

CHAPTER IV

FINDING AND ANALYSIS

A. The Succession of the Governor in Yogyakarta Special Region

1. The Governor's Election System in DIY

According to the Indonesian Government system, the system of Indonesian Government consists of three levels, namely: central government, regional government consisting of provincial and district/city, and village government.⁵³ The regional government is the Head of Region and the Vice Head of Region as an element of the regional government which guarantees the implementation of the government affairs which is the authority of the autonomous region.⁵⁴

Article 18 of 1945 Constitution determines that the territory of Indonesia is divided into provincial areas, and the provinces are divided into districts and cities. Each province, district, and city have local government as determined by Law. In regulating the form and structure of regional government, the state recognizes and respects to the special regional government units which will be regulated by Law.⁵⁵ Before the amendment of 1945 Constitution or since the proclamation of independence on August 17th, 1945, there are at least some provinces

⁵³ Suharizal, Muslim Chaniago, 2017, *Hukum Pemerintahan Daerah Setelah Perubahan UUD 1945*, Yogyakarta: Thafa Media, p. 52

⁵⁴ Andi Pangerang Moenta, Syafa'at Anugrah Pradana, 2018, *Pokok-Pokok Hukum Pemerintahan Daerah*, Depok: Rajawali Pers, p. 26.

⁵⁵ *Ibid.*, p. 50.

with special status or special region, namely: DIY, Nanggroe Aceh Darussalam, and Jakarta.⁵⁶

The Governor, the Regent, the Mayor, and the regional apparatus are the element of local government administration. Each region is led by the Head of Government called the Head of Region. The Head of Region for province called as the Governor, for municipality called as the Regent, and for city called as the Mayor. The Head of Region is assisted by the Vice Head of Region. The Vice Head of Region for province called as the Vice Governor, for municipality called as the Vice Regent, and for city called as the Vice Mayor.⁵⁷

The filling of the state office is one of the important elements in Constitutional Law. In the conception of the Unitary State of the Republic of Indonesia which is decentralized model, filling position of the Head of Region is a form of filling state officials in order that the implementation of local government functions as part of the central government can be implemented. The mechanism of filling position of the Head of Region is intended to choose the leader at the regional level who will carried out the functions of local government.⁵⁸

⁵⁶ Ismu Gunadi Widodo, *Op. Cit.*, p. 320

⁵⁷ See Law No. 32 of 2004 on Local Government.

⁵⁸ Laura Hardjaloka, "Studi Dinamika Mekanisme Pilkada di Indonesia dan Perbandingan Mekanisme Pilkada Negara Lainnya", *Jurnal Rechts Vinding*, Vol. 4, No. 1, 2015, p. 60.

The election of the Head of Region in Indonesia is a direct mandate from the reform movement in 1998. The election of the Head of Region becomes the most important democracy momentum. On its journey, the election mechanism of the Head of Region has changed from indirect election to a direct election.⁵⁹

The election of Head of Region has been conducted directly since 2005. Based on Law No. 32 of 2004 on Regional Government and based on the Article 18 Paragraph (4) of 1945 Constitution stipulates that the Governors, the Regents, and the Mayors, as the Head of Provincial, the Head of Municipality, and the Head of City are elected democratically.⁶⁰ However, the direct election of the Head of Region does not apply to the election of the Governor of DIY. This is because the filling position of the Governor and the Vice Governor in Yogyakarta through the mechanism of determination (appointment).⁶¹

In the filling position of the Head of Region through democratic election based on Article 18 Paragraph (4) of 1945 Constitution not only conducted directly by people or elections conducted by DPRD, but also consider the implementation of Head of Region in the special regions as referred in Article 18B Paragraph (1) of 1945 Constitution. It means that there is other mechanism in the process of filling position of the Governor

⁵⁹ Suyatno, "Pemilihan Kepala Daerah (Pilkada) dan Tantangan Demokrasi Lokal di Indonesia", *Jurnal Politik Indonesia: Indonesian Political Science Review*, Vol. 1, No. 2, 2016, p. 213.

⁶⁰ Nopyandri, "Pemilihan Kepala Daerah yang Demokratis dalam Perspektif UUD 1945", *Jurnal Ilmu Hukum*, Vol. 2, No. 2, 2011, p.2.

⁶¹ Titik Triwulan Tutik, "Analisis Hukum Tata Negara: Sistem Penetapan Gubernur Kepala Daerah Istimewa Yogyakarta dalam Sistem Pemilihan Kepala Daerah Berdasarkan Pasal 18 ayat (4) UUD 1945", *Jurnal Hukum dan Pembangunan*, Vol. 41, No. 1, 2011, p. 91.

and the Vice Governor as well as the determination system in the filling position of the Governor and the Vice Governor in DIY.⁶²

The regulation on the Yogyakarta Special Region in Article 226 Paragraph (2) of Law No. 32 of 2004 on Local Government affirms that the privilege of DIY as referred in the Law No. 22 of 1999 on Local Government remain on the provision that the implementation of the Government of DIY is based on this Law. The Article 122 of Law No. 22 of 1999 on Local Government explains that the recognition of the privileges of DIY are based on their origins and roles in the history of the national struggle, while the content of the privilege is the appointment of the Governor by considering the candidates from the descendant of the Sultan, and the Vice Governor by considering the candidates from the descendant of *Paku Alam*.

One of the element of privileges of DIY is related to the filling position of the Governor and the Vice Governor. The filling position of the Governor and the Vice Governor in DIY becomes an authority of DIY as the special region which is different from other regions. The filling position of the Governor and the Vice Governor as regulated in Article 7 Paragraph (2) Law No. 13 of 2012 on the Privileges of DIY is related to the procedure of filling position, duty, and authority of the Governor and the Vice Governor. This provision is not only stipulated in the Law No. 13 of 2012 on the Privileges of DIY, but also regulated in the Special

⁶² *Ibid.*, p. 95.

Regional Regulation (PERDAIS/ *Peraturan Daerah Istimewa*) of DIY No.1 of 2013 on the Authority of Privileged Affairs of DIY.⁶³

In the filling position of the Governor and the Vice Governor of DIY before the issuance of Law No. 13 of 2012 on the Privileges of DIY still refers to the Law No. 32 of 2004 on Local Government, namely by appointment. In the Article 122 of Law No. 22 of 1999 on Local Government and Law No. 32 of 2004 on Local Government has affirmed that the candidate of the Governor and the Vice Governor may only come from the descendants of Yogyakarta Sultanate and *Kadipaten Pakualaman*.⁶⁴

The requirements of the candidate of the Governor and the candidate of the Vice Governor in DIY as mentioned in Article 18 of Law No. 13 of 2012 on the Privileges of DIY is different from the provisions of Law No. 32 of 2004 on Local Government, namely the candidate of the Governor as Sultan *Hamengu Buwono*⁶⁵, and for the candidate of the Vice Governor as *Adipati Pakualam*⁶⁶ must be proven by a letter of inauguration which is declared that Sultan *Hamengku Buwono* govern in the Sultanate and *Paku Alam* govern in the *Kadipaten*.⁶⁷

⁶³ Raisa Rizani, "Sabdatama dan Sabdaraja Sri Sultan Hamengku Buwono X dalam Perspektif Keistimewaan Daerah Istimewa Yogyakarta", *Jurnal UII*, Vol. 1, No. 1, 2016, p.21.

⁶⁴ Ni'Matul Huda, 2013, *Daerah Istimewa Yogyakarta dalam Perdebatan Konstitusi dan Perundang-Undangan di Indonesia*, Bandung: Nusa Media, p. 162-164.

⁶⁵ The title of Sri Sultan Hamengku Buwono is Ngarsa Dalem Sampeyan Dalem Ingkang Sinuwun Kanjeng Sultan Hamengku Buwono Senapati Ing Ngalaga Ngabdurrakhman Sayidin Panatagama Kalifatullah.

⁶⁶ The title of Sri Paku Alam is Kanjeng Gusti Pangeran Adipati Arya Paku Alam.

⁶⁷ See Article 18 paragraph 2b of Law No. 13 of 2012 on the Privileges of DIY.

From the mechanism of filling position of the Governor and the Vice Governor in Yogyakarta, it is seen clearly that the mechanism of filling position of the Governor and the Vice Governor in Yogyakarta is different from other regions. It shows the privileges of DIY as the special region. The determination of Sri Sultan *Hamengku Buwono* as the Governor and *Paku Alam* as the Vice Governor of DIY is not contradicted to the 1945 Constitution. It is because in the Preamble of 1945 Constitution the drafters of 1945 Constitution agreed to adapt the form and model of democracy which is in accordance with the culture and style of Indonesian society, namely democracy deliberation based on kinship including the mechanism which is to be practiced. As long as the mechanism is considered democratic, it means that it is not contradict to the idea of deliberate democracy and does not ignore the special element of DIY.⁶⁸

2. The History of the Succession of Governor in DIY

Yogyakarta Sultanate was established since 1755. Yogyakarta Sultanate founded by Prince Mangkubumi who later became Sultan *Hamengku Buwono I. Kadipaten Pakualaman*, established since 1813, *Kadipaten Pakualaman* founded by Prince Bendara Pangeran Haryo

⁶⁸ Raisa Rizani, *Op. Cit*, p. 22.

(BPH) Notokusumo (son of Sultan *Hamengku Buwono I*) who later became *Adipati Paku Alam I*.⁶⁹

The filling position of the Governor and the Vice Governor of Yogyakarta through determination is a political consensus based on the historical experience of DIY which shows that even though the succession of the Governor in Yogyakarta did not through a direct election process, the reality shows that the succession of the Governor in Yogyakarta is based on the values of democracy. The commitment of Yogyakarta in democracy began when the leadership of Sri Sultan *Hamengku Buwono IX*⁷⁰

The joining process of Yogyakarta with the Republic of Indonesia can not be separated from the role of Sri Sultan and *Paku Alam VIII*. In 1973, Sri Sultan *Hamengku Buwono IX* was appointed to become the Vice President in Indonesia and automatically could not be active in the government of Yogyakarta, therefore the government was run by *Paku Alam VIII*.

The policy of the status of Yogyakarta is continued by the Central Government with Law No. 5 of 1974 on Local Government. Sri Sultan *Hamengku Buwono IX* was active again in carrying out his duties as Governor of Yogyakarta in 1978. Sri Sultan *Hamengku Buwono IX* only

⁶⁹ Dikpora, "Sejarah Singkat Provinsi Daerah Istimewa Yogyakarta", available at http://pendidikan-diy.go.id/dinas_v4/?view=baca_isi_lengkap&id_p=1, accessed on July 19th, 2018 at 09.05 a.m.

⁷⁰ Nafiatul Faradita, 2017, *Implementasi Undang-Undang Nomor 13 Tahun 2012 tentang Keistimewaa Daerah Istimewa Yogyakarta*, Yogyakarta: Pendidikan Kewarganegaraan dan Hukum FIS UNY, p. 448-449.

served for ten years as the Governor of Yogyakarta, it is because in 1988 Sri Sultan *Hamengku Buwono IX* passed away in the United States. Sri Sultan *Hamengku Buwono IX* become the longest Governor in Indonesia (1945-1988) and as the longest Sultan of Yogyakarta (1940-1988).

The Central Government did not appoint Sri Sultan *Hamengku Buwono X* as the Governor to replace Sri Sultan *Hamengku Buwono IX*, but appointed Sri *Paduka Alam VIII* as the Governor of DIY. But, the death of Sri *Paduka Alam VIII* caused problems for the government of DIY in terms of leadership. There was a debate between Central Government, DPRD of DIY, Yogyakarta Palace, *Puro Pakualaman*, and society. This is because of the legal vacuum of Law No. 57 of 1974 which only regulate the position of the Governor and the Vice Governor of Yogyakarta when held by Sri Sultan *Hamengku Buwono IX* and Sri *Paduka Alam VIII*, and does not regulate on its succession.

Because of the society's insistence, Sri Sultan *Hamengku Buwono X* was appointed as the Governor (1998-2003). Sri Sultan *Hamengku Buwono X* was not accompanied by the Vice Governor. To overcome with that problem, the Central Government in Law No. 22 of 1999 on Local Government regulates the problem of succession of leadership in DIY.

When the tenure of Sri Sultan *Hamengku Buwono X* ended in 2003, the incident was repeated. The DPRD of Yogyakarta wants the Governor's election in accordance with Law No. 22 of 1999 on Local

Government, but the most of society wants Sri Sultan *Hamengku Buwono X* and Sri *Paduka Alam IX* became the Governor and the Vice Governor. So, Sri Sultan *Hamengku Buwono X* and Sri *Paduka Paku Alam IX* were appointed as the Governor and the Vice Governor (2003-2008).

On March 25th, 2018, around 10.000 people from various districts in Yogyakarta held people's hearing, it is essentially intended to call for the DPRD of DIY immediately to hold a Special Plenary Meeting to make political decisions depending on the aspirations of the people of Yogyakarta Special Region and reject the Draft of Privileged Law (RUUK/ Rancangan Undang-Undang Keistimewaan) which is against the aspirations of the people. Substantially, related to the leadership of DIY the special committee agreed to reappoint Sri Sultan *Hamengku Buwono X* and Sri *Paduka Alam IX* as the Governor and the Vice Governor of DIY for the period of 2008-2013.⁷¹

The extension of the term of the Governor and the Vice Governor of DIY which has been going on twice does not indicate the validity of the time. When Sri Sultan *Hamengku Buwono X* as the Governor and Sri *Paku Alam IX* as the Vice Governor has ended their second term as the Governor and the Vice Governor of DIY on October 2008, then the President extended the term for 3 (three) years and ended on October 2011. Then, on October 2011, the term of the Governor and the Vice Governor was extended again for 1 (one) year and ended on October

⁷¹ Dikpora DIY, 2011, "Daerah Istimewa Yogyakarta", available at http://www.pendidikan-diy.go.id/dinas_v4/index.php?view=v_taukah&id=12 , accessed on March 25th 2018, at 11.31 a.m.

2012. It can be seen that the extension of the term of the Governor and the Vice Governor of Yogyakarta is depending on the desire of the President and the availability of Sri Sultan *Hamengku Buwono X* and Sri *Paku Alam IX*.⁷²

The succession in the Yogyakarta Palace attracts not only people in Yogyakarta people in Indonesia. As we know that Yogyakarta Palace is always led by a man, but it seems there will be an opportunity for a woman. Sri Sultan *Hamengku Buwono X* who does not have a son inherited the throne to his eldest daughter. This is became a polemic in the Palace family. Four brothers of Sri Sultan *Hamengku Buwono X* rejected the decision of Sri Sultan *Hamengku Buwono X* to appoint his daughter as the successor of Yogyakarta Palace.⁷³ It is because if looking at the tradition or custom, when the Sultan did not have a son, then the next throne will be given to Sultan's brother.⁷⁴

To anticipate that his daughter would not be able to became the next Governor in DIY, Sri Sultan *Hamengku Buwono X* on December 31st, 2015 issued *Sabda Raja* (the word of Sri Sultan) which is essentially contained "If the brothers of Sultan and *abdi dalem*⁷⁵ do not fulfill the command of Sultan, they would be removed from their

⁷² Ni'Matul Huda, *Op. Cit.*, p.167-168.

⁷³ Wahyuni Choiriyati, "Suksesi Kepemimpinan Kraton Ngayogyakarta dalam Dualitas Struktur", *Jurnal Ilmu Komunikasi*, Vol. 15, No. 1, 2017, p. 82.

⁷⁴ Eko Nuriyatman, "Implementasi Desentralisasi di Daerah Istimewa Yogyakarta (DIY) Berdasarkan Undang-Undang Nomor 13 Tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta", *Jurnal Paca Sarjana Hukum UNS*, Vol. 14, No. 2, 2016, p. 63-64.

⁷⁵ Abdi dalem is the peson who devoted himself to the palace and Sultan with all the rules that exist.

positions. Moreover, if they do not obey with the command of the Sultan, they have to get out from the earth of Mataram.⁷⁶

The debate on the succession of leadership in Yogyakarta Palace began when the DPRD of DIY discussed the Draft of Special Region Regulation of DIY on the Procedures of Filling Position, Duties, and Authorities of the Governor and the Vice Governor of DIY. A number of parties, including Sri Sultan *Hamengku Buwono X*, asked for the changes of Article in the Draft of Special Regional Regulation of DIY which is indirectly requires the position of the Governor and the Vice Governor of Yogyakarta must be a man. This debate also became a debate on the succession of leadership in the Yogyakarta Palace. The succession of leadership in Yogyakarta Palace and in *Kadipaten Pakualaman* becomes not only an internal problem of two institutions, but also become a public affairs, it is because the leaders of these two institution automatically become the Governor and the Vice Governor of Yogyakarta.⁷⁷

B. The Legal Consequences of the Constitutional Court Decision No.88/PUU-XIV/2016

⁷⁶ Hinijati Widjaja, "Babak Baru Tradisi Mataram Islam di Kraton Ngayogyakarta Hadiningrat", *Jurnal Ilmiah WIDYA Non-Ekstakta*, Vol. 1, No. 1, 2016 , p. 44.

⁷⁷ Bayu Kurniadi, "Publikasikan Paugera, Parentah Hageng Keration: Perintah Sultan yang Harus Ditaati", *Kompas*, March 11th, 2015, available at <http://bdardias.staff.ugm.ac.id/wp-content/uploads/2007/05/Publikasikan-%2522Paugeran%2522.pdf>, accessed on May 6th, 2018, at 10.41. p.m.

Based on the Article 18B Paragraph (1) of 1945 Constitution, the state recognize and respect to the special region which is regulated by law. One of the regulation that regulated the special government unit is Law No. 13 of 2012 on the Privileges of Yogyakarta Special Region. The recognition of privileges in the field of government in Yogyakarta is based on the history of Yogyakarta leadership which came from the sultanate area that has been legally and socially recognized by the society.⁷⁸

Sri Sultan *Hamengku Buwono X* and Sri *Paduka Paku Alam X* were inaugurated again as the Governor and the Vice Governor for the Yogyakarta Special Region recently. Sri Sultan *Hamengku Buwono X* and Sri *Paduka Paku Alam X* have been inaugurated by President Joko Widodo at the State Palace, Jakarta, on Tuesday, October 10th, 2017. The appointment of Sri Sultan *Hamengku Buwono X* and Sri *Paduka Paku Alam X* as the Governor and Vice Governor of DIY are in accordance with the Law of Privilege of Yogyakarta.

In 2015, there was a polemic of the succession of the Governor in Yogyakarta. It is because Sri Sultan *Hamengku Buwono X* does not have a son to be his successor as the next Governor. If Sri Sultan *Hamengku Buwono* makes his daughter as Governor, it will be contrary with the Law. Sri Sultan also anticipate this problem by issuing *Sabda Raja* that to become a Governor does not have to be male. Besides his words, Sri Sultan also change the name of his daughter Gusti Kanjeng Ratu

⁷⁸ Sartika Intaning Pradhini, Alam Surya Anggara, *Loc. Cit.*, p. 149

Pembayun become Gusti Kanjeng Ratu Mangkubumi Hamemayu Hayuning Bawono Langgeng ing Mataram. All of this is the step of Sri Sultan *Hamengku Buwono X* to prepare his daughter to become the Governor in Yogyakarta.⁷⁹

Sri Sultan *Hamengku Buwono X* issued *Sabda Raja* in Siti Hinggil on Tuesday, May 5th, 2015. Sri Sultan *Hamengku Buwono X* accompanied by his wife, GKR Hemas, to give a new title to his eldest daughter. Hamemayu Hayuning Bawono Langgeng implies being able to maintain balance and harmony in the life of the world, in the life of the small universe and also in the big universe. The name of Mangkubumi first used in the Yogyakarta Sultanate is the name of Prince Mangkubumi who became the title of Sri Sultan *Hamengku Buwono I* as the founder of the Sultanate of Ngayogyakarta Hadiningrat after the Mataram Palace is divided into two in the *Giyanati* Agreement 1775 A.D. In the name of GKR Mangkubumi there is no name of Buwono, but there is Bawono in the name of GKR Mangkubumi. This is in accordance with *Sabda Raja* issued by the Sultan on Thursday, April 30th, 2015 and then declared to change the name Buwono became Bawono.⁸⁰

Related to this matters, an opinion emerged regarding the requirement to be the Governor in DIY which state the word “wife” which

⁷⁹ Ansori, “Penghalang Hak Politik Perspektif Sistem Demokrasi”, *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, Vol. 1, No. 1, 2016, p. 7.

⁸⁰ Bagus Kurniawan, “Cerita dan Makna Gelar ‘Mangkubumi’ yang Disematkan ke Putri Pertama Sultan”, *Detik News*, May 6th 2017, available at <https://news.detik.com/berita/2907409/cerita-dan-makna-gelar-mangkubumi-yang-disematkan-ke-putri-pertama-sultan>, accessed on May 14th, 2018, at 4.48 p.m.

shows discrimination of gender. It rises the interpretation that only man can become the candidate of the Governor of DIY. The problem is Sri Sultan *Hamengku Buwono X* does not have a son, and therefore it has become question who will be the successor of Sri Sultan *Hamengku Buwono X*.

The Petitioners argue that Article 18 Paragraph 1 (m) of Law No. 13 of 2012 which states that “submit a curriculum vitae, including the history of education, occupation, siblings, wife, and children” is contradict to the 1945 Constitution. According to the petitioners, the word “wife” in Article 18 Paragraph 1 (m) of Law No. 13 of 2012 means that who can be the candidate only a man.

Article 18 Paragraph 1 (m) of Law No. 13 of 2012 which regulates the candidate for the Governor and the Vice Governor shall submit the biography of history which contains only the word “wife” without the word “husband”, it indicates only man can be the Governor and the Vice Governor of Yogyakarta.

The Petitioners also argue that Article 18 Paragraph (1) of Law No. 13 of 2012 violates the Article 28C Paragraph (1)⁸¹, Article 27 paragraph (2)⁸², and Article 28H paragraph (1)⁸³ of the 1945 Constitution. The

⁸¹ Article 28C paragraph (1) of the 1945 Constitution, stated “Every person has the right to develop themselves through the fulfillment of their basic needs, deserve the education and benefit from science and technology, art and culture to improve the quality of life and for the welfare of mankind.”

⁸² Article 27 paragraph (2) of the 1945 Constitution, stated “Every citizen has the right to work and a decent living for humanity.”

⁸³ Article 28 H paragraph (1) of the 1945 Constitution, stated “Every person has the right to life, get a good and healthy environment, and get health services.”

petitioners said that with this formulation could make the position of the Governor and the position of the Vice Governor or both may be ineligible, so the position of the Governor and/ or the Vice Governor becomes void permanently. This is because maybe Sultan or *Adipati Paku Alam* have no wife, children, and siblings, while the state itself should not interfere the matter of the replacement of Sultan or *Adipati Paku Alam* in order to have a wife first.

The requirements in Article 18 Paragraph 1 (m) of Law No. 13 of 2012 are also rationally unfair because it has intervened the destiny of God. The permanent void of the position of the Governor and/ or the Vice Governor is contradictory to Article 18 paragraph (2)⁸⁴ of the 1945 Constitution. It is because the authority to regulate and manage his own government affairs becomes impossible and may cause the society life and the society service is can not be done, so it may harm the constitutional rights of the society, such as the right to get the education, the benefit from science and technology, art and culture.

It is clear that the procedure of filling the Governor position, the Vice Governor position and the Governmental Institution position is one of the privileges of Yogyakarta Special Region. The method of filling the position of the Governor and the Vice Governor is not done through direct election, and who may fill the position of the Governor shall be entitled as

⁸⁴ Article 18 paragraph (2) of 1945 Constitution, stated “The government of Provincial, Regency, and Municipal shall manage their own governmental affairs according to the autonomy principle and tasks assistance.”

Sultan *Hamengku Buwono* and who may fill the position of the Vice Governor shall be entitled as *Paku Alam*.

The Petitioners also said that the existence of the norm of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 actually also harmed the Yogyakarta Sultanate by leading the Sultan to be discriminative in determining the leadership of Yogyakarta Sultanate. In fact, it is actually the power of the Sultanate which become the privileges of the Sultanate and the regulations can not interfere with this.

The enactment of the norm of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 which includes the words “wife”, “child”, and “siblings” can make the permanent void of the position of the Governor/ the Sultan and the Vice Governor/ *Adipati Paku Alam*. It is because maybe the Sultan and *Paku Alam* have no wife, child, and sibling when they ran for the Governor and the Vice Governor of Yogyakarta.

Although since Sri Sultan *Hamengku Buwono* I until Sri Sultan *Hamengku Buwono* X as the King in Yogyakarta Palace is never led by a woman, it does not mean that the State in terms of legislation can regulate and determine the Governor and the Vice Governor of Yogyakarta must be led by man, or must be someone who has a wife, or even write in the Law that the Sultan and *Adipati Paku Alam* should have a wife. It is because

everything is back to the Sri Sultan *Hamengku Buwono X* as the leader of Sultanate and *Adipati Paku Alam* as the leader of *Kadipaten*.

According to Zainal Arifin Mochtar⁸⁵, the discourse on whether woman or man who must be the Sultan in Yogyakarta is not appropriate. It is because the position of the Sultan has been appointed to be part of the state institution, namely the Sultan is part of the Governor. So, the principles of democracy and equality are also applied.

The highest authority in the Sultanate is in the hands of the Sultan. In determining who will become the next Sultan to replace Sri Sultan *Hamengku Buwono X* is the prerogative right of Sri Sultan *Hamengku Buwono X*. In the Sultanate system, the Sultan is at the top of the hierarchy. So, the Sultan has the authority to determine the rules/*paugeran*, and *paugeran* can change and adapt to the times. Thus, it can be said that *paugeran* is dynamic, not static, and determined to solve the problems that arise at the time. Sri Sultan *Hamengku Buwono X* is not only as a leader of custom and culture, but also as a leader of religion, and Sri Sultan *Hamengku Buwono X* has an obligation to protect all religions, not only Islam.

Based on the Constitutional Court Decision, the procedure of the filling position of the Governor and the Vice Governor of Yogyakarta and the government institution of Yogyakarta is part of the scope of authority

⁸⁵ Dr. Zainal Arifin Mochtar is an expert of Constitutional Law from Gadjah Mada University. See Constitutional Court Decision No.88/PUU-XIV/2016.

which belong to the affairs of privileges of Yogyakarta. It means, giving the process of filling position of the Governor and the Vice Governor which is different from other regions in Indonesia is a form of the privilege of Yogyakarta.

Historically and juridically Yogyakarta Sultanate and *Kadipaten* existed first than the Unitary State of the Republic of Indonesia. Therefore, the applicable law in determining who is entitled to be Sultan in the Sultanate and who is entitled to be *Adipati* in *Kadipaten* is a law that applies in the internal palace and internal *Kadipaten*.

Logically and historically, Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY is contradict to the principle of recognition and respects to the rights and the origin of special government units as stated in Article 18B Paragraph (1) of the 1945 Constitution if the state interferes in determining the requirements of who is entitled to be Sultan in the Yogyakarta Sultanate and *Adipati* in *Kadipaten*. Therefore, the court argued that Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY is a form of the state interference within the internal affairs of the Palace. Whereas, constitutionally by the 1945 Constitution it has been recognized and as the full authority of the Sultanate and *Kadipaten*.

According to GBPH (Gusti Bendara Pangeran Haryo) Haji Yudhaningrat⁸⁶, by granting the changes of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY, it will cause the fundamental changes in *paugeran*. One of that fundamental changes is give the Sultan opportunity to be occupied by a woman, which means that the Sultan is not necessarily a man.⁸⁷

The court hearing in the Constitutional Court related to the Juridical Review of Law No. 13 of 2012 on the Privileges of DIY has ended with the conclusion by President on March 1st, 2017. Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY stated that the candidate of Governor and the candidate of Vice Governor of Yogyakarta is the citizen of the Republic of Indonesia who must fulfill the requirement such as submitting the curriculum vitae, which include the history of education, occupation, siblings, wife, and children, and it is concluded that who can be the Governor and Vice Governor of DIY must be a man.

Because of the Constitutional Court Decision which nullified Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY, it becomes an opportunity for the eldest daughter of Sri Sultan *Hamengku Buwono X* to become the Governor of Yogyakarta. The nullification of the Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY does not only give women a chance to become the Governor but also to become the Sultan of Yogyakarta. If the Yogyakarta

⁸⁶ GBPH Haji Yudhaningrat is a stepbrother of Sri Sultan Hamengku Buwono X. See Constitutional Court Decision No. 88/PUU-XIV/2016.

⁸⁷ Constitutional Court Decision No. 88/PUU-XIV/2016.

Palace confirmed the women to become the Governor of Yogyakarta and sends it to the DPRD DIY as the candidate of the Governor, the DPRD DIY can not refuse it. It is because the Law of Privileges of DIY does not require the candidate of the Governor of Yogyakarta must be a man.

The gender rules that indicates the candidate of the Governor and the Vice Governor of DIY must be a man have been nullified since the decision of the Constitutional Court No.88/PUU-XIV/2016. With the revocation of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY which is stated that the candidate of the Governor and the Vice Governor of DIY who must submit a curriculum vitae which include the history of education, occupation, siblings, wife, and children, now there is no obstacle to Gusti Kanjeng Ratu Mangkubumi to become the Governor of Yogyakarta.⁸⁸

The discourse whether women or men who should become the Sultan in Yogyakarta is not right. This is because the position of the Sultan has been appointed as part of state institution. So, the principles of democracy and equality are applied. Sri Sultan *Hamengku Buwono X* said that the process of the succession of the Sultan in Yogyakarta became the authority of Sri Sultan *Hamengku Buwono X* as the holder of power.

⁸⁸ Ainun Nadjib, "Suksesi Gubernur DIY, Peluang GKR Mangkubumi Terbuka Lebar", *Sindo News*, September 6th, 2017, available at <https://daerah.sindonews.com/read/1237255/189/suksesi-gubernur-diy-peluang-gkr-mangkubumi-terbuka-lebar-1504702956>, accessed on April 5th, 2018, at 11.42 p.m.

Therefore, the highest power is actually in the hands of the Sultan and this is become a privilege of Yogyakarta. This has been guaranteed by the 1945 Constitution that the state recognizes and respects to the special government unit.⁸⁹

The criteria on who is eligible or qualified to become the Governor of Yogyakarta is the internal affairs of Yogyakarta Sultanate and *Kadipaten* which by the 1945 Constitution and the Privilege Law of DIY are recognized as part of the special privilege of DIY. Therefore, related to who has the right or qualify as Sri Sultan *Hamengku Buwono* and *Adipati Paku Alam* is determined by the law that applicable in the Sultanate and *Kadipaten*.⁹⁰

The Local Government of DIY declare that the Local Government of DIY respects and appreciate to the decision of the Constitutional Court which is related to the existence of the Law No.13 of 2012 on the Privileges of DIY. The Local Government of DIY said that the regulation of the Privilege Law of Yogyakarta does not need to be changed. With the emergence of the Constitutional Court Decision related to the Privilege Law of DIY, there are two legal documents that must be obeyed. First is

⁸⁹ Kementrian Hukum dan Hak Asasi Manusia, “Pengujian Undang-Undang Nomor 13 Tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta terhadap UUD 1945”, available at <http://ditjenpp.kemenkumham.go.id/kegiatan-umum/3161-pengujian-undang-undang-nomor-13-tahun-2012-tentang-keistimewaan-daerah-istimewa-yogyakarta-terhadap-uud-1945.html>, accessed on April 13th2018, at 3.18. p.m.

⁹⁰ Rizal Bomantama , “Putusan MK menegaskan Kesetaraan Kesempatan Laki-Laki dan Perempuan jadi Gubernur DIY”, *Tribun News*, August 31st, 2017, available at <http://www.tribunnews.com/nasional/2017/08/31/putusan-mk-menegaskan-kesetaraan-kesempatan-laki-laki-dan-perempuan-jadi-gubernur-diy?page=3>, accessed on April 5th, 2018, at 12.04 p.m.

the legal document of Law No. 13 of 2012 on the Privileges of DIY, and the second is Constitutional Court Decision.

The decision of the Constitutional Court must be implemented side by side with the Privilege Law of DIY and become the part that can not be separated with the Privilege Law of DIY. In implementing the Privilege Law of DIY, it can not ignore the decision of Constitutional Court, it is because the Constitutional Court Decision already has legal force binding. Therefore, with the decision of Constitutional Court, there is no need to amend the Regulation of Special Region. It is because the Regulation of Special Regions is based on the Privilege Law.

On the other side, Mohammad Mahfud MD⁹¹ said that with the decision of the Constitutional Court, then the Regulation of Special Regions which is contrary to the decision of Constitutional Court shall be adjusted. Because of the administrative technical matters, the administrative techniques of the Regulations of Special Regions must follow the decision of the Constitutional Court. The problem relating to the Sultan as King is not the authority of the Constitutional Court, but the requirement of the Governor's candidate become the authority of the government.⁹²

The decision of the Constitutional Court implicitly contains a contradiction between the reality of Positive Law and Customary Law that

⁹¹ Prof. Dr. Mohammad Mahfud MD is the chairman of the Constitutional Court (2008-2013). See Constitutional Court Decision No.88/PUU-XIV/2016.

⁹² Dinar Widiyanto, "Suksesi Sultan Bukan Urusan MK", *KR Jogja*, September 5th, 2017, available at http://krjogja.com/web/news/read/42969/Suksesi_Sultan_Bukan_Urusan_MK, accessed on May 29th, 2018, at 12.59 p.m.

applies in Yogyakarta/ *Paugeran*. On one hand, the Constitutional Court Decision stated that based on the Privilege Law of DIY, woman can be the Governor of Yogyakarta, On the other hand, the decision of the Constitutional Court also stated that the state does not interfere in the process of the succession of the Sultan in Yogyakarta and stated that the mechanism of the filling position of the Sultan in Yogyakarta through the Customary Law which is applicable in Yogyakarta Palace.

The Sultan in Yogyakarta must be a man. This is the Customary Law which is applicable in Yogyakarta Palace. This is based on the idiom “Sultan” that comes from Arabic language which means “King” (man), if the King is woman, then its idiom changed to “Sultaniyah”. While the provisions of Article 18 Paragraph 1c of Law No. 13 of 2012 on the Privileges of DIY stated that to become the Governor and the Vice Governor of Yogyakarta should be as Sultan *Hamengku Buwono* for the candidate of the Governor and should be as *Adipati Paku Alam* for the candidate of the Vice Governor.

The logic contradiction of the Constitutional Court Decision is on the inconsistency of the material of decision. On the one side, the woman can be the Governor because Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY has been nullified, but on the other side, the provision of Article 18 Paragraph 1c of Law No. 13 of 2012 on the Privileges of DIY is not nullified by Constitutional Court. It means that the decision of Constitutional Court can not be executed in the Yogyakarta

Palace because it would be contrary to the *paugeran* in Yogyakarta Palace. In fact, the decision of Constitutional Court has triggered a bigger conflict among sultanate family.

The decision of the Constitutional Court may cause conflict in internal Palace because there are different views of the palace family. Some of the palace family hold on the *paugeran* where the Sultan must be a man, but the other palace family argued that woman also can be the Governor/ the Sultan in Yogyakarta. The reality is Sri Sultan *Hamengku Buwono X* has no son, so some palace family argued that the successor of Sri Sultan *Hamengku Buwono X* must come from Sri Sultan *Hamengku Buwono X*'s brother from *Hamengku Buwono IX* lineage as happened in the succession of Sri Sultan *Hamengku Buwono V* to Sri Sultan *Hamengku Buwono VI* when Sri Sultan *Hamengku Buwono V* did not have a son, then the crown prince title was given to his brother and appointed became Kanjeng Gusti Pangeran (KGP) Adipati Anom or called *Hamengku Buwono VI*.

The execution process of the Constitutional Court Decision need revision on the provision of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY which has been nullified by the Constitutional Court. This revision takes a long time and is not simple. Therefore, the decision of the Constitutional can not be executed immediately.

Bayu Dardias⁹³ said that women have an opportunity to become the Governor of Yogyakarta are not final yet, even though the Constitutional Court has granted the lawsuit of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY. There are other stages that must be passed if requires woman to become the Governor of Yogyakarta. As we know that the Constitutional Court granted the juridicial review of Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY through decision which was read on Thursday, August 13th, 2017.

Article 1 point 4 of Law No. 13 of 2012 on the Privileges of DIY stated that Yogyakarta Sultanate is led by “Ngarsa Dalem Sampean Dalem Inkgang Sinuwun Kanjeng Sultan Hamengku Buwono Senapati Ngalaga Ngabdurrahman Sayidin Panatagama Khalifatullah” then called as Sultan *Hamengku Buwono*, and the title of “Khalifatullah” is identical with men. In addition, Article 18 of Law No. 13 of 2012 on the Privileges of DIY also stipulates that the candidate for the Governor of DIY is Indonesian Citizen who was enthroned as Sultan *Hamengku Buwono* and the candidate for the Vice Governor of Yogyakarta was enthroned as *Adipati Paku Alam*. Beside that, there are Customary Law of the Palace where since Sri Sultan *Hamengku Buwono* I to Sri Sultan *Hamengku Buwono* X, Sultan of Yogyakarta Palace is led by a man.⁹⁴

⁹³ Bayu Dardias is Political Obeserver from Gadjah Mada University.

⁹⁴ Yusron Fahmi, “Pengamat: Peluang Perempuan Jadi Gubernur DIY Belum Final”, *Liputan 6*, September 3rd 2017, available at <https://www.liputan6.com/news/read/3080552/pengamat-peluang-perempuan-jadi-gubernur-diy-belum-final>, accessed on April 19th 2018, at 12.10 a.m.

The expert of Constitutional Law, Irman Putra Sidin explained that after the decision of Constitutional Court No. 88/PUU-XIV/2016 which nullified Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY, there are some implications, such as the Governor of Yogyakarta can be led by a woman, and the candidate of the Governor can be the Governor even if the candidate is not married. Moreover, the question of who will become the Sultan is the internal affairs of the Yogyakarta Sultanate and *Kadipaten*.⁹⁵

The Government will not interfere in the polemic that occurred in Yogyakarta Palace after the decision of Constitutional Court No. 88/PUU-XIV/2016 which nullified Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY. The decision of Constitutional Court gives opportunity to woman to be the leader of Yogyakarta. But, the authority in filling position is the authority of Yogyakarta Palace and *Kadipaten*. The decision of the Constitutional Court that nullified Article 18 Paragraph 1 (m) of Law No. 13 of 2012 on the Privileges of DIY is final and binding, and in the filling position is a matter of customs and culture.⁹⁶

Based on the *paugeran* of Yogyakarta Palace, the Sultan of Yogyakarta must be a man, but at the same time, the position of the Governor may be man or woman. Whereas in Law No. 13 of 2012, the

⁹⁵ Ainun Najib, “Adik Sultan Kukuh Tolak Raja Perempuan”, *Koran Sindo*, October 14th 2017, available at http://koran-sindo.com/page/news/2017-10-14/5/3/Adik_Sultan_Kukuh_Tolak_Raja_Perempuan, accessed on May 2nd 2018, at 8.37 p.m.

⁹⁶ Nazarudin, “Mendagri: Pemerintah Tak Akan Ikut Campur Polemik Keraton Yogya”, *Kompas*, September 9th, 2017, available at <https://regional.kompas.com/read/2017/09/08/19245211/mendagri-pemerintah-tak-akan-ikut-campur-polemik-keraton-yogya>, accessed on May 3rd, 2018, at 11.38 p.m.

position of the Governor and the Sultan is attached which means the Sultan automatically become the Governor of DIY. Constitution can guarantee that the candidate of Governor may be a man or woman, but *paugeran* still maintained that the Sultan must be a man. The issue is the Governor and the Sultan is the same person. It will be no longer issue if the Governor and the Sultan are different person.⁹⁷

The problems that occurred in the Yogyakarta Palace has been going on since Sri Sultan *Hamengku Buwono X* announced *Sabda Raja* on 2015. According to some of the Palace family, especially Sri Sultan *Hamengku Buwono IX*, *Sabda Raja* announced by Sri Sultan *Hamengku Buwono X* is contradict to the *paugeran* or the Palace convention. *Sabda raja* of Sri Sultan *Hamengku Buwono X* has changed the title of *Hamengku Buwono* to *Hamengku Bawono*, and appointed his eldest daughter to become the leader of Yogyakarta by changing his name to GKR Mangkubumi.

According to brother of Sri Sultan *Hamengku Buwono X*, GBPH Prabokusumo, the filling position of the Governor of Yogyakarta which is stated in the Law No. 13 of 2012 on the Privileges of DIY indirectly related to the provision in *paugeran* which require the Sultan must be a man. In the Law No. 13 of 2012 on the Privileges of DIY stated that the Governor of Yogyakarta also as the king in the Yogyakarta Palace.

⁹⁷ Pribadi Wicaksono, "Sejarawan: Isu Raja Perempuan Jadi Masalah Pelik Keraton Yogya, *Tempo*, September 4th, 2017, available at <https://nasional.tempo.co/read/905895/sejarawan-isu-raja-perempuan-jadi-masalah-pelik-keraton-yogya>, accessed on Mei 12th, 2017 at 10.55 p.m.

Although the succession in the Palace become the prerogative rights of Sri Sultan *Hamengku Buwono X*, it can not be used when it has violated the applicable provisions. It is like a President who has prerogative rights but the prerogative rights of the President can not violate the Constitution.⁹⁸ According to GBPH Prabokusumo, the equality of gender applies only in the fields of social and politic, and this is can not apply in the custom and religion. The customs and traditions can not be changed because it will cause constitutional problem from the Constitutional Court Decision perspective as well as from the *paugeran* of Yogyakarta Palace.⁹⁹

⁹⁸ Arif Wibowo, “Adik Sultan HB X: Kami Sudah Tak Peduli Siapa Calon Raja Yogya”, *Tempo*, February, 10th, 2018, available at <https://nasional.tempo.co/read/1059326/adik-sultan-hb-x-kami-sudah-tak-peduli-siapa-calon-raja-yogya>, accessed on May 12th, 2018, at 10.25 p.m.

⁹⁹ Sukma Indah Permana, “Adik Sultan HB X: Bukan Dsikriminasi, Tradisi Punya Aturan Adat Sendiri”, *Detik News*, September 6th, 2017, available at <https://news.detik.com/berita-jawa-tengah/d-3630955/adik-sultan-hb-x-bukan-diskriminasi-tradisi-punya-aturan-sendiri>, accessed on May 13th, 2018, at 1.11 p.m.