



COMPARISON OF ELECTION OF LOCAL HEAD BEFORE AND AFTER AMENDMENT TO THE 1945 CONSTITUTION

Yulia Susantri¹

¹⁾ STAIN Tengku Dirundeng Meulaboh

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Abstract

The election of local heads (KDH) is a democratic process that must be carried out to determine who will lead the regions and determine the management of the state in the regions so that the aspirations of the people are achieved. The history of the election of KDH from year to year, both before the amendment to the 1945 Constitution and after, is interesting to explore to find out the intent and purpose of the legislators. This type of research is a normative research that portrays law as a prescriptive discipline which only looks at the law from the point of view of its norms. The data that has been obtained will be analyzed in a normative-qualitative manner, namely by interpreting and constructing statements contained in documents and laws and regulations. The results showed that prior to the amendment to the 1945 Constitution, the mechanism for regional head elections was not contained in the Constitution. The election method for KDH from 1974 followed the nuances of democracy at that time. In 1974 where Pancasila democracy was implemented, the appointment of KDH was the authority of the president together with the DPRD. At the beginning of the reform era, democracy was implemented making the KDH election mechanism the full authority of the DPRD due to the demands for reform to involve wider community participation in KDH elections. Starting in 2007 after the amendment to the 1945 Constitution, the election of KDH was carried out using a direct election mechanism by the people. Various new arrangements emerged in accordance with political and social developments such as the simultaneous election of KDH, individual candidates and single candidates in the implementation of KDH elections

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Corresponding Author:

Yulia Susantri

Email: Yulia.susantrii@gmail.com

I. INTRODUCTION

One of the characteristics of a democracy is the holding of regular general elections. General elections are a means by which people choose to hold political office in the country. The elected people will represent the aspirations of the people and bring them as a basis for shaping any state policy. Because democracy holds the belief that government is run by, for and for the people. Forming a government should not ignore human rights. With the general election, the civil and political rights of the citizens are realized. Citizens are free to make decisions according to their conscience, express their opinions and have the right to hold political offices in government. Furthermore, Jimly Asshiddiqie believes that it is the conception between human rights and democracy that best recognizes and guarantees human dignity (Asshiddiqie, 2005).

The election of regional leaders is a democratic process that must be carried out to determine who will lead the regions five years from now. In the hands of the candidate for regional head, it is chosen how the administration of the state in the region will be carried out in order to achieve the community's ideals or goals, namely mutual prosperity. (Hakim, 2018).

The direct election of the KDH and the KDH representatives was held for the first time on August 8, 2007 in the DKI province of Jakarta. In Law No. 22 of 2007 on the Conduct of General Elections, KDH direct elections are included in the general electoral regime, namely "regional elections" or often referred to as post-conflict municipal elections (Rahman, 2011). This aims to remove the assumption that the KDH does not yet represent the aspirations of the wider community because it is elected by the government or the DPRD. The reasons for holding local elections in post-conflict Indonesia are as follows (Rahman, 2011, p. 3):

1. The regional manager general election is the answer to the demands of the people, because the president and vice president, DPR, DPD and even regional managers have so far been elected by the people.
2. The Regional Chief General Election is the embodiment of the Constitution and the 1945 Constitution as prescribed in Article 18 Paragraph (4).
3. Elections are seen as a means of learning democracy (politics) for the people.
4. Elections are seen as a means of strengthening regional autonomy. The success of regional autonomy is also determined by local leaders. The better local politicians have come out of the post-conflict local elections, the more the commitment of local politicians to achieving the goals of regional autonomy, including improving the common good, will be realized.
5. The regional leadership election is an important proposal for the renewal of national leadership. Whether we are aware of it or not, the number of qualified members of the national leadership is very limited.

Jimly Asshiddiqie (Asshiddiqie) proposed a simultaneous election mechanism for all universally elected positions, namely election of the central and regional executive and election of the central and regional legislatures. If simultaneous elections for all positions are difficult to carry out, there is another Alternative, namely executive and parliamentary elections in stages. Jimly added that the simultaneous election of the executive branch and members of the legislature will strengthen the system of government (Asshiddiqie).

Government Ordinance No. 1 of 2014 on the Election of Governors, Regents and Mayors was enacted as law, namely Act No. 1 of 2015 Provision of Government Ordinance in lieu of Act No. 1 of 2014 on the Election of Governors, Regents and Mayors became law. This law has undergone amendments twice passed, namely Law No. 8 of 2015 amending Law No. 1 of 2015 and Law No. 10 of 2016 on the second amendment of Law No. 1 of 2015. One of the amended rules is abolition of the public examination for candidates for KDH, which was originally included in the Perppu, the

provision on the public examination in the amending law is deleted. The new regulation for holding the KDH election stipulates that the KDH election will be held simultaneously throughout Indonesia. The discourse on the regional elections taking place at the same time was initiated in order to protect the election budget. Furthermore, it is also intended that local elections have a clear five-year cycle so that the public is not preoccupied with the general election agenda, which may be held twice a year (Faqih, 2014).

Prior to the 1945 amendment to the Constitution, the election of regional leaders was the full responsibility of the legislature to regulate the mechanism, as there were no provisions in the Constitution. After the 1945 constitutional amendment, the constitution provided for governors, mayors, and regents to be elected democratically. "Democratically elected" points out (Maulana, 2012):

- (1) The provision on appointments in the constitution is the result of the political struggle at the time of the 1945 constitutional amendment.
- (2) The level of development of the constitutional thinking of the Indonesian nation in regulating the position of the KDH has changed since the arrangement of the KDH has never been regulated in the constitution before.
- (3) There is an opinion that the authors of the statutes want to incorporate into the regulation of the occupation of the KDH post.
- (4) There is a desire to provide guidance and guidance so that the process of filling KDH positions is carried out democratically. The emergence of this arrangement was the resultant form of various political, social and economic issues related to the then KDH election in Indonesia.

The definition of democracy is not explained in the constitution. The Constitution gives the legislature the freedom to regulate democratic electoral mechanisms. Democracy is not always a direct election by the people, because the election by the DPRD is also the voice of the people represented by the DPRD. Direct elections by the people are chosen by the legislature because there is no longer any power to elect KDH within the duties and powers of the DPRD.

Based on the above description of the background of the problem, the problem can be formulated as follows.

1. What was the regional leader election like before the 1945 constitution of the Republic of Indonesia was amended?
2. How is the election of regional leaders after the 1945 amendment to the Constitution of the Republic of Indonesia?

II. RESEARCH METHODS

This research is a normative type of legal research that tends to present law as a prescriptive discipline that looks at law only in terms of its norms (Sonata, 2014). The approach used in this research is a statutory approach, namely the 1945 Constitution, Law No. 5 of 1974 on the Principles of Regional Government, Law No. 22 of 1999 on Regional Government, Law No. 32 of 2004 on Government Regions, Law No 12 of 2008 on the Second Amendment to Law No. 32 of 2004 on Regional Government, Perppu No. 1 of 2014 on the Election of Governors, Regents and Mayors, Law No. 1 of 2015 on the Determination of Perppu No. 1 of 2014 on the election of governors, regents and mayors become laws, and Law No. 8 of 2015 on the first amendment of Law No. 1 of 2015.

The legal materials used in this study are from the search e for legal materials or literature studies on primary, secondary and tertiary legal materials (Ibrahim, 2012).

- a. Primary legal materials are legal materials consisting of legal rules according to the hierarchy.
- b. Secondary legal materials are legal materials derived from textbooks, journals, opinions of legal scholars.
- c. Tertiary legal materials are legal materials that enrich writing by providing instruction or explanation of primary and secondary legal materials such as dictionaries, encyclopedias, and others.

The data obtained is analyzed normatively and qualitatively, namely through the interpretation and construction of statements in documents and laws and regulations. The received legal material is analyzed for understanding, and then systematically described, then conclusions are drawn.

III. RESULT AND DISCUSSION

3.1. ELECTION OF REGIONAL HEAD BEFORE AND AFTER THE AMENDMENT TO THE REGIONAL CONSTITUTION OF REPUBLIC OF INDONESIA YEAR 1945

3.1.1. The Idea of Electing Regional Heads Prior to The 1945 Amendment of The Constitution of The Republic of Indonesia

Before the amendment of the constitution in 1945, there were three styles of democracy in Indonesia, namely liberal democracy, governed democracy and the new order period (MD., 2011, p. 293). When the Indonesian people declared their independence on August 17, 1945, the idea of democracy became very prominent in political life (MD., 2011, p. 294). The role of the parties was very dominant during this period, while the role of the executive or cabinet was very weak. This proves the short lifespan of the cabinets, the longest lifespan is 15 months. According to Mahfud MD, press life is relatively free at this point (MD., 2011, p. 297). The short cabinet life makes the government unstable, the existing cabinet is not yet functioning but was overthrown by parliament. This government instability made Soekarno president at the time, issuing a presidential decree on July

5, 1959, simultaneously ending the period of liberal democracy. The president dissolved the constituents and re-enacted the 1945 constitution, previously amended to the 1950 constitution. During this period, Soekarno managed to transform himself into an authoritarian leader (MD., 2011, p. 299). The position of the DPR and the parties, in contrast to the position of the President, is very weak. According to Mahfud MD, freedom of the press is currently in a very bad state (MD., 2011, p. 302).

The election of regional leaders discussed in this discussion is based on Act No. 5 of 1974 on the Principles of Regional Government and Act No. 22 of 1999 on Regional Government. The 1945 Constitution does not regulate the election of the KDH, affairs of regional government are regulated only in Article 18, which reads: "The division of the Indonesian regions into large and small regions, the form of the governmental structure being determined by law, taking into account and under Consideration of the advisory bases in the governmental system, the state and the rights of origin in special areas".

3.1.2. The Period of Validity of Act No. 5 of 1974 on the Principles of Regional Government

This law was effective from July 23, 1974 to May 6, 1999. This law is a new correction and adjustment of Law No. 18 of 1965 in accordance with the regime change from the old order to the new order. This law is considered to be very centralized and does not take into account the position of the DPRD as the regional legislature (Maulana, 2012, p. 73). The orientation of state policy at that time was the effort to achieve national stability with a trilogy of development. The development in the economic sector is the main priority, while the development in other areas then, including in the political sphere, not much attention is paid. The government wants to create a stable and safe atmosphere so that development can be carried out smoothly without any disturbances and turmoil. People's political activities are tried to be suppressed by reducing the role of political parties, negating the role of the DPR and the role of the DPRD. Previously, in connection with the election of the KDH, the DPRD played a role in the selection and appointment, in the a quo law, the DPRD selected few candidates for the KDH, and the President selected the candidates for the KDH.

In Law No. 5 of 1974, the territory of Indonesia was divided into autonomous regions and administrative regions. To implement the principle of decentralization, Level I regions and Level II regions were formed and put together. The mechanism for selecting KDH positions in Level I regions, namely the governor as head of the province or state capital, is governed by Article 15 Paragraph (1) and Paragraph (2), which states:

- (1) The Head of the Level I Region is nominated and elected by the Regional People's Representative Council from a minimum of 3 (three) people and a maximum of 5 (five) candidates discussed and agreed between the Heads of the Regional People's

Representative Council/Leadership of the parliamentary groups the Minister of the Interior.

- (2) The results of the elections referred to in paragraph (1) of this Article shall be submitted by the competent regional People's Legislative Assembly to at least two (2) persons to be appointed by the President through the Minister of the Interior.

Then the regulation on the mechanism for filling KDH positions for Level II regions, namely regents and mayors as district or community leaders, is regulated in § 16 para. (1) and para. (2) as follows:

- (1) The Head of the Level II Region shall be nominated and elected by the Regional People's Assembly from a minimum of 3 (three) persons and a maximum of 5 (five) candidates discussed and agreed between the Heads of the Region People's Representative Council/Leading factions faction with the Governor of the regional head.
- (2) The results of the elections referred to in paragraph (1) of this Article shall be submitted by the competent regional House of Representatives to the Minister of the Interior through the Governor of the regional head of at least 2 (two) persons to be appointed one of them.

KDH is appointed for a term of 5 years from the date of his inauguration and is renewable once for one additional term. Before taking office, KDH was sworn in and sworn in by:

- (1) President for Heads of Level I Regions
- (2) Minister of Home Affairs for KDH Level II

The recruitment mechanism for the election of KDH Representatives, whether in Level I or Level II Regions, will be carried out through the mechanism governed by Article 24, paragraphs (1) to (4), which reads:

- (1) Deputy Heads of Level I Regions shall be appointed by the President from among the officials who qualify.
- (2) By obtaining the approval of the Regional Council of People's Representatives without holding an election, the governor of the regional head proposes the candidate for the deputy head of the Level I region to the President through the Minister of the Interior.
- (3) Deputy Heads of Level II Regions shall be appointed by the Minister of the Interior on behalf of the President from among the officials who meet the requirements.
- (4) By obtaining the approval of the Regional Council of People's Representatives without electing the regent/mayor, the regional leader proposes a candidate for the deputy leader of the second-level region to the Minister of Interior through the governor of the country regional leader.

Deputy Head of Level I Region as his position is Deputy Head of Provincial or State Capital and is referred to as Deputy Governor. The deputy head of the second level region is deputy head of the district or municipality by virtue of his position and is called deputy regent or deputy mayor.

3.1.3. The Period of Validity of Law No. 22 of 1999 on Regional Government

Thereafter, the New Order government of President Suharto was replaced by the BJ government. Habibie, Law No. 5 of 1974 with its centralist nuances replaced by Law No. 22 of 1999 on regional government. This law changes the structure of local government from centralized to decentralized (democratic). This is reflected in the number of matters that are delegated to the regions, with headquarters just taking care of the rest. In this law, the DPRD is granted far-reaching powers, which even tend to be excessive (Maulana, 2012, p. 78). The position of the KDH is no longer dominant and becomes a reli The position of the KDH is determined by the DPRD, not the central government This law was passed to meet the demands for reform, namely to create a new Indonesia, a more democratic, fairer one and more prosperous Indonesia.

This law offers broader powers through decentralization and regional autonomy. The position of the DPRD is no longer part of a government institution, but as a regional legislature running parallel to the regional government. The DPRD has sole authority to elect the KDH, hold them accountable at the end of their term, and even dismiss them if the DPRD deems it has sufficient grounds to do so. This law divides the territory of Indonesia into autonomous provincial regions, regency regions and city regions. The mechanism for selecting KDH is governed by Article 34(1) and (2) which provides:

- (1) The posts of regional head and deputy regional head are filled by the DPRD through simultaneous elections.
- (2) Candidates for regional leaders and candidates for deputy regional leaders are determined by the DPRD through the nomination and election phase.

The purpose of the simultaneous election of the KDH and the KDH representative is that the KDH candidates and the KDH deputies are elected at the same time, i.e. the KDH candidates and the KDH deputies are elected in pairs. This election is intended to ensure harmonious cooperation between KDH and representatives of KDH. The mechanism for selecting KDH candidates and KDH deputy candidates is carried out in a plenary session of the DPRD, attended by at least two-thirds of all DPRD members. The election of KDH and KDH representatives is direct, free, confidential, honest and fair. Each DPRD member may vote for a KDH candidate pair and a KDH deputy candidate from a pair designated by the DPRD leadership. The pair of KDH candidates and KDH deputies that receives the most votes is designated as the KDH and n representatives of the KDH by the DPRD and then ratified by the President. KDH is appointed by the President or another official

acting on the President's behalf. The term of office of the KDH in this law is 5 years and can only be re-elected for one term.

In the event that the KDH position is prevented, this law stipulates that the KDH position will be represented by a KDH representative until the end of the term of office if the KDH is permanently absent. However, if the KDH representative is permanently prevented, the KDH position will not be filled. In the practice of selecting KDH positions, the DPRD often acts in a manner that deviates from the expected specifications.

3.2. The Idea for The Election of Regional Leaders After The Amendment of Regional Constitution of The Republic of Indonesia in 1945

The principle of democracy has been applied since Indonesia's independence, but in practice there are various interpretations of democracy, including liberal democracy, guided democracy and Pancasila democracy (Maulana, 2012, p. 5). In the era of Pancasila democracy, the selection of the KDH is done through a candidate selection mechanism by the DPRD, which is then determined by the President. KDH election based on Regional Government Law No. 22 of 1999 is considered more democratic as KDH is elected exclusively by DPRD. Under the reform-era democratic regime, the election of the KDH, which the constitution describes as "democratically elected," is defined as direct elections by the people, a mechanism that continues to this day.

3.2.1. The Period of Validity of Law No. 22 of 1999 on Regional Government

Conducting direct regional head elections is an improvement over the conduct of regional head elections by people's representatives in the DPRD under Law No. 22 of 1999 on Regional Government. The correction of the election system for regional heads was made by implementing the legal basis for direct elections of regional heads, namely Law No. 32 of 2004 (Nopyandri, 2010).

Law No. 32 of 2004 was ratified by the President on October 15, 2004. This law is the result of a revision of Law No. 22 of 1999, which is considered not to meet the requirements of the situation, the development of state administration and the implementation of regional autonomy after the reform.

KDH is the democratically elected leader of the regional government. The purpose of the democratic election of the KDH is to recall that the tasks and powers of the DPRD are set out in Law No. 22 of 2003 on the composition and position of the MPR, DPR, DPD and DPRD and declares that the DPRD does not have the duty and power to KDH and to elect KDH representatives, so that democratic elections in this law are conducted directly by the people. The KDH is assisted in carrying out its duties by a KDH representative and regional officials. The KDH is directly elected by the people, whose requirements and procedures are laid down in laws and regulations. KDH are elected in

pairs directly by the people in the area concerned (Act No. 32 of 2004 on Regional Government, Article 24(5)).

Major differences between Law No. 32 of 2004 and the Government Law The previous state government was based on democratically conducted state elections. Article 18(4) of the 1945 Constitution states: "Governors, regents and mayors as heads of provinces, districts and cities shall be democratically elected" (T., 2016). In addition, it is expressly stated in Article 56 paragraph (1) and paragraph (2) of Law No. 32 of 2004, which states:

- (1) The district head and deputy district head shall be elected in a pair of candidates conducted democratically on the basis of direct, general, free, confidential, honest and fair principles.
- (2) The pairs of candidates referred to in paragraph (1) are proposed by a political party or coalition of political parties.

Candidates participating in the election of the KDH and the KDH representatives are pairs of candidates proposed in pairs by political parties or coalitions of political parties (Act No. 32 of 2004 on Regional Government, Article 59(1)). Political parties or coalitions of political parties may register pairs of candidates if they meet the requirements to obtain at least 15% of the total number of DPRD seats or 15% of the valid votes collected in the general elections for DPRD members in the area concerned. Elections for KDH and KDH representatives are conducted by the KPUD, which is accountable to the DPRD. In conducting the post-conflict local elections, the KDH candidate pair and KDH representative who receive more than 50% of the valid votes will be designated as the elected candidate pair (Act No. 32 of 2004 on Regional Government, Article 107(1)). In the event that this provision cannot be met, the pair of candidates consisting of KDH and the representative of KDH who receive more than 25% of the valid votes will be declared the pair of candidates elected.

After the candidate for the post of regional head is determined victorious in the post-conflict local elections and has previously held office, the governor and deputy governor are sworn in by the Home Secretary on behalf of the President. Regents and Deputy Regents, or Mayors and Deputy Cities, are appointed by the Governor on behalf of the President. The inauguration takes place in the plenary session of the DPRD (Ges etz No. 32 of 2004 on regional government, Article 111). If KDH and KDH representatives stop temporarily, then there are two conditions. In the event of a temporary suspension of the KDH, the tasks of the KDH will be performed by the KDH representative. If the KDH representative is temporarily recalled, his duties will be performed by the KDH. Upon final termination of the KDH, the KDH will be replaced by a KDH representative until the end of his term of office. The implementation process takes place on the basis of the decision of the DPRD General Assembly, which is then ratified by the President.

3.2.2. The Period of Validity of Law No. 12 of 2008 on The Second Amendment of Law No. 32 of 2004 on Regional Government

Law No. 12 of 2008 was created by the government and the DPR not only as a response but also as a legal basis for the Constitutional Court's decision on the admissibility of individual (independent) candidates to participate in direct KDH elections. In principle, there is no significant difference in terms of the recruitment mechanism for filling KDH positions. It's just that this law has provisions about individual candidates. This provision is contained in Article 56, which reads:

- (1) The district head and deputy district head shall be elected in a pair of candidates conducted democratically on the basis of direct, general, free, confidential, honest and fair principles.
- (2) The pairs of candidates referred to in paragraph 1 are proposed by political parties, political party alliances or individuals who are supported by several persons who meet the requirements laid down in this law.

3.2.3. The Period of Validity of Perpu No. 1 of 2014 on The Election of Governors, Regents and Mayors

Law The birth of Perpu No. 1 of 2014 in response to various protests against Law No. 22 of 2014, which stipulates that the election of governors, regents and mayors will be carried out by representative institutions, in this case the DPRD. Born full of dramatic twists, the perpu enshrined in Law No. 1 of 2015 had become the subject of political negotiations following a change in the national political map following the 2014 elections (Association for Elections and Democracy, 2015). The idea of the Regional Head Elections Act of Law No. 32 of 2004 began with an assessment of the conduct of regional elections in the period 2005-2008. This is also in line with SBY-Boediono's idea of dividing Law 32 of 2004 into three laws, namely the Regional Government Law, the Regional Electoral Law and the Village Law. Discussion of the Pilkada Act began during the 2012 session. In the Pilkada Act, the government proposed that the governor should be elected by the DPRD rather than by the people. This is due to the governor's position as a representative of the central government. Meanwhile, regents and mayors are still elected by the people.

At the beginning of the second half of 2013, the debate in the DPR on the electoral mechanism, whether direct or indirect, has yet to reach consensus, which elapsed by the end of 2013 (Association for Elections and Democracy, 2015). Ultimately, the Pilkada law was not completed because the pol prepared political parties to participate in the 2014 parliamentary elections. The majority of factions in the DPR had different attitudes towards the KDH election.

SBY responded to the popular protest by issuing Perpu No. 1 of 2015, which stipulates that the election of the KDH is carried out directly by the people. The DPR could have rejected this perpu, but after political negotiations, the majority of the factions accepted this perpu, and President-elect

Joko Widodo just included the provision of this perpu in Law No. 1 of 2015 (Association for Elections and Democracy, 2015). According to election experts, the Perpu, which was created in a short time without in-depth study, contains many weaknesses. At least in this perpu, there are seven new regulations for the election of the KDH, namely: individual nomination, prevention of dynastic politics, public scrutiny, limitation of campaign funds, electronic voting and counting, transmission of election results to the Supreme Court, and local elections at the same time.

Anyone wishing to register as a candidate for governor, regent and mayor must take a public test, the public test is held by a public examination board (Government Ordinance in lieu of Law No. 1 of 2014, Article 38). The public examination board consists of 5 members, consisting of two academics, 2 from the municipality and 1 member of the state or district/city KPU. The public examination is conducted publicly, no later than three months before the registration of candidates for governor, regent and mayoral candidates. Deputy regents/mayors are proposed by the regional head, for deputy governors appointed by the governor-elect, deputy regents/mayors are proposed by the regents/mayors-elect (Government Decree replacing Law No. 1 of 2014, Article 171(1)) . Each of them proposes a representative no later than 15 days after the inauguration of governors, regents and mayors.

Practice has shown that many determinations cannot run correctly. To address this challenge, Law No. 1 of 2015 was amended to Law No. 8 of 2015. Several provisions were amended, including provisions on public examinations, the election of deputy regional leaders and the technical conduct of elections. The new regulation removes the provision on public testing. KDH and KDH representative are elected in pairs in 1 pair of candidates. Previously, the election was intended only for the election of the KDH, this provision was made by Law No. 8 of 2015.

A new problem in conducting the KDH election is the existence of a single candidate in multiple regions. Citing KPU data, there are at least eight regions that are behind in the concurrent regional elections, namely Buton, Tebing Tinggi City, Kul. on Progo, Tulang Bawang Barat Regency (Lampung), Tambrauw Regency (West Papua), Pati Regency (Central Java), Hedgehog (West Kalimantan) and Sorong City (Papua) (Nugroho, 2016). UU no. 8 of 2015 states that if only one pair of candidates remains from the selection stage, the KPU will extend the registration period (Act amending Law No. 1 of 2015 on the Determination of Government Regulations instead of Law No. 1 of 2014). on Elections for Governors, Regents and Mayors to Become Law) Law, Article 50 Paragraph (9). The law does not stipulate that after the application deadline has been extended by three days, there are no applicant pairs who meet the requirements. The KPU offers a solution to delay the election of the KDH in the region. This, of course, can negate citizens' right to vote and vote. Citizens' right to vote and vote is constitutionally guaranteed. The postponement cannot guarantee that there will not be a single candidate after the KDH election is repeated r will give.

The judicial review was proposed to examine the constitutionality of the provisions of Law No. 8 of 2015 relating to this individual candidate issue. In the decision of the Constitutional Court No. 100/PUU-XIII/2015 The court found that Article 49 paragraph (9) of the Law No. 8 of 2015 On the Election of Governors, Regents and Mayors (UU Pilkada) violates the Constitution of 1945 and has no binding legal force unless construed to include the definition that 1 pair of candidates for governor and alternate will be determined governor candidates to vote after the 3 day period has passed, but there is always only one pair of candidates left, one candidate for governor and one candidate for deputy governor. The ruling also applies to the election of mayoral and alternate mayoral candidates and regent and alternate regent candidates pursuant to Article 50(9), Article 51(2) and Article 52(2) of the Pilkada Act. According to the court, if the postponement is justified, there are no guarantees that the next concurrent regional elections will be held (ASH, 2015). This is because there is a minimum requirement of at least two pairs of candidates in the Pilkada. In fact, supreme sovereignty rests in the hands of the people, directly and democratically electing regional leaders. In order to fulfill the constitutional rights of citizens, elections must be held even if there is only one pair of candidates. However, this had previously been a serious attempt to get at least two pairs of candidates.

Later, the people are given the choice of whether or not to vote for a single candidate in the election. If a large number of people vote in favor, the pair of candidates will be designated as elected leader and deputy regional leader. Should more people disagree in the meantime, the regional election will be postponed to the next regional election taking place at the same time. For the Constitutional Court, this postponement is not unconstitutional. This is because the postponement is the result of the popular election by voting against it.

IV. CONCLUSION

1. Before the Constitution of the Republic of Indonesia was amended in 1945, the mechanism for selecting regional heads was not included in the Constitution. The 1974 electoral process for the KDH followed the nuances of democracy at the time. When Pancasila democracy was instituted in 1974, the appointment of the KDH was the President's authority along with the DPRD. At the beginning of the reform era, democracy was introduced, making the KDH electoral mechanism the full authority of the DPRD, as reforms were called for to include broader community participation in KDH elections.

2. From 2007, after the amendment of the 1945 constitution, the KDH was elected by direct popular vote. In accordance with the political and social developments, various new regulations emerged, such as the simultaneous election of KDH, single candidates and single candidates when conducting KDH elections.

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