

# The Regulation of Independent Candidates in Organizing Regional Head Elections in Indonesia: A literature Review

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## ABSTRACT

One absolute element of the existence of a country is sovereignty. Elections in Indonesia especially the election of regents/mayors and governors can be reached through party and independent paths. Elections through independent paths certainly have strengths and weaknesses in the context of democracy in Indonesia. The purpose of this paper was to review the arrangements of independent candidates in organizing the regional elections in Indonesia. Through a literature review, this research found that an independent candidate presents as the representation of the existence of Law No. 12 of 2008 concerning Regional Election. Election of regional heads is always dominated by candidates who come from political parties. This makes many parties give demands for the birth of regulations for independent candidates as an effort to realize democracy in Indonesia. Competition through independent candidates has positive implications as a solution to local development at a time when natural resource support is currently increasingly limited. The contrast between independent candidates and candidates from political parties is the problem of organizing infrastructure with its political superstructure. Independent candidates do not have a clear political infrastructure so, what maintaining the constituent relations (infrastructure) with the executive (superstructure) does not exist. In fact, the executive position filled by independent candidates will not gain strong political legitimacy from the Provincial and Regency/City DPRD because of the representation of the strengths of various political parties. The progress of the pairs of candidates from non-political parties shows several things: 1) citizens who have the right to develop themselves in the world of government by becoming candidates of regional head have tried to take away their rights as prospective pairs of heads and deputy regional heads, 2) the advance of citizens through independent paths also shows the number of citizens who want to advance the elections but have limited access to political parties, 3) the phenomenon of independent candidates can also be interpreted as a form of resistance against political parties, and 4) the victory of independent candidates in the elections also showed that political parties are not succeed in carrying out their functions of recruitment and political education. Election have models in various countries and at various levels but elections through independent paths like this can be adapted in other countries according to the cultural context, characteristics and needs of the community and local government.

**Keywords:** Independent candidates, regional head elections, Indonesia

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## INTRODUCTION

In implementing democratic system, country must rely on the participation and interests of the people (Damanhuri, 2019; Fuller, 2019; Nabatchi & Leighninger, 2015; Peters & Witschge, 2015; Tasbir & Jayadi, 2020). Indonesia adheres to the sovereignty of the people (Ridho, 2017), which is manifested in the public will that is the collective will of all individuals as a nation that leads to the common interest or public interest, so that the law must reflect the public interest that is determined directly by the people in a meeting (direct democracy).

In the provision of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, the Election of Regional Heads and Deputy Regional Heads, is the election to elect Regional Heads and Deputy Regional Heads directly in Indonesia by local residents who meet the requirements.

Direct election is democratic mechanisms in the context of recruiting leaders in the regions, where the people as a whole have the right and freedom to choose candidates who are considered to have capabilities and competencies (Arrsa, 2016; Huda, 2017). Indonesia itself only enacted the direct election when Law No. 32 of 2004 concerning Regional Government was stipulated and Government Regulation No.

6 of 2005 concerning Procedures for Election, Endorsement, Appointment and Dismissal of Regional Heads, was a new milestone for the upholding of the sovereignty of the regional people in Indonesia. Law Number 32 of 2004 enacted in October 2004 provided very significant changes in governance and even the direct election of regional heads. This means that the spirit to provide the broadest opportunities for local communities to improve is in accordance with their wishes and aspirations. At the end, every Regional Head will feel closer and understand the needs and interests of the people. This implies that all policies to be taken by the Regional Head are truly based on the actual needs of the people.

Based on Law Number 32 of 2004, regional head Election participants are candidate pairs proposed by political parties or a combination of political parties. This provision was amended by Law Number 12 of 2008 which states that participants in the elections may also come from pairs of independent candidates who are supported by a number of people. This law follows up on the decision of the Constitutional Court which overturned several Articles concerning participants in the election of regional heads in Law Number 32 of 2004. Law Number 12 of 2008 the

second amendment to Law Number 32 of 2004 concerning Regional Government in Article 59 of paragraph (1) states that Participants in the election of Regional Heads and Deputy Regional Heads are candidate pairs proposed by political parties or a combination of political parties and independent candidate pairs supported by a number of people. Meanwhile, Law Number 9 of 2015 states that the provisions regarding the election of Regional Heads are regulated by Law.

The regulation regarding the election of regional heads is also strengthened by the Government Regulation in lieu of Law Number 1 of 2014 which has been amended 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 and has been amended again by Law Number 8 of 2015 concerning Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Laws which states that Prospective Governors, Regent and Mayor are election participants proposed by political parties, a combination of political parties, or individuals who register or are registered in the Provincial Election Commission.

The purpose of this paper was to review the arrangements of independent candidates in organizing regional elections in Indonesia.

#### MATERIALS AND METHOD

This study used a literature review. Various references were collected from online databases including google scholar and journals in the last five years. Stages of literature review used included identification, screening, eligibility and included. In general, we identified 15,300 documents relevant to this study, then we screened 3,870 documents that were directly related to the regulation of independent candidates in holding regional head elections. Ten articles were relevant after the screening and these articles were specifically reviewed. The process of searching for articles used English and Indonesian for the context in Indonesia. The keywords used for English were *pemilihan* (election), *perorangan* (independent), *kepala daerah* (regional head), and Indonesia. Meanwhile, English references used the keywords independent, election, major/regent, governor and Indonesia.

#### RESULTS AND DISCUSSION

We identified and tested 10 related articles in this study as shown in Table 1. An independent candidate presents as a representation of Law Number 12 of 2008 concerning Regional Head Elections. Election of regional heads or post-conflict local elections is always dominated by candidates who come from political parties. This makes many parties give demands for the birth of regulations for independent candidates. One form of democracy is the existence of independent candidates. The number of independent candidates in the local election today makes some figures want to participate in the election. Support from the law and the decision of the Constitutional Court's decision also makes an independent candidate as an alternative choice in the election. During this time, democracy is understood as a form of direct election to fill public or political office.

The election of public officials through the post-conflict local election is currently considered as the most ideal system that can be carried out in order to realize democracy in Indonesia. The emergence of post-conflict local elections has a strong connection to the form of local democracy. One of the strong influences of local democracy is the participation of the community in the election of public officials through post-

conflict local elections. Filling out the position of regional head directly is a historical leap on the local political stage. In general, in filling the position of regional head using two paths. The first is through political party channels. This is in accordance with the provisions of Law Number 32 of 2004 concerning Regional Government, particularly article 56 paragraph 2 stating that the candidate pair is submitted by a political party or a combination of political parties. Candidates are nominated from certain political parties or from several political parties that conduct coalitions. The second route is through an independent candidate or commonly referred to as an individual candidate. Legally and formally, an independent candidate appeared in the local political stage after the issuance of the Amar Constitutional Court ruling No.5/PUUV/2007 regarding revocation of the provisions of article 59 paragraph 1 and article 56 (2) "Law no. 32 of 2004 which is contrary to the 1945 Constitution Article 18 Paragraph (4), because it only gives an opportunity for pairs of candidates who come from political parties or a combination of political parties. With the Constitutional Court's Decree, an independent candidate can finally take part in the regional head election.

Election of regional heads through individual channels or known as independent channels shall take effect since the issuance of Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Regional Government. This law was born based on considerations including:

1. The implementation of regional government is directed to be able to produce effective regional leadership by paying attention to the principles of democracy, equality, justice and legal certainty
2. Realizing democratic regional leadership that takes into account the principles of equality and fairness, organizing local government head elections provides equal opportunities to every citizen who meets the requirements

The advance of the candidate pair from non-political parties shows several things;

First, citizens who have the right to develop themselves in the world of government by becoming candidates for regional head have tried to take away their rights as prospective pairs of heads and deputy regional heads. The right of citizens to advance through non-political parties or individuals is regulated in Article 41 paragraph (1) for the Election of Governors and paragraph (2) for Regents/Mayors of Law 10 of 2016 concerning Regional Head Election (Pilkada).

With the emergence of these individual channels, it can show the public that to become a candidate for the regional head and deputy head of the region does not have to be proposed by political parties or a combination of political parties. This is important because so far there are still many people who judge that someone can go forward as a participant in the elections if carried by a political party or a combination of political parties such as the requirements to run as a participant in the election of President and Vice President which must be carried by political parties or a combination of political parties. In this election, the opportunity was given.

Second, the advancement of citizens through independent channels also shows the number of citizens who want to advance the elections but have limited access to political parties. In this case, the access could be due to networks or because of finance. Recognized or not, recommendations from political parties are only given to people who have a certain relationship with the political party DPP management either because of factors as cadres or family members of a political party cadre or not political

party cadres and family members but have financial strength. Thus, it is possible to get the access.

Third, the phenomenon of independent candidates can also be interpreted as a form of resistance against political parties. Citizens who have been 'fed up' with political parties trying to carry out political parties through an official competition called the elections. If an independent candidate succeeds in winning the election then naturally, it will be a major blow to political parties. A severe blow because with the victory of the individual candidate path, it shows that the political party does not have a heart in the eyes of the people. The victory of the independent candidate in the elections is not 'the delusion of a virgin child' like the song of Dewi Persik. Victory of individual candidates has been proven in several Pilkada such as the NAD Election, Rote Ndou NTT, Batubara and Garut Districts, West Java.

Fourth, the victory of independent candidates in the elections also showed that political parties did not succeed in carrying out their functions in carrying out the functions of recruitment and political education. If political parties succeeded in carrying out the recruitment function, the nominees were those who had been cadre and prepared to lead an area and were predicted to seize the region victory. The reason is because their recruitment here means that political parties are official institutions or distributors who are the most appropriate in supplying figures who will lead an area. If the regional head chosen by the people in the Pilkada is an independent candidate, then this is clear evidence that political parties are not distributors of leaders as expected by consumers (people) in the elections. Political parties cannot provide 'goods' at the request of the buyer.

The emergence of individual candidates with the potential for victory is a threat to political parties. Threats because political parties which are pillars of democracy have proven unable to carry out their substantial functions as institutions that must carry out education, regeneration, retribution and political outreach. The appearance and victory of independent candidates can be a breath of fresh air for people who are increasingly uneasy with the behavior of political parties. People will make this fact (the victory of independent candidates) as energy and ammunition to fight the domination and oligarchy of political parties in the succession of local leadership. People increasingly have the belief that local level leadership can be achieved without political parties.

This means that independent candidates with the potential for victory will strengthen confidence in the people's mistrust of political parties and the belief that people can carry out democracy without political parties. People's distrust of political parties certainly will not stop at the level of elections at the local level or the election alone but it can trigger the birth of demands that the pair of presidential and vice presidential candidates in the election should not be submitted by political parties or a combination of political parties as stipulated in Article 6A paragraph (2) of 1945 Constitution of the Republic of Indonesia. If one can run for office without having to carry a political party in an election, it can be ensured that the political party is just waiting for time to go to grave.

The current Regional Head Election Arrangement is seen as not reflecting the real Principles/Values and Democratic Principles/Values. The disregard for the principle/value of justice in the current regional head election arrangement is marked by the existence of a very discriminatory regulation, where in the current direct regional head election the conditions and mechanisms must be met for the regional head candidate pairs to advance through the individual channels (independent candidate) increasingly complicated

and aggravated both in terms of procedures and mechanisms as well as in terms of financing that must be borne by the prospective independent candidate. It is much more difficult and heavier than the conditions and mechanisms that must be met by the candidate pairs of Regional Head candidates who advance through the doors of political parties.

Some other countries, rarely found leaders who are elected through individual channels at the provincial or city level but at the country level. Democracy requires world leaders to be elected through the general election route by the people, who are usually supported by a party and deliver the figure chosen to be a figure of the state. However, there are some cases when a world leader is elected through an independent route. Independent referred to here is a path through non-parties. Liima is a world leader who carries his position through independent channels such as Boris Yeltsin (Russia), Joachim Gauck (Germany), Lamberto Dini (Italy), Atifete Jahjaga (Kosovo) and Lech Walesa (Poland). Each country has its own characteristics in the context of the election of state or regional leaders depending on the government system, ideology and even the needs of local communities.

### CONCLUSION AND RECOMMENDATION

This study found that an independent candidate presents as the representation of Law Number 12 of 2008 concerning Regional Election. Election of regional heads is always dominated by candidates who come from political parties. This makes many parties give demands for the birth of regulations for independent candidates as an effort to realize democracy in Indonesia. Competition through independent candidates has positive implications as a solution to local development at a time when natural resource support is currently increasingly limited. The contrast between independent candidates and candidates from political parties is the problem of organizing infrastructure with its political superstructure. Independent candidates do not have a clear political infrastructure so, what maintaining the constituent relations (infrastructure) with the executive (superstructure) does not exist. In fact, the executive position filled by independent candidates will not gain strong political legitimacy from the Provincial and Regency/City DPRD's because of the representation of the strengths of various political parties. The progress of the pairs of candidates from non-political parties shows several things: 1) citizens who have the right to develop themselves in the world of government by becoming candidates of regional head have tried to take away their rights as prospective pairs of heads and deputy regional heads, 2) The advance of citizens through individual channels also shows the number of citizens who want to advance the elections but have limited access to political parties, 3) the phenomenon of independent candidates can also be interpreted as a form of resistance against political parties, and 4) the victory of individual candidates in the elections also showed that political parties are not succeed in carrying out their functions in carrying out the functions of recruitment and political education. Election have models in various countries and at various levels but elections through independent channels like this can be adapted in other countries according to the cultural context, characteristics and needs of the community and local government.

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**Table 1.** Relevant articles to the regulation of independent candidates in organizing regional head elections in Indonesia

No.	Authors (Year)	Objectives	Findings
1	Adiluhung, Herawati, and Saraswati (2017)	Conducting a normative study of independent candidates in the regional head election in Pekalongan City, Indonesia	This study found that regional elections were held in accordance with Law Number 12 of 2008 concerning independent candidates were more accommodated in Law No10 of 2016 concerning the Election of Governors, Regents and Mayors. Obstacles that occur in independent candidates in the process of electing the regional head was with the condition of collecting support documents in the form of Identity Card. Efforts to overcome the problem of independent pairs of candidates for the regional head election process must prepare themselves in advance both the administrative registration requirements and socialization to the public. Law Number 12 of 2008 in accordance with the laws and regulations of the General Election Commission Number 12 of 2015
2	Warjiyati (2014)	Discussing independent	Before, the decision of the Constitutional Court No. 5/PUU-

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		<p>candidates in regional head elections in the perspective of political jurisprudence</p>	<p>V/2007 shows that independent candidates can enter two political institutions; first, in the 2004 general election, independent candidates competed to enter the Regional Representative Council of the Republic of Indonesia; second, Law No. 11 of 2006 concerning the Government of Aceh where independent candidates can compete with candidates promoted by national political parties in electing regional heads throughout Aceh. Decision of the Constitutional Court No. 5/PUU-V/ means that regional head elections held in various regions can include independent candidates. In the perspective of political jurisprudence, the mechanism for nominating individuals in elections is in accordance with the concept of al-āammamah masalahah hifdz al-ummah. In this case, every independent candidate who nominates himself as regional head cannot be discriminated against and they have the right to run according to the decision of the Constitutional Court</p>
3	Frensiska (2015)	<p>Examining changes in the elections in Indonesia for independent candidates and their implications in a human rights perspective</p>	<p>Provisions regarding the minimum number of support requirements for independent candidates have never changed, even though the minimum amount of support is quite large. The difference in reference to the percentage of the amount of support between independent candidates and candidates from political parties gives a gap which is more burdensome for independent candidates. One of the philosophical foundations of the existence of independent candidates in the elections is to fulfill human rights, especially the rights of citizens in participating in government. This gap shows that the formation of laws has not fully fulfilled the rights of its citizens by providing equal opportunities to participate in government.</p>
4	Berhimpong (2016)	<p>This research was conducted with the aim to find out how the Application of Law in the Verification Process of Supporting Candidates of Regional Head/Deputy Regional Head Through the Independent candidates according to Law No. 12 of 2008 and Law No. 8 of 2015 and how the Comparison of Legal Applications in the Verification Process of Supporting Candidates Regional Head/Deputy Regional Head Through Independent candidates according to the Law.</p>	<p>This research concludes: The application of Law regarding the Verification of Support of Independent candidates in the Election of Regional Heads/Deputy Regional Heads increasingly shows developments starting from the old law and the latest law that we have just implemented together in the simultaneous local elections on December 9, 2015 ago. The Verification process was actually carried out in accordance with the laws that govern, although it cannot be denied that there are still implementation that is not too optimal because the Verification implementation time is very short, even though the amount of support that must be Verified reaches Thousands of supports. Comparison between Law No.12 of 2008 and Law No.1 of 2015 with the amendments to Law No.8 of 2015 found in the number of supporting documents for independent candidates, independent candidate pairs must try harder to meet the nomination requirements as independent candidates of Region/Deputy Regional Head, because the quota amount has been added from the amount set in the previous law. Regarding the Verification mechanism or process between the old law and the new law, there are also some very drastic changes, so that independent candidates must be more careful in fulfilling support requirements, so that the verification process can be skipped and get the expected results.</p>
5	Novita (2014)	<p>Discussing independent candidates for Malang Regional Election in 2013 (Case Study of Dwi-Uddin Couple)</p>	<p>The study concluded that an independent candidate presents as a form of granting political rights to be elected for every citizen in accordance with the 1945 Constitution and for the community's disappointment with political parties. Political parties are considered less than optimal in carrying out its functions. Likewise what happened in Malang City, the community's disappointment with political parties made the community's support for independent candidates even greater.</p>
6	Agastya, Ibrahim, and Sarna (2015)	<p>This study examined how regulation and benchmarks to determine the denominator numbers between regional head candidates from political parties and independents, and what are the legal consequences in the occurrence of the difference in the denominator benchmarks between candidates for regional</p>	<p>This study concluded about the regulation of the terms of the denominator number of regional head candidates and benchmarks to determine these numbers. These terms of denominator are in conflict with the principles of democracy and justice and the 1945 Constitution of the Republic of Indonesia</p>

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		head from political parties and independents.	
7	Manfaluthi (2018)	The question was whether Kediri has carried out registration procedures in accordance with applicable rules?	This research found that based on Law Number 12 of 2008 from Chapters 58 to 60, the General Election Commission (KPU) of Kediri city has implemented a candidate registration mechanism for Mayor and the Deputy Mayor is from political parties, joint political parties and independent candidates, the results of all independents from both the independent and from political parties and coalitions of political parties passed through the registration stage
8	Kardeli (2018)	The purpose of this study was to provide a reason that the application of parliamentary thresholds in Law No. 10 of 2016 can hamper the implementation of democracy and how the dynamics of society, the working relationship between parliament and the prospective regional head of an individual who is unable to realize the principle of checks and balances.	This study concluded that the implementation of parliamentary thresholds in the administration of elections can hamper the implementation of democracy because it is against the laws and regulations and can also damage the justice that is coveted by the public and protected by the 1945 Constitution. With regard to the inability to realize the principles of checks and balances in the relationship between Government functions governing independent regional heads and independent candidates which lead to political attitudes that the parliament does not provide political support to independent regional heads
9	Muhtar AW (2018)	The aim of this research was to find the obstacles faced by independent regional head candidates in Gayo Lues District in 2017 and find what causes the defeat of independent regional head candidates Adam, SE and Iskandar in the simultaneous regional elections in 2017 in Gayo Lues District.	The results of this study indicated two things, first, the obstacles faced by independent regional head candidates in Gayo Lues District in 2017 included the winning team which was not well coordinated. The two causes of the defeat of individual candidates were regional heads Adam, SE and Iskandar, the figure of the candidate pair and the program that was not appropriate to the community's situation. Trust must be improved in the future to the winning team that has been built so that coordination between the team and the community is not constrained because cooperation and trust must be prioritized within a team
10	Simuraya and Ishak (2017)	The purpose of this study was to determine the differences between the votes obtained by independent candidates and the support requirements submitted by independent candidates	The results of this study indicated differences in vote acquisition and support conditions caused by the existence of legal support requirements caused by the uncertainty of legal support. Support in the form of Identity Card is only a condition that can be manipulated. This was proven by the fact that there are still people who withdraw their support by filling out the revocation form provided by the Election Commission during the support recapitulation