

# Contestation of Candidates for Regional Head: Juridical Review of Regional Head Elections According to the 1945 Constitution

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**Abstract.** Elections are a very important and strategic instrument of democracy for a nation. Elections not only show the extent to which voters have sovereignty in determining their representatives who will sit in parliament but can also determine the political future for five years. The importance of elections as an instrument for voters is determined by the extent to which their implementation follows the principles of democratic and quality elections. The quality of an election is at least determined by whether the election is held in an honest, fair, free, secret, peaceful, and democratic manner. In addition, whether the political rights of voters are protected and accommodated in the implementation of elections. This exploration utilizes the Standardizing Exploration technique, which is a regularizing juridical investigation that basically underscores the logical strategy as the principal guide and the inductive technique as a supporting work methodology. This examination was directed to recognize the current ideas, rules, and legitimate principles by utilizing existing library materials and pertinent regulations and guidelines. The law that becomes the reference in this writing is Law no. 22 of 1999 concerning Regional Government and Law no. 32 of 2004. Elections for regional heads, both governors and deputy governors at the provincial level, as well as elections for regents and deputy regents at the district level, are conducted democratically. In this case, the notion of democracy is an election conducted by a representative through the DPRD, where the implementation is handled directly by the DPRD itself. The definition of democracy is carried out in a safe and orderly manner, as well as the election of regional heads and deputy regional heads, both governor and deputy as well as regent and deputy as well as mayor and deputy, which is carried out by the community or residents which is an election by directly appointing regional head candidates at the location, as is currently being done throughout Indonesia, which is regulated through laws and regulations.

**Keywords:** election; legislation; election implementation

## 1 Introduction

Pilkada in its implementation often causes polemics in society. Along with the implementation of Pilkada in various places, it is also often colored by brawls and various kinds of events that tarnish democracy itself.

The 1945 Constitution of the Republic of Indonesia (UUD NRI) is the reason for the organization of the public government, for this situation including the local government. Article

18 of the 1945 Constitution of the Unitary Condition of the Republic of Indonesia directs the division of locales into territories, then, at that point, territories are separated into rural and urban communities. The division of areas, the two territories, regions, and urban communities, has its own administration. Furthermore, it is additionally managed that provincial government is done by the standards of independence and co-organization.

Moreover, on the grounds that the Unitary Condition of the Republic of Indonesia (NKRI) is a unitary state which is overseen in view of the thought of a vote based system, in government there is a regulative body known as Individuals' Delegate Chamber (DPR). At the common level, it is known as the common parliament (DPRD) and at the area level, it is known as the locale/city territorial individuals' agent chamber (DPRD). The individuals from the DPRD are chosen through direct decisions from the local area which is held simultaneously as the overall political race (Pemilu) broadly.

To control the public authority, the locale concerned is driven by a provincial head, both in the territory and in the regime/city. For areas, the local head is known as the lead representative and for regions, the provincial head is known as the official and for the city, the territorial head is known as the chairman.

In the 1945 Constitution, Article 18 passage (4) as expressed prior, specifies those lead representatives, officials, and chairmen separately as heads of commonplace, region, and regional authorities are chosen fairly. As the execution of Article 18 section (4) of the 1945 Constitution of the Republic of Indonesia which has been corrected, Regulation no. 32 of 2004 concerning Territorial Government (hereinafter condensed as Regulation No. 32 of 2004) which directs the appointment of local heads, both common and region/city. Article 56 of Regulation no. 32 of 2004 expressed that provincial heads are chosen two by two with delegate territorial heads which are completed equitably founded on the standards of immediate, general, free, secret, legitimate and fair.

Since the authorization of Regulation no. 32 of 2004, territorial head decisions are led straightforwardly. Different during the authorization of Regulation no. 5 of 1974 concerning the Standards of Local Government and Regulation no. 22 of 1999 concerning Local Government, where the appointment of provincial pioneers like lead representatives, officials, and city chairmen is brought out by political race through delegates, specifically chose through the DPRD.

Elections are a crucial and strategic instrument of democracy for a nation is not only show the extent to which voters have sovereignty in determining their representatives who will sit in parliament but can also determine the political future for five years. The importance of elections as an instrument for voters is determined by the extent to which their implementation follows the principles of democratic and quality elections. The quality of an election is at least determined by whether the election is held in an honest, fair, free, secret, peaceful, and democratic manner. In addition, whether the political rights of voters are protected and accommodated in the implementation of elections. In that context, does the election make it easy for voters and citizens who already have the right to vote to use their voices? The democratization process in Indonesia was marked by the birth of a multi-party system. A multiparty system is a party system that has many parties. In the process of democratization, individuals are viewed as the holder of the greatest sway. It tends to be seen appeared through broad races where individuals straightforwardly choose the individual who will sit to lead the public authority by the relevant period.

General elections ranging from legislative elections to two regional head elections may be carried out safely, honestly, and fairly. Elections which are held directly by selecting candidates from both legislative and executive candidates, give freedom to the people to choose

their candidates. After the 1998 reform, there were many fundamental changes occurred in the Indonesian state administration system. Among these are the 1999 elections which were multi-party in nature, in which the opportunity for free movement of political parties was reopened, including the establishment of new parties. A democratic nation's life is always based on the principle that it is the people who are sovereign so they have the right to be involved in political activities. It is not enough that changes also occur in the process of selecting regional heads and deputy regional heads where the people are also allowed to be able to directly elect regional heads and their representatives with the considerations of each voter. The general election for regional heads and deputies is carried out in a two-round system. This means that if no candidate in the first round gets the specified minimum number of votes, a second round will be held with the participants of the two pairs of candidates who get the most votes. So that the main objective is the existence of an elected pair of candidates who have strong legitimacy with a vote of 50% plus one or an absolute majority. If in the second round no one gets a vote of 50% plus one, what will be taken into consideration in determining the winner is the even distribution of votes at the provincial or district/city level.

Elections are a minimum requirement for democracy. A democratic system can be said to have been running when it meets the characteristics, such as fair and periodic elections, accountability of the state in front of the people, and the guarantee of freedom of expression and organization (Beethan 1994). Diamond (2003) writes that democracy is increasingly related to the freedom of individuals and groups to behave and express themselves. Broadly speaking, the electoral system can be divided into two, namely, the proportional system and the non-proportional system, also known as the district. A proportional system can also be called a representative and balanced system which is a form of application of the principle of a multi-member constituency, or one electorate elects several representatives. Meanwhile, the non-proportional system or district system is a form of application of the principle of a single-member constituency or one electoral district that elects only one representative.

Generally, in political campaigns, each candidate is not only preoccupied with forming a positive image of himself but also throws negative issues at the opposing candidate to form a negative image. Some of these negative campaigns are carried out openly, but some are carried out in secret, for example through leaflets on issues in the mass media. That is, a negative campaign contains a statement or action that shows or expresses a contradiction, denial, or rejection, a statement or action that is highly critical of others and others. All of this aims to control public opinion, controlling public opinion is considered very important, as long as the goals are for popularity, electability, and politics, image (can be good or bad, according to plan). The rulers of public opinion can be given reasons or even rational benefits for carrying out certain political actions in line with the opinions that have been created.

The implementation of the regional elections has shown high dynamics. In addition to the success of presenting regional leaders. The direct election was marred by social conflict. This dynamic raises a critical assessment of the meaning of direct elections in government administration. The response to these developments has prompted the need for scrutiny of the election administration. Various aspects need to be studied from the philosophical meaning of democracy to matters relating to implementation techniques such as voter registration and candidacy. The study is also accompanied by academics on the basics of implementing government and making comparisons with the practices of other countries governments.

## **2 Method**

In this review, the creator utilizes the Regularizing Exploration technique, which is a standardizing juridical examination that basically stresses the rational strategy as the primary aide, and the inductive strategy as a supporting work method. The exploration was led to distinguish the current ideas, rules, and legitimate standards by utilizing existing library materials and relevant regulations and guidelines.

The types and sources of data used in this study are classified into 2 (two) parts, namely:

- 1) Primary information is observational information acquired straightforwardly in the field or exploration areas through interview methods with data sources, in particular from the local area, KPUD, ideological groups (Parpol), and all gatherings from pertinent offices;
- 2) Secondary data, is data obtained and collected through literature or literature studies, laws and regulations, legal articles, scientific articles, the internet, books, newspapers, magazines, newspapers, and other related readings. closely related to the problem to be studied.

The information got in this study were examined subjectively, specifically subjective examination depicting the genuine states of the item to be examined with a formal juridical methodology and alluding to legitimate tenet. The examination is unmistakable of the information gotten as meetings and afterward given translation and ends.

## **3 Result and Discussion**

### **Regional Head Candidate Contest**

Elections are a minimum requirement for democracy. A democratic system can be said to be running when it meets the characteristics, such as fair and periodic elections, accountability of the state in front of the people, and guarantees of freedom of expression and organization. Elections not only show the extent to which voters have sovereignty in determining their representatives who will sit in parliament but can also determine the political future for five years. The importance of elections as an instrument for voters is determined by the extent to which their implementation follows the principles of democratic and quality elections.

The quality of an election is at least determined by whether the election is held in an honest, fair, unrestricted, secret, peaceful, and democratic manner. In addition, whether the political rights of voters are protected and accommodated in the implementation of elections. In that context, does the election make it easy for voters and citizens who already have the right to vote to use their voices? The democratization process in Indonesia was marked by the birth of a multi-party system. A multiparty system is a party system that has many parties. During the time spent democratization, individuals are viewed as the holder of the greatest sway. This should be visible appeared through broad races where individuals straightforwardly choose the individual who will sit to lead the public authority by the appropriate period.

The establishment is the Overall Political race Commission (KPU). The KPU as the coordinator of the political decision and as commanded by Regulation Number 15 of 2011 in holding the Overall Political race is committed and directed by the standards of being autonomous, genuine, fair, methodical in holding the Overall Political race, being open, proficient, productive and successful thinking about that the KPU's errand is to sort out

decisions for individuals from the Gathering. Individuals' Agents (DPR), Individuals from the Provincial Delegates Committee (DPD), Individuals from the Territorial Nation Delegate Chamber (DPRD), as well as the Official and Bad habit Official races which are held straight by individuals. Notwithstanding these errands, as examined beforehand, the KPU likewise completes the execution of the Territorial Head Political race (Pemilukada), specifically to choose the Lead representative and Delegate Lead representative and Official and Appointee Official as well as the Chairman and Appointee Chairman straightforwardly, so that to do this undertaking a Commonplace KPU is likewise shaped Rule/Civil KPU in the Territory and Regime/City.

The Overall Political decision Commission (KPU) is an organization responsible for setting anything up that should be ready in the execution of the Overall Political race. What's more, the KPU likewise has the obligation to guide general society to partake in the execution of the Territorial Head Political race, so the Execution of a Provincial Head Political decision can run appropriately and with the standards of a majority rule government in light of the fact that the achievement pace of holding general races and local head races should be visible in view of the political cooperation of individuals.

Community participation in the lead-up to the election is a form of active and passive participation of the community in the process of organizing elections. Participation can take various forms, for example participating in determining and selecting candidates, participating in socialization, helping with funding or personnel, and others. Community participation becomes an integral part of election management, therefore a good election is not only seen from the perspective of election participation, and election administration alone but also from public participation in all stages of the election starting from updating voter data, verification, nomination, campaigning, to determine election results. Various models of public participation in every election momentum mark a very complex portrait of social behavior. Elections are aimed at increasing public understanding and knowledge of the importance of elections in building democratic life in Indonesia, about the stages and programs of the election, about some technical matters in using their political rights and voting rights correctly, increasing public awareness, especially voters, to participate in every stage of the election, increasing awareness and participation of voters in exercising their right to vote in elections.

### **Election of Regional Heads According to Law Number 22 of 1999 concerning Regional Government**

Though in confronting and prepared to expect conditions at home and abroad, as well as expecting worldwide rivalry, the public authority considers it significant to give expansive authority by executing local independence as extensively as could be expected, genuine and responsible to the areas relatively. It provoked the public authority in 1999 to make changes to Regulation no. 5 of 1974 concerning the Standards of Territorial Government, through Regulation no. 22 of 1999 concerning the Standards of Administration in the Locales. This is acknowledged through the guideline, dispersion, and use of mineral assets, as well as by monetary harmony between the middle and the areas, which is acclimated to the standards of a majority rule government, local area investment, value, and equity, as well as territorial potential and variety, which is carried out inside the structure of the Unitary Condition of the Republic of Indonesia.

Guidelines on the appointment of territorial pioneers/local heads (lead representatives, officials, and city chairmen) in the period under the steady gaze of the establishment of Regulation no. 32 of 2004, in particular during the authorization of Regulation no. 22 of 1999, which are the aftereffects of field exploration and library research are as per the following:

- 1) Election of regional heads (governors, regents, and mayors) shall be conducted democratically through DPRD, for provinces through provincial DPRD, for regencies/municipalities through Regency/Municipal DPRD (level II)
- 2) In choosing territorial heads (lead representatives, officials, and city hall leaders) in the period of the authorization of Regulation no. 22 of 1999, territorial heads (lead representatives, officials, and city chairmen) are chosen two by two and along with agent provincial heads
- 3) For the selection and appointment of local heads (lead representatives, officials, and city hall leaders) and delegate lead representatives, appointee officials, and agent chairmen, a political race council is framed, in which the Executive of the DPRD is the director of the panel, while the Agent Executives of the DPRD are each as a delegate. executive, and simultaneously as an individual from the political decision panel.
- 4) The duties of the election committee as mentioned in point 3 above, are:
  - a. checking the identity files of prospective candidates based on Article 33 of Law no. 22 of 1999
  - b. carry out technical activities for the election of candidates for regional head and deputy regional head candidates
  - c. The election committee is the person in charge of organizing the election
  - d. candidates for regional heads and candidates for deputy regional heads who meet the requirements according to the results of the examination by the election committee, are submitted to the DPRD to be determined as regional head candidates.
  - e. The determination of contender for local heads is completed by every group as per the circumstances specified by Article 33 of Regulation no. 22 of 1999 concerning Territorial Government.
- 5) In connection with the selection of candidates in point 5 above, the candidates for governor and deputy governor who have been determined by the leadership of the DPRD shall be consulted with the president. Meanwhile, candidates for regent and deputy regent as well as candidates for mayor and deputy mayor who will be elected by the DPRD are determined by a DPRD decision.
- 6) The election of candidates for regional heads and regional representatives is carried out in a plenary meeting of DPRD which is attended by at least two-thirds of the total members of DPRD; and if DPRD members do not reach the quorum, the chairperson of the meeting may postpone the meeting for one hour. If after the meeting is postponed for one hour, but has not reached a quorum, then the plenary meeting is postponed for another hour.
- 7) The appointment of local heads and appointee territorial heads from possibility for provincial heads and representative territorial heads is done straightforwardly, uninhibitedly, privately, truly, and decently. Straightforwardly implies that individuals from DPRD in the entire meeting of DPRD choose possibility for local heads and delegate provincial heads straightforwardly go with decisions as per up still up in the air in the request for DPRD or the whole meeting.
- 8) Each DPRD part makes a choice just for one contender for local head and representative provincial head from a couple not set in stone by the DPRD.
- 9) Each individual from the DPRD makes a choice just for one possibility for local head and delegate territorial head from a couple of up not entirely settled by the DPRD.

The example of a majority rule government which is reflected in the appointment of provincial heads and representative local heads in Regulation no. 22 of 1999 concerning Local Government is a style of liberal philosophy, yet in its execution, it actually focuses on the state underpinning of Pancasila. Despite the fact that choices are made by larger part vote, this regulation actually focuses on pondering and agreement.

### **Election of Regional Heads and Deputy Regional Heads according to Law Number 32 of 2004 concerning Regional Government**

The appointment of local heads and delegate territorial heads is completed two by two in view of the standards of immediate, general, free, secret, legit, and fair. To choose territorial heads and delegate local heads as directed in Regulation no. 32 of 2004 concerning Provincial Government, a few establishments are straightforwardly engaged with the political race process, specifically:

- 1) Regional General Election Commission (KPUD)
- 2) Regional People's Representative Council (DPRD)
- 3) Election Supervisory Committee (Panwaslu/Bawaslu)
- 4) Constitutional Court
- 5) General Court
- 6) Police
- 7) and others.

The institutions in question are under their respective duties and authorities as well as their respective obligations based on the laws and regulations. In addition to the government institutions mentioned above, civil society organizations (NGOs) and other private institutions are also involved.

Of the institutions involved in the election of regional heads and deputy regional heads mentioned above, the most dominant is the KPUD, which is an independent institution tasked with and obliged to carry out elections for regional heads and deputy regional heads.

Likewise, before the KPUD does its obligations and commitments, the territorial individuals' delegate foundations as administrative organizations work first, specifically completing their obligations and specialists to inform the finish of the term of office of the local head and agent provincial head. Likewise, the DPRD additionally advises the KPUD in regards to the lapse of the term of office of the territorial head and delegate provincial head concerned.

The stages of implementing the Pilkada which are divided into preparation stages and implementation stages as carried out in every Pilkada, and regulated in Article 65 paragraph (1) of Law no. 32 of 2004 are as follows:

- 1) The preparation period as referred to in Paragraph (1) includes
  - a. Notification of the DPRD to the regional head regarding the end of the term of office;
  - b. Notification of DPRD to KPUD regarding the end of the regional head's term of office;
  - c. Implementation planning includes the determination of procedures and schedules for the stages of implementing regional head elections;
  - d. Formation of the supervisory committee, PPK, PPS, and KPPS; 5. Notification and registration of monitors.

From Article 65 above, it can be seen that the DPRD works early, whose work is in the preparation stage. Meanwhile, the stages of implementation are carried out by KPUD in succession as follows:

**a. Determination of the voter list**

These stages include:

Notification of the DPRD to the regional head regarding the end of the term of office

Implementation planning includes the determination of procedures and schedules for the stages of implementing regional head elections.

Formation of Supervisory Committee, PPK, PPS, and KPPS

Formation and Registration of Observers

**b. Registration and determination of regional head/deputy regional head candidates**

The determination of the voter list is carried out by first registering residents who meet the requirements as voters, by visiting people's homes, and then writing down their names and addresses for each household, in this case, KPUD through the local government and referring to the local government. population data available at the local population office.

Enlistment and Assurance of contender for territorial head/delegate provincial head  
To have the option to enroll as a possibility for local head and representative local head, the accompanying necessities should be met:

- i. Registration and Assurance of contender for local head/delegate provincial head to enroll as a possibility for territorial head and representative local head, the accompanying prerequisites should be met:
- ii. Pairs of up-and-comers advanced by ideological groups or alliances of ideological groups to become contender for provincial head and agent local head, the ideological group that conveys them should meet the obtaining of seats no less than 15% (fifteen percent) of the absolute seats in DPRD or 15% (fifteen percent) from the amassing of substantial votes from the overall political race for DPRD individuals in the space concerned
- iii. Political gatherings or alliances of ideological groups are committed to open the broadest potential open doors for planned individual applicants who meet the necessities as specified in Article 58 of Regulation no. 32 of 2004, and the selection interaction is brought out through a vote based and straightforward instrument.
- iv. Of every one of the contender for local head and agent territorial head, both at the degree of South Sulawesi Territory, as well as in the Palopo City Pilkada, the party conveying the provincial head and delegate territorial head up-and-comers didn't give a lot of consideration to the public's reaction to the competitor they were conveying.

**c. Campaign;**

The campaign carried out is part of the 14-day regional head and deputy election, which will end 3 days before the voting day. The mission group is shaped by each sets of competitors along with ideological groups or a blend of ideological groups that are sets of up-and-comers. The campaign can be carried out jointly with other pairs of candidates or separately with other pairs of candidates and/or the campaign team. The person in charge of the campaign is the candidate pair holding the campaign, which is operationally accounted for by the campaign team. To see further about the implementation of this campaign, Article 76 paragraph (1) of Law no. 32 of 2004 regulates the following matters:

Campaigns can be implemented through:



- i. limited meetings;
- ii. face-to-face and dialogue;
- iii. dissemination through print media and electronic media;
- iv. broadcasting via radio and or television;
- v. distribution of materials to the public;
- vi. installation of props in public places;
- vii. general meeting; h. public debate/open debate between candidates, and or
- viii. other activities that do not violate the laws and regulations.

In the campaign there are certain prohibitions as regulated in Article 78 of Law no. 32 of 2004 as follows:

- i. Cornering the Pancasila State Basis and the Preamble to the 1945 Constitution;
- ii. Insulting a person, religion, ethnicity, race, or group of candidates for regional head/deputy. District head;
- iii. Instigating or pitting political parties, individuals, and or community groups;
- v. Using violence, threats of violence, or advocating the use of violence against individuals, community groups, and or political parties;
- vi. Disturbing security, peace, and public order;
- vii. Threatening, and advocating the use of force to take power and legitimate government;
- viii. Damaging and or eliminating the props of other candidate pairs
- ix. Using government and local government facilities and budgets;
- x. Using places of worship and places of education; and
- xi. Carry out a parade or procession carried out on foot, and or by a vehicle on the highway.

**d. Voting**

The holding casting a ballot to choose provincial heads and representative local heads is done no later than one month before the finish of the term of office being referred to. Casting a ballot is stolen out on siestas or days away, which is finished by casting a ballot through a polling form containing the number, photograph, and name of the up-and-comer pair (Article 86 of Regulation No. 32 of 2004). Deciding in favor of the appointment of territorial heads and agent provincial heads is done by punching one of the sets of up-and-comers on the polling form. Surveying stations (TPS) are in areas that are effectively open, incorporating for people with handicaps, and there is an assurance that each citizen can project his/her vote straightforwardly, deliberately, and secretly. In each TPS the number of voters is determined to be a maximum of 300 (three hundred) people (Article 90 of Law No. 32 of 2004). The printed ballots are equal to the number of permanent voters plus 2.5% (two and a half percent) of the total number of voters. These additional ballots are used as a backup at each polling station to replace the ballots of voters who mistakenly chose pairs of candidates, and damaged ballots are included in the minutes. The committee for voting provides ballot boxes whose number, material, size, and color are determined by the KPUD, and by statutory regulations.

**e. Determination of the elected regional head/deputy regional head candidate pair, ratification, and inauguration.**

If the regional head and deputy regional head of the regency/city are determined by the plenary session of the relevant regency/municipal KPU, in this case, the Palopo KPU, then submit them to the Palopo City DPRD for approval. Elections for regional heads and

deputy provincial heads are determined through the plenary session of the KPU of South Sulawesi Province, then submitted to the DPRD of South Sulawesi Province for ratification (Articles 100 and 102 of Law No. 32 of 2004).

Issues with the assurance of the consequences of the provincial head and agent territorial head races must be put together by sets of applicants in something like three days after the assurance of the aftereffects of the local head and representative territorial head decisions. The complaints alluded to above must be recorded against the consequences of the vote count that influence the appointment of a couple of up-and-comers (Article 106 passages (1) and (2)). Under the steady gaze of the change of Regulation no. 32 of 2004 concerning Local Government, it likewise manages issues with the assurance of the consequences of the vote count. The protest is submitted to the High Court of the Republic of Indonesia. Be that as it may, because of changes in the power to arbitrate, the protest alluded to above lies with the Established Court (MK).

As to endorsement of the applicant matches for Official/Appointee Official, City chairman/Agent Chairman will be completed by the Clergyman of Home Undertakings in the interest of the President, no later than 30 (thirty) days subsequent to being chosen. While the introduction of the Lead representative is done by the President in no less than 30 days of being chosen.

#### **4 Conclusion**

Elections for regional heads, both governors and deputy governors at the provincial level, as well as elections for regents and deputy regents at the district level, are conducted democratically. In this case, the notion of democracy is an election conducted by a representative through the DPRD, where the implementation is handled directly by the DPRD itself. The definition of democracy is carried out in a safe and orderly manner, as well as the election of regional heads and deputy regional heads, both governor and deputy as well as regent and deputy as well as mayor and deputy, which is carried out by the community or residents which is an election by directly appointing regional head candidates at the location, as is currently being done throughout Indonesia, which is regulated through laws and regulations.

The community plays an important role in the elections and their participation is important for the legislature, but in implementation, from time to time public participation tends to decrease, this is caused by various things, one of which is the public's distrust of legislative candidates because most legislative members who have been elected tend to only care about their own interests and many of them instead of defending the interests of the community, many of them commit corruption.

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