

THE STRUGGLE OF INDIVIDUAL CANDIDATES IN ACHIEVING EQUALITY IN THE LOCAL ELECTION

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Submitted: May 20, 2024; Reviewed: June 07, 2024; Accepted: June 11, 2024

Abstract:

This article discussed two questions: **First**, does the regulation of candidacy requirements for individual candidate (non-party candidate) pairs in the local election emphasize the procedural justice more than the substantive justice? **Second**, does the regulation of the candidacy requirements for individual candidate pairs based on the Local Election Law and the candidacy requirements for individual candidates that apply in Aceh Province based on the Aceh Government Law (UU No. 11 of 2006) concerning Aceh Government indicate that there are equality disparities in democracy? To answer the questions above, this article used materials sourced from statutory regulations, decisions of the Constitutional Court, opinions of experts, legal theories or doctrines scattered in several books and articles in scientific journals. Furthermore, the results of the article conclude: **First**, individual candidates have a strong constitutional juridical basis after the 2007 Constitutional Court Decision (No.5/PUU-V/2007), the Local Government Law, and the Local Election Law. **Second**, the Aceh Governance Law and the Local Election Law show disparities in the regulation of the requirements for the amount of support for individual candidate (non-party candidates) pairs.

Keywords: Local Election; Candidate; Individual; Equality.

INTRODUCTION

The topic of the principles of equality and justice are not only discussed in today's modern era, but has also been the concern of philosophers since ancient Greece. The principle of justice in politics has been written by Aristotle in the fifth book of Nicomachean Ethics (Kraut, 2006; Thornton C. Lockwood, 2006; David Ross, 2013; Gerard J. Hughes, 2013). Aristotle uses the term "dikaioisune" as the equivalent of the word "justice" (Collins, 2011). Justice in a general sense contains two meanings, namely respect for the rules and respect for the equality of citizens (Dragica Vujadinović, 2011; Parisa Ebrahimpour, Alireza Golshani, 2017) The demand for equality in the

political field is an inseparable part of efforts to realize justice (John Finnis, 2012). According to Rawls, that one of the essences of the principle of justice is the right to freedom. In the principle of justice there is a postulate that everyone has the same right to the broadest basic liberties, as wide as the same freedom for all (John Rawls, 1999). Rawls added, that the basic freedom of citizens is freedom in politics (John Rawls, 1999).

In the book "Philosophical Foundations of the Law of Equity", it is written that the principle of equality has been discussed since Aristotle era and last until the recent days (Dennis Klimchuk, Irit Samet, 2020). Why is that? The reason is, apart from the fact that the

domain of equality in the legal system is developing, as well as the issue of equality which cannot be separated from the moral dimension (Dennis Klimchuk, Irit Samet, 2020), it also because there are unfair equality practices (Andreas Albertsen and Soren Midtgaard, 2014), and the undermined of equality (Robert L. Tsai, 2020). According to Eric Chang, *et al*, corrupt practices in democratic governance have undermined the idea of equality and justice (Eric Chang, 2014).

The development of a democratic government system also has implications for the development of democratic theories. Democratic theory has covered a variety of themes, such as equality of rights, legitimacy, and justice (Frank Cunningham, 2020). Dahl in Arend Lijphart, proposed eight themes as criteria for democracy, and three of them are: (a) the right to be elected, (b) the right to compete for support and vote, and (c) election that is free and fair (Arend Lijphart, 1999). Democracy is a means to realize justice (Laura Valentini, 2013), and equality. Equality is fundamental (essential) in democracy (David Schultz, 2016). Therefore, the implementation of a "free and fair" and democratic election is not only judged by the presence of competing political parties, but also from extent of access to justice for every citizen to be nominated and/or running for the election. According to Schultz, holding elections with only one legally recognized party also questions how free the elections are (David Schultz, 2016).

Robert Post states that democracy and equality are two correlated things. In a democratic system of government, everyone should be treated equally. Democracy requires equal democratic tools. In a democracy, every citizen is considered as an autonomous and self-determining person (Robert Post, 2006). Every citizen has equal access to be involved in the decision-making process (Philip Green, 1999). One of the criteria used to assess the existence of a democratic government is the guarantee and recognition of the principle of "equality before the law for all citizens, regardless of race, creed, color, gender, or national origin" (D. Grier Stephensen

Jr, Robert J. Bresler, Robert J. Friedrich, 1988). In the legal context, the principle of equality is identified with formal equations (numeric equations and proportional equations). Numerical equality gives all individuals the possibility to enforce equal rights and obligations before the law (Christina Deliyianni-Dimitrakou, 2015).

John Dewey's reconstruction of Confucian democracy also strengthens the concept of the value of equality, namely equal opportunity for individual self-development. The concept of equality rests on moral values. Therefore, democratic institutions must be able to provide and maintain equal opportunities for everyone to participate in the field of political life (Sor-hoon Tan, 2016). The government must be able to act to make the lives of its citizens better, and give equal attention to all its citizens (Ronald Dworkin, 2000). The expressive theory developed by relational egalitarians, among others, states that every state action must express the same concern and respect for citizens (Ben Mitchell, 2015; Voigt, 2018). Democratic government systems integrate the principles of distribution with respect for equality (Elizabeth S. Anderson, 1999).

Furthermore, John Dewey hopes that citizens of a democratic society respect the principles of freedom and equality (Mordechai Gordon & Andrea R. English, 2016). Respect for the principle of equality has a moral basis with normative implications. According to Alberto De Luigi, respect for the principle of equality is not respect for beliefs, but for people. Some beliefs deserve our respect, and some do not. Meanwhile, respect for the principle of equality (people), requires us to recognize the capacity of each person (Alberto De Luigi, 2015).

Elections as one of the conditions for realizing a democratic government system ideally should provide access to every citizen to compete in order to gain public office (Kofi Annan Foundation, 2016). Access to achieve equality in elections is part of the fulfilment of human rights in the political field (Robert Alexy, 2012; Nahuel Maisley, 2017). The principle of equality is not only contained in various

human rights documents, but is also contained in the constitutions of democratic countries (James W. Nickel, 1996; Global Commission, 2012; Susanne Baer, 2012; Sandra Fredman, 2016; Nahuel Maisley, 2017). In Indonesia, the principle of equality in politics is stated in Article 27 section (1), Article 28C section (2), Article 28D section (1) and (3) of the 1945 Constitution (Amsari, 2021), and Law no. 39 of 1999 concerning Human Rights.

A democratic government system requires free and fair elections. According to Annan, elections are the center of democracy (Kofi Annan Foundation, 2016). For David Beetham, in order for an election to be successful, the implementation of an election must be able to realize political equality and people's control over the government (Holly Ann Garnett & Toby S. James, 2018). In the context of elections, the principle of equality is interpreted as the right for every citizen (adult) to vote and be elected (Guy S. Goodwin-Gill, 2006). The principle of electoral equality plays an important role in the process of establishing who the power elite is in a democratic society (Adam Cebula, 2018).

Sara Pennicino argues that equality must also be given in the candidacy stage. All political participants must be given the same opportunity to run for office, even though the law regulates the requirements that must be met to become a candidate, for example; payment of a deposit or collection of signatures in a minimum amount to support candidacy (Sara Pennicino, 2017).

All arguments related to the principle of "equality" become reference material in the study of the nature of the regulation for individual candidates in the Law of Local Election. It is known that the recognition of individual candidate pairs begins with the election of the local head/deputy head in Aceh Province, namely by referring to the Aceh Government Law (Law No. 11 of 2006). Furthermore, for regions outside Aceh Province, the recognition of individual candidates at the local election stage began with the second amendment to the Local Government Law (Law No. 12 of 2008). The recognition of individual candidates to be

able to advance as local election participants based on Law No. 12 of 2008, was initially appreciated by some local elites, including political party cadres who did not receive a recommendation from political party administrators to compete in the local election. However, in the course of the local election since the second amendment to the Local Government Law until the simultaneous implementation of the IV Local Head/Deputy Election (2020 Local Election), all individual candidates must struggle to collect the requirements for the amount of support and distribution requirements for the amount of support. Furthermore, all these requirements still have to be verified administratively and factually. Therefore, individual candidates are faced with the requirements of fulfilling and validating the number and distribution of support.

Although in the 2015, 2017, 2018, and 2020 local election (the first, second, third, and fourth wave of local election) were joined by dozens of individual candidates, some of them won the 2015 and 2017 local election, but does not mean that the requirements arrangement of individual candidate in the Local Election Law has reflected the essence of the principle of equality. The Local Election Law, which has been amended many times, not only facilitates the requirements for candidacy from the political party line, and conversely burdens the candidacy requirements for individual candidates, but also shows disparities in terms of the number and distribution of support for individual candidates in Aceh Province (based on the Aceh Government Law) on condition that the number and distribution of support outside Aceh Province (based on the Local Election Law).

Ideally, the Local Election Law does not only prioritizes procedural aspects related to the fulfilment and validity of the requirements for the number and distribution of independent candidate support, but must also prioritize the nature and spirit of regulating individual candidates in the Local election Law. According to Hurlbert and

Mulvale, law is often regarded as the ultimate expression of justice in society. In this case, justice is really more than just the law (Margot A. Hurlbert & James P. Mulvale, no date). Starting from the legal issues above, the main issues discussed in this article are: does the regulation of the requirements for individual candidate pairs in the local elections reflect the principle of equality in democracy through the implementation of local elections? Individual candidates in this article are candidates who come from non-party lines or commonly called individual candidates.

METHOD

The writing of this article used primary and secondary legal materials derived from normative legal research. The primary legal materials are sourced from laws and regulations relating to the local election, as well as decisions of the Constitutional Court related to reviewing the articles on nomination of heads/deputy heads in the Local Election Law. Meanwhile, the secondary legal materials can be in the form of legal theory, opinions of legal experts, and legal doctrine. All legal materials that underlie the study of this article are analyzed descriptively through legal interpretation and reasoning methods.

ANALYSIS AND DISCUSSION

Constitutionality of Individual Candidates in Local Election Stage

The regulation of the candidates from independent route (non-partisan politicians) to participate in the local election is starting from the Constitutional Court Decision of 2007 (Number 5/PUU-V/2007), namely decisions concerning the examination of several articles in the Local Government Law (Yance Arizona, 2007). The Constitutional Court's decision contradicted from a judicial review submitted by a member of the DPRD in Central Lombok Regency, NTB Province, Lalu Ranggalawe (Aminuddin Kasim, 2016). Concurrently, Ranggalawe postulated that Article 56 section (2), Article 59 section (1), (3), (4), (5) letters a and c, and section (6),

and Article 60 section (2), (3), (4), and(5) the Regional Government Law (Law Number: 12 of 2008) contradicts the Article 18 section (4), Article 27 section (1) Article 28D section (1), and Article 28I section (2) of the 1945 State Constitution of the Republic of Indonesia. The local head elections based on the local government law were carried out indirectly at that moment which was the votes of local heads through the Regional People's Representative Council (DPRD).

The basis consideration of the Constitutional Court granted Ranggalawe's request which was concerning the implementation of the Law of Aceh's Governance (Article 67 section (1) letter d). After the decision of the Constitutional Court, there are opportunities for individual candidates (non-partisan candidates) to take a part in the elections of the local head/vice local head. The decision of the Constitutional Court has gradually changed substance and mechanism for the local elections of head/vice local head. A fundamental change occurred in political equality. For the reason that, in practice, there has been a gap or inequality among political actors because of political channels only being recognized through political parties (Suharizal, 2012). This is the decision of the Constitutional Court for the first time which allows the independent candidates to compete in the local elections of head/vice local head (Edward Aspinall and Wawan Mas'udi, 2017).

Prior to the 2007 Constitutional Court' Decision, Aceh Province have held the elections for regional head/vice local head in 2006. Back then, there were 3 independent candidate pairs out from 8 (eight) candidates who participated in the election of local head/vice local head. Then, the candidates who won the election at that time were the candidates from independent route, they were: Irwandi Yusuf (a former Free Aceh Movement or GAM Combatant) and Muhammad Nazar. The victory of the candidates from independent route in 2006 for the local head/vice local head in Aceh incised a constitutional history that a candidate from independent route was one of

the political choices in the process of holding the local head/vice local head elections.

Although the Constitutional Court' did not include the fact of the victory of Irwandi Yusuf and Muhammad Nazar as a particular consideration underlying the decision. However, there are valuable lessons for democracy that can be learned from the local head/vice local head elections in 2006: *First*, the equality (equality of rights) is one of the principles that must be underlying for every local head/vice local head election. In the election of local heads/vice local head, not only political parties have the right to nominate candidates, but also individual candidates(non-partisan). *Second*, the candidate for local head/vice local head from the independent candidate was an alternative channel for voters to express their human rights in the political field. *Third*, the victory of the candidate from the independent route of local head/vice local head election in 2006 was the result of a social contract between voters in Aceh and the elected candidates (Irwandi Yusuf and Muhammad Nazar). The theoretical basis that supports this statement is Rousseau's teaching on the social contract (Aminuddin Kasim, 2019; Kasim, 2020).

After the Constitutional Court' in 2007 (Decision Number: 5/PUU-V/2007), the regulation of the requirements for candidates from independent route in the Local Government Law underwent a fundamental change. The Local Government Law begins to accommodate candidates from the independent politician to participate in the election of local heads/vice local head through DPRD. Furthermore, after the arrangement for the election of local head/vice local head was separated from the Local Government Law, the practice of electing local head/vice local head began to be held simultaneously, with the exception of Aceh Province because it was still subject to Law Number: 11 of 2006. When the local head/vice local head elections were held simultaneously for the first time (2015), 269 regions held the local elections. Meanwhile, the number of independent candidates who passed as participants of the local head/vice

local head elections in 2015 was 174 pairs or 68.5% of the total number of candidates from independent route who registered (254 candidates from independent route) or 20.4% of all candidates who have passed the local head/vice local head elections in 2015 (852 pairs of candidates).

Forced Politic in Regulation of Independent Candidate in Local Election Law

Since the simultaneous local head/vice local head election was held in 2015 (Simultaneous Local Elections of 1st Wave) up to the simultaneous local head/vice local head elections in 2020 (Local Elections of the 4th Wave), The Simultaneous Local Government Law has undergone a third change. The third amendment (last amendment) was marked by the stipulation of Law Number: 6 of 2020.

Since the judicial recognition of individual candidates, either through the Local Government Law or the Local Election Law, politicians in the legislature (The House of Representatives) are eventually not willing to accept the presence of individual candidates to participate in regional head/vice local regional head elections. It can be traced from the regulation of individual candidate requirements of Law Number: 1 of 2015. Regarding the law, the percentage of support required for pairs of individual candidates in participating the elections of local head/vice local head which has a maximum of 6.5% and a minimum of 3% (Article 41 sections (1) and (2)). The percentage figure is not different from the one required in the older Local Government Law (Article 59 section (2a) and (2b) of Law Number: 12 of 2008 and Article 14 (1) and (2) of Law Number: 22 of 2014). However, after the implementation of simultaneous local elections in 2015, the legislators (DPR and the President) set the first amendment to the Local Election Law (Law Number: 8 of 2015). The results of the changes to the Local Election Law ultimately have an impact on prospective individual candidates, because the percentage number required for prospective individual candidates was increasingly burdensome, the

highest was 10% and the lowest was 6.5% (Article 41 section (1) and (2) Law Number: 8 of 2015).

Why did legislators increase the support requirements for individual candidates after the enactment of Law Number 8 of 2015? The answer to that question is inseparable from the empirical facts on the 2015 Simultaneous local election itself. At the time, the requirement refers to the percentage of support in Law Number 1 of 2015, there were 174 individual candidates participated or 20.4% of all candidates who passed simultaneous local elections in 2015 (852 candidate pairs). Furthermore, out of 174 individual candidates participating in the simultaneous local elections of head/vice local head in 2015, there were 13 (thirteen) individual candidates named as winners such as: candidates from the independent route in Tomohon City, Tanjung Balai City, Bukit Tinggi City, Bontang City, Banjar Baru City, Supiori Regency, Sabu Raijua Regency, Rembang Regency, Rejang Lebong Regency, Kutai Kertanegara Regency, Ketapang Regency, Gowa Regency, and Bandung Regency.

Although only 13 individual candidates won the local head/vice local head elections in 2015 or 7.47% of the total individual candidates participating on it, this fact provides lessons for Political Parties. When the local election process began, political party oligarchs began to stand out in the recruitment of local head candidates (Herri Junius Nge, 2018). According to *Jeffrey A. Winters*, free competition for free votes is meaningless if several thousand oligarchs and elites have the power to direct, limit, block, or overwhelm democratic methods at every stage (Jeffrey A. Winters, 2021). This distorted practice was also highlighted by *Nankyung Choi*, that the contestation of power at the local level in Indonesia is trapped in an oligarchy practice. Local political elites spend money to dominate the electoral stage in the regions (Nankyung Choi, 2009). The funds that must be provided by candidates to compete in the election of local head/vice local heads, are not only for

campaign financing (Marcus Mietzner, 2020) but also costs to get support from political parties (Ward Berenschot, 2018) or costs for “*mencari perahu*” (look for a boat) (Edward Aspinall and Ward Berenschot, 2019).

It's no secret that in Indonesia, political parties participating in the general election and get places in the Regional People's Representative Council (DPRD) always require a "political dowry" of billions of rupiah if they want to get recommendations in nominating the local election (Delia Wildianti, 2018; Endah Yuli Ekowati, 2019; Feri Amsari dan Hemi Lavour Febrinandez, 2019; Ida Farida, 2019). Ferry Liando, called the practice of political dowry a crime of candidacy in the local election (Ferry Liando, 2019).. The requirements for candidacy in the election of local head/vice local head in Indonesia are like the practice of marriage. Political parties are like women or girls requiring a money proposal (*uang panai*) if a man wants to marry her. Ironically, nomination recommendations from political parties are centralized. Only the Central Executive Board (DPP) of Political Parties in Jakarta (head and secretary of political parties) has the right to provide recommendations to candidates of local head/vice local head. Meanwhile, the administrators of political parties at the provincial level and the regency/city level are not entitled to provide recommendations to their cadres who participating in the election of local head/vice local head. The practice of political dowry transactions to obtain recommendations from the head and secretary of political party, help condition some cadres from political parties to choose the independent route (non-partisan) in the nomination of local head/vice local head. This happened to the elections of local head/vice local head in Tojo Una-Una Regency in 2020 (Kadir Kalaro from the Demokrat Party), in Sigi (Ilyas Nawawi from the Keadilan dan Persatuan Indonesia Party), in Banggai Laut (Rusli Banun from the Persatuan Indonesia Party), and in Palu City (Zainuddin Tambuala from the Keadilan Sejahtera Party). However, from four political party cadres who chose the

individual candidates, in the four regencies/cities in Central Sulawesi, only individual candidates in Banggai Laut Regency - Rusli Banun and his partner H. Basri were declared eligible as participants in the local head/vice local head elections in 2020.

Individual candidates, in spite of the fact that the practice of oligarchs and political dowry transactions in the recruitment of local head/vice local head can constrain the existence of individual candidates, it is still difficult for prospective individual candidates to fulfil the nomination requirements. The requirement for the percentage of supporting Simultaneous Local Election Law is still considered burdensome for prospective candidates from the individual candidates. It makes the Simultaneous Local Election Law repeatedly become the judicial review object in the Constitutional Court. In *Achmadudin Rajab's* notes, Law Number 8 of 2015 had been submitted for judicial review 25 times in the Constitutional Court. The material that is repeatedly requested for review by the Constitutional Court is the content of Article 41 (Achmadudin Rajab, 2016), which is related to the requirements for the percentage of support, as well as the requirements for the status of the population who has the right to support the prospective individual candidates.

The second amendment of Local Election (Law Number 10/2016) is a follow-up to the Constitutional Court Decision Number 60/PUU-XIII/2015 concerning the review of Article 41 of Law Number 8 of 2015. Based on the Law Number 10 of 2016, the requirement for the percentage of support for individual candidates; a maximum of 10% and a minimum of 6.5%. The percentage figure is no longer based on the population as in Article 41 of Law Number 8 of 2015, but based on the number of residents who have the right to vote and are registered in the Permanent Voters List (DPT). This percentage figure is still guided by the General Election Commission (KPU) even though there has been a final decision from the Constitutional Court (Decision Number

54/PUU-XIV/2016), which is related to the review of Article 41 sections (1) and (2) Law Number: 10 of 2016.

Although the support requirements for individual candidates are already based on the number of residents who have the right to vote and are registered in the Permanent Voters List, however the Simultaneous Local Election Law also requires additional requirements such as a photocopy of an Electronic Identity Card (KTP) or a statement from the Population and Records Office. Civil law (Article 41 section (3) of Law Number 10 of 2016), as well as the obligation of the Regional General Elections Commission (KPUD) to verify (administrative and factual) the nomination requirements documents, individual candidates are forced to face a long and difficult struggle. In the simultaneous Local Election of the 4th wave in 2020 at the same time as the spread of Covid-19, many individual candidates were declared non-eligible (Unqualified or *TMS*) as local election participants. At the registration stage for candidates for local head/vice local head, initially there were 203 prospective individual candidates who registered as participants. However, after the required documents are verified (administrative and factual), there are only 70 individual candidates declared as Eligible (Qualified or *MS*). One of the factors causing many prospective individual candidates to be declared as non-eligible is the government policy regarding social restrictions dealing with the Covid-19 pandemic. The social restrictions make it difficult for some prospective individual candidates to bring supporters when factual verification takes place in village/sub-district.

The Disparity of Support Percentage Numbers Requirement for Individual Candidates, in Simultaneous Local Elections Law and Aceh Governance Law

The regulation of the requirement for the percentage of support for prospective individual candidates in the Local Election Law (Law Number: 10 of 2016) and in Aceh

Governance Law (Law Number: 11 of 2006) shows that there is a disparity. The Aceh Government Law only requires 3% of support of the total population which spread over partially 50% of the total regencies/cities of the Governor/Deputy Governor's elections and 50% of the total sub-districts of the regent/deputy regent's or mayor/deputy mayor's elections (Article 68 section (1) Aceh Governance Law (Law Number: 11 of 2006). Meanwhile, in the Simultaneous Local Election Law, the percentage requirement of support for individual candidates, is maximum 10% and minimum 6.5% of the total population who have voting rights and have registered in the DPT. Moreover, the Governor/Deputy Governor' elections, the terms of support must be spread more than 50% from the total regencies/cities. Meanwhile, for the elections of Regent/Deputy Regent and Mayor/Deputy Mayor, the support requirements must be spread over 50% from the amount number of sub-districts (Article 41 of Law Number: 10 of 2016).

Table 1
Comparison of the Terms of Support for individual candidates, in the Aceh Governance Law and the Simultaneous Local Election Law

Aceh Governance Law		Simultaneous Local Election Law	
Local election Province	Local election Regency/City	Local election Province	Local election Regency/City
3% from the total number of populations	3% from the total number of populations	Population in the DPT up to 2,000,000 = 10%	Population in the DPT up to 250,000 = 10%
		Population in the DPT more than 2,000,000 to 6,000,000 = 8,5%	Population in the DPT more than 250,000 to 500,000 = 8,5%
		Population in the DPT more than 6,000,000 to 12,000,000 = 7,5%	Population in the DPT more than 500,000 to 1,000,000 = 7,5%
		Population in the DPT more than 12,000,000 = 6,5%	Population in the DPT more than 1,000,000 = 6,5%

Source: processed by the author

Although Article 68 section (1) of the Aceh Government Law only requires population support as in the old Regional Government Law (Law Number 12 of 2008) and in Law Number 8 of 2015, however, because the requirement for the percentage of population support in the Aceh Government

Law is only 3%. Therefore, the requirements for individual candidates in the Local Election in Aceh Province are considered much lighter than the requirements for individual candidates in the *Simultaneous* Local Election Law (which applies for all regions in Indonesia except in Aceh Province). This difference can be simulated by taking the example of the population in 2019 in the five districts with the most population in Aceh Province with the number of residents entitled to vote in Palu city based on the last DPT in 2019.

If the election of local heads and deputy regional heads in districts/cities in Aceh Province coincides with the 2020 regional head and deputy regional head elections. There will be a striking disparity in the requirements for support for individual candidates in Aceh Province and outside the Aceh province. The simulation of the minimum population that individual candidate must collect in five districts in Aceh Province is shown in the following table:

Table 2
Total Population of 5 (Five) Districts in Aceh Province Based on Data from the Aceh Central Statistics Agency (BPS) in 2020.

Districts	Total population (person)	Support Requirement (%)
North Aceh	619.407	18.582
Bireuen	471.635	14.149
Pidie	444.976	13.349
East Aceh	436.081	13.082
Aceh	425.216	12.756

Source: processed by the author

The population in the 5 (five) districts in Aceh Province above is much larger than the population of Palu City in 2019, which is 368.086 people. Meanwhile, the number of residents entitled to vote in the election of the mayor and vice-mayor of Palu based on the

last DPT in 2019 is 213.957 people, then the percentage number required for individual candidates in the election of the mayor and vice-mayor of Palu is 10% (Article 41 section (2) letter (a) of Law Number 10 of 2016). If 10% is multiplied by the number of voters in the last DPT (213.957 people), then the minimum amount of support that individual candidates in Palu must collect is 21.396 supporting voters.

The description above shows that the requirement for support for individual candidates in Palu city is much heavier than the requirement of support for individual candidates in 5 (five) districts in Aceh Province. If the disparity is seen in the context of Herbert Lionel Adolphus Hart's idea of justice, which Treats like cases alike and different cases differently (H. L. A. Hart, 1996), then there is an apparent imbalance of justice. The regulation of support requirements for individual candidates to participate in the simultaneous regional head/deputy regional head elections in Indonesia must be subject to the exact nomination requirements. So, all individual candidates in Aceh Province and all regions in Indonesia (except Aceh Province) are equal. Likewise, the nomination requirements for individual candidates from the political party line ideally are subject to the exact nomination requirements for all regions of Indonesia, including in the Aceh Province.

Why do individual candidates in Indonesia ideally have to be subject to the exact nomination requirements, including the requirements for candidacy in regional head/deputy regional head elections in Aceh Province? This refers to considering the Constitutional Court's decision related to the review of the Regional Government Law (Law Number 32 of 2004) proposed by Lalu Ranggalawe. In the decision of the Constitutional Court in 2007 Number 5/PUU-V/2007, it is clear that the legal considerations of the Constitutional Court at point 3.15.9 state that the Article 56 section (2) related to Article 59 section (1) and (2) of the Regional Government Law and the

regulation of requirements for individual candidates in the Aceh Government Law (Article 67 section (1) letter (d), both originate from the same legal basis, namely Article 18 section (4) of the 1945 Constitution of the Republic of Indonesia. The relationship between the articles contained in the Law on the Government of Aceh and the articles contained in the Law on Regional Government cannot be positioned as a relationship between specific laws, namely Article 67 of the Law on Government Aceh and the general law, namely Article 56 section (2) related to Article 59 section (1) and (2) of the Regional Government Law because the provisions of Article 67 of the UUPA do not cover the substance of the privileges of the Aceh Province based on Article 3 of Law Number 44 of 1999. It states that the implementation of the privileges of the Aceh Province is only limited to four things, namely: (a) Consecrated life; (b) customary life; (c) education; and (d) the role of scholars in the process of determining regional policies.

Furthermore, because it is not in a position of relationship between specific Law and general Law, Article 67 of the Law on the Government of Aceh must be interpreted as a new interpretation by legislators of the provisions of Article 18 section (4) of the 1945 Constitution of the Republic of Indonesia. If these apply jointly but for different regions, it will result in dualism in implementing the provisions of Article 18 section (4) of the 1945 Constitution. Such dualism may result in the absence of equal status between Indonesian citizens residing in the territory of the Aceh Province and Indonesian citizens residing in other Indonesian provinces (See: Message of Decision of the Constitutional Court Number 5/PUU-V/2007). Indonesian citizens living outside the Aceh Province will face tough candidacy requirements to nominate themselves through the individual route. Meanwhile, Indonesian citizens living in the province of Aceh are relatively easy to nominate themselves through individual channels. The disparity in setting

requirements for individual candidates in the Law needs to be reviewed. The two laws (Law Number 10 of 2016 and Law Number 11 of 2006) are based on the same constitutional juridical basis, namely Article 18 section (4) of the 1945 Constitution of the Republic of Indonesia.

Given the different treatment between individual candidates residing in the Aceh Province (based on Law Number 11 of 2006) and individual candidates outside the Aceh Province (based on the *Simultaneous* Local Election Law), it is not an exaggeration to say that Indonesia is not yet in an orderly manner with election laws. Legislators need to be aware that the presence of candidates from the individual channels in the implementation of the Local Election is an alternative political channel for some citizens to elect candidates for regional heads and deputy regional heads who are considered capable of administering regional government. The current strengthening of the oligarchs of political parties and the practice of political transactions in nominating regional heads/deputy regional heads ultimately affects closing access to justice for potential regional leaders to run for regional heads and deputy heads area. This is not only felt by non-partisan regional leaders but also by political party cadres.

The practice of political cost transactions to obtain recommendations from the chairpersons and secretaries of political parties at the centre (Jakarta) helped condition several cadres from political parties in the regions to choose the individual (non-party) route in the candidacy of regional heads and deputy regional heads. In the Tojo Una-Una district, a cadre from *Partai Demokrat* (Kadir Kalaro) was forced to choose the individual route in the 2020 Simultaneous Local Election candidacy. The arrangement of the requirements for individual candidates needs to be reviewed, so implementing the Local Election in the future can contribute to realizing the quality and dignified democracy. The Simultaneous Election Law in the future ideally should make it easier for individual candidates to

compete in the Simultaneous Local Election. The demand regarding the participation of individual candidates to compete in the election of regional head and deputy regional head is necessary. Building a democratic government system through the election of regional heads and deputy regional heads is necessary to realize procedural justice, but it is also necessary to realize substantive justice. Legislators face moral demands; "Make it easy for everyone to get their constitutional rights through the law".

CONCLUSION

Based on the analysis and discussion above, it is concluded as follows: **First**, the participation of individual candidates (non-party candidates/independent candidates) to compete in the election of regional heads/deputy regional heads already has a solid constitutional juridical basis. This is based not only on the Constitutional Court's decision in 2007 (Decision Number 5/PUU-V/2007) but also on the Local Election Law (Law Number 10 of 2016). **Second**, although the participation of individual candidates has obtained a solid constitutional juridical basis based on the decisions of the Constitutional Court Number 5/PUU-V/2007 and the Simultaneous Local Election Law, the requirement for the number of support for individual candidates still feels burdensome, especially when compared to the requirements for the number of support of individual candidates in the Aceh Province. Thus, the regulation of the requirements for the number of support for individual candidates in the Simultaneous Local Election Law (which applies for all regions in Indonesia except in Aceh Province) and the Aceh Government Law (which applies explicitly to the Aceh Province area) shows that there is a disparity.

ACKNOWLEDGMENT

The author would like to thank the publisher, to reviewer/peer reviewer for assistance in reviewing this article; we appreciate your dedication in supporting this article to be published.

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