

CHAPTER ONE

INTRODUCTION

A. Background of Research

General election is a logical consequence of the principle of sovereignty of the people (democracy) in the life of nation and state.¹ In the implementation of the General Election, it is conducted directly, publicly, freely, secretly, honestly and fairly within the Unitary State of the Republic of Indonesia. In the study of political science, the system of election is defined as a set of methods or an approach with procedural mechanisms for citizens to exercise their right to vote.² There are three general election in Indonesia namely, legislative election, general election of regional head and presidential election. The function of regional head election is to select regional head in a region that has its own regional autonomy. Regional autonomy is the right, authority, and obligation of regional autonomy to regulate and manage their own government affairs and interest of citizen in the Unitary State of the Republic of Indonesia.³

The decision of the Constitutional Court Number 14/PUU-XI/2013 on Judicial Review of Law Number 42 of 2008 on the Election President and Vice President decided on implementation of simultaneous election, although it doesn't convey the regional head election such as the election of Governor,

¹ Putera Astomo, 2014, *Hukum Tata Negara Teori dan Praktik*, Yogyakarta, Thafa Media, p. 121.

² Jimly Asshiddiqie, 2003, *Menegakkan Etika Penyelenggara Pemilu*, RajaGrafindo, Jakarta, p. 1.

³ Article 1 paragraph 6 Law Number 23 of 2014 on Regional Government.

mayor, and regent.⁴ Chairman of the Association for election and democracy⁵, Didik Supriyadi said that it would be more efficient if the simultaneous election in both national and regional level will leave only two elections in five years. The first to elect the president and vice president, and legislative election. The second to elect regional head and the Regional Representative's Council (hereafter DPRD).

The regional head election is democratic agenda to elect head of region mandated by the 1945 Constitution of the Republic of Indonesia, based on Article 18 paragraph (4), the implementation regional heads election are carried out democratically.⁶ The implementation of regional elections is the correction of democratic system which is not a direct election in the previous era, where the regional head and vice regional head are elected by the DPRD, into a democracy that is rooted in the choice of the people.⁷ As the implementation of the General Election of Regional Heads is already valid in Law Number 8 of 2015 on Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents and Mayors into the Act. In the

⁴ R Nazriyah, 2016, "Calon Tunggal dalam Pilkada Serentak Tahun 2015 terhadap Putusan Mahkamah Konstitusi Number 100/PUU-XIII/2015", *Jurnal Konstitusi volume 13 Number 2*. p. 384.

⁵ The Association for Elections and Democracy (here after Perludem) was one of the forums of the former Election Supervisors in 2004, the idea of this association demanding that members be represented in each province. Perludem was established in January 2005 with status of legal body of association. However, in February 2006 the status of legal entity changed to Perludem foundation. This association aims to be effectively involved in the process of building a democratic State and conducting fair elections.

⁶ Maryam Nur Hidayati, 2016, "Problematika Hukum Calon Tunggal dalam Pemilihan Kepala Daerah Serentak Tahun 2015", *Jurnal Lex Renaissance*, Vol. 1 No. 1 Januari. p. 38.

⁷ Mustafa Lutfi, 2010, *Hukum Sengketa Pemilukada di Indonesia Gagasan Perluasan Kewenangan Konstitusional Mahkamah Konstitusi*, Cetakan Pertama, UII Press, Yogyakarta, p. 130.

implementation of regional elections, there is some polemic which occurred in the implementation such as any phenomena single candidate. The phenomena of single candidate have occurred in 2015, where at the time there are four areas that did not have additional candidate. The three are Blitar (East Java), Tasikmalaya (West Java), North Central Timor (East Nusa Tenggara).⁸

Meanwhile, a single candidate is not regulated in Law No. 8 of 2015 on General Head Election because the law is followed by at least two pairs of candidate. This is possible due to the absence of candidates who have great potential power to compete with such a single candidate. The existence of *Rechtsvacum* (kekosongan hukum) with weak regulation on elections. The phenomena of single candidate are extreme form of the least number of candidates for election. It happens because there are several factors that create of single candidate in local election as follows:

- a. The requirements of candidate pairs from a political party or coalition of political parties are also exacerbated by the requirements compared to the previous election. A candidate for a regional head may be nominated by a political party or coalition of political parties with at least 20 percent of the DPRD seats or 25 percent of the vote in the legislative elections. The simultaneous election also only takes place

⁸ KPU Republik Indonesia, 2015, "Suara Komisi Pemilihan Umum Menjaga Hak Rakyat Dalam Pemilu", edisi IV, Available in https://kpu.go.id/koleksi_gambar/Revisi+Final+Majalah+Suara+KPU+Edisi+4.compressed.pdf Accessed on Sunday, November, 13, 2017, 12.00 pm. P. 5.

in one round. This resulted in that many advanced candidates must really count about win or lose;

- b. Decision of Constitutional Court that requires House of Representative (*Dewan Perwakilan Rakyat*) here in after DPR or DPRD members to resign from their positions when elected for candidates for regional head. This factor also makes the number of candidates smaller. The third factor also related to the weakness of party cadre and the lack of party policy orientation;
- c. The presence of powerful incumbents as participants and most political parties support one candidate; and
- d. There is has specific local political dynamic in the region concerned.⁹
- e. Existing political parties do not want to run its function in conducting political recruitment.¹⁰

Here are some of the factors that the authors make of a single candidate in some areas of the 2015 general election. Whereas in fact the people who have the capacity to lead their region may nominate at these elections simultaneously, because every citizen who has the right to vote also has the right to be elected and has equal opportunity in government which has been guaranteed by the 1945 Constitution Article 28D paragraph (3). This single candidate pair has also allowed by the Constitutional Court, where the

⁹ Iza Rumesten, 2016, "Fenomena Calon Tunggal dalam Pesta Demokrasi", *Jurnal Konstitusi*, Vol. 13 No 1. p. 80.

¹⁰ Nur Rohim Yunus, 2017, "Calon Tunggal Sebagai Wujud Disfungsi Partai Politik", *Jurnal ADALAH: Buletin Hukum&Keadilan*, ISSN: 2338 4638, Volume 1 Nomor 4a, p. 32.

Constitutional Court has issued a decision related to a single candidate numbered 100/PUU-XIII/2015 proposed by Effendi Gazali.

As the realization, there is a problem regarding the absence of the candidates or can be called as the single candidate only appear in the election. The absence of the regulation makes polemic in society in how the election can be new without no more than single candidate. The background becomes the problem to be solved, so based on these problems, the author wanted to raise the issue into a writing method of research with the title “ **The Legal Consequences of Single Candidate in the Regional Head Election.**”

B. Research of Problems

1. What is the legal basis of single candidate according to the Law?
2. How are the legal consequences of the single candidate in local election?

C. Objectives of Research

1. To know the legal basis of single candidate according to the law.
2. To analyze the legal consequences of single candidate in local leadership.
3. To propose suggestion for better regional elections.

D. Benefits of the Research

Based on the research problem and objectives of the research, the benefits of research are expected as follows:

1) For the author, this research can give benefit to hone the ability of author in researching the phenomena of election that happen. Thus, it increases knowledge of the researcher to solve the problem.

2) Theoretical Benefit

By considering the problems and objectives of the research above, it is hoped that this research will give academic benefit for the society and also for the candidate of law bachelor and is expected to be one of the references for the development of the study on the legal consequences of single candidate process that occurs in the election.

3) Practical Benefit

The results of this research are expected to provide thought and study for law bachelor, to formulate the efforts of the election order of election which is concerned with the foundation of the State, and able to realize an ideal order of justice and democracy.