

Implication of prohibition of single candidate in village heads election (Pilkades) in Indonesia and the completion effort

Hani Puspitaningsih¹, Jadmiko Anom Husodo², Mulyanto²

¹ Student of Master of Law Program, Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

² Lecturer of Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

Abstract

This study aims to determine the implications of provision regarding the minimum number of village heads candidate which implicitly prohibits the existence of single candidate in Pilkades as stated in Article 23 paragraph (1) and Article 24 of the Minister of Home Affairs Regulation Number 112 Year 2014 concerning Village Head Elections. Then formulate conceptual ideas as an effort to solve the problem using the concept of asymmetric decentralization in Pilkades. The result of the study shows that the prohibition of single candidate in Pilkades resulted pseudo village head candidate, that is the village head candidate who is in the process of nominated only compete with his / her relative because there is no candidate nominated in Pilkades contestation while normatively there is prohibition of single candidate. Pseudo village head candidate can result political dynasty at village level that give bad impact on democratic process in village. The prohibition of political dynasty is not regulated by Indonesian *ius constitutum*. The completion effort initiated in this study is to integrate the concept of asymmetric decentralization in the future Pilkades based on village autonomy.

Keywords: village heads election (Pilkades), village head, prohibition of single candidate, completion effort

Introduction

A precondition of a democratic country is a periodic rotation of power as an effort to avoid absolute power. This corresponds to the expression stated by Lord Acton that "power tends to be corrupt, absolute power is corrupt absolutely" ^[1]. The power rotation used in Indonesia is conducted through direct election based on the principles of Direct, General, Free, Confidential, Honest and Fair. Direct election is not only used for power rotation in national scale but also used as power rotation method in the smallest authority that is village scale.

The existence of Law Number 23 Year 2014 concerning Regional Government substantially gives autonomy to province and regency / city regions an authority and autonomy that is wider than the previous government. The occurrence of a paradigm shift in the process of government administration also gave the effect of opening up space for villages to manage and organize their households according to their respective characteristics ^[2]. The existence of Pilkades is a form of country recognition of regional autonomy. The village head election (Pilkades) normatively regulated in Articles 31-39 of Law Number 6 Year 2014 concerning Villages. From this Law, implementation rule was formed, that is the Minister of Home Affairs Regulation Number 112 Year 2014 concerning Village Head Election and Minister of Home Affairs Regulation Number 65 Year 2017 concerning Amendments to the Regulation of the Minister of Home Affairs Number 112 Year 2014 concerning Village Head Elections.

The implementation of village autonomy is an genuine autonomy, unified and complete and is not a gift from the government, on the other hand the government is obliged to respect the genuine autonomy that the village has. As a legal community unit that has a genuine arrangement based on privileges, the village can carry out public law actions as well civil law actions, own wealth and property and can be prosecuted and sued in court ^[3]. The current dynamics of Pilkades continues. The simultaneous Pilkades which is mandated by Law Number 6 Year 2014 concerning Villages are certainly not free of obstacles. One of the obstacles faced is the absence of competitors who will take part in the Pilkades contest, while the arrangements made by the central government are prohibiting the existence of a single candidate in the Pilkades. The prohibition of a single candidate in the Pilkades basically aims to encourage the village democratization. Village democratization is one of the goals to be achieved from the formation of Law Number 6 Year 2014 concerning Villages as stated in the preamble and explanation of the law.

Village democratization is interpreted as a process of increasing the capacity of village communities to play a more active role in decision making from, by and for the community ^[4]. The phenomenon of a single candidate in Pilkades shows the failure of the village democratization process. This illustrates the lack of public willingness to participate in running for Pilkades. One example of the Pilkades phenomenon between incumbents against empty boxes is the Pilkades which took place in Dlingo Village, Boyolali Regency in 2013 which was won by an empty box

¹ <http://lipi.go.id/berita/power-tends-to-corrupt/4869>. Diakses pada 09 Oktober 2020, pukul 13.06 WIB.

² Rudiadi dan Ratna Herawati. 2017. "Pemilihan Kepala Desa Serentak Dalam Perspektif Otonomi Desa (Studi Kasus Pelaksanaan Pemilihan Kepala Desa Serentak Tahun 2016 di Kabupaten Rokan Hilir, Provinsi Riau)", Jurnal Law Reform, Volume 13, Nomor 1, Tahun 2017, hlm.133.

³ HAW. Widjaja. 2003. Otonomi Desa Merupakan Otonomi yang Asli Bulat dan Utuh. Jakarta: PT Raja Grafindo Persada, hlm. 164.

⁴ <https://binadesa.org/apa-kabar-demokratisasi-di-desa/> diakses pada 13 Oktober 2020, pukul 13.02 WIB.

so that the Pilkades had to be repeated 5 (five) times^[5]. The phenomenon of a single candidate can be caused by a number of reasons, for example the high politics costs of becoming a village head and the existence of a very strong and influential incumbent figure^[6].

The existence of single candidate in the Pilkades then responded by central government by issuing Minister of Home Affairs Regulation (Permendagri) Number 112 of 2014 concerning Village Head Elections which was later amended by Regulation of the Minister of Home Affairs (Permendagri) Number 65 Year 2017 concerning Amendments to the Regulation of the Minister of Home Affairs Number 112 Year 2014 concerning Village Head Election. The provisions of Article 23 paragraph (1) of the Regulation of the Minister of Home Affairs (Permendagri) Number 112 Year 2014 concerning Village Head Election implicitly prohibits the existence of a single candidate in Pilkades by regulate a minimum limit of 2 (two) candidate and a maximum limit of 5 (five)) candidates who can run for Village Head. However, the improvement of law substance only to overcome a legal problems cannot be the single factor that determine the success of Pilkades in the future. The reality is after the enactment of the Minister of Home Affairs Regulation Number 112 Year 2014 concerning Village Head Election which was later amended by the Regulation of the Minister of Home Affairs (Permendagri) Number 65 Year 2017 concerning Amendments to the Regulation of the Minister of Home Affairs Number 112 Year 2014 concerning Village Head Elections, it actually caused problems and a threat to the village democratization process.

Research Method

The research method used in this study is normative or doctrinal legal research, that is a research based on legal materials that focused in reading and study the primary and secondary legal materials so the law study can produce arguments, theory or new concept as a prescription in solve the faced problems^[7]. The type of the study is a perspective and applied study^[8]. This study examine the norms of Pilkades and democracy and asymmetric decentralization concepts. Research approach used is statute approach and conceptual approach. The legal materials used involve, primary legal materials in the form of statutory regulations related to Pikades and secondary legal materials in the form of legal literature both book, journal as well as other legal scientific work. Legal materials are collected through library research. Furthermore, the legal materials are analyzed used a deductive syllogism

Finding and Discussion

Implication of Prohibition of Single Candidate in Village Heads Election (Pilkades) in Indonesia

The regulations stated in Article 23 paragraph (1) of the Regulation of the Minister of Home Affairs Number 112 Year 2014 concerning Village Head Election states that: "Dalam hal bakal calon kepala desa yang memenuhi persyaratan sebagaimana dimaksud dalam Pasal 21 berjumlah paling sedikit 2 (dua) orang dan paling banyak 5 (lima) orang, Panitia pemilihan kepala desa menetapkan bakal calon kepala desa menjadi calon kepala desa". This article indicates that the village head nomination process is at least followed by 2 (two) people. This article is a form of politics will from the central government to encourage village democratization, especially in the context of Pilkades.

Furthermore, Article 24 of the Regulation of the Minister of Home Affairs Number 112 Year 2014 concerning Village Head Election states that: " (1) In case that there are less than 2 (two) candidates who meet the requirements referred to in Article 21, the election committee will extend the registration period by 20 (twenty) days. (2) In case that a prospective candidate who meets the permanent requirements is less than 2 (two) after the extension of the registration period as referred to in paragraph (1), the Regent / Mayor postpones the implementation of the Village Head election until the time determined later (3) If within the grace period as referred to in paragraph (1) the term of office of the Village Head ends, the Regent / Mayor appoints the acting Village Head from a civil servant within the Regency / City government.". From the Article description above it can be concluded that the Pilkades in Indonesia only can be conducted if the candidate at least consist of two (2) candidates. This is the intention of the legislators to eliminate the phenomenon of a single candidate in Pilkades.

However, the reality happened in community after the regulations of prohibition of single candidate in Pilkades applied is appear pseudo village head candidate in Pilkades competition that generally still has relatives relation between candidates. It means, the existence of other candidates only as a formality to get around the provisions in the Permendagri. This can be seen from the visions and missions as well as the nomination reasons. The phenomenon of pseudo-village head candidate makes the campaign doesn't work properly as a contest to compete the constructive visions-missions. The following table is attempt to present some writer's inventory results obtained from the mass media related to the phenomenon of pseudo-village head candidate.

⁵<https://www.liputan6.com/news/read/671337/incumbent-dikalahkan-kotak-kosong-pilkades-dlingo-diulang-5-kali>, diakses pada 13 Oktober 2020, Pukul 11.20 WIB.

⁶<https://m.republika.co.id/berita/nasional/18/07/02pb8nrr409-penyebab-munculnya-calon-tunggal-versi-peneliti-lipi>, diakses pada 13 Oktober 2020, pukul 11.40 WIB

⁷ Peter Mahmud Marzuki. 2014. Penelitian Hukum Edisi Revisi. Jakarta: Kencana Prenada Media, hlm. 55-56.

⁸ Ibid, hlm.69.

Table 1: Examples of Pseudo-Village Head Candidate Phenomenon in Indonesia

No	The Parties	Nomination reasons or Campaign Visions and Missions	Location
1.	Simultanous Pilkades on December 2019 there were 282 candidates for village head, 15 couples of village head candidates including husband and wife.	Because of the minimum requirement for village head candidate is at least two (2) candidates.	Pati Regency ^[9]
2.	Simultanous Pilkades on November 2019 was attended by 794 Village Head Candidates, 33 couples of husband and wife and 1 (one) village was attended by a father and a son.	Because of there is no another candidate nominated.	Magelang regency ^[10]
3.	Simultanous Pilkades was attended by 215 villages with minimum number of 430 village-head candidate, the other village head candidates are 28 couples of husband and wife.	Because of there is no another candidate nominated.	Temanggung ^[11]
4.	Pilkades on September 2019 was attended by a couple of husband and wife.	Wife's missions: "to support the husband to win". During the campaign, the wife invited the voters to elect her husband as a village head.	Sonoharjo Village, Wonogiri Regency ^[12]
5.	Pilkades on October 2019 was attended by a couple of husband and wife.	The wife's visions and mission was the same and similar to the husband's vision's and missions because the wife's participation in Pilkades is to fulfill the minimum requirements of two (2) village head candidates.	Jiyu Village, Mojokerto Regency ^[13]

The prohibition of single village head candidate was circumvented by proposing the family member to be the competitor in Pilkades contest. The nomination was design to win one of the village head candidate in purpose. The

⁹<https://www.murianews.com/2019/12/06/178164/ada-15-pasang-suami-istri-bertarung-di-pilkades-serentak-kabupaten-pati.html> diakses pada 12 Oktober 2020, pukul 15.15 WIB.

¹⁰<https://www.liputan6.com/regional/read/4118313/sepi-peminat-33-pasangan-suami-istri-berebut-kursi-kepala-desadi-magelang> diakses pada 12 Oktober 2020, pukul 15.18 WIB.

¹¹<https://republika.co.id/berita/q21hlp377/28-pasutri-ikut-pilkades-temanggung> diakses pada 12 Oktober 2020, pukul 15.22 WIB.

¹²<https://www.solopos.com/pasutri-bertarung-di-pilkades-sonoharjo-wonogiri-misi-istri-dukung-suami-menang-1019419>, diakses pada 13 Oktober 2020 pukul 15.26 WIB.

¹³<https://kumparan.com/beritajatim/kala-suami-istri-di-mojokerto-bersaing-jadi-kepala-desadi-1s6xaTHIUer/full> diakses pada 13 Oktober 2020 pukul 15.31 WIB.

phenomenon shows the relevance of Susi Dwi Harijanti's opinion which stated that Indonesia always move from one extreme point to another ^[14]. In the context of Pilkades, it can be concluded that at first there was no prohibition of a single village head candidate in Pilkades but many villages have candidates won by empty box or single candidate in Pilkades. The government responded to that phenomenon by absolutely prohibited the existence of single candidate in Pilkades by making regulation regarding the minimum number of village head candidate. However, this regulation was later violated by village head candidate so that raised pseudo-village head candidates.

Kinship, Power and absence of Legal Framework Regulation

Election is a way to building democracy that consist of the principles of individual freedom, human right, non-discrimination base on religion, ethnicity, or gender and opportunity to participate from competition element ^[15]. The implication raising from the phenomenon of relatives contestation in Pilkades can ruin the principles of village democracy. This statement refers to the loss of competition principle in conducting Pilkades. Even though there is at least two candidates and not against empty box, if the other candidate's rivals are family then the competition that will emerge has the potential to lead to a competition that has been oriented to win one of the village head candidates. Even though the pseudo-village head candidate that will win the Pilkades, then the condition is potentially lead to perpetuation of political dynasty concept ^[16].

Political dynasty has long been present in democracy states and increased concerns about the unequal politic power distribution of political power which may reflect imperfections in democratic representation in politic that called power result strength. This remains Mosca's concern, that every class shows a tendency to be hereditary, even when the politics position is open to all, the position of the ruling family will be rewarded with various advantages ^[17]. Ironically, even though political dynasty has a bad impact on democracy, the law in Indonesia has not yet covered the problem so that political dynasty is still rife in both regional head elections and village head elections.

The absence of legal substance that explicitly prohibit the phenomenon of political dynasty in Indonesia related to political will from its government. In the context of handling the political dynasty in Regional Head Election (Pilkada), the existence of Article Number 1 Year 2015 concerning Pilkada actually give a fresh air in limiting political dynasty by using interest conflict prohibition. Article 7 of Law Number 1 Year 2015 concerning Pilkada point q stated that "Indonesian citizens who can become Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidate for Deputy

¹⁴Kuliah Umum "Titik Taut Hukum Tata Negara dan Hukum Internasional dalam Sistem Ketatanegaraan Indonesia" oleh Prof. Susi Dwi Harijanti,S.H.,L.L.M.,Ph.D. Diunggah oleh Pusat Studi Hukum Konstitusi FH UII dalam <https://www.youtube.com/watch?v=9qa0eTRCsr&t=4263s>, diakses pada 14 Oktober 2020 pukul 08.34 WIB.

¹⁵ Philip, G. 2011. Democracy and Democratization. London: University of London,hlm. 21.

¹⁶ Puji Astuti, Sulistyowati, Lusia Astrika. 2019. "Kontestasi Pasangan Suami-Istri dalam Pilkades. JPW (Jurnal Politik Walisongo), Vol 1, No 1, 2019, hlm.73.

¹⁷ Synder, dkk. 2009. Political Dynasties. Los Angeles: The Review of Economic Studies, Edisi: 76, hlm. 115.

Regent as well as Candidates for Mayor and Candidate for Deputy Mayor are those who meet the following requirements (q). Has no conflict of interest with the incumbent”.

In the Law elucidation it is described in detail the parties that deemed to have interest conflict with incumbent, that what is meant by not having a conflict of interest with the incumbent: does not have blood relations, marital relationship and / or lineage of 1 (one) level straight up, downward, sideways with the incumbent, unless after 1 (one) term of office has passed. In its journey the provision was canceled through Constitutional Court (MK) decision Number 3/4 PUU-XIII/2015, on the grounds of “interest conflict with incumbent”, only use consideration of political and assumptive, as if each candidate has a blood relation as well as marital relationship with incumbent is confirmed will build political dynasty that will ruin national order, without consider the competition sides, integrity, and capability and fulfill the concerned candidate’s element of acceptability objectively. Blood relations are an essential and fundamental divine nature, which according to any religion is universally recognized as a sacred relationship and not as a relationship that prevents from taking part in government, as is the relationship due to marriage. This Constitutional Court decision has open the way for political dynasty groups to participate in the Pilkada without having to wait for the next 5 (five) years^[18].

The leeway towards the gaps in political dynasty in Pilkada also occurred in smaller scale that is Pilkades. There is no norm that prohibit political dynasty in Pilkades in Indonesia. This created oligarchy at village level. Oligarchy is a condition in which political power is held by elite based on wealth, bloodline and nobility. In this condition that law should act as means to limit the power of ruler. Therefore, the completion effort can be done is to initiate a model for Pilkades administration as *ius constituendum* as recommendation for Law maker through reasonable concept.

Asymmetric Decentralization Concept in Pilkades as a Completion Effort

Asymmetric Decentralization is a concept commonly known in constitutional law literature. This concept focuses on implementation or transfer of special power that only given to certain region in a country, which is considered as an alternative to solve the problems of the relationship between central government and regional government, in the context of Indonesia in order maintain the regional existence in NKRI. Asymmetric Decentralization includes political decentralization, economics, fiscal, and administration, but does not have to be similar for all regions in Indonesia, by considering the specificities of each region^[19]. So far the concept of asymmetric decentralization in Indonesia is applied in the context of special autonomy which is granting of special status and special regions, for example: DKI Jakarta, DI Yogyakarta, Aceh and Papua.

However, theoretically asymmetric decentralization concept is applied in various ways in the countries constitutional in

the world. This can be seen from the practice in the state of Tasmania, Asymmetric decentralization concept is used to the number of representative of the state of Tasmania to Commonwealth House of Representative of 5 (five) that is minimum number as determined by Constitution regardless of the population. In addition, Canada applied the concept of appointing Supreme Court Justice that is require at least 3 (three) from 9 (nine) Supreme Court Justices must e from Quebec. Asymmetric decentralization concept can be applied indifferent contexts but must be guided by several things, namely: a. a building peace and mitigating conflict, b. managing multiculturalism and diversity, and c. territories that are distinct for other reasons^[20].

Those examples show the possibility of asymmetric decentralization concept implementation in Indonesia, that is freedom for village to determine democratic Pilkades mechanisms, either direct election or elected by representatives that is through deliberation by Village Representatives Council (BPD). Asymmetric Pilkades design was originated from the idea that village as smallest government entity in Indonesia normatively has a representative council called BPD. BPD has a strategic role as the embodiment of deliberation institution in village. However, in reality BPD in the context of village head candidate (Cakades) election doesn’t function optimally as a village representative council that represents of sovereignty village community in formulation strategic policies in village.

The idea of asymmetric decentralization in Pilkades aims to appreciate the conditions of each village that is can not be aligned. Village freedom in determine the right democracy model is still limited to the provision that a village that is able to ensure the continuity of the Pilkades properly and can avoid the polemic of single candidate, then the village can conduct direct election. Meanwhile, if in a village only nominate 1 (one) candidate or there are certain conditions then Pilkades will be conducted by using deliberation by involving BPD as representatives council at village level. This is because of in principal, the use of deliberation as a method to conduct Pilkades is not against Pancasila.

The usage of deliberation can be implemented as a method of village head election as long as it is not contrast with Pancasila. This statement is resulted by the value of deliberation as explanation of the Fourth Precept of Pancasila, i.e. “*Kerakyatan yang dipimpin oleh hikmat kebijaksanaan dalam permusyawaratan perwakilan*”. Strictly speaking, the Fourth Precept of Pancasila can be read as management of Indonesian people that should be carried out with Indonesian characteristics. Rights and duties management of Indonesian people should be carried out with deliberation based on wisdom. Deliberation can only be carried out in a representative institution^[21].

Conclusion

The existence of single candidate prohibition in Pilkades as stated in the Minister of Home Affairs Regulation Number 112 Year 2014 concerning Village Head Elections was originally formed to support process of democratization at

¹⁸ Martien Herna Susanti. 2017. “Dinasti Politik dalam Pilkada di Indonesia”. Journal of Government and Civil Society Vol. 1, No. 2, September 2017, hlm. 112-113.

¹⁹ Gunawan A. Tauda. 2018. “Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia”. Administrative Law and Governance Journal, Vol. 1, Edisi 4, November 2018, hlm.415.

²⁰ Melbourne Forum on Constitutional Building. 2018. “Assymmetric Territorial Arrangements in Decentralized System”. Constitutional Insight, No.3, October 2018, hlm. 3-4.

²¹ Herlambang. 2017. “Perwujudan Sila Ke Empat Pancasila Setelah Perubahan Undang-Undang Dasar 1945”. Supremasi Hukum: Jurnal Penelitian Hukum, Vol. 26, No.2, Agustus 2017, hlm.58.

village level. However, the reality happen in community is the regulation is circumvented by nominating their relatives and families to be the political opponents in Pilkades as mere formality. This can be seen from the nomination reason as well as visions and missions of the campaign. This phenomenon shows the start of political dynasty at village level. The rise of political dynasty in Indonesia both at village level nor regional level is caused by no regulation prohibit political dynasty. Therefore, an asymmetric Pilkades model is needed that refer to the diversity in village and reinforcement on village autonomy so that village can choose whether to use direct Pilkades or elections conducted by BPD as representative institution at village level by means of deliberations to reach consensus which correspond with the fourth precept in Pancasila so that there is a proportional democratic meaning, which can be conducted through direct democracy or representative democracy.

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