

Nominating Mechanisms for Regional Heads and Deputy Regional Heads in Indonesia: A Perspective of Law Number 10 of 2016

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ABSTRACT

This study analyzed the mechanism of nominating regional heads and deputy regional heads from the perspective of law number 10 of 2016. The researchers used normative legal research by searching for data and information directly to the parties related to the problem under study and conducting a literature review. Data analysis used a law argumentative analysis technique, which explained the data in detail using sentences that are collapsed, systematic, clear, and orderly. The results of the study stated that the election of the regional head and deputy regional head consisted of several stages, programs, and implementation schedules. The steps of the poll include the stages of preparation and stages of implementation. The preparatory stage consists of program planning and budgeting, to the updating and compilation of the voter list. Meanwhile, the implementation phase consists of the announcement of the registration of candidate pairs, to the proposals for ratification of the appointment of selected candidates.

Keywords: Nominating Mechanism, Regional Head, Deputy Regional Head, Constitution, General Election Commissions

INTRODUCTION

The mechanism for nominating regional heads and deputy regional heads is regulated in the laws and regulations of the general election commission. In law number one of 2015 concerning the stipulation of government regulations in lieu of law and

number one of 2014 concerning the election of governors, regents and mayors into law, juncto law number 8 of 2015 concerning amendments to law number one of 2015 concerning the stipulation of government regulations in lieu of law number one of 2014 concerning the election of governors, regents, and mayors into law. ^[1]

In chapter three, article seven letter (a) to the letter (t), regulates the requirements of candidates and chapter five articles 37 paragraphs (1) to (5) explains the registration of prospective candidates and in chapter seven articles 39 to article 47 concerning registration of candidates governor, candidate for regent and candidate for mayor, and the latest amendment to law number 10 of 2016 concerning the second amendment to law number one of 2015 concerning the stipulation of government regulations to substitute law number one of 2014 concerning the election of governors, regents, and mayors into law. ^[2]

The law only regulates globally how the nomination mechanism is either from individuals or candidates who come from political parties or a combination of political parties. The nominating mechanism governed by the law certainly does not have sufficient detailed explanation for prospective candidates or political parties supporting potential pairs who will register themselves in the holding of regional and regional head elections simultaneously.

The election organizer must realize that the law certainly does not specifically regulate the nomination mechanism, what are the candidates' requirements and/or nomination requirements. Therefore, it is also necessary to present the general election commission regulations which regulate in detail the nomination mechanism in terms of the candidates' qualifications and nomination requirements, which are ideal and easily understood by the organizer and participants of the election. The election organizer is aware that to make it easier for candidates to register, the election organizer should present a nominating mechanism that is not multiple interpretations or ambiguous in terms of the candidates and nomination requirements. This study analyzed the mechanism for nominating regional heads and deputy regional heads from the perspective of law number 10 of 2016.

LITERATURE REVIEW

In the constitutional system, it is stated that the Unitary State of the Republic of Indonesia is a state of law, as confirmed in article 1 paragraph 3 of the 1945 constitution, the third amendment, which states that the state of Indonesia is a state of law. ^[3] Wahyono ^[4] says that in the rule of law, there is a pattern as follows: (a) respecting and protecting human rights, (b) democratic institutional mechanisms, (c) the rule of law, and (d) independent judicial authority. Budiman ^[5] states that the rule of law requires that all actions of the authorities have a clear legal basis or legality both based on written law and based on unwritten law. The validity of the state in governing some say that because the state is a neutral institution, does not take sides, stand above all groups of people and serve the public interest.

The practice of implementing local governance in Indonesia has progressed since the reform period. It can be seen with the enactment of law number 22 of 1999 concerning regional government. With the enactment of the law, the relationship between the central and regional

governments has become more decentralized. It means that most of the authority in the field of government is given to the regions. In general, law number 22 of 1999 concerning regional governance has brought a lot of progress for the area and also for improving the welfare of the community.

However, on the other hand, this law, in its implementation, has also had a negative impact, including the appearance of the regional head as small kings in the region. It happens because of the vast authority that is owned, the unclear hierarchical relationship with the government above it, the growing opportunities for corruption, collusion, and nepotism in the regions due to extensive authority in the management of regional wealth and finance, and money politics in regional elections. To fix these weaknesses, then the enactment of law number 32 of 2004 concerning regional government. This law is directed to accelerate the realization of people's welfare through the improvement of services, empowerment, and community participation. It is also able to increase competitiveness by paying attention to the principles of democracy, equity, justice, privileges, and specialties the potential and diversity of the regions in the system of the Unitary State of the Republic of Indonesia, which is carried out effectively, efficiently and responsibly.

A very significant change to the development of democracy in the regions following the demands for reform is the direct election of regional heads and deputy regional heads. The direct election of regional heads is a consequence of the change in state order due to the amendment to the 1945 Constitution. The new law regulates the implementation of regional government in the steps of implementing a decentralization policy. It can be seen through the elaboration of the constitutional mandate of article 18 paragraph (4) of the 1945 Constitution, which states that the governors, regents, and mayors, respectively, as heads of provincial, district,

and city governments are democratically elected.

The direct election of regional heads and deputy regional heads are directly regulated in law number 32 of 2004 concerning regional government article 56, article 119, and government regulation number 6 of 2005 which has been amended by government regulation number 17 of 2005 in chapter one general provisions concerning procedures for the selection, approval, appointment, and dismissal of the regional head and deputy regional head. In chapter one general provisions of article one paragraph one that the election of regional head and deputy regional head, hereinafter referred to as election, is a means of exercising people's sovereignty in the province and/or district/city area based on *Pancasila* (the five philosophical basic of state) and the 1945 Constitution of the Republic of Indonesia to elect the head regions and deputy regional heads. [6] Explicitly the provisions regarding the direct election of regional heads are reflected in the provisions of the holding of regional head elections in article 56 paragraph one it is mentioned that the regional head and deputy regional head are elected in a candidate pair which is conducted democratically based on the principle of direct, general, free, secret, honest, and fair. [7]

The direct election of regional heads is an increase in democracy at the local level. With the existence of democracy in a country, it means that the country will uphold the aspirations, interests, and voices of its people. According to Winarno, [8] a direct electoral system is the most realistic alternative for bringing the aspirations of the people to democracy closer to the power of the government and, at the same time, providing the basis of political legitimacy for elected executive officials. While Purwoko [9] explained that in the direct local election, democracy means opening up opportunities for every citizen to occupy public office. It also means an opportunity for the people to use their political rights

directly and the opportunity to determine choices and participate in controlling the course of government.

With the direct election of regional heads, the process of democratization at the local level can be realized. It means that direct elections can be obtained by leaders who are in accordance with the choices of their people and can be accepted in their regions. The leaders can realize the interests and wishes of their people responsibly according to the potential that exists for the welfare of the people in their area. The direct election of regional heads must have a purpose in which to carry out the mandate of the *Pancasila* and the 1945 Constitution, namely to carry out people's sovereignty. The importance of direct regional head elections makes all regions must prepare themselves as well as possible and try how it can take place in a democratic and quality manner. They get regional heads and deputy regional heads who can bring progress to the region while empowering the people of the area. Besides, one of the objectives of holding direct local elections is also to provide political education for people in the region, where later they become more experienced and participate in political activities.

Election of regional heads directly becomes political learning that includes three aspects, namely increasing the political awareness of the local community, organizing the community into a political activity that provides greater opportunities for everyone to participate, and expanding access of local communities to influence the decision-making process concerning their interests. Besides, the most important thing in this regional head election is a means of democratization at the local level that can uphold people's sovereignty in the administration of regional government. Also, the elected candidates will have strong legitimacy because they are directly elected by the people so that political stability in regional government is created.

RESEARCH METHOD

This type of research is normative legal research by finding data and information directly to the parties related to the problem under study and reviewing the literature. According to Cohen, legal research is the process of finding the law that governs activities in human society. Through research can find the resources needed to predict what is done by the court. [10]

This research used the approach of legal norms to the laws and regulations, legal references, legal theories, and legal journals relating to the procedures and mechanisms for nominating regional heads and deputy regional heads simultaneously. Data obtained through references or obtained in the field are then analyzed using law argumentative analysis techniques meaning that the data is explained in detail using sentences that are collapsed, systematic, clear and orderly, and finally conclude the problem under study.

RESULTS AND DISCUSSION

Based on law number 10 of 2016 concerning the election of regional heads and deputy regional heads requires that the election of regional heads consists of several stages, programs, and schedules for organizing the election of the governor and deputy governor, regent and deputy regent, and or mayor and deputy mayor in 2018. The stages, programs, and schedule for the election are explained technically in the general election commission regulation number two of 2018 regarding the stages, programs, and schedule for organizing the election of the governor and deputy governor, regent and deputy regent, and or mayor and deputy mayor in 2018.

In the implementation of the electoral stage, the electoral commission works based on the steps that have been regulated in the general election commission regulation number two of 2018 regarding steps, programs, and schedules. The stages of the election as regulated in the regulations for the election of regional head

and deputy head of the region have been regulated in article three; namely, the election stage consists of (a) the preparatory stage and (b) the implementation stage. In article four-paragraph one it is explained that the preparatory stages as referred to in article three, letter (a) program planning and budgeting, (b) preparation of the rules for organizing elections, (c) planning for organizing which includes procedures for scheduling stages of the implementation of elections, (d) the establishment sub-district election committees, polling committees, and polling organizer groups, (e) formation of district and city supervisory committees, sub-district supervisory committees, field supervisory committees, and polling committee oversight committees, (f) Notification and registration of election observers, (g) submission of a potential voter list, and (h) updating and compiling the voter list.

It is stated in paragraph two stages of program planning and budgeting, as referred to in paragraph one letter (a) include the preparation and signing of the text of the regional grant agreement and management of the program and budget. Paragraph three stages of the preparation of the rules for organizing elections, as referred to in paragraph one letter (b), include the preparation of the election administration decision. Paragraph four of the planning stages of the process which includes the procedure for scheduling the stages of the election as referred to in paragraph one letter (c) including socialization to the community and counseling or technical guidance to provincial, district/city election commissions, sub-district selection committees, voting committees, and organizing groups voting. Paragraph five stages of the formation of a sub-district election committee, the voting committee, and the voting organizer group as referred to in paragraph one letter (d) include the working period of the sub-district election committee, the voting committee, and the voting organizer group, as well as the

formation and working period of the voter data updating officer. Paragraph six stages of notification and registration of election observers, as referred to in paragraph one letter (f), includes registration of survey organizers or opinion polls and registration of implementing quick counts.

In Article five-paragraph one, the stages of implementation referred to in article three-letter (b), include a) announcement of the registration of candidate pairs, b) registration of candidate pairs, c) examination of candidate requirements, d) determination of candidate pairs, e) campaign implementation, f) voting, g) vote counting and recapitulation of the results of vote counting, h) determination of selected candidates, i) resolution of violations and disputes over the results of the election, and j) proposing the endorsement of the appointment of elected candidates. Two, before the announcement stage of the registration of candidate pairs as referred to in paragraph one letter (a), the steps of the fulfillment of the requirements of individual pairs of candidates are supported. Three, after the stage of determining a couple of candidates as referred to in paragraph one letter (d), the administrative state dispute stage is carried out. Fourth, implementation of the campaign, as referred to in paragraph one letter (e) covers the steps of the campaign period and the audit report on campaign funds. Five, before the implementation of the voting stage as referred to in paragraph one letter (f), the procurement and distribution stages of the voting and counting equipment are carried out. Six, the determination of the elected candidates, as referred to in paragraph one letter (h), is the stage of determining the pairs of elected candidates without a request for the dispute over the results of the election. Seven, after the steps of the settlement of violations and disputes over the results of the election as referred to in paragraph one letter i, the stages of determining the pair of elected candidates after the constitutional court decision. Eight, after the steps of proposing

the ratification of the appointment of selected candidates as referred to in paragraph one letter j, the evaluation and reporting stages are carried out. ^[11]

In practice in the Gorontalo city - Indonesia, before the determination of candidate pairs, the Gorontalo city general election commission has carried out the nomination mechanism as mandated in the general election commission regulation number 3 of 2017 as follows:

First, registration of candidate pairs, at the registration of the candidate pairs the general election commission announces the registration, then asks prospective pairs of candidates to submit nominating and nominating requirements.

Second, document examination of candidate requirements and nomination requirements, in this mechanism the electoral commission does several things, namely (1) researching the nomination requirements documents and candidate requirements, (2) asking prospective pairs of candidates through a party or coalition of supporting parties to make improvements candidacy and candidate requirements, (3) then the general election commission conducts research on the results of improvements.

Third, Stipulation and announcement of candidate pairs, before stipulating and announcing pairs of candidates for the general election commission, recheck the documents related to the candidates' requirements and nominations and make improvements to ensure that the documents are following the applicable laws and regulations.

Fourth, the general election commission gives the prospective candidate a chance to make a replacement. The replacement is carried out by a political party or a combination of political parties.

Fifth, prohibition and sanction mechanism, political parties are prohibited from receiving any compensation in the process of nominating elections, incumbents are prohibited from committing officials six months prior to the appointment of candidate pairs until the end of their term of office, are prohibited from using program authority and local government activities for election activities six months before the date determination of candidate pairs up to the determination of the selected candidate pairs.

Sixth, public response, after the list of prospective pairs of candidates is announced the general election commission asks the public to provide responses and input related to the list of prospective pairs of candidates before being determined on condition that the respondent must include a clear identity and photocopy of the resident's identity card.

Seventh, community response. In the stage of providing responses preceded by announcements by the provincial general election commission/independent Aceh general election commission and the general election commission/independent district/city general election commission through print media and or electronic media related to the candidate list, registration documents, deadline for input and public response and the implementation of the facts of integrity conveyed by prospective governors and deputy governors, regents, and deputy regents, and/or mayors and deputy mayors. Submission of responses made one day before the end of the repair research period.

Eighth, settlement of state administrative disputes

Ninth, other provisions.

The nominating mechanism in the election of regional head and deputy regional head is carried out following the stages as outlined in the general election commission regulations regarding the election starting from the registration stage to the step of determining the elected candidates. In the case of the announcement of registration, the general election commission must follow the regulations as referred to in article 38 paragraph one of the provincial general election commission/independent commission of Aceh general election or the general election commission or district/city election independent commission announcing the registration of prospective pairs through the mass media and/or the notice board and/or the provincial general election commission/independent commission of Aceh general election or district/city general election commission according to the schedule as stipulated in the general election commission regulations governing the stages, programs and schedule for holding elections for the governor and deputy governor, regent and deputy regent, and/or mayor and deputy mayor. Paragraph two, namely the announcement of the registration of prospective pairs as referred to in paragraph one, shall be stated, a). decisions of the provincial general election commission/independent commission of Aceh general election or district/city general election commission as referred to in article five, paragraph one, b). time of submission of registration documents, and c). place of surrender. Paragraph three, the registration period for a candidate pair is no longer than three days after the last day of the announcement of registration as referred to in paragraph one. Paragraph three, registration of prospective couples as referred to in paragraph three, shall be carried out with the following schedule: a). The first and second day of registration is carried out until 16:00 local time, and b). The third day of registration takes place at 24.00 local times. The registration mechanism, as explained above, is the city

general election commission obedient to the general election commission regulations. Before the registration announcement was made, the general election commission conducted information dissemination regarding registration information that would be announced through the mass media, time, place, and date of registration.

In terms of submitting the documents on the requirements of the candidates and nominations, they are also clearly socialized to the Liaison Officer (LO) of each bearer party regarding what documents must be submitted and become joint agreements in the socialization. The form of the agreement must be stated in the minutes of the agreement so that it becomes a guideline and guide for the supporting party in registering.

Furthermore, in terms of research, documents must also be conveyed and socialized what will be examined related to the requirements of candidates and nominations. The experience so far has not been conveyed and clearly socialized in relation to the candidates' requirements and how the verification mechanism will be carried out by the election commission. Based on this experience, the election commission will inform the election participants through the LO about what documents will be examined and what documents are eligible and not eligible.

In addition to being explained through socialization to the LO, an open consultation room was also provided for the LO who did not understand clearly the documents regarding candidates and nominations who were eligible and did not meet the requirements. The understanding that has happened so far is first, and sometimes the general election participants take it lightly or easily by saying that the requirements of candidates and nominations are well understood because they have often done so. Second, there is still time to repair. This understanding is wrong because regulations change frequently and must be updated by election participants. After the registration process is complete, the general

election commission will examine the nomination requirements. It must be fulfilled at that time because the nomination requirements must be complete at the time of registration. For factual verification, the candidates' qualifications will be carried out for one week by the election commission team together with the election supervisory body.

Factual research of the candidate requirements document is carried out by checking directly at the institution authorized to issue the candidate documents. The next stage, after factual verification, is then the results will be submitted to prospective pairs through the LO to be corrected if there are improvements to the candidate's requirements. Improvements to the requirements of candidates and nominations must be clear, namely 1) what must be corrected and conveyed through minutes of items related to items that must be repaired by prospective pairs of candidates, 2) deadline for repairs and 3) sanctions for prospective pairs of late submitting according to with a predetermined deadline in accordance with the schedule of selection stages. After reviewing the results of improvements, the general election commission will determine and announce pairs of candidates who qualify and do not qualify as eligible participants.

At the stage of determining the candidates, it becomes serious about being considered by the organizer. The determination of candidate pairs is conducted in closed and open plenary meetings. Closed plenary meetings can only be attended by commissioners of the general election commission, and one of the secretariat officers is present to take notes and must be sterile in the committee. The results of the plenary meeting are stipulated in the minutes of the plenary meeting and then based on the minutes of the general election commission stipulates by issuing a decree on the determination of pairs of candidates who are entitled to participate in the election.

Based on what has been said by the chairperson of the general election commission of the Republic of Indonesia that what is likely to be the most likely conflict is the establishment of a candidate pair. To anticipate this the Gorontalo city general election commission does the following: first, coordinate with the provincial general election commission internally, as well as the Gorontalo municipal election supervisory body by addressing the problems faced by the Gorontalo city general election commission; Second, coordinating with electoral participants in a coordinating meeting forum attended by the municipal election supervisory body, supporting parties and security forces. The coordination meeting was deliberately carried out in order to anticipate conflicts before the determination of candidate pairs. The experience of the Gorontalo city general election commission before determining the candidate pairs that need to be designed also is how before making the determination in addition to presenting the election supervisory body, LO of the candidate pairs, and the security forces as mentioned above it is also necessary to present the provincial general election commission and the general election supervisory body province in the coordination meeting. It is in line with research by Priyowidodo et al., (2019) ^[12] that the selection and nomination of candidates for regional head must follow the process of negotiation and coordination at each level.

The organizer's technical division further explained that before the determination of the candidate pairs, they would still hold a joint coordination meeting but would not present the provincial election commission and also the provincial election supervisory body. According to the researchers for the simultaneous regional head elections in 2020 and 2024, in addition to joint coordination meetings with related parties, the Gorontalo city general election commission also needs to bring print and electronic media journalists to ensure that

the information obtained is the same so that it becomes a commitment to take care of each other before it is done determination of candidate pairs. In addition to making a commitment to understanding in carrying out the duties and obligations in the registration process, the general election commission also ensures that the LO of each party or a combination of the supporting parties clearly understands what will be done at the time of registration. The next step for the general election commission is to ensure that the LO so that in the dissemination of information related to the registration procedure and documents that must be submitted at the time of registration is always attended by the LO that has been assigned by the party or party combination and cannot be replaced during the socialization. The socialization was carried out well in each nomination process.

CONCLUSION

Based on law number 10 of 2016 concerning the election of the regional head and deputy regional head, it is stated that the regional head election consists of several stages, programs, and implementation schedules. The steps of the vote as regulated in the regulations of the regional head election commission and the deputy regional head have been regulated in article three; namely, the election consists of the stages of preparation and stages of implementation. The preparatory stage consists of program planning and budgeting, preparation of the election administration regulations, planning of the organizing, which includes the procedure for scheduling the steps of the election, the formation of a sub-district election committee, the voting committee, and the voting organizer group. Besides, the formation of district or city supervisory committees, sub-district supervisory committees, field supervisory committees, and polling committees. Included in the preparation stage are notification and registration of election observers, submission of a list of potential voters, updating, and compilation of the

voter list. The stages of implementation, as referred to in article three-letter (b) consist of announcements of candidate pairs, registration of candidate pairs, an examination of candidate requirements, determination of candidate pairs, campaign implementation, voting, vote counting, and recapitulation of vote counting results. Furthermore, also included in the implementation stage is the determination of the selected candidates, the resolution of violations and disputes over the results of the election, and the proposal for the ratification of the appointment of the elected candidates.

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