

CHAPTER I

INTRODUCTION

A. Background of Research

The Constitutional Court decided that women (the daughter of Sultan) can also be the Governor in Yogyakarta. The Constitutional Court accepted the petition of petitioners which considered that the provision in Article 18 paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of Yogyakarta Special Region (DIY/ Daerah Istimewa Yogyakarta)¹ against to the 1945 Constitution, where the 1945 Constitution adheres to the principle of non-discrimination. The word “wife” in Article 18 paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY indicates only a man that can be the Governor of Yogyakarta. But that Constitutional Court decision does not also mean that the Sultan of Yogyakarta or the Governor of Yogyakarta should be a woman.²

The Constitutional Court decision only neutralize the *a quo* article, so who will become the Governor or the Sultan in Yogyakarta is not restricted to men only. The decision of the Constitutional Court only nullified the enactment of Article 18 paragraph 1 (m) because it was considered discriminatory. As explained in the decision, that who will be the Sultan or Governor and *Adipati* or Vice Governor in Yogyakarta handed over to the

¹ Article 8 paragraph 1 (m) of Law No. 13 of 2012 on The Privileges of Yogyakarta Special Region, stated “Submit the curriculum vitae containing the history of education, profession, sibling, wife, and children.”

² Iwan Satriawan, 2017, “Menanti Langkah Negarawan Istana Yogya”, Yogyakarta: *Koran Bernas*, taken from <https://www.koranbernas.id/menanti-langkah-negarawan-istana-yogya/>, accessed on October 25th, 2017, at 2.25 p.m.

internal of Sultanate and *Kadipaten* (an area within the Kingdom, Palace, or Sultanate).³

The historical fact proves that Yogyakarta Sultanate was never led by a woman. In the case of the succession of Hamengku *Buwono V* to *Hamengku Buwono VI* showed when *Hamengku Buwono V* did not have a son, then the crown prince title was given to his brother and he was appointed to become Kanjeng Gusti Pangeran (KGP) Adipati Anom or called *Hamengku Buwono VI*. Thus, the customs of the Yogyakarta Sultanate Palace which gave the throne of Yogyakarta Sultanate based on male pedigree is a historical fact and become a *paugeran* (an unwritten constitution).⁴

Sri Sultan *Hamengku Buwono X* has no son but has five daughters. Therefore, Sri Sultan *Hamengku Buwono X* gets difficulty in determining who will become the successor because he seems also does not want to give the sultanate position to his brother. Sri Sultan *Hamengku Buwono X* also refused to polygamy which makes Sri Sultan *Hamengku Buwono X* has small possibility to get a son, it is because the source of descendants only comes from one uterus only. GKR Hemas is the only wife of Sri Sultan Hamengku Buwono X.⁵

Yogyakarta is a special region, where the privileges of DIY is regulated in Law No. 13 of 2012 on the Privileges of DIY (Privilege Law).

The Law No. 13 of 2012 contains of 16 chapters and 51 articles governing

³ *Ibid.*

⁴ *Ibid.*

⁵ Bayu Dardias, "Menyiapkan Sultan Perempuan: Legitimasi Langit dan Efektivitas Rezim Sultan Hamengkubuwono X", *Jurnal Departemen Politik dan Pemerintahan Fakultas Ilmu Sosial dan Ilmu Politik Universitas Gadjah Mada Yogyakarta*, Vol. 42 (1), 2016, p. 33.

five aspects of privileges. The privileges are the mechanism of filling the position of the Governor and the Vice Governor, DIY government institutions, land, culture and spatial. The mechanism of filling position of the Governor and the Vice Governor is filled by the Sultan and *Adipati*.⁶

The Governor and the Vice Governor in Yogyakarta are not the member of political party. It indicates that the existence of the Governor and the Vice Governor belongs to Yogyakarta society.⁷ Article 25 paragraph (1) of Law No. 13 of 2012 regulates that the period as the Governor and the Vice Governor in DIY is for 5 (five) years from the inauguration. But, Article 25 paragraph (2) of Law No. 13 of 2012 regulates that the Sultan as the Governor and *Adipati* as the Vice Governor is not bound by the provision of two periods as the Governor and the Vice Governor. It means that the position of Sultan and *Adipati* is a lifetime.

DIY is the region that has distinctive government structure, therefore Yogyakarta is called special region. One of the privileges is in the election of the Governor and the Vice Governor which is different from other regions.⁸ The election of the Governor and the Vice Governor in Yogyakarta is done by determination, not by election as in other regions. The issue among people in Yogyakarta is about the succession of the Sultan in Yogyakarta since the *Sri*

⁶ Nora Hilma Sari, "Analisis Pengisian Jabatan Gubernur dan Wakil Gubernur Daerah Istimewa Yogyakarta di Tinjau dari Undang-Undang Nomor 13 Tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta", *Jurnal Perhimpunan Mahasiswa Hukum Indonesia Cabang Daerah Istimewa Yogyakarta*, Vol. 1, No. 1, 2015, p. 201.

⁷ Hendy Kurniawan, "Lima Poin UU Keistimewaan DIY", *Tribun Jogja*, September 4th, 2012, available at <http://jogja.tribunnews.com/2012/09/04/lima-poin-uu-keistimewaan-diy>, accessed on November 15th, 2017, at 8.51 p.m.

⁸ Nora Hilma Sari, *Op. Cit*, p. 200.

Sultan Hamengku Buwono X has no son. But, looking at the tradition exists, when Sultan has no son, then the position of the next King is given to the Sultan's brother.⁹

DIY found a new momentum in democracy after the enactment of the Privilege Law which give some privileges to the region. One of the privileges is the Governor and the Vice Governor are not elected. *Sri Sultan Hamengku Buwono* and *Adipati Paku Alam* were not determined through the Regional Head elections as in the other provinces.¹⁰

The Constitutional Court decision which accept all the judicial review of Article 18 paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY has a broad impact. The decision then open the way for Yogyakarta Sultanate to be led by a woman. With the disappearance of the word "wife" in Article 18 paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY, it can be noted that woman also can be the Governor in Yogyakarta. *Sri Sultan Hamengku Buwono X* may appoint his daughter who is known as Gusti Kanjeng Ratu (GKR) Mangkubumi to become the Governor of Yogyakarta.¹¹

Another impact of this decision is the Regional House of Representative (DPRD/ Dewan Perwakilan Rakyat Daerah) and the local government also must change the local regulations that require a wife. It is because the local regulations should not be contrary to the Law and the Palace

⁹ Nora Hilma Sari , *Op. Cit.*, p. 202.

¹⁰ Bayu Dardias, *Op. Cit.*, p. 32.

¹¹ Putu Merta Surya Putra, "Putusan MK Buka Jalan Kesultanan Yogyakarta Dipimpin Perempuan", *Liputan* 6, August 31st, 2017, available at <http://news.liputan6.com/read/3078644/putusan-mk-buka-jalan-kesultanan-yogyakarta-dipimpin-perempuan> , accessed on November 2nd 2017, at 9.31. p.m.

family also must change the internal rules, where culturally the Sultan was never a woman.¹² However, some experts and internal family of Yogyakarta Palace disagree with this decision because the decision has triggered internal conflict among the members of family.

Based on above description, it is interesting to study more about “**The Legal Consequences of Constitutional Court Decision No. 88/ PUU-XIV/ 2016 toward the Succession of the Governor of Yogyakarta Special Region**”.

A. Problem of Research

Based on the background above, the issue to be examined in this study is: What are the Legal Consequences of Constitutional Court Decision No. 88/ PUU-XIV/ 2016 toward the Succession of the Governor of Yogyakarta Special Region?

B. Objective of Research

1. To understand the Constitutional Court Decision No. 88/ PUU-XIV/2016 toward the succession of the Governor of Yogyakarta Special Region;
2. To analyze the legal consequences of Constitutional Court Decision No.88/PUU-XIV/2016 toward the succession of the Governor of Yogyakarta Special Region;

¹² Suara Investor, “Akibat Putusan MK, Sejarah Berubah Perempuan Bisa Jadi Gubernur Yogyakarta”, available at <http://www.suarainvestor.com/akibat-putusan-mk-sejarah-berubah-perempuan-bisa-jadi-gubernur-yogyakarta/> , accessed on November 2nd 2017, at 10.04 p.m.

3. To propose some recommendation toward the succession of the Governor of Yogyakarta.

C. Benefit of Research

Based on the problems and objectives of research, the benefits of research are follows:

1. Theoretically

This research can be used as study materials toward other researchers relating to the impact of Constitutional Court Decision No. 88/ PUU-XIV/ 2016 against the succession of the Governor of Yogyakarta Special Region.

2. Practical Benefit

This research is expected to give information and become reference for the public or legal practitioners and related institution about legal consequences of Constitutional Court Decision No.88/PUU-XIV/2016 toward the succession of the Governor of Yogyakarta Special Region.