

Legal Protection of Regional Head Candidates Due to Disqualification in The Regional Head Election Process in Indonesia

Supriyadi, S.H., M.H.

Supriyadi Adi & Associate, Indonesia
saa.lawoffice@gmail.com

Abstract

Background: Regional head candidates consist of regional heads and deputy regional heads who form one unit to advance to win the regional head election, each of whom must fulfill the requirements as regulated in the laws and regulations relating to regional head elections, meaning pairs of regional head and deputy candidates. If a regional head does not meet the requirements, he cannot take part in the next process. The requirements for regional head candidates according to the decision of the Constitutional Court always apply until the regional head candidate pair is inaugurated as regional head, but if one of the candidate pairs violates the requirements as regional head, disqualification will be imposed on the candidate pair, whether they violate it or not. **Purpose:** This writing will raise legal protection for pairs of candidates who have been determined as winners by the organizers but if one of the pairs is proven to have violated the conditions that have been determined then disqualification can be carried out for all pairs of candidates, even though those who violate one but not the violation will be affected. **Methodology:** The research approach is normative legal research by examining and analyzing legal events in determining disqualification and legal protection for candidate pairs who do not violate participant requirements. Bearing in mind that when completing the requirements, each data and document is then combined into one couple, but in the Constitutional Court's decision you have to bear the risk of legal action by the other partner. **Findings:** This research is to fight for the rights of candidate pairs for regional head and deputy regional head who are jointly running to become regional head who are subject to disqualification as a result of one of the candidate pairs committing a violation of the law as regulated in statutory regulations.

Keywords: Legal protection, Head Election, Indonesia.

I. INTRODUCTION

Bagir Manan¹ said that a position is a permanent work environment that contains certain functions, which as a whole reflect the goals and work procedures of an organization. The state contains various positions or permanent scopes of work with various functions to achieve state goals. Officials occupy positions as office holders to carry out office functions, equipped with rights and obligations.

The Regional Head is the leader who manages the regional government called the Regional Head who is usually called the Governor for provincial areas, the Regent for district areas and the Mayor for city areas and each regional head is assisted by a deputy regional head who is called the deputy Governor, deputy Regent and deputy Mayor as regulated in Law Number 23 of 2014 concerning Regional Government² as amended by Law number 9 of 2015 concerning the second amendment to Republic of Indonesia Law Number 23 of 2014 concerning Regional Government.

Regional Heads and Deputy Regional Heads in the government system in Indonesia do not include State Civil Apparatus who have a career path in regional government in holding positions but the position or position of Regional Head is a political position, to fill the positions of Regional Head and Deputy Regional Head, the current system must be vote directly by the people who have the right to vote through regional head elections. Direct elections are believed to be closer to the meaning of democracy³. However, the meaning of being elected democratically can be interpreted as being elected directly by the people or through the regional people's representative council (DPRD) of a province, district or city⁴.

Election of Regional Heads is a necessity. Filling the position of regional head according to the 1945 Constitution (UUD 1945) is regulated in article 18 paragraph (4) Governors, Regents and mayors as regional heads of provinces, districts and cities are elected democratically. In the 1945 Constitution, regional head elections (PILKADA) are

¹ Bagir Manan, *Teori dan Politik Konstitusi*, Yogyakarta: FH UII Press, 2004, hlm 66.

² Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah pasal 59 dan pasal 63

³ Mahfud MD, *Evaluasi pemilukada dalam Prespektif Demokrasi dan Hukum*, Demokrasi Lokal, Evaluasi Pemilukada di Indonesia, Jakarta: Konstitusi Pers, 2012, hal 7

⁴ Majalah Konstitusi No.88, Edisi Juni 2014, Hal 13

regulated in Chapter IV Regional Government separately from the presidential elections and legislative elections regulated in CHAPTER VII B General Elections⁵.

Democratic regional head election can be interpreted as a regional head and deputy regional head elected directly and democratically by the people (voters) who have the right to vote through the election of the regional head and deputy regional head, as regulated in article 1 paragraph 1 of Law Number 10 2016⁶ concerning the second amendment to Law Number 1 of 2014 concerning the election of Governors, Regents and Mayors into Law, namely; Election of Governors, Regents and Mayors, hereinafter referred to as Elections, is the exercise of popular sovereignty in Provinces and Regencies/Cities to elect Governors, Regents and Mayors directly and democratically.

Elections are the implementation of democracy which is the embodiment of people's sovereignty as regulated in the 1945 Constitution of the Republic of Indonesia, article 1 paragraph (2), which states that sovereignty is in the hands of the people and is implemented according to the Constitution. Meanwhile, to exercise popular sovereignty in the form of democracy, it must be accompanied by laws that regulate this, strengthening it with the basic rules contained in the 1945 Constitution, article 1 paragraph (3). The Indonesian state is a state of law.

The definition of democratically elected has a flexible meaning, it can be chosen directly by the people or chosen by the DPRD. Being elected directly by the people is democratic, being elected through the DPRD is also equally democratic.⁷

Every citizen is given the same rights and opportunities to become a regional head as long as they fulfill the requirements of Article 7 which regulates that the candidate must never be convicted and must never commit any disgraceful act, must be open and honest, Articles 71 and 73 regulate the prohibition on incumbents from making policies in office. carry out replacement of officials within a period of 6 (six) months before the date of determination of candidate pairs until the end of the term of office unless written approval is obtained from the Minister (Minister of Home Affairs) as stated in Law Number 10 of 2016 concerning the second amendment to Law Number 1 2015 concerning the

⁵ Maria Farida Indrati, *dalam sengketa Pemilukada, Putusan MK dan Pelaksanaan Putusan MK, Demokrasi Lokal , Evaluasi Pemilukada di Indonesia*, Jakarta: Konstitusi Pers 2012 hal 51

⁶ Undang-Undang Nomor 10 Tahun 2016 tentang Perubahan Kedua Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati dan Walikota menjadi Undang-Undang.

⁷ Heru Widodo, *Hukum Acara Perselisihan Hasil PILKADA Serentak di Mahkamah Konstitusi*, Sinar Grafika, cet.2, Maret 2017 hlm.12

Determination of PERPU Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.

This article will highlight legal protection for pairs of candidates who have been declared winners and then disqualified because one of the candidate pairs has violated the law. Even though candidate pairs who have not violated the law have fulfilled the administrative requirements, have been verified and determined by the General Election Commission. Then there are candidate pairs who have participated in the selection process, voting and some have even been declared winners by the General Election Commission, canceled by the Constitutional Court.

Even though the election process takes a long time and costs a lot of money, if a candidate pair who has not committed a violation also receives a sanction of disqualification, so there is no legal protection, then there will be a violation and/or neglect of the constitutional rights of the candidate pair who are their running mates.

1. Disqualification by the General Election Commission.

a. Yapen Islands Regent Election in 2017

The incumbent pair, Tonny Tesar and Frans Sanadi, committed a violation of Article 71 paragraph (3) and paragraph (5) of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors by using their positions to benefit or harm certain candidate pairs.

b. Pare Pare Mayor Election 2018

The incumbent pair, Taufan Pawe and Pangeran Rahim, violated Article 71 paragraph 5 of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors, by distributing rice, money and ASN transfers six months before being appointed as candidate pairs.

c. Palopo Mayor Election in 2018

As the incumbent, he committed a violation of Article 71 paragraph 2 of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors by replacing officials 6 (six) months before the date of determining the candidate pairs.

d. Election of Regent of Sinjai Regency

The incumbent pair, Sabirin and Mahyanto, violated Article 74 of Law no. 10 of 2016 concerning the Election of Governors, Regents and Mayors, by making LPPDK reports late regarding campaign funds

2. Disqualification by the Supreme Court

a. Makasar Mayor Election 2018

The couple, Moh Ramdhan Pomanto and Indira Mulyasarai, did not fulfill the requirements for the election of Mayor and Deputy Mayor according to Supreme Court Decision Number 250K/TUN/PILKADA/2018 dated April 23 2018.

b. Boalemo Gorontalo Regent Election 2018

Incumbent Drs. Rum Pagau and Lahmuddin, violated article 71 paragraph (2) of Law no. 10 of 2016 concerning the election of governors, regents and mayors by dismissing hospital directors within 6 months before the determination of candidate pairs. Decision Number 02P/PAP/2017

3. Disqualification by the Election Supervisory Body

Election of Regent of Jaya Pura Incumbent couple Mathius Awoitouw and Giri Wijayanto, candidates for regent, violated article 71 paragraph 2 of Law no. 10 of 2016 concerning the election of Governors, Regents and Mayors by replacing the Head of the Industry and Trade Service and the Regional Hospital Director

4. Disqualification by decision of the Constitutional Court

a. Sabu Raijua Regency Regent Election in 2021

Candidate pair Orient Riwu Kore and Thobias Uly, candidates for regent, violated Article 7 paragraph (1) UU/10/2016 concerning the Election of Governors, Regent and Mayor, Requirements for candidacy for Regent and Deputy Regent must have the status of an Indonesian Citizen and their status as a Citizen is known Foreigners by election organizers after the election has been held, meaning before all the requirements have been completed and strangely enough, the submission to the Constitutional Court is already overdue.

b. South Bengkulu Regent Election in 2008

Candidate pair Dirwan Mahmud and Hartawan, one of the candidate pairs was once convicted but was covered up but later revealed in court. The importance of "honesty" in democracy, protection against crime and dishonesty in democracy is the attention of the court so that the people as voters do not choose the wrong leader.

c. Yalimo Regency Regent Election in 2020

Candidate Pair Erdi Dabi and John W. Wilil, candidates for Regent, violated the provisions of article 7 paragraph (2) letter g of Law no. 10 of 2016, Regent Candidate Erdi Dabi was convicted based on the Jayapura District Court decision

Number 500/Pid.Sus/2020/PN.Jap on 18 February 2021 with a 4 month sentence for violating the provisions of article 311 paragraph (1), paragraph (2) and paragraph (5) of Law Number 22 of 2009 concerning Road Traffic and Transportation

The disqualification action in this article is carried out against candidate pairs after they have participated in voting and have been declared the winner. One of the Decisions of the Constitutional Court Number 145/PHP/-BUP XIX/2021, stated that the candidate pair had fulfilled the requirements and had taken part in the voting and had been declared the winner because they had received the most votes by the Regional General Election Commission and were just waiting for the oath process to become Regent and Deputy Regent.

This incident occurred in Yalimo Regency, Papua, while waiting for the re-voting of one of the Regent Candidate candidates, Erdi Dabi S. Sos. had a traffic accident on the highway when the driver of the vehicle hit a female police officer and the person who was hit died. Then he was subject to traffic law with a threat of 12 years because it was resolved outside the court according to custom and then the court sentenced him to prison for 4 months.

After carrying out the crime, they still participate in the re-voting and win the vote, by getting the most votes. Then the losing participant submitted another dispute over the results to the Constitutional Court with the argument that apart from fraud in the election, he also raised a case involving being convicted of a traffic accident.

In the decision of the Constitutional Court, it was decided that Regent candidate Erdi Dabi S.Sos and Deputy Regent were declared ineligible as Regent Candidates, because one of the conditions for Regent and Deputy Regent Candidates was never being convicted, even though the criminal act was committed after being completed administratively by the General Election Commission, on the grounds that when a crime occurred during the election process and he had not yet been appointed as Regent, the Constitutional Court therefore disqualified the election participant as a candidate for election on the grounds that he violated the law as well as being a legal subject who has always been an example, role model or role model, whether inner attitude and integrity as well as his actions for members of the community, but the problem is that the Deputy Regent Candidate is not involved in criminal acts by his partner. The Regent Candidate is also disqualified.

In his demands the prosecutor used Article 311 paragraph (5) of Law Number 22 of 2009 concerning Road Traffic and Transportation with the threat of imprisonment for 12

(twelve) years and finally on February 18 2021, the Panel of Judges at the Jayapura District Court sentenced him to prison. for 4 (four) months cq Decision Number 500/Pid.Sus/2020/PN.Jap.⁸

Even though Regent Candidate Erdi Dabi S.Sos has been sentenced to prison for 4 (four) months, the Yalimo Regency General Election Commission still allows him to take part in a repeat voting on the grounds that the administrative violation of Regent candidate Erdi Dabi, S.Sos occurred after taking part in the first voting, not during the selection process. candidate pair, and in the trial the Yalimo Regency General Election Commission retained the candidate pair because a violation occurred at a later time, not during the selection.

The Court did not agree with the opinion of the General Election Commission, stating that fulfilling the requirements for registering a candidate pair was a legal event of the nature of 'einmalig', which was deemed to occur immediately and only once so that once a condition was met, the person concerned would forever hold the status of "qualified". This is because regional head candidates, both while they are candidates and after being appointed as regional heads, still have the status of legal subjects who are always examples, role models or role models, both in their inner attitudes and integrity and their actions for members of the community.⁹

II. LITERATURE REVIEW

Referring to Bagir Manan's opinion, the theoretical foundation or framework was built as a frame or analytical knife to answer existing problems¹⁰. In general, theory is an analysis of the relationship between one fact and another in a set of facts¹¹.

This article was built using the construction of the Theory of Popular Sovereignty, the Pancasila Democracy Theory and the Theory of Legal Certainty.

1. Theory of Popular Sovereignty

The 1945 Constitution of the Republic of Indonesia in its third amendment firmly regulates the sovereignty of the people as contained in Article 1 paragraph (2).

⁸ Putusan Pengadilan Negeri Jaya Pura Nomor 500/Pid.Sus/2020/PN.Jap

⁹ Putusan Mahkamah Konstitusi perkara nomor 97/PHP/-BUP-XIX/2021

¹⁰ Bagir Manan, *Fungsi Teori Ilmiah dalam Penelitian dan Penulisan Disertasi Ilmu Hukum*,Makalah ,April 2014, hlm.2.

¹¹ [Merriam-Webster.com](https://id.wikipedia.org/wiki/Teori),Merriam-Wabster Dictionary dikutip dari <https://id.wikipedia.org/wiki/Teori>

Sovereignty is in the hands of the people and is implemented according to the Constitution.

Grotius said that the highest power to rule is called sovereignty. Sovereignty is held by people who are not subject to the power of others, so that it cannot be contested by human will¹². Furthermore, Jean Bodin (1576) in the book *Les Six Livres de la Republique* stated that sovereignty is power that transcends citizens and subordinates, even overcoming laws, or in other words, Bodin said that sovereignty is complete and lasting power that belongs to one Republic.¹³

According to the Big Indonesian Dictionary and the Law Dictionary written by Sudarsono, sovereignty is defined as the highest power over state, regional government and so on¹⁴. When associated with the word "people" then the people are the place that gives birth to the highest power.¹⁵ If "sovereignty" is combined with "the people" then the people are the birthplace of supreme power¹⁶.

At the level of implementation of popular sovereignty, it is a combination of the will of each individual, whose number in society is determined by the majority vote. Referring to the theory of popular sovereignty, the implementation of voting to elect regional head candidates has given the highest power to the people to give their votes to the candidate they like in accordance with their conscience, even the rights of the people as sovereign rights have been recognized by law. The Republic of Indonesia was founded in 1945, but why just because one partner breaks the law then the other partner is disqualified, thereby ignoring the people's voice as the place that gives birth to the highest power in choosing a leader.

2. Pancasila Democracy Theory

Bagir Manan said that democracy will only grow if there is democratic consciousness and responsibility. It is further said that democracy is not just unlimited freedom, democratic freedom is limited by responsibility for the interests of the people and the law. Democracy will only be realized if it is implemented based on law (democracy

¹² Arief Budiman, *Teori Negara, Negara, Kekuasaan dan Ideologi*, (jakarata: PT.Gramedia Pustaka Utama,2002),hlm 12 (dikutip dari Pemilihan Umum dan Kedaulatan Rakyat,Khairul Fahmi,S.H.,M.H., hlm.18

¹³ Muhammad Yamin, *Proklamasi dan Konstitusi Republik Indonesia*.Djambatan.Djakarta,1952.hlm 115, dalam Moh.Mahfud MD., *Dasar dan Struktur Ketatanegaraan Indonesia*,(Jakarta:Rineka Cipta),hlm.104

¹⁴ Kamus Besar Bahasa Indonesia.loc it

¹⁵ Khairul Fahmi,*Pemilihan Umum dan Kedaulatan Rakyat*,PT. Raja Grafindo Persada,Jakarta,2011,hlm 19

¹⁶ Muhammad Khoesnoe, loc it hlm 19

under the rule of law). Democracy without the principle of a state based on law is a hidden dictatorship. Power that is not subject to law will make law a mere instrument of power (law is a tool of ruling power)¹⁷.

Pancasila democracy is a democracy based on the principles of kinship and mutual cooperation aimed at the welfare of the people, which contains elements based on religion, based on truth, love and noble character, Indonesian personality and sustainability¹⁸. In democracy, Pancasila prioritizes the principle of deliberation and consensus for the common good (of all people) which is based on the personality and philosophy of life of the Indonesian people. The Indonesian nation has the ideology of Pancasila, therefore in national life we must adhere to every principle of Pancasila.

Thus, Pancasila democracy is a democracy¹⁹ that prioritizes deliberation and consensus. Pancasila democracy is a constitutional democracy with a mechanism for people's sovereignty in administering the state and administering government based on the constitution, namely the 1945 Constitution of the Republic of Indonesia.

Referring to the theory of Pancasila Democracy, regional head elections have involved the community in voting as a means of voting, but it is true that handing over rights to voters does not mean unlimited, but legal guidelines or norms must be made so that democratic rights can be exercised without limits. And it is worth paying attention to the limits of deliberation and mutual cooperation, if there are differences in implementing democracy.

3. Theory of Justice and Legal Certainty

Justice and law are different things but are related and complementary because the essence of justice is the assessment of a treatment or action by examining it with a norm which according to subjective views exceeds other norms. The law is supposed to contain the value of justice, but the law itself is not synonymous with justice because there are legal norms that do not contain justice²⁰.

¹⁷ Bagir Manan, Teori dan Politik Konstitusi Cet I, (Yogyakarta: UII Press 2003). hal 162. Jimly Asshiddiqie, op.cit., 2006, hal 165

¹⁸ Rohmatullah, Pengertian Demokrasi Pancasila <http://rohmatullah.blogspot.co.id/2014/03/>.html, di akses Rabu 6 april 2016 spasinya salah harus

¹⁹ Wikipedia, Demokrasi pancasila, <https://id.wikipedia.org/wiki/>, di akses Rabu 6 april 2016 jam 19.30.

²⁰ Dalam buku Wantu, Fence W "Antononi dalam penegakan hukum oleh hakim" Journal Berkala Mimbar Hukum Vo.19 No.3 Oktober 2007 Yogyakarta : Fakultas Hukum Universitas Gadjah Mada

The 1945 Constitution in Article 1 paragraph (3) states "The State of Indonesia is a State of Law". With this formulation, all administration and all aspects of state activities and life must be based on laws or statutory regulations.

This understanding was taken over by Justinian in the *Corpus iuris civilis*. *Juris praecepta sunt haec: honesty vivere, alterum non laedere, suum cuique tribuere*, that the basic rules of law are related to living properly, not harming others and giving to others what is their share²¹.

The regional head election is followed by a pair consisting of the regional head and deputy regional head. It could happen that between the two of them taking part in the election, one of them violates the law and is then disqualified. The problem is why both have to accept the risk of disqualification while only one violates the law.

In the opinion of legal expert Bagir Manan, there are 3 conditions that must be met by the judiciary in carrying out just law enforcement, namely the legal rules that will be enforced, the perpetrators of law enforcement and the social environment where the law applies²². There are two important aspects in realizing just law enforcement, namely procedures for law enforcement (procedural justice) and the content or results of law enforcement (substantive justice) which is the confirmation of legal expert Bagir Manan. If there are legal norms that have been contained in statutory regulations down to their derivatives that are violated and must be enforced, as well as violations of the law in elections, then the law that is violated must be enforced through law enforcement, the law becomes a reality in concreto²³. Likewise, if there are differences in interpretation and/or inserting legal norms that differ from their actual meaning, this results in decisions that have multiple interpretations, which will give rise to legal uncertainty itself.

If there are different interpretations, then the role or position of the judge is really needed so that it does not set a bad precedent in the future. The position of the judge in law enforcement holds a central position to uphold law and justice, therefore, in carrying out his duties, the judge is not just a mouthpiece or mouth for regulations or an *bouche de la loi* or *spreek van de wet*²⁴. Judges are also translators or givers of

²¹ K Berten, 2000 Pengantar etika Bisnis Yogyakarta, Kanisius hlm.86-87

²² Bagir Manan, *Menegakan hukum, suatu pencarian*, Jakarta, Asosiasi Advokad Indonesia, 2009 hlm 58

²³ Pelaksanaan hukum dapat berlangsung secara normal dan damai atau karena adanya pelanggaran hukum. Op cit hlm 145.

²⁴ Bagir Manan, *Sistem Peradilan Berwibawa*, Yogyakarta: FH.UII Press, hlm,3

meaning through legal discovery (Rechtsvinding) or legal construction (Rechtconstructie) in the forms of interpretation, analogy, legal refinement and so on, even creating new law (Rechtschepping) through decisions (judge made law) that has the values of justice (gerechtigheit), legal certainty (rechtszekerheit) and legal usefulness (zweckmassigkeit)²⁵.

The complexity of society and also many law enforcement agencies in elections, if judges do not take this into account, the future prospects for enforcing the law, especially regional head elections, will become chaotic and will have consequences for the lives of the people themselves. Aharon Barak²⁶, stated that in making decisions, there is a legal thinking method called balancing and weighing. This method is necessary considering the complexity of society which involves various values and principles. Balancing is the act of considering all values and principles without treating one value or principle as better than another, while weighing is the act of determining the importance of certain values and principles.

To uphold justice, judges use the principle of judging according to the law and do not discriminate between people. The principle of adjudicating according to law contains substantive and procedural aspects. The substantive aspect concerns the choice of law to be applied, while the procedural aspect concerns various things, including: equality before the law, fair trial and impartiality.²⁷

III. METHODOLOGY

This writing focuses on studying legal science regarding the administrative requirements for pairs of candidates for Regional Head and Deputy Regional Head as determined by statutory regulations using a normative legal approach by researching and studying and analyzing legal events from library materials in the form of books. and Constitutional Court decisions and secondary data data that can provide or clarify primary data. This article refers to theories, statutory regulations, journals and relevant references, while the research approach cannot be separated from laws and constitutional court decisions.

²⁵ Bambang Sutiyoso, *Metode Penemuan Hukum, Upaya Mewujudkan Hukum yang pasti dan berkeadilan*, Yogyakarta : UII Press, 2009, hlm 2

²⁶ Aharon Barak, *The Judge in a Democracy*, New Jersey : Princeton University Press, hlm 164

²⁷ Bagir Manan, *Mengadili Menurut Hukum dalam menegakan Hukum*, Op. Cit hlm 3

IV. RESULT AND DISCUSSION

As explained previously, regional head election violations are regulated in statutory regulations, namely:

a. **Incumbent Violates Authority.**

In practice, incumbents usually do not use running mates, but when they want to run again they look for new representatives. Where the position of the Regent Candidate as the incumbent still has influence, even in plans to run again, usually they have been discussed two years before. And the incumbent can certainly abuse his authority by abusing his authority, in the form of programs and activities that benefit or harm one of the partners. And acts of abusing authority in office are impossible for deputy candidates who are not incumbents.

Replacement of official 6 (six) months and six months before the date of determination of the candidate pairs has been confirmed by the incumbent, because this violation is only the incumbent who can carry out the temporary deputy if both incumbents cannot possibly replace officials because the authority lies with the current Governor, Regent or Mayor. took office.

These violations occurred in the electoral district of Yapen Islands Regency in 2017, Mayor of Pare-Pare, Mayor of Palopo in 2017, Regent of Boalemo Gorontalo 2018, Regent of Jaya Pura

b. **Requirements for Indonesian citizenship**

This happened in Sabu Raijua Regency in 2021, where the candidate pair had been determined by the Regional General Election Commission, the person concerned had been determined to fulfill the administrative requirements so that they could take part in the election process and had been declared victorious because they received the most votes.

However, it was discovered by the applicant or opponent that the regent candidate was not an Indonesian citizen but was still a citizen of the United States, then a dispute was raised regarding the results and the argument that the winning candidate pair was not an Indonesian citizen and it was proven at the Constitutional Court that the winning regent candidate did not meet the requirements because he was not Indonesian citizens as regulated in article 7 (1) of Law Number 10 of 2016.

There was a lack of accuracy in the General Election Commission so that the candidate pair passed the voting, again the deputy regent candidate was not involved in the actions of the regent candidate, but was also a victim of disqualification.

c. Dishonest as an ex-convict

Regent candidates who are ex-convicts should be honest in democracy and convey openly to the voting public that they have committed criminal acts so that people do not choose the wrong leader. It happened in the regent election in the South Bengkulu region that the regent candidate was dishonest, but this also resulted in his partner, namely the deputy regent candidate, having to accept the risk of being disqualified.

d. Criminal offence

The 2020 Regent Election in Yalimo Regency, where candidate pairs had met the requirements as candidates for regional head elections, took place twice, in the first election there was a dispute over the results at the Constitutional Court with the voting decision being repeated. While facing re-voting, one of the pairs, namely the candidate for regent, experienced a traffic violation, namely hitting a female police officer and the person who was hit died and was then prosecuted and sentenced by the District Court. Meanwhile, the second voting process is still ongoing because according to the General Election Commission, it is considered that it still fulfills the election requirements and in the election process it received the most votes so it was declared the winner because it received the most votes.

Then the losing party resubmits the results dispute process and submits the argument that there was a traffic criminal violation to the Constitutional Court. The decision of the Constitutional Court states that Regent Candidates who violate the requirements, namely that a candidate has never been convicted based on a court decision that has permanent legal force. Even though the violation was at the end of the voting process and the winner had been declared the winner with the most votes, he was still disqualified because of the consideration of the Constitutional Court. This requirement continued until before he was inaugurated as regional head.

Meanwhile, the Deputy as his partner is not involved in criminal violations and is also not included in criminal decisions that have permanent legal force. Must bear the risk including being disqualified.

COUPLES OF REGIONAL HEAD CANDIDATES ARE ONE UNITY

Candidate pairs for regional heads consist of regional heads and deputy regional heads to become leaders of both provinces, districts and cities, bound by legal norms. Where pairs of candidates for Regional Head and Deputy Regional Head are proposed by political parties or combinations of political parties in pairs as one unit and likewise pairs of individual candidates for Regional Head and Deputy Regional Head are supported by a number of people who have met the requirements in pairs as one unit.

So even if one of the partners violates the law and is subject to sanctions, both must be sanctioned and not only the one who commits the violation cannot be disqualified, but both must be strengthened by the decision of the Constitutional Court in its decision on the conditions for regional head candidates to be attached until they are inaugurated. regional head, meaning that before being inaugurated as regional head, violations of administrative requirements are found so that he can be disqualified, except that if he has already been appointed, those who commit the violation will be subject to sanctions.

Thus, the practice of electing regional heads, especially regarding the implementation of conditions, cannot be implemented fully because the highest power is in the hands of the people, deliberation and mutual cooperation as contained in the Pancasila theory of popular sovereignty and democracy must be ignored.

Viewed from the perspective of justice and legal certainty, candidates who do not violate the law are also affected by disqualification. Just to uphold legal certainty, they must sacrifice the material that has been issued, the people's vote and people's sovereignty.

V. CONCLUSION

After studying several disqualification decisions made by the General Election Commission, the Supreme Court and the Constitutional Court from various electoral districts, this writing can be concluded as follows:

1. The pair of candidates for regional head and deputy regional head are one unit to become regional leaders.
2. The administrative requirements for regional head candidate pairs are in place until they are appointed as regional heads.

Thus, because a single pair of candidates is an administrative requirement, there is no legal protection for other pairs who do not violate the law, but anyone who violates the law can be disqualified and the people's vote given to candidates who do not violate the law will be lost.

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