

Legal Reconstruction of Government's Political Regulation in the Election of Regional Heads Based on Pancasila Justice Values

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Abstract

This research analyzes the weaknesses of the government's political and legal regulations in the current implementation of regional head elections and finds a legal reconstruction of the government's legal politics in regional head elections based on Pancasila justice values in Indonesia. In a constructivism paradigm where the type of research method used is normative juridical and the specifications of this research have a prescriptive analytical nature with the approach used by the author being a statutory approach. The research results found that the weakness of the government's political and legal regulations regarding regional elections, the substance of which regulates the resolution of election crimes; Requirements as Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, as well as Candidates for Mayor and Candidates for Deputy Mayor; Prohibition in campaigning; Criminal Sanctions Regional head elections; Simultaneous regional head elections; Community participation in organizing elections and the existence of a special electoral judicial body. Therefore, the reconstruction of the government's political and legal regulations for regional head elections as a whole based on the values of Pancasila justice in its formation can be done by synchronizing vertically with the 1945 Constitution and horizontally with the national election law starting from the planning, preparation, discussion, stipulation, and promulgation stages with adhere to principles in the formation of laws that Pancasila guides as the source of all sources of law in Indonesia by reconstructing the provisions governing the requirements for regional head candidates, candidate registration, voter data collection, campaigns, community participation, violations of the code of ethics, administration, dispute resolution, election crimes, state administration disputes, disputes over election results, formulation of criminal sanctions, implementation of simultaneous regional elections, as well as the formation of a tribunal for election crimes.

Keywords: Legal Reconstruction, Political Regulation, Regional Election, Justice Value.

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INTRODUCTION

Various problems arise in the implementation of general elections for regional heads both before and during and after the general elections for regional heads, starting from planning the program and budget for holding regional elections to the campaign stage, where there is a lot of abuse of the authority of regional heads who return to participate in the regional elections as regional head candidates and The large number of regional heads involved in corrupt practices, one of the causes of which is to return capital for participation in the Pilkada which requires a lot of campaign funds (Widodo, 2018), not to mention the independence of Acting Regional Heads who temporarily replace regional heads, as stipulated in Law Number 10 of 2016 Regarding the

Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law, Article 201 paragraph (8) determines that national simultaneous voting in The election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors in all regions of the Unitary State of the Republic of Indonesia will be held in November 2024. If you look at these provisions, in 2022 and 2023, regional heads elected in 2017 and 2018 will His term of office ends in 2022 and 2023. Meanwhile, simultaneous regional head elections will only be held in 2024 in November. During the period 2022 to 2024, many regions experienced vacancies in the positions of regional heads and deputy regional heads. The process of

appointing and determining Acting Regional Heads this year is very different from before, because the acting regional heads appointed in 2022 and 2023 served for one to two years, unlike the previous year which was only a few months. During this time, they will implement a number of strategic policies issued by the government, apart from that, they are tasked with conducting elections in 2024 so that an Acting Officer (Pj) is needed who has independence and integrity.

Apart from that, there are differences in restrictions on rights and conditions that must be met to participate in regional head elections for legislative members and executive leaders, where legislative members must first resign as members of the legislature, while executive leaders are only required to take leave (Widodo, 2019). The issue of this difference was also tested at the Constitutional Court as an attempt to remove the provisions of Article 7 paragraph (2) letter s of Law Number 10 of 2016 but was rejected by the Constitutional Court with Decision Number 22/PUU-XVIII/2020, which reads: "*Declaring written resignation as a member of the People's Representative Council, member of the Regional Representative Council, and member of the Regional People's Representative Council since being appointed as a candidate pair participating in the Election*"; declared the Petitioners' petition unacceptable and rejected the Petitioners' petition in its entirety. Furthermore, regarding the issue of single candidates found in various regions, even though the Constitutional Court gave a decision on the material review of Law Number 8 of 2015 through Decision Number 100/PUU-XIII/2015. Through this decision, the Constitutional Court opened the way for several regions that only had one pair of regional head candidates to continue holding regional elections in 2015 without having to postpone them until the next period (Toebagus, 2022). Interestingly, the Constitutional Court defines a single candidate paired with a column of agree and disagree, not with the meaning of an empty box with an election to give the people the right to vote as the holder of the highest sovereignty in a democracy and many more from the government's legal political regulations contained in the substance of the law. regarding regional head elections that the author analyzes are not based on the justice values of Pancasila.

By looking at the above problems, according to the author, it is necessary to reconstruct legal political regulations from the government in determining the rules for holding general elections for regional heads by prioritizing the value of justice in a Pancasila-based democracy to overcome these problems and it cannot be denied that so far the regulations which have now become the government's legal political policy regarding regional head elections Many lawsuits were found before the Constitutional Court which also gave rise to Constitutional Court decisions which had juridical consequences in the implementation of regional head elections, namely related to special judicial bodies for

disputes over regional head elections and the expansion of the meaning of regional elections as national elections.1. Where the problem studied are further organized into research with the following main problem:

1. What are the weaknesses of the Government's Political Regulation in the Election of Regional Heads in Indonesia currently?
2. How is the Legal Reconstruction of the Government's Political Regulation in the Election of Regional Heads Based on the Value of Pancasila Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyses problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Government's Political Regulation in the Election of Regional Heads in Indonesia Currently

An important aspect of the legal system is its substance. What is meant by substance are the rules, norms, and real behavior patterns of humans within that system. So legal substance concerns applicable laws and regulations that have binding force and serve as guidelines for law enforcement officials.

The author summarizes the weaknesses of the legal substance into two things, namely, Weaknesses in setting the requirements for regional head candidates and Weaknesses in the substance of simultaneous regional elections.

In terms of weaknesses in setting the requirements for regional head candidates, in its regulations the government regulates the requirements for regional head candidates in Article 7 of Law Number 1 of 2015 which was then amended twice by Law Number 8 of 2015 and Law Number 10 of 2016, while in the third amendment, namely Law Number 6 of 2020 regarding the substance of these requirements, there has been no change. After the enactment of the First Amendment through Law Number 8 of 2015, the requirements for regional head candidates underwent changes with the removal of the requirement to have taken part in a public test. The removal of this requirement was a juridical consequence of the deletion of Article 3 paragraph (2) related to the principles of implementing regional elections in Law Number 1 2015 which states that Governor Candidates, Regent Candidates, and Mayor Candidates who can take part in the election must take part in the Public Test process. Furthermore, there are several changes and additions to the requirements for citizens to be able to exercise their rights as Governor Candidates, Regent Candidates, and Mayor Candidates.

The author understands that the regulation of conditions in the regulations for holding regional elections as the implementation of the rights of citizens is a limitation of the implementation of citizens' rights as the constitutional basis is contained in Article 28J of the 1945 Constitution paragraph (2) which states that in exercising their rights and freedoms, every person is obliged to subject to restrictions determined by law with the sole aim of ensuring recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.

Second, in terms of weaknesses in the substance of simultaneous regional elections, the simultaneous regional elections in 2024 which are regulated in Law Number 10 of 2016 are regarding the timing of voting. In Article 201 paragraph 8 it is stated: "*National simultaneous voting in the election of Governor and*

Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor throughout the territory of the Unitary State of the Republic of Indonesia will be held in November 2024".

According to the author, the simultaneous meaning intended by the legislators in their legal politics in holding regional regional elections does not explain the meaning and purpose of holding them simultaneously throughout Indonesia. As per the provisions of Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, Article 3 paragraph (1) states that elections are held every 5 (five) once a year simultaneously throughout the territory of the Unitary State of the Republic of Indonesia.

According to the author, the word "*simultaneous*" is not included as one of the election principles in Article 22E paragraph (1), namely direct, general, free, confidential, honest, and fair, but is included in the principles of implementing regional elections as intended in Article 3 paragraph (1) of the Law. -Law Number 1 of 2015.

The entire stages of the National Election simultaneously with the Regional Head Election emphasize that the essence of elections is not only during voting, but is also related to other very important and fundamental stages which must be guaranteed by election organizers. Therefore, ensuring that the stages of the two election models, namely the 2024 Simultaneous Elections and the 2024 Simultaneous Regional Elections, run and comply with statutory regulations is a must for election governance with integrity. This requirement must be fulfilled by the organizers so that any potential maladministration that could become an election violation occurs whether it is carried out by participants or voters.

The stages of the two election models can be seen in the 2024 Simultaneous Election (President/Vice President, DPD, DPR and Provincial DPRD, district/city DPRD) that coincides in time and process with the Simultaneous Pilkada in November 2024 which is said to be a stage that coincides with the two election models which are philosophically the same as with different arrangements, needs to be the focus of the work of election organizers. These overlapping stages can cause organizers' workload and procedural fatigue in elections which could have an impact on increasing cases of reported ethical violations by organizers in simultaneous national and regional elections in 2024 (Nafiah, 2021).

In holding simultaneous elections in Indonesia, the basic principles of elections have been regulated as implementing the mandate of Article 22E of the 1945 Constitution, namely in Law Number 7 of 2017 concerning Elections and the Law governing regional

elections relating to general principles and principles in their implementation such as independence, honesty, fair, legal certainty, orderly, open, proportional, professional, accountable, effective and efficient.

Based on this description, according to the author, the simultaneous regional elections, the implementation time of which has been determined in the regulation Article 201 of Law Number 10 of 2016, is different from the implementation of national elections which only originate from the determination by the KPU, which also has the potential to change and impact the implementation provisions as stated in Article 201 of Law Number 10 of 2016 means that reconstruction is needed in the meaning of simultaneity which is adapted to national election regulations and also according to the author, regional legislative elections, namely for the DPRD, both provincial and district and city, should be combined in the meaning of simultaneous elections in the regions.

The simultaneous relationship as outlined in the Pilkada law has the potential to change and these changes must be made by re-issuing a government regulation to replace the regional election law as the author quoted via online media, the government's legal politics to change the schedule for simultaneous regional elections through a proposed Replacement Government Regulation Law (Perppu) Number 10 of 2016. This Perppu aims to speed up the implementation of the 2024 Simultaneous Pilkada which was previously held in November, and is proposed to be held in September, based on the following considerations (Asmorajati, 2023):

- a. To anticipate the vacancy of regional heads on January 1, 2025.
- b. Advance the implementation of regional election voting in September 2024. So the 2024 Simultaneous Regional Election voting process which is based on the Law on Regional Elections is set for November 2024 and must be adjusted
- c. The Perppu will shorten the duration of the simultaneous regional election campaign to just 30 days. This is done to ensure that there is no intersection between the stages of the General Election and the 2024 Regional Head Election.
- d. Shorten the duration of regional election process disputes. This point was proposed to consider the 30-day campaign period and reduce potential problems in providing regional election logistics.
- e. Legal certainty that political parties or their combinations proposing regional head candidate pairs are the results of the 2024 General Election. There needs to be a norm that regulates that the proposed regional head candidacy is based on the results of the 2024 General Election determined by the General Election Commission (KPU) by taking into

account the percentage provisions as in Article 40 of the Law Regional Elections.

- f. Simultaneous inauguration of DPRD in 2024. Based on Law 23 of 2014 concerning Regional Government, regional heads and DPRD are the administrators of regional government. This means that regional development management is greatly influenced by the alignment of terms of office of DPRD members and regional heads.

Apart from that, the simultaneous regional elections as an implementation of the principle which will be held in November 2024 will no longer be adjusted to the end of the regional head's term of office. In 2022, there will be 101 regional heads whose terms of leadership will end and will be replaced by acting regional heads until the definitive regional heads are determined as a result of the simultaneous regional elections in 2024. Although many acting regional heads have been appointed, to date regulations specifically regulate the mechanism for appointing acting governors, then the government does not yet have regents and mayors, giving rise to legal uncertainty in their implementation, one of which is related to the implementation of power in the regions.

The process for appointing and appointing acting regional heads in 2022 is different from appointments in previous years. The term of office of officials appointed in 2022 is longer, namely between 1 and 2 years, whereas previously it was only a few months. During his term of office, an acting regional head has the authority to carry out legal politics from the central government that are urgent for the national interest, and conducive to the region during the election and regional election stages. Simultaneously in 2024, implementing policies by regional regulations, and implementing the APBD that has been determined by the previous regional head.

The government will hold simultaneous regional elections in November 2024 as regulated in the provisions of Article 201 paragraph (8). Then Article 201 paragraph (9) regulates that regarding the vacancies in the positions of governor and deputy governor, regent and deputy regent, as well as mayor and deputy mayor due to the end of the term of office in 2022 and 2023, acting governors, regents, and mayors will be appointed until their election. New regional heads and deputy regional heads from holding simultaneous national regional elections in 2024. Furthermore, in Article 201 paragraphs (10) and (11) it is stated that to fill the vacancy in the position of governor, regent, or mayor, an acting regional head is appointed, namely a person who has or is currently occupying JPT intermediate for acting governor and JPT Pratama for acting regent or mayor with a term of position until the appointment of regional heads through simultaneous regional elections in 2024 (Junaedi, 2023). Based on the description above, the author finds that there is no mechanism for appointing

acting regional heads in the legal politics of regional government so this appointment is conditional on political influence as outlined in the policy for appointing acting regional heads.

2. Legal Reconstruction of the Government's Political Regulation in the Election of Regional Heads Based on the Value of Pancasila Justice

To be able to answer the above problems, a legal reconstruction is needed. In reconstructing the government's political and legal regulations which are also based on the first principle, namely belief in God, the Almighty, there is a need to legitimize the role of the community, especially religious organizations, to create a conducive atmosphere and increase community participation in exercising their voting rights. Specifically, the implementation of the Godly values in Pancasila to communities who adhere to the Islamic religion, if it is transformed into regional election regulations, is the transformation of Islamic law into national law, including statutory regulations as part of the reconstruction of national law. The legal politics of holding regional elections must be adapted to Sociological aspects of legal enforcement in Indonesia, both related to the circumstances and place of application. Therefore, the importance of including the role of the community and social organizations needs to be clarified in the provisions of the laws and regulations regarding Regional Elections which will later be combined in accordance with improvements and synchronization with the National Election legal system. As is known, community participation in exercising their rights in elections, both regional elections and national elections, is still faced with abstention or some people who do not use their voting rights (Subanti, 2023).

Furthermore, regarding the formulation of the application of progressive law, which should also be implemented in the reconstruction of government legal political regulations, is the planning of a general election system through an electronic system (e-voting) as has been done in countries with advanced democracies such as the United States and South Korea. This electronic system also does not conflict with the 1945 Constitution as stated in the decision of the constitutional court because it is only part of the technical aspects of holding regional elections in terms of voting which depends on the readiness of the government, especially election organizers. Another progressive legal political step that is regulated is the concept of simultaneous elections in the two Regional Election regulations into the National Election which needs to be regulated in such a way both in relation to the preparatory stage to the final stage so that the intersections of these two regulations do not overlap in their implementation because the organizers of the Regional Election and National Election are one unit at both the central and regional levels, namely the KPU, Bawaslu and DKPP as well as the involvement of law enforcers who are members of the Integrated Law Enforcement Center in general elections and the

existence of court institutions such as state administrative courts for election state administration disputes up to the Supreme Court and the Supreme Court. Constitution in adjudicating final vote count disputes (Uwardani, 2023). The urgency of establishing a special electoral tribunal no longer needs to be established considering that the Pilkada that the Author conceptualized is the same as the General Election and has been strengthened by the Constitutional Court's decision, namely that disputes over the final voting results are purely the authority of the Constitutional Court as stipulated in Article 24C paragraph (1) that the Constitutional Court has the authority to adjudicate on the first and last levels whose decisions are final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and resolve disputes regarding the results of general elections. What according to the author is a necessity regarding the existence of a judicial institution is the establishment of a special court institution for election crimes. As is known, the electoral and regional head election law regime contains provisions for elements of special acts which also have the consequences of criminal sanctions in them, for this reason a special court is needed related to criminal acts. This election will first form a law regarding election criminal trials, this the author recommends by following the example of a corruption criminal court whose formation is based on Law of the Republic of Indonesia Number 46 of 2009 concerning Corruption Criminal Courts. The explanation regarding the basis for the establishment of this general election crime court is also based on the interpretation of the Constitutional Court in Decision Number 012-016-019/PUU-IV/2006 in the case of Application for Review of Law Number 30 of 2002 concerning the Corruption Eradication Commission which in Its implementation was realized by the establishment of Law Number 46 of 2009 concerning the Corruption Crime Court, which then established the corruption criminal court as a special court within the General Court.

Based on the above, the legal reconstruction as intended is to synchronize vertically with the 1945 Constitution and horizontally with the national election law starting from the stages of planning, drafting, discussing, enacting, and promulgating in accordance with the principles in the formation of the law, a law that is based on the Pancasila, a guide and the source of all sources of law in Indonesia by reconstructing the provisions governing the requirements for regional head candidates, candidate registration, voter data collection, campaigns, community participation, violations of the code of ethics, administration, dispute resolution, general election crimes, state administrative disputes, disputes over election results, formulation of criminal sanctions, implementation of simultaneous regional elections and the establishment of election crime courts by first establishing a law on election crime courts.

CONCLUSION

1. The Weaknesses in the government's political and legal regulations regarding regional elections are in the regional election regulations that originate from Government regulations in Lieu of Law is the substance that regulates the Settlement of election crimes in Article 146 paragraph (1) of Law Number 10 of 2016; Requirements as Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, as well as Candidates for Mayor and Candidates for Deputy Mayor in Article 7 of Law Number 10 of 2016 letter e and letter f and letter p; Registration of Regional Head Candidates in Law Number 10 of 2016 in Article 40 paragraph (1); Prohibition on campaigning in Article 69 of Law Number 8 of 2015; Campaign funds in Article 74 of Law Number 10 of 2016; Criminal sanctions for regional head elections in Law Number 1 of 2015 in Article 177 and Law Number 10 of 2016 in Article 182B; Simultaneous regional head elections in Article 201 in Law Number 10 of 2016; Community Participation in Elections Law Number 1 of 2015 Article 132 and Law Number 10 of 2016 Article 133A; Election result dispute cases are examined and tried by a special judicial body in Article 157 of Law Number 10 of 2016.
2. The Legal Reconstruction of the government's political and legal regulations for regional head elections as a whole based on the values of Pancasila justice in its formation by synchronizing vertically with the 1945 Constitution and horizontally with the national election law starting from the planning, preparation, discussion, stipulation, and promulgation stages with adhere to principles in the formation of laws that Pancasila guides as the source of all sources of law in Indonesia by reconstructing the provisions governing the requirements for regional head candidates, candidate registration, voter data collection, campaigns, community participation, violations of the code of ethics, administration, dispute resolution, general election crimes, state administration disputes, disputes over election results, formulation of criminal sanctions, implementation of simultaneous regional elections and the establishment of election crime courts by first establishing a law on election crime courts.

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