



# Determination of a suspect for the candidate of region in election in Indonesia

Imam ropii \*, Abdul Rachman A. Latif, Hibertus Sujiantoro

*Law faculty, Wisnuwardhana University of Malang, Indonesia*

## Abstract

Legal arrangements for region head elections in Indonesia prioritize the principle of legal certainty rather than the principle of morality. This can be seen from the arrangement of region head candidates determined by the regional election commission that it is prohibited from resigning or being replaced by political parties who propose even though the candidate of region head are determined as suspects by law enforcement officials. The results of the study indicate: determination of a suspect for the candidate of region head does not abort as candidate of region head; the candidate of region head are also prohibited from resigning or being replaced by political parties who propose; and the replacement of region head candidates may be made only for reasons of permanent absence, namely death. The importance of elections to produce region heads with integrity requires changes to legal election relating to the replacement of candidates of region heads who are designated as suspects during the election process.

**Keywords:** Suspect Status; Candidate Of Region Head; Indonesia Election

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## **1. Introduction**

The research article on the determination of a suspect for the candidate of region head in the legal election of the region head in Indonesia is a research to describe the candidate of region head who has legal status as a suspect in the legal system of election in Indonesia. The study on the subject is very interesting because there is a pullback between the principle of legal certainty and the principle of morality.

The simultaneous election of region head in Indonesia in 2017 (<https://infopemilu.kpu.go.id/pilkada2018>), became an important political moment and study in the political history of region head elections in Indonesia. Because at the time of the election, one of the candidates for Jakarta Capital City.

Special Region, Basuki Tjahaja Purnana (Ahok) was appointed as a suspect by the Indonesian Police for allegedly blasphemy reports of one religion and then increased as a defendant by the prosecutor. The determination of a suspect for the candidate of region head continued to occur in 2018 in spite of the different forms of criminal acts committed (<https://kolom.tempo.co/read/1072384/candidate-head-region-suspect-corruption> / Retrieved May 6, 2018). One of the factors which lead the candidates for region head to carry out legal action which includes the qualification of corruption in the implementation of the simultaneous general election is due to the high cost of political elections of region head.

The simultaneous election of region head in 2017 is a continuation as well as a series of the former simultaneous region head election which is an important momentum of the implementation of the principle of sovereignty of the region people in whole Indonesia to elect their leaders. The first simultaneous region head election will continue until 2027 as the peak of simultaneous region head election nationally. It is hoped that this democratic presidential election will produce region head with high integrity, legality and political legitimacy. Therefore, the implementation of region head elections held periodically five years and requires high costs should be held not merely as ceremonial social and political only, but also to run voter education with his/her intelligence to be able to choose and produce a candidate for region head equitably, fair, and has strong political legitimate.

The determination of a defendant for one of the candidates of region head in the election in the capital of Jakarta in 2017 will be a test of the consistency of the Indonesian government in the implementation of the legal election and an essential ingredient in reconstructing legal election in future reflecting justice in a democracy. The determination of a suspect status as well as a test of voter loyalty in determining the region leader. As a form of attention and public participation due to ignorance or a form of loyalty of political support, especially Ahok's supporters on the region head election, many are asking about how the continuity of Ahok's candidacy with the legal status as a suspect.

The determination of the status of a suspect to Ahok (Djauhari, 2011). at the time of the region head election in 2017 in Jakarta had raised many public questions about the continuity of his nomination as a candidate of region head in the election process as the first case in the simultaneous region head election in 2017. The number of questions from the public at least because of ignorance of how the provisions of the legal and also as a form of participation and political awareness in the election process of region head. Especially for his

supporters, Ahok's determination as a suspect at least has affected the integrity and electibility of the nomination as a candidate of the governor of the Jakarta capital.

It is important to emphasize that the determination of the status of a suspect by the Indonesian National Police to Ahok or another candidate in the election in 2018 after being elected as a candidate of region head by the Region Election Commission. The focus of this study is to examine the continuity of nominating candidates for region head in elections which is determined as suspects according to legal election in Indonesia.

## **2. Discussion**

### **2.1. Candidate and nomination process of the region head in Indonesia**

The exposure of candidate and nomination process is needed to illustrate that to nominate him/herself which is then followed by the nomination of a political party or a coalition of political parties in a region head election is actually a long process to go and not easy to follow by all citizens and by any political party.

In accordance with the legal principles and human rights, every citizen has the same right to be nominated as region head either through a political party or individual candidate. To nominate as candidates of region head must meet the requirements set forth in the election law of the region head. As determined in the electoral law, the candidate of the region head shall be composed of candidates nominated by a political party or a coalition of political parties and individual candidates (The provisions of Article 39 section (1) of Law Number 8 of 2015).

A political party or coalition of political parties can nominate a candidate pairs of region heard if at least have at least 20% of the total seats in the Region People's Representative Council or 25% of the accumulation of valid votes in the general elections of member of the Region People's Representative Council in the region concerned (The provisions of Article 40 section (1) of Law Number 8 of 2015). Whereas candidates of region heard of individual elements can nominate themselves as candidates for governor, regent and mayor if eligible to support of the number of residents who have the right to vote and be included in the permanent voters list in the last general election or the last previous election in the region concerned (Provisions of Articles 41 and 42 of Law Number 8 of 2015).

A statement of support to individual candidates by residents is made in the form of a letter of support accompanied by a photocopy of the Electronic Identity Card or a certificate issued by the civil service and civil registry. The format of support statements to individual candidates shall be further stipulated in the Regulation of the General Election Commission.

Based on the description of the requirements of the nomination of region heard above, it appears that the onerous of the requirements that must be fulfilled in the nomination of region heard, both nominations proposed by political parties and individual candidates that is a requirement of political support of citizens and substantial funding support. Based on this reasoned if the candidate of region head to be able to follow the election process and win the election will seek to seek capital as much as possible to support and win the

election process (Rumesten, 2014). It has led to corruption behavior by the candidate to support election financing to win the election.

## 2.2. Procedures and conditions of nomination of a candidate of region head in region head election

Procedures and conditions of the nomination of the region head and their deputy has been regulated in the election code of the region head. The regulation of procedures and requirements for the nomination of region head in elections shall be strictly and completely regulated to prevent conflicts and confusion in the process and determination of candidates promoted by political parties or coalitions of political parties (Fajriyah, 2017). The importance of the regulation on the requirements and procedures for the nomination of the region head shall be fully regulated to prevent confusion in the determination of candidates and nominations by the region political party officials in addition to providing legal certainty.

Based on the nomination provisions, it is showed that the local political party does not have the right to appoint a candidate to be supported by a political party or a coalition of political parties in the contestation of the region head election. The provisions on the nomination also strengthen the strong domination and absoluteness of the central leadership of political parties in Indonesia in the determination of candidates for region head. It is indicated by if there is defiance/ rejection/election of election party political party or does not enforce the decision of central leadership of political party, election code gives right to central leadership of political party to expropriate/ register directly to candidate pair which has been approved by official of central political party without consultation of administrators in the regions if not performing registration in accordance with the decision of central leadership of political parties (Article 42 section (6) of Law Number 10 of 2016).

The provision of article 42 of the election code also affirms the strength of the dominance of the board of central level political party in determining the candidate for region head in the election contest of region head which has been supported by the party since the Reformation era (Nge, 2018). Therefore, the strengthening of the ideas and demands of democratization in the nomination of region head by region political parties and the study of democratization of political parties by academics proved to be very far from the expectation to be realized based on the regulation of the election (<https://pusako.or.id/index.php/hasil-research/147-proceedings-khtn-3>).

In order to prevent the withdrawal of rewards or "extortion" by a political party to a candidate of region head in order to obtain a nomination recommendation or approval, the Law of election of region head has prohibited the Political Parties from receiving any compensation or levy in the nomination process which in Indonesian politics practice terminology called "political party dowry" (Article 47 of Law Number 8 of 2015). Although it has been regulated in the general election law but in practice, it is difficult to be eliminated or avoided because the political democratization culture within political parties and transparency is still not fully established. Therefore, this is one of the factors that led to the election of region head as expensive political contestation and the trigger of corruption by candidates from the incumbent (<https://nasional.kompas.com/read/2016/09/27/16560571/biaya.pilkada.picu.korupsi>. accessed 6 Mei 2018).

In political practice there are several terms used to refine the term "recommendation rewards for the nomination of the region head" which is often put forward by the mass media with the term "political dowry" or "political operational costs" or "political costs" whose substance is no different (same) the concept of reward. The threat of political sanctions and administrative penalty for violation of region head election is in the form of prohibition of nominating a spouse in region head election in the next year in the same place and a fine of ten times is actually quite advanced penalty compared to the previous rule although the provision is very difficult to prevent pick up the money to the candidate which is proposed by the Political Parties. Certainly, it is not wrong if there is a statement that the high cost of politics in the election of region heard is one factor causing the decrease in the quality of democracy in the election of region head (Sinaga, 2018).

### 2.3. Implication of legal decision as a candidate of region head and a political party that requires

A review of the legal implications of candidates for region heard determined by the General Election Commission and the political party that support the region head is important because it is the core of this writing. The legal consequences are binding on both parties in the next election process.

The nomination to be determined as a candidate of region head in an election contestation by the Region General Election Commission is not easy. In addition to the requirements for the nomination of regional heard, the assessment and determination of the central leadership of political parties play a role as an important key is also onerous.

The election of the region head as a region political agenda that is held simultaneously must be ascertained the process and the result as an election that has legal legality and right political legitimacy. Because it must be maintained through the legal system of election, that the election process should not occur interruption and stalled before completion. Therefore, it is needed legal to be able to provide certainty and prevent chaos.

The prohibition of resigning candidate for region heard nominated by a political party or a coalition of political parties with some legal consequences for the political party concerned as well as individual candidates accompanied by the threat of administrative fines is a form of approach to election legal in Indonesia that prioritizes certainty legal approaches. The certainty legal approaches in Indonesia's election legal is deemed very appropriate based on the following considerations. First, the election of the region head is a political activity and process that has a broad social impact and high risk of conflict in Indonesia in case of implementation problems. The near distance of residence between the candidate of region head and the supporters will be easy to mobilize by the candidate or region political figure of supporters to act or do something so it is very risky the occurrence of social conflict problems that are very difficult to do social recovery. Secondly, the level of political awareness and obedience to the law of some Indonesian society is relatively unstable, easily influenced and pitted against each other, and thirdly, the ethnic pluralism of Indonesian society with the complexity of social problems of the Indonesian nation is very easy to occur ethnic friction.

The prohibition of resigning candidates for region heard supported by a political party or a coalition of political parties with some legal consequences for the political parties concerned as well as individual candidates accompanied by the threat of administrative fines is a form of approach to election law in Indonesia

that prioritizes certainty law approach. The certainty law approach in Indonesia's election law is deemed very appropriate based on the following considerations. First, the election of region heard is a political activity and process that has a broad social impact and high risk of conflict in Indonesia in case of implementation problems. The near distance of residence between the candidate of the head and the supporters will be easy to mobilize by the candidate or region political figure of supporters to act or do something so it is very risky the occurrence of social conflict problems that are very difficult to do social recovery. Secondly, the level of political awareness and obedience to the law of some Indonesian society is relatively unstable, easily influenced and pitted against each other, and thirdly, the ethnic pluralism of Indonesian society with the complexity of social problems of the Indonesian nation is very easy to occur ethnic friction.

What is the legal effect on candidate pairs of region heard and political parties or coalitions of political parties that have registered a candidate of region heard to the Region General Election Commission? The consequences of post-stipulation of a candidate for region heard by the Region Election Commission is varied between candidate pairs supported by political parties with individual / independent candidate as well as political parties that support a candidate.

The legal consequences of a political party or a coalition of political parties proposing a candidate for region heard by election law are clearly stipulated. Arrangements are clearly intended to prevent conflicts between political party leaders in determining proposed candidate, replacements or withdrawals. The intelligibility of the arrangement is also intended to provide the surety of legal certainty to all parties, that the process and stages of nomination and the determination of candidate are done with certainty.

The legal consequences for a political party or a coalition of political parties which nominate the candidate pairs of region heard governed by the law of elections include: 1) Withdrawing or replacing the candidate pair that has been nominated, 2) If a political party and a coalition of political parties withdraw the candidate pair of the Political Party or a coalition of nominating political parties cannot nominate a candidate pair.

Both forms of legal consequences for political parties after the determination of candidate pairs by the region electoral commission are absolute so that must be obeyed by party officials so that the election process can run have legal certainty, fair, honest and objective.

In order to continue to provide an alternative choice of candidates of region heard to the voters, the election law gives the right to a political party to replace the proposed candidate pairs if the candidate who has been determined by the election commission is permanent absent due to death (Article 54 section (1) of Law Number 10 of 2016). It means that the replacement of a candidate can only be done because of death only. Replacement of candidate pairs whose permanent impediment is limited since the stipulation of the candidate up to 30 days prior to the implementation of the voting. The granting of the right to substitute a candidate for a region head to a political party nominating a candidate and individual candidate when there is a permanent impediment to the death of one of the candidates.

For individual candidate pairs (non-party) in the event of a permanent impediment (died) of one, if within 30 days before the voting is also given the right to make a replacement (Article 54A section (2) of Law Number 10 of 2016). The replacement is nominated by one of the remaining partners, but if in that time there is no

replacement then the candidate is declared a candidate by notifying the public by the region election commission (Article 54A section (4) of Law Number 10 of 2016).

The legal consequences for individual candidate pair of region heard (non-party) after being appointed as a candidate for region heard are a prohibition to resign. If they withdraw from the nomination the candidate pair will be given administrative penalty sanction in the form of a fine of twenty billion rupiahs for the candidate of the governor and amount to ten billion rupiahs for candidate regent/mayor (Article 53 section (4) of Law Number 8 of 2015).

The problem further is why there is a different sanction treatment in the law of region election for an individual candidate with a candidate who is nominated by political parties who resign. For a resigned individual candidate is given a considerable administrative fine while the candidate who submitted by a political party is not given administrative fines? Political parties are only forbidden to attract candidate pairs to be nominated after being established. An unjust and discriminatory arrangement in election law of region head is hard to find in the election law. Should candidate from any of the same offenses are also given the same sanctions? Elucidation of the article governing the provisions of sanction is not listed in the explanatory section.

After a candidate pair of region heard is determined later if any candidate pairs resign or a political party or coalition of political parties that nominate candidate to withdraw their candidate pairs from election contestation, the general election law of region head has locked up with the threat of tougher sanctions that if violated can affect loss to the credibility of the party itself. Such arrangements are aimed in order for the democratic party as a form of sovereignty implementation of the society in the region and have a high level of social conflict sensitivity is not underestimated. Because if not accompanied by the threat of sanctions are quite severe feared will be able to disrupt the region head election process of a social area prone to conflict (Husen2016).

The threat of sanctions as a legal result of a violation of a prohibition for a political party or a coalition of political parties nominating candidates and resignations by an established candidate pair is designed to prevent and ensure that the election process must continue until elected a democratic, fair, region head and have strong political legitimacy.

#### 2.4. Rights and obligations of the candidate of region head in the selection process

The registrars of the election of region heard after completing the specified and eligible conditions are eligible, then stipulated as a candidate of region heard by the region election commission. After they are established as a candidate for region head then at that time also attached to him the rights and obligations as a candidate for region head.

The rights and obligations of candidates for regional heard have been regulated in Articles 63 to 73 of Law Number 1 of 2015 on Stipulation of Government Regulation in lieu of Law Number 1 of 2014 on the Election of Governor, Regent and Mayor became Law as amended the second by Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015.

Based on the provisions, the candidate of region head determined by the General Election Commission have the right to continue to participate in the election process of all series of election activities such as conducting campaign to convey the vision, mission and goals as candidate for the region head to gain sympathy and support from the voting community.

Based on the provisions, all candidates of region head have the same rights and obligations as well as candidates of region head who are designated as suspect also have the same rights as other candidates who have no legal problems. It's just that the candidate of region head is designated as a suspect, then the right to be able to perform activities in relation to the election as the campaign is not as free as the other candidates who are not specified as a suspect. Because a candidate of region head who is a suspect is in custody so to conduct such offensive activities as a campaign outside of detention requires the permission of a detaining law enforcement agency.

Based on the description indicates that the candidate of region head nominated by a political party and then determined as a suspect by law enforcement authorities can not be replaced and also should not resign. Whereas candidate of region head who come from an individual (non-political party) if resigned are threatened with the sanction of an administrative fine is big enough. A big threat of fine and certainly very heavy for an individual candidate. Therefore, under such condition, there is a candidate for the regional head who assumes moral and legal burdens as a suspect in the electoral process because they cannot resign and also cannot be withdrawn and replaced and must continue to follow all election stages until completion.

## 2.5. Legal implications for selected candidate pairs of region head with as a suspect status, defendant, and convict

The legal status of candidate for selected region head, in reality, there are various possibilities, namely the status of suspect, defendant, and also convicted. Each legal status of the candidate for the region head has its own legal implications according to the law of region head election.

The determination of candidate pairs of region head nominated by a political party or coalition of a political party in the selection process shall be conducted under strict and measurable conditions both ability and personality (Dede, 2015). It is different when compared to a candidate for region head from individual (non-party) elements that do not process as a candidate nominated by political party or coalition of a political party. Therefore, the candidate of region head nominated by a political party has a greater chance to be able to get a better candidate of region head.

The development of the region head election process simultaneously in 2018, there are several candidates for region head nominated by a political party who the status of a suspect expelled by the Corruption Eradication Commission for allegedly committed a criminal act of corruption. An action that is mostly done by a candidate of region head who is serving as region head (incumbent candidate) in the simultaneous election process in 2018.

For the selected candidate of the region, head designated a suspect, defendant, and convicted, election law has anticipated and regulated him/her (Law Number 10 of 2016, Article 163–164). The anticipation of the



arrangement seemed to provide an illustration and the way, that there will be many candidates for region head who have the status as a suspect in the contest of region head election.

As a form of legal certainty approach in election law, the prescribed region head candidate is forbidden to resign or be replaced by a political party unless permanently reason due to death and within 30 days before voting. Therefore, even though the candidate for region head is designated as a suspect, the defendant and the convicted will continue to follow the election stage.

For the candidate of the region head or candidate of selected vice region head designated as a suspect, he/she will remain inaugurated as region head or vice region head by authorized. Whereas the candidate of region head or candidate of selected vice region designated as a defendant also remains inaugurated as region head or vice region head. But at that time also followed by the decision of temporary dismissal as region head or vice region head.

Then if the candidate of the elected region head or candidate of elected vice region head is determined to be a convicted person based on a court decision that has obtained permanent legal force at the time of inauguration, then the person remains inaugurated as region head or vice region head and at that time followed by the dismissal of the region head or vice region head.

### 3. Conclusion

The legal system for the election of region head in Indonesia does not invalidate a candidate of region head with suspect, defendants and convicted status. The prescribed a candidate of region head is prohibited to resign or can not be replaced by a political party who nominates despite being a suspect. Replacement of candidate of region head can be done only for reasons of absence due to death. The onerous of the requirements of nominating for region head and the legal implications of post-determination of a candidate make the position of region head as political beliefs that must be implemented in accordance with the determination of tenure that is 5 years. To produce a good candidate for region head, strong political integrity and legitimacy are required to provide candidate of region head at least two candidate pairs. Therefore, it is necessary to reconstruct the law of region head election to be able to replace the candidate of region head appointed as a suspect, defendant and also convict.

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