

## **CHAPTER FOUR**

### **FINDING AND ANALYSIS**

#### **A. The Legal Basis of the Single Candidate**

The provision of Law Number 8 of 2015, that the law requires the regional heads election held simultaneously in 2015 are required to have at least two candidate pairs in each region. It is closely related to that general election and local elections is a political contest of several options proposed candidates. The provisions are regulated in Article 51 paragraph (2) and Article 52 paragraph (2) of Law Number 8 of 2015.<sup>1</sup>

KPU also issued Regulation Number 12 of 2015 on Amendment to Regulation of the General Election Commission Number 9 of 2015 on the Candidate of Governor and Vice Governor, Regent and Vice Regent, and/or Mayor and Vice Mayor. The regulation in KPU is stated that in the event until the end of the Candidate Pairs registration period there are only 1 (one) Candidate Pair or no Candidate Pairs registering, Provincial KPU/KIP Aceh or KPU/Regency/City extend the registration period of the Candidate Pair for a maximum of 3 (three) days. In the event that until the expiration of the registration period there is only 1 (one) Candidate Pair or no Candidate Pairs registered as referred to in paragraph (1) , Provincial KPU/KIP Aceh or KPU/KIP Regency/City stipulates the decision of the

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<sup>1</sup> Article 51 paragraph (2) and Article 52 paragraph (2) of Law No. 8 of 2015 on Pemilihan Gubernur, Bupati dan Walikota

postponement of all stages and the Elections shall be held in subsequent Selection.<sup>2</sup> So it is clear that each region must have a candidate of regional head of at least two candidate pairs. However, the rules in the Law on Regional Head Election do not provide a position for regions that have only one candidate pairs of regional heads.

Regarding local elections in areas with only one candidate, Coordinating Minister for Political, Legal and Security Affairs, Tedjo Edhi Purdijatno, said there are three options as discussed with President Joko Widodo. First, the option is to issue a Government regulation in lieu of law (hereafter Perppu) so that the elections in the 7 regions can still be implemented even though only followed by one candidate pair. Second, the option is to extend the registration period even though the KPU has extended the registration period until 3 August 2015 after it was closed on 28 July 2013. Third, it is to keep conducting elections according to KPU Regulation No. 12 of 2015. This ultimately leads to postponed in regional elections that have only a single candidate until 2017.<sup>3</sup>

Postponed the elections for regions with only single candidates is not the best option. The choice is very unfair to voters as well as for candidates who are ready to register. Voters lose their right to correct local leadership in the five-year elections cycle. While for a single candidate

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<sup>2</sup> Article 89 Regulation of KPU Number 12 of 2015 on Pencalonan Pemilihan Gubernur dan Wakil Gubernur, Bupati dan wakil Bupati, Walikota dan Wakil Wali Kota.

<sup>3</sup> Aryojati Ardipandanto, "Calon Tunggal dalam Pilkada Serentak 2015", Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI, ISSN 2088-2351, Vol. VII, No. 15/I/P3DI/Agustus/2015.

who has signed up to follow all the existing procedures is definitely the rights was violated, and this will be very detrimental for a single candidate. Because if postponed a single candidate must do everything from the first step again. The postponement of the election of regional heads for single candidates in 2015 is considered to cause a loss of constitutional rights for citizens. The loss of constitutional rights was felt by Effendi Ghazali. Finally, the parties who feel aggrieved of their rights filed a judicial review of the Election Law to the MK to find a solution to the problem. The party who submits the material test about the minimum requirements of candidate pairs in the election as stipulated in Law Number 8 of 2015 on the amendment of Law Number 1 of 2015 on the Election of Governor, Regent, filed a judicial review against Law Number 8 of 2015 relates to the existence of a single candidate which may cause delays in the election. The Constitutional Court in its ruling gave its approval for a referendum on the mechanism of voting for a single candidate for the election of the regional head through the Constitutional Court Decision Number 100/PUU-XIII/2015.

The reason of the petition, the applicant argued that they are Indonesian citizens whose constitutional right by the application of legal norms petitioned the following arguments:<sup>4</sup>

- a. Provisions requiring the existence of at least two pairs of candidates for the regional head to be elected to the election of

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<sup>4</sup> Decision of Constitutional Court Number 100/PUU/XIII-2015, p. 37-38.

regional heads, as regulated in Law Number 8 of 2015 which later became the legal basis for the establishment of KPU regulation Number 12 of 2015, has impaired the constitutional rights of the applicant for a fair legal certainty as guaranteed by Article 28D Paragraph (1) of the 1945 Constitution because there is no certainty that the requirements will always be fulfilled.

- b. The provisions of the Act petitioned for the potential testing result in discrimination, since voters living in areas with only one pair of candidates may not vote as voters in areas with more candidate pairs.
- c. The provisions of the Act petitioned for review also potentially because of losses for voters who have only one pair of candidates for regional head and deputy head of region by the possibility of multiple delays until the conditions are met at least two pairs of candidates for regional head and deputy regional head.
- d. The provisions of the Act petitioned for adjudication do not provide legal certainty and discrimination as well as the potential for slowing and the existence of development discontinuities.

The norm of Law Number 8 of 2015, the applicant submits several articles that are tested, including Article 49 paragraph (8) and (9), Article 50 paragraph (8) and (9), Article 51 paragraph (2), Article 52 paragraph (2) and Article 54 paragraph (4), paragraph (5), paragraph (6) of Law Number 8 of 2015. If summarized the arguments of the petitioner's

petition are centered on the issue of disruption or even the election of the regional head and vice regional head of the region as scheduled to be halted by the provisions of the norms of the Act petitioned for a review requiring at least two pairs of candidates for regional head and vice regional head.

The Constitutional Court granted part of the petition for judicial review of Law Number 8 of 2015 (Election Law) petitioned by Academician Effendi Gazali. In this decision, the Court declared the elections were only followed by one candidate for regional head and deputy regional head can be implemented if it has been cultivated in earnest fulfillment of the requirements of at least two candidates. To that end, Regional Head Election is no longer solely dependent on the necessity of at least two pairs of candidates for regional head and candidate for deputy regional head. Therefore, according to the Court, the election which was postponed until the next election only because the unfulfilled requirement of at least two candidate pairs is contradictory to the 1945 Constitution. In order to guarantee the fulfillment of the constitutional rights of the citizens, the election of the Regional Head must be carried out even though there is only one pair of candidates for the regional head and the candidate for the deputy head of the regions.<sup>5</sup>

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<sup>5</sup> Mahkamah Konstitusi, “Referendum Bagi Calon Tunggal pada Pilkada”, 2015, <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=12140#.Wr5NEdRubIU> Accessed on Monday, April, 02, 2018, 12.29 am.

The Constitutional Court ruling states that, "Contrary to the spirit of the 1945 Constitution if the Regional Head Election is not held and postponed until the next election because it impairs the constitutional rights of the citizens in this case the right to be elected and voted, simply because the most unfulfilled terms few pairs of candidates for regional head and candidate for vice head of region even though it has been done in earnest ". Although according to the decision of the Constitutional Court it is explained that simply by giving the people the choice to vote or disagree, if the people "Agree" to choose the candidate pair then the intended candidate pair as the regional head and vice regional head of the elected area. Conversely, if it turns out the popular vote more "Disagree" then in such circumstances elections are postponed until the next Regional Head Election.

According to Suhartoyo, the election through the "agree" and "disagree" columns aims to grant people the right to vote for their own regional head candidates. As the holder of the highest sovereignty in democracy, the public is given the right to vote, including to elect to postpone the election. If the one who chooses the column "agrees" more, then the single candidate is designated as the regional head. However, if more people choose to "disagree", the implementation of the regional election will be postponed until the election in the next period. Such postponed are not inconsistent with the constitution, because it is the

people who decide the postponement with a disagreement to a single candidate.<sup>6</sup>

According to Perludem Executive Director, Titi Angraini, considers the Court's judgment that single candidate election by mechanism agree or disagree can be a direct correction on the leadership of single candidate. She considered that the Court's decision is very appropriate because it accommodates the principle of voting by involving the community in the election. The choice of agreeing or disagreeing is actually the same as the conception of an empty bucket or a blank column.<sup>7</sup> After the Constitutional Court decision, there must be clear technical rules and massive socialization related to this new mechanism. Therefore, the mechanism of “agree or disagree” is new in the electoral system in Indonesia.

In some countries that have long practiced elections, such as the United States, Canada, Britain, India, Malaysia, and the Philippines, single-candidate issues are not new. They already have their own mechanisms that are legitimized in the legislation to address a single candidate. In the practice of statehood in America, the candidate is directly authorized as a winner or known as uncontested election. Whereas in the

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<sup>6</sup>Abba Gabrillin, “MK:Calon Tunggal dipilih Melalui Kolom Setuju dan Tidak Setuju”, 2015, Available at <https://nasional.kompas.com/read/2015/09/29/15201091/MK.Calon.Tunggal.Dipilih.Melalui.Kolom.Setuju.dan.Tidak.Setuju>. Accessed on Sunday, April, 01, 2018, 10.58 pm.

<sup>7</sup>ASH, “Pasangan Calon Tunal Bisa Ikut Pilkada”, 2015, <http://www.hukumonline.com/berita/baca/lt560a42cc46904/pasangan-calon-tunggal-bisa-ikut-pilkada> Accessed on Sunday, April, 01, 2018, 11.13 pm.

practice of state administration in Canada, single candidates directly acclamation become elected candidates.<sup>8</sup>

The KPU makes the rules contained in the KPU Regulation Number 13 of 2018 on Amendments to the Election Commission Regulation Number 14 of 2015 on the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors with One Candidate Pair. The rule was based on the determination of the Constitutional Court ruling which stated that a single candidate could take part in the general election. This also includes if the empty ballot box has more votes than the single candidate pair in the local election.

The regional head election has been held in December 2015 well although there are still problems in the implementation and dispute one of them is, the lack of election participants is evidenced by in some areas there is only one single candidate. Although in the end the Constitutional Court allows the election of Governor and Vice Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor, it is still necessary to consider the concept of avoiding a single candidate.

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<sup>8</sup> Iza Rumesten. *Op.cit.* p. 83.



## **B. The Legal Consequences of the Single Candidate in the Regional Election**

### **1. Election of Single Candidate**

The phenomenon of a single candidate occurred in the elections in 2015, which make the KPU as the organizer of the election confused about the phenomenon of this single candidate Law No. 8 of 2015 on the Regional Head Election is the basis for the implementation of the elections that has not been regulated on this single candidate. Single candidates are dangerous to democracy and may assume the absence of competition in the election of regional leaders. In fact, the more competing candidates the better the quality of democracy and the people who have the ability to lead their region can nominate at the same elections, 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 assured by 1945 Constitution Article 28D paragraph (3).

Legitimacy or validity is the belief of members of society that the authority that exists in a person, group, and ruler, deserves respect.<sup>9</sup> If it related to a legal definition it means a regulation or custom which is officially deemed binding authorized by a ruler or government.<sup>10</sup> The meaning of legitimacy of the law can mean that authority existing in the ruler is believed and respected by the

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<sup>9</sup> Ni'matul Huda, 2014, *Ilmu Negara*, Rajawali Press, Jakarta, p. 10.

<sup>10</sup> <https://kbbi.web.id/hukum> Accessed on tuesday, June 5, 2018, 12:05 am.

community through binding official regulations. When using the law as a source of legitimacy, then the rules of law can be used as a basis to legalize a leadership. Legislation can be a reason for a party to gain power.<sup>11</sup>

In a democratic system, the power transition takes place through an open competition and is regulated by the set of laws and regulations. This means that Indonesia as a democratic legal country when conducting a change of leadership in this case, the head of the region, and must be done through the election. The election is a media of power built and seized by the political party or political system and election process must guarantee justice and transparent so that come out as "winner" will get legitimacy from the community. It is difficult for anyone who will lead and oversee a government if it does not get strong legitimacy from its people.<sup>12</sup> The legitimacy of democracy is the majority of the people. Certainly, the source of legitimacy needs to be in accordance with the society in which power will be implemented. For modern society, the source of legitimacy is the democratic system with the people who delegate the authority to organize social life either to a political party or individual.<sup>13</sup>

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<sup>11</sup>David Sitompul, 2015, *Thesis*, "Legitimasi Hukum dan Politik Calon Pasangan Tunggal dalam Pemilihan Umum Presiden dan Wakil Presiden di Indonesia", Faculty of Law Universitas Gadjah Mada, p. 48.

<sup>12</sup>Firmanza, 2010, *Persaingan, Legitimasi Kekuasaan dan Marketing Politik*, Yayasan Obor Indonesia, Jakarta, p. 585.

<sup>13</sup>*Ibid.* p. 586.

Legitimacy is the primary source of power and legitimacy that determines whether power will be continued or revoked.

According to Soehono, legitimacy is closely related to sovereignty because to obtain such legitimacy based on who holds the highest sovereignty in a State. Article 1 paragraph 2 of the 1945 Constitution states that sovereignty is in the hands of the people. This is in accordance with the democratic values contained in the Constitution. Sovereignty exercised according to the Constitution that has the meaning that during the implementation of the sovereignty to be limited by a regulation so that the sovereignty of the people is not exceeded, or become dominant and uncontrollable. The implication of democratic sovereignty is an election.<sup>14</sup>

Political legitimacy is an acknowledgment to the ruler in using his power. The ruler should be given recognition because it will regulate and create a policy that is public. The ruler or the government should be able to provide guarantees of protection to the public for the commanding acts it undertakes. For that, it takes a process for the government's actions to achieve recognition from the society. Political legitimacy obtained through the majority vote in the election. The election result is a political legitimacy for the winners who compete in the election, especially elections. Implementation of elections is a way to gain legitimacy from the people to the regional head and elected

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<sup>14</sup> Soehino, 2011, *Bunga Rampai Hukum Tata Negara*, BPFE, Yogyakarta, p.57.

representatives are obliged to do, even though there is only one candidate pair.

Democracy in the form of government in which all citizens have equal rights in decision-making that can change their lives. Democracy allows citizens to participate either directly or through representation in the formulation, development, and law-making. Direct democracy is the main political right is the right of citizens to participate in debates and decision-making in general assemblies and voting in parliamentary elections, heads of state and other legislative organs.<sup>15</sup> Representative democracy is a form of democracy that is made to be able to run for a long time and covers a large area, or in other words Democracy is run by the people by appointing its representatives in the election. In this representative democracy, the function of the government is transferred to the organs of the State which is the representative of the citizen. According to John Locke, although power has been left to State organs, society as a political entity can still convey aspirations and demands.<sup>16</sup> Democracy with a direct oversight system of the people is a blend of direct democracy with representative democracy. In this democracy, the people choose their representatives to sit legislatively, but in carrying out their duties the representatives of the people are overseen by referendum and the people's initiative. The referendum is a vote to know the will of the

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<sup>15</sup> Saleh, *Op.cit.* p. 48.

<sup>16</sup> *Ibid*, P. 49.

people directly. Implementation of democracy through elections is designed to replace the appointment system in the form of the State Monarchy which is considered likely to bring up an authoritarian leader.<sup>17</sup> The representatives of the people act on behalf of the people, and the people's representatives determine the style and way of working for the government, and what goals are to be achieved both in the long term and in a relatively short period of time. In order for the people's representatives to act on behalf of the people, the people's representatives must be determined by the people themselves, through elections. Thus, the elections are nothing but a way to elect people's representatives democratically.

Elections are a medium for people to declare their sovereignty. People's sovereignty understands that the highest authority in a country is the people and the people who determine the style and manner of governance. It also works with the implementation of elections and the election of regional heads which is the embodiment of the sovereignty of the people. Ideally, the general election aims to bring about a change of governmental power on a regular, peaceful basis in accordance with the mechanisms guaranteed and determined by the constitution.<sup>18</sup> In June 2005, the Head of Region and Deputy Regional Head, both Governor/Vice Governor, Regent/Vice Regent, mayor/vice mayor, were elected directly by the people.

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<sup>17</sup> Muhadam Labolo, Teguh Ilham, 2017, *Partai Politik dan Sistem Pemilihan Umum di Indonesia*, Jakarta, Rajawali Pers, hlm. 46.

<sup>18</sup> Mustafa Lutfi, *Op.cit.* p. 115.

Law on Regional Head Election is a mandate of the Constitution to provide certainty of the electoral mechanism of the regional head and at the same time to provide guarantees to the democratic process embodied in an election. This law is also the basis for the implementation of elections simultaneously. Although some improvements of the electoral system have been made with the amendment of Law on Regional Head Election to improve the implementation of Regional Head Election in accordance with the aspirations of the people, but the provision of Article 52 paragraph (2) states that "Regency/Municipal KPU shall establish at least 2 (two) candidate pair of Regent and Candidate Vice Regent as well as Candidate Mayor and Vice Mayor".

Registration of candidate of regional heads and deputy heads of regions was held on July 26-28, 2015. Until the deadline of registration, there are 12 regions that have a single candidate and one region has no candidate at all. The 12 regions with single candidate are Blitar, Purbalingga, Tasikmalaya, South Minahasa, North Central Timor, Serang, Asahan, Pacitan, Arfak Mountains, Surabaya City, Mataram City and Samarinda City. While one area that has no candidate is East Bolaang Mongondow Regency. The KPU open the registration renewal on August 1-3, 2015. Of the 13 formerly prospective regions, six regions have had more than one candidate pair of Asahan (North Sumatera), Serang (Banten), Purbalingga

(Central Java), Arfak Mountains (West Papua), South Minahasa Regency and East Bolaang Mongondow Regency (North Sulawesi). Thus the remaining seven regions with the single candidate.<sup>19</sup>

The KPU would open the second phase of registration on 9-11 August 2015 based on the recommendation of the Election Supervisory Board (Badan Pengawas Pemilu). During the second phase of extension, there were four out of seven regions that experienced an increase in the number of candidate pairs, namely Pacitan (East Java), Surabaya (East Java), Mataram City, and Samarinda (East Kalimantan). While the three regions of Blitar, Tasikmalaya, and Timor Tengah Utara (NTT) municipalities, until the registration extension closes on Tuesday afternoon August 11, 2015, there were no additional candidates.

Based on Bawaslu's recommendation, the KPU plenary meeting decided to extend the registration period. Following up the matter, the KPU issued Circular Letter Number 449/KPU/VIII/2015 addressed to the regional KPU in the seven regions. The contents are granted registration eligibility for election commencing from 1-3 August 2015. However, on the last day of the registration of election candidates in 2015, there were no additional candidates. The first extension of the stages left seven areas that had a single candidate. The seven areas include Tasikmalaya Regency, Surabaya City, Blitar

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<sup>19</sup> KPU Republik Indonesia, *Op.cit.* p. 6.

Regency, Pacitan Regency, Mataram City, North Central Timor District, and Samarinda City. On the rise of political tension to issue Government Regulation in Lieu of Law (Perppu), President Joko Widodo discussed the issue of a single candidate and ultimately selected the option to extend the registration of the second phase.<sup>20</sup>

The second phase extension which took place on August 9 to 11, 2015 still leaves the only candidate regions of Tasikmalaya, Blitar, Mataram and North Central Timor. The extension of registration is due to the election legal framework requiring the election of election followed by at least two candidate pairs. Following up on this, the KPU then issued the KPU Regulation Number 12 of 2015 that in the event until the expiration of the registration period there is only one candidate pair or no candidate pairs to register, the local KPU shall determine the decision of the postponement of all stages and the general head election shall be held simultaneously in 2017.<sup>21</sup>

Postponement of the elections due to only one candidate pairing would undermine the constitutional rights of citizens, namely the right to vote and be elected. The existence of single candidate pairs cannot be used as an excuse to postpone the election. The KPU

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<sup>20</sup>M. Yasin Al Arif, 2016, "Politik Hukum Calon Tunggal dalam Putusan Mahkamah Konstitusi dan Implikasinya Terhadap Sistem Pilkada Serentak", *Journal Yuridis*, Vol.3 Available at [http://www.academia.edu/31814735/Politik\\_Hukum\\_Calon\\_Tunggal\\_dalam\\_Putusan\\_Mahkamah\\_Konstitusi\\_dan\\_Implikasinya\\_Terhadap\\_Sistem\\_Pilkada\\_Serentak](http://www.academia.edu/31814735/Politik_Hukum_Calon_Tunggal_dalam_Putusan_Mahkamah_Konstitusi_dan_Implikasinya_Terhadap_Sistem_Pilkada_Serentak). Accessed on Friday, May, 11, 2018. 10.24 pm. p. 123.

<sup>21</sup> Iza Rumesten, 2016, "Fenomena Calon Tunggal dalam Pesta Demokrasi", *Jurnal Konstitusi*, volume 13 number 1. p. 75.



must establish a single candidate pair after a three day delay period is exceeded, but there is only one candidate pair. The decision of the Constitutional Court Number 100/PUU-XIII/2015 opened the blockage of democracy, the implementation of regional head election in some areas which were originally postponed because only followed by one candidate pair. The Constitutional Court authorizes a single candidate to participate in the elections, in this case the choice of "agree or disagree".<sup>22</sup> The choice is considered more democratic than the election postponement. If it turns out the popular vote is more "Agree" then the candidate pair is determined as the regional head and deputy head of the elected area. Conversely, if it turns out the voice of the people more choose "Disagree" then the election is postponed until the next elections in unison. Delayed as a consequence of the people who choose the option "disagree" or prefer "empty box" according to Sri Budi Eko Wardani (Political Science Expert University of Indonesia) actually keep the problem. First, the political right of citizens to elect and have new regional head become obstructed. Though people want a new regional head. Secondly, if the election is canceled, the deputy head of the region must stop at the end of his / her position and be replaced by the task. Executing a task does not mean there is no problem. But the task Force cannot issue strategic

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<sup>22</sup> Nur Rosihin Ana, "Jangan Tunda Pilkada", *Konstitusi*, No.104 Oktober 2015, p. 3.

policies for the progress of the region, so citizens are imprisoned for two years.<sup>23</sup>

The election of regional heads must still be carried out in the context of the implementation of popular sovereignty. The Court provides constitutional guarantees that Article 49 paragraph (9) and Article 50 paragraph (9) of Law Number 8 of 2015 on Governor Election, Regents and Mayors (Law Election) must be interpreted in accordance with the verdict so that people's demands are not shackled. Guarantees of the right to vote and be elected are always put forward as a form of constitutional mandate.<sup>24</sup> Law No. 8 of 2015 on the Election of Regional Head is considered to be contradictory to the Constitution so that a norm that allows a single candidate to protect the constitutional rights of citizens. With the issuance of the decision of Constitutional Court Number 100/PUU-XIII/2015 which allows a single candidate in the election organizer is a solution to protect the rights of constitutional citizens in accordance with the principle, consistent and in accordance with the values also the basic principles of Belief in the One Supreme. It is also reinforced by the Constitutional Court's decision which is always based on the responsibility to God Almighty. Single candidate pairs are entitled to

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<sup>23</sup> Sri Budi Eko Wardani, "Calon Tunggal Gerakan Mundur Partai Politik", *Majalah Suara Komisi Pemilihan Umum*, Edisi IV, Juli-Agustus, 2015, p.14.

<sup>24</sup> Dwanda Julisa Sistyawan, 2017, "Penerapan Demokrasi Pancasila Terhadap Pemilihan Kepala Daerah Calon Tunggal (Studi Kasus Putusan MK No. 100/PUU-XIII/2015)", *Thesis*, S2 Hukum Universitas Gadjah Mada.

be elected by the people in the system of choosing "agree" or "disagree".

The KPU makes the rules contained in the KPU Regulation Number 13 of 2018 on Amendments to the Election Commission Regulation Number 14 of 2015 on the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors with One Candidate Pair. In the KPU regulation, it was drafted on how to carry out elections with only one candidate pair in accordance with the Act. In Article 14 paragraph (1) reads: Means used to vote in the Election of 1 (one) Candidate Pair use a ballot containing 2 (two) columns consisting of 1 (one) column containing photos of Candidate Pairs and 1 (one) blank column that is not pictured.<sup>25</sup> And Article 18 reads: Voting for the election of 1 (one) Candidate Pair shall be conducted by voting 1 (one) time in the column containing photos of Candidate Pairs or blank images that are not pictured.<sup>26</sup> A single candidate is considered to win votes in his area when the single candidate pair gets more than 50% of the valid votes. A single candidate is considered to win votes in his area when the single candidate pair gets more than 50% of the valid votes. That is, there must be more than half the number of people who voted for it

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<sup>25</sup> Article 14 Decision General Election Commission Number 13 of 2018 on Amendments to the Election Commission Regulation Number 14 of 2015 on the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors with One Candidate Pair.

<sup>26</sup> *Ibid.*

compared to the blank column, this is based on Law No. 10 of 2016 article 54D point 1.

## 2. The Winner and The Loser of Single Candidate in some Local Election

The House of Representatives has ratified Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 on Election of Governors, Regents and Mayors. In this case it means that the implementation of the elections is still being carried out, with this legal consequence in the single candidate, namely the continuing implementation of the post-conflict local election even though there is only one candidate pair. Because it has been determined by the decision of the Constitutional Court Number 100 / PUU-XIII / 2015 and the Law, without being prevented there must be 2 pairs of candidates.

Table. 1 Acquisition of Single Candidate Election Results in Indonesia  
(First and Second Wave Pilkada)

No	Name of Region	Province	Candidates	Supporting Party	Vote Acquisition of Candidate pairs	Vote do not agree	Level of participation
1	Regency of Tasikmalaya	West Java	H. Uu Ruzhanul Ulum, SE dan H. Ade Sugianto, S.IP	PDIP PAN PKS	500.513 votes (67,35%)	242.628 votes (32,65%)	60,19%

2	Regency of Blitar	East Java	Drs. H. Rijanto, MM dan Marhaenis U.W	PDIP GERINDR A	427.076 votes (84,90%)	75.943 votes (15,10 %)	56,65%
3	Regency of Timor Tengah Utara	East Nusa Tenggara	Raymundus Sam Fernandes, S.Pt dan Aloysius Kobes, S. Sos	PDIP	74.953 votes (79,74%)	19.049 votes (20,26 %)	64,28%
4	Regency of Buton	Southeast Sulawesi	Samsu Umar Abdul Samiun, SH dan Drs. La Bakry, M. Si	PKB PKS Nasdem PAN Demokrat Golkar PBB	27.512 votes (55,08%)	22.438 votes (44,92 %)	71,55%
5	Tebing Tinggi City	North Sumatera	Ir. H. Umar Zunaidi Hasibuan, M.M dan Ir H. Oki Doni Siregar	Nasdem Demokrat Hanura Gerindra PKB Golkar PDIP PPP	41.937 votes (71,39%)	16.807 votes (28,61 %)	55,8%
6	Regency of Landak	West Kalimantan	Dr. Karolin Margret Natasa dan Hercules Heriadi, SE	PDIP PAN Demokrat PKB Golkar Hanura Nasdem Gerindra	226.378 votes (96,72%)	7.673 votes (3,28% )	93,3%
7	Regency of Tulang Bawang	Lampung	Umar Achmad SP dan Fauzi Hasan, SE, M.M	PKS Demokrat PPP PDIP Gerindra Golkar PAN PKB Hanura Nasdem	167.512 votes (96,75%)	5.625 votes (3,25% )	88,4%
8	Regency of Pati	Central Java	H. Haryanto, SH, MM, M. Si dan H. Saiful Arifin	PDIP Gerindra PKS PKB Demokrat Golkar Hanura PPP	519.627 votes (74,51%)	177.77 1 votes (25,49 %)	84,4%
9	Sorong City	West Papua	Drs. Ec. Lamberthus Jitman, MM dan dr. Hj. Pahima Iskandar	Golkar Demokrat PDIP PAN Nasdem Gerindra Hanura PKB	73.974 votes (78,09%)	20.761 votes (21,91 %)	66,5%
10	Central	Maluku	Tuasikal	Gerindra	147.920	61.063	68,4%

	Maluku Regency		Abua, SH dan Martlati I. Leleury, SE	Golkar Hanura Demokrat Nasdem PAN PBB PDIP	votes (70,78%)	votes (29,22%)	
11	Jayapura City	Papua	Dr. Drs Benbur Tomi Mano, MM. dan Ir. H Rustan Saru, MM.	PKB Hanura PAN Nasdem Golkar PDIP Gerindra	115.996 votes (84,34%)	21.545 votes (15,66%)	48,5%
12	Regency of Tambrauw	West Papua	Gabriel Asem, SE, M.Si dan Mesak Metusala Yekwan, SH	Nasdem PDIP Golkar Demokrat Gerindra PKS PKB Hanura	14.608 votes (90,06%)	1.613 votes (9,94%)	98,5%

Source: KPU of the Republic of Indonesia

Related to the implementation of the elections in 2015 with only one pair of regional head candidates. One example in Kabupaten Tasikmalaya West Java in the face of regional head election in single candidate is faced with the confusion of the community in choosing. They can not determine which one is good with only one candidate option. However, some residents claimed to support "agree" in his ballot paper rather than having no leader. They assume that than the area is not maintained, it is better to choose only there. In this case, Tasikmalaya district residents are faced with a difficult choice in the regional head elections because only a single candidate is offered. They are only given the choice of agree or disagree with the

candidate.<sup>27</sup> Based on the result of quick counting, the result of vote Agree on Regional Head Election single candidate of Tasikmalaya Regency is 500,513 votes or 67,35 percent. According to the head of Tasikmalaya Regional Election Commission, Deden Nurul Hidayat mentioned that almost half of the voters in Tasikmalaya district were golput, only 60,19 percent of the people who decided to exercise their right to vote.<sup>28</sup>

Another problem that arise in the implementation of the Election of Single Candidates in Blitar Regency, East Java was the implementation of the election of regional heads in Blitar regency followed by small number of votes, but by no means deserted from the protests. Non-governmental organizations Forum Blitar accused Blitar KPU of deliberately directing voters to approve a single candidate and not socialize how to refuse for those who disagree.<sup>29</sup> The results of the vote count, according to the Head of Blitar Regency Commissioner Imron Nafifah stated that the single candidate pair received a vote "agree" to 427,076 voters or 84.90 percent, while those who voted

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<sup>27</sup> Heyder Affan, "Polemik Pilkada calon tunggal di Kabupaten Tasikmalaya", 2015, Available at [https://www.bbc.com/indonesia/berita\\_indonesia/2015/12/151204\\_indonesia\\_pilkada\\_calontungga](https://www.bbc.com/indonesia/berita_indonesia/2015/12/151204_indonesia_pilkada_calontungga), Accessed on Thursday, July 7, 2018, 03:40 pm.

<sup>28</sup> <https://pilkada.tempo.co/read/726398/calon-tunggal-tasikmalaya-menang-kpud-belum-final>, Accessed on Thursday, 7 July 2018, 03:55 pm.

<sup>29</sup> <https://nasional.tempo.co/read/715260/calon-tunggal-pilkada-blitar-kpu-dituding-tak-adil>, Accessed on Sunday, 23 May 2018, 04:53 pm.

"disagree" only 15,10 percent or 75,943 voters, resulting in total voting rights were 543,770 voters.<sup>30</sup>

The phenomenon of single candidates in 2018 held in June occurred again. Where there are 13 regions that have a single candidate, namely, Prabumulih City, South Sumatra, Lebak Banten Regency, Tangerang Banten Regency, Tangerang City Banten, Pasuruan Regency, East Java, Minahasa Regency, Southeast Sulawesi, Tapin Regency, South Kalimantan, Puncak Papua Regency, Mamasa District, Mamasa District, West Sulawesi , Papua Jayawijaya Regency, North Padang Lawas Regency, North Sumatra, Makassar City, South Sulawesi.<sup>31</sup>

A single candidate is considered to win votes in his area when he and his partner get more than 50% of the valid votes.<sup>32</sup> Its means, there must be more than half the number of people who chose it compared to the empty column.<sup>33</sup> However, if it turns out that the empty column that gets more votes than the votes for the candidate pairs, the Provincial or Regency/City KPU stipulates that the re-election on the next simultaneous election held in the following year is

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<sup>30</sup> <https://jatim.antaranews.com/berita/169741/pasangan-pilkada-calon-tunggal-menang-8490-persen>, Accessed on Sunday, 7 July 2018, 04:10 pm.

<sup>31</sup> Yunizafira Putri AW, "13 Daerah di Pastikan Gelar Pilkada dengan Calon Tunggal", 2018, Available at <https://www.liputan6.com/news/read/3523237/13-daerah-dipastikan-gelar-pilkada-dengan-calon-tunggal> Accessed on Monday, 18 November 2018, 10:00 pm.

<sup>32</sup> Ikhwan Hastanto, "Yang Terjadi Jika Calon Pilkada Hanya Satu Pasang Melawan Kotak Kosong dan Kotaknya Menang", 2018, Available at <https://mojok.co/mih/esai/yang-terjadi-jika-calon-pilkada-hanya-satu-pasang-melawan-kotak-kosong-dan-kotaknya-menang/> Accessed on Monday, 18 November 2018, 10:17 pm.

<sup>33</sup> *Ibid.*



based on Article 54D 10 of 2016. And for candidate pairs, they can still nominate again at the next simultaneous election.

The case example in the 2018 simultaneous local election which had a single candidate in this general election was the city of Makassar with candidate pairs namely Munafri Arifudin-Rachmatika Dewi who was defeated by an empty box. In the recapitulation of votes, empty boxes won in 13 Subdistricts in Makassar City, while Munafri Arifudin-Rachmatika Dewi only won in 2 Districts.<sup>34</sup> The empty box gets 300,795 votes, while the single candidate gets 264,245 votes.<sup>35</sup> The total vote acquisition of the Mayor and Deputy Mayor of Makassar reached 565,040 votes. The vote between the empty box and the single candidate was 36,898 votes.<sup>36</sup> The loss of the candidate pair Munafri Arifudin-Rachmatika then the election of the mayor of Makassar will be postponed until the nearest election time, or in 2020. This has been based on Law and Regulation of KPU No. 13 of 2018. In the regulation mentioned, a single candidate must obtain more than 50 percent of the votes. If it does not arrive, the elections are postponed until the closest election, while the candidates who are not

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<sup>34</sup> Hendra Cipto, "KPU Tetapkan Kotak Kosong Sebagai Pemenang Pilkada Makassar 2018", 2018, Available at <https://regional.kompas.com/read/2018/07/07/06225871/kpu-tetapkan-kotak-kosong-sebagai-pemenang-pilkada-makassar-2018>, Accessed on Sunday, November 18, 2018, 11:34 pm.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

elected may register again.<sup>37</sup> With the postponement of the regional election in Makassar city, the leadership in the temporary city of Makassar will be taken over by the Mayor (Pj) appointed by the Ministry of Home Affairs. The Acting Mayor will be on duty until the next local election is held.<sup>38</sup>

Regional head election organizers with only one pair of candidates have been concerned and various parties in the region related to the level of citizen participation in using the right to vote, because the level of citizen participation in using the right to vote can be used as one indicator of the running of democracy in Indonesia. In fact, however, the existence of a single candidate in the local elections raises concerns of reducing the level of citizen participation in using voting rights. According to Deputy Secretary General PPP Achmad Baidowi, the potential for declining voter participation due to single candidates in the regional head election indeed needs to be scrutinized, because it will be a bad precedent for democracy which is essentially the involvement of the wider community.<sup>39</sup>

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<sup>37</sup> Himas Puspito Putra, "Kolom Kosong Unggul di Pilwalkot, Ini Konsekuensinya", 2018, Available at <https://www.inews.id/daerah/sulsel/163593/kolom-kosong-unggul-di-pilwalkot-makassar-ini-konsekuensinya> Accessed on Monday, 19 November 2018, 12:30 am.

<sup>38</sup> *Ibid.*

<sup>39</sup> JPNN.com, "Calon Tunggal di Pilkada Berpotensi Menurunkan Partisipasi Pemilih", <https://pilkada.jpnn.com/news/calon-tunggal-di-pilkada-berpotensi-menurunkan-partisipasi-pemilih> Accessed on Thursday, 7 July 2018, 02:53 pm.