a letter of support accompanied by a photocopy of the Electronic Identity Card or a certificate of identity. This support can only be given to 1 individual candidate. In Law No. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of the Government in Lieu of Law Number 1 of 2014 concerning the Election of Governor, Regent and Mayor into Laws, there are several changes and additions to the provisions relating to regional head elections both at the level provincial and district/city.

The amendments/additions include: a) rules to anticipate the possibility of dispute over the management of political parties that will carry the regional head candidates, b) in the case of a candidate pair or one of the candidate pairs dies from the determination of the candidate pairs until the day of voting, the party politics or a combination of political parties may propose a replacement candidate pair or one of the replacement candidates, c) for a prospective candidate, if the candidate pair dies from being determined as a candidate pair until polling day, the candidate pair is declared void and unable to contest the election. However, if the person who died is one of the pairs of candidates, the prospective individual may propose a replacement candidate.

Related to the amount of support for registering as a Candidate for Governor and Candidate for Deputy Governor, in addition to support must be spread over more than 50% (fifty percent) of the number of districts/cities in the province concerned, there is also an increase in the amount of support.

Table 3. Support for Candidate for Governorial Elections

Total population	Number of Support Under Law Number 1 Year 2015	Number of Support Under Law No. 10 of 2016
< 2.000.000	6.5%	10%
2.000.000 – 6.000.000	5%	8.5%
6.000.000 – 12.000.000	4%	7.5%
> 12.000.000	3%	6.5%

For individual candidates who register as Regent Candidates and Mayor Candidates, in addition to the amount of support spread over more than 50% (fifty percent) of the total number of sub-districts in the district/city, there is also an increase in the amount of support.

Table 4. Support for Regent Candidates

Total population	Number of Support Under Law Number 1 Year 2015	Number of Support Under Law No. 10 of 2016
< 250.000	6.5%	10%
250.000 – 500.000	5%	8.5%

500.000 – 1.000.000	4%	7.5%
>1.000.000	3%	6.5%

Another problem, in the area of regional head election, based on the legislation governing regional government and regional head elections as mentioned above, the requirements for candidates for regional heads and deputy regional heads are increasingly complex, due to becoming candidates for regional heads and deputy regional heads it is not enough to only concern the issue of devotion to God Almighty, faithful to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Proclamation of Independence on August 17, 1945 and the Republic of Indonesia, age and education, but also the problem of personal wealth, concurrent positions with regional heads in other regions and for former ex-regents criminal convicts have an obligation to openly and honestly state to the public that the relevant criminal convicts are concerned. Besides that, because the position as regional head is a strategic position, members of the House of Representatives, members of the Regional Representative Council, members of the Regional People's Representative Council, members of the National Army, members of the Indonesian National Police, civil servant, village heads, SOEs' officials also has an obligation to resign in these positions.

The Dynamics of Regional Head Elections on the State Administration System

Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia after the amendment (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) has placed sovereignty in the hands of the people and granted the people the right to exercise their own sovereignty without going through the people's consultative institutions as determined in the Constitution before the changes. Furthermore, related to the election of regional heads, Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia has laid the foundation for the election of regional heads based on democratic principles. The principle of democratic elections can be done in two ways, first; elections by the local parliament, second; direct election by the people. Democratic elections in the provisions of regional head elections also consider the implementation of regional head elections in regions that are special and special as referred to in Article 18B paragraph (1) of the 1945 Constitution.

The democratic election of the Regional Head, bearing in mind that the duties and authority of the Regional People's Legislative Assembly according to Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, state among other things that the local parliament does not have the duty and authority to elect the Regional Head and Deputy Regional Head. Article 24 paragraph (5) of Law No. 32 of 2004 interprets one of the meanings of democratic elections in this Act carried out by the people directly. Therefore, it starts with Law No. 32 of 2004 and subsequently followed by Law Number 1 of 2015 concerning the Establishment of Government in lieu of Law Number 1 of 2014 concerning the Election of Governor, Regent and Mayor into Law and Law No. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of the Government in lieu of Law Number 1 of 2014 concerning the Election of Governor, Regent and Mayor into Law. Election of regional heads in Indonesia is carried out directly by the people. This means that the legislators have defined that what is meant by democratic according to Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia is direct democracy, not representative democracy.

In the practice of holding regional head elections so far, the Regional Election Commission has been given authority by the Law to hold regional head elections, as well as in the event of a dispute over the results of regional head elections, then the one who resolves it is the Constitutional Court. Pursuant to Article 24C paragraph (1), the Constitutional Court has the authority to adjudicate at the first and last level the decision is final to examine the law against the Basic Law, decide upon a dispute over the authority of a state institution whose authority is granted by the Basic Law, to decide upon the dissolution of political parties and decide upon disputes about the results of general elections. Furthermore, in paragraph (2) the Constitutional Court is obliged to give a decision on the opinion of the People's Legislative Assembly regarding alleged violations by the President and/or Vice President according to the Basic Law. Referring to these provisions, should there be a dispute over the results of the regional head election, then it is not the Constitutional Court who must try them. Related to this, the Constitutional Court has issued MK Decision No. 97/PUU-XI/2013. The Constitutional Court has the authority to adjudicate disputes over the results of regional head elections as long as there is no law governing this matter (see, Suhariyanto, 2015; Herawati & Sukma, 2019). In its development, until now a law regulating the authority of institutions to settle disputes over the results of regional head elections has not yet been formed. So that in accordance with the Court's decision, the Court still has the authority to settle disputes over the results of regional

head elections. It can be said that legally, the Constitutional Court still has the authority to settle disputes over the results of regional head elections to date and the Constitutional Court's decision is legally valid.

Conclusions

The dynamics of regional head elections in Indonesia in the Reformation era include the conditions for pairs of candidates for regional head elections and the mechanism for regional head elections. Pairs of regional head candidates must be proposed by political parties or a combination of eligible political parties. Related to the requirements of the regional head candidate pairs there are various conditions that must be met. One of the important requirements is the permission of former convicts (corruption) to register as a candidate for regional head candidate. In addition, there are also opportunities for members of the army and police to register as regional heads, with the condition that they must resign first. Candidates who do not have political vehicles are also given the opportunity to register as candidates for regional head accompanied by conditions for the amount of support from the people. As for the electoral mechanism, there was a shift, namely at the beginning of reform with the enactment of Law no. 22 of 1999, regional head elections were held by the local parliament and the elections were also carried out by members of the local parliament. In line with the amendment to the provisions of Article 1 paragraph (2) of the Constitution which grants the right to the people to exercise sovereignty directly without local parliament through a consultative body, then in the case of regional head elections they are held directly and the implementation is carried out by the local election commission. The implication of the dynamics of the regional head election for the Indonesian constitutional system is that although regional head elections do not belong to the electoral regime, but because there is no authorized institution to hold regional head elections, the regional head election is conducted by the Regional Election Commission. In addition, if there is a dispute over the results of the regional head election, the settlement of the case is still handled by the Constitutional Court.

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