

Setting The Principles of Democracy in The Appointment of A Single Candidate Spouse of Regional Heads

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Abstract

This research aims to analyze the regulation of democratic principles in filling the position of regional head in single candidate pair. This study uses normative juridical research by conducting legal analysis of legislation related to the filling of local government positions and legal issues related to the Decision of the Constitutional Court No. 100/PUU-XIII/2015 on the constitutional requirements of regional head elections (candidates' spouses). The results showed the regulation of democratic principles in filling the position of regional head in the case of a single candidate pair can use two mechanisms, namely using the electoral mechanism (Based on Law No. 10 of 2016 as a follow-up to the Decision of Mk No. 100/PUU-XIII/2015) or the mechanism of appointment, as long as the appointment is done by officials who have been directly elected. Furthermore, the arrangement of the mechanism of appointing a single candidate of regional head in Indonesia can follow what has been implemented in the United States that implements uncontested elections if after the nomination period ends still produces only one candidate, then the candidate's spouse is immediately considered valid as the spouse of the elected candidate and can be legally appointed as the head of the new period. Filling the position of regional head that there is only 1 (one) candidate pair is using the mechanism of appointment, while if there are 2 (two) pairs of candidates or more still use the election mechanism.

Keywords: Revocation of Political Rights, Crime, Corruption, Judge's Decision

1. Introduction

Filling the position of Regional Head is *conditio sine qua non* in the implementation of democratic local government. Article 18 paragraph (4) of the 1945 NRI Constitution, as the basis for filling local government positions, affirms "governors, regents, and mayors respectively as heads of provincial, district, and municipal governments are democratically elected" (Huda, 2011). The phrase "democratically elected" does not have to be interpreted as directly elected by the people, but it can be interpreted as democratic, as long as it is democratic. The

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Article's Information:

DOI:

<https://doi.org/10.35326/volkgeist.v5i2.844>

Constitutional Court also strengthened this through the Decision of Mk No. 72-73/PUU-II (MK-RI, 2004).

Historically, based on Law 5/1974 on The Principles of Local Government until Law 22/1999 on Local Government is unakanrepresentative democraticmechanism. However, after the enactment of Law 32/2004 on Local Government, the mechanism of direct democracy is used even applies until now with its last amendment through Law 10/2016 on the Election of Governors, Regents, and Mayors (abbreviated election law).

Since 2015 local elections have been held simultaneously in various regions in Indonesia which are then accommodated through Law 8/2015 on the Election of Governors, Regents, and Mayors. It's just that the Law is not complete so there is something new that is beyond prediction, namely the holding of elections for single candidates against empty columns.

The presence of a Single Candidate Pair in elections, certainly inseparable from the role of political parties, pragmatism of political parties by conducting transactional political practices to obtain short-term political incentives after elections, party management conflicts, and the thick practice of party oligarchs give way to the presence of a single candidate pair. In addition, it is also caused by the requirement of a threshold record that is too high. Thus, the increasing number of Paslon Tunggal in elections certainly invites questions about how effectively political parties perform their functions as a forum for political education, political socialization, aggregation of political interests, and recruitment of public officials.

Therefore, some civil society groups filed judicial reviews to the Constitutional Court related to the Election Law. The decision of the Court of Justice a quo states to use the plebiscite system which is a mechanism of selection determined based on the choice of the majority between agreeing and disagreeing for the candidate's spouse that has been determined by the KPUD.

Although the number has increased since the Court opened the opportunity to elect 1 (one) candidate pair, but the phenomenon of Single Candidate Pairs has emerged before the Court decided Case No. 100/PUU-XIII/2015. Before September 29, 2015, there were 3 local elections that were only followed by one candidate's spouse, at least until the deadline for registration of candidates.

Based on Law 10/2016 (Election Law) as a follow-up to the decision of the Court, theelectoral mechanism is used with a single candidate against an emptybox. But that condition is certainly not the ideal expectation of many parties, because the empty box is not a substantive solisi but just a technical solution that certainly does not solve the problem fundamentally, especially if it is connected with various references to the deepening of a more substantial democracy (Idris Patarai, 2019).

The decision of Mk No. 100/PUU-XIII/2015 and Law 10/2016 has clarified how to fill the position of regional government showing off that there is only one candidate pair. But technically, although both use the electoral mechanism in filling the position of one-candidate local government, still have differences in terms. The plebiscite system and emptyboxes are both aimed at determining the winner. It's just that if the plebiscite, working with standing tries to convince voters, while the empty boxes of candidates are faced with a pseudo object. Therefore, if rationalized it is better to use a plebiscite mechanism. Apart from the two electoral techniques for filling local government positions that provide only one Candidate Pair, actually by returning to the principle of democracy, the way of filling government positions through appointment is also

contained in that principle. In the United States there is an uncontested election because there is only one pair of candidates for leader after the registration period runs out. The person in question is then determined as the winner. In Canada it is known as acclamation. In the United States the term work over (Isharyanto, 2018).

The concept of democracy continues to evolve from procedural practice to substantive in nature (Ilmar, 2014). Meaningful democratic elections in a flexible democracy, between direct democracy and representative democracy. Thus, if it is understood how to fill government positions through the appointment of government officials who have been elected through direct elections, then the appointment is the embodiment of representative democracy.

Filling the position of local government of a single candidate can streamline the implementation of regional head elections held simultaneously in order to save costs. It is also more rational to use the mechanism of appointment, because how it is possible to hold elections, while there are no other options. That the certainty of filling a special government position for a single candidate is more in accordance with the mechanism of appointment. A position that will carry out policies against strategic interests, especially permanent positions that are local government, can not be by simply handing over to government officials (temporary officials) as executors of duties that are limited to the time and authority of his office.

Therefore, the principle of democracy is also important to be re-interpreted in the filling of local government positions where there is only one candidate pair. Because the principle of democracy in filling local government positions is not always in the mechanism of direct elections. Direct democracy can be used for the election of regional heads who provide 2 (two) or more candidate pairs (Damang, 2015a). While indirect democracy can be used through the mechanism of appointment by government officials who have been directly elected, especially the Regional Head Election that only provides one Candidate Pair, for that can be raised the formulation of the problem is how the regulation of democratic principles in filling the office of regional head in the case of a single candidate pair.

2. Methodology

The types of research used in this study, namely: normative juridical research that is legal research conducted by researching library materials or secondary data (Soekanto & Mamudji, 2014). Primary legal material is a legal material that is authoritative, meaning it has authority. Primary legal materials consist of legislation, official records or treatises in the making of legislation and decisions of judges. In this case the primary legal materials include (Marzuki, 2008): NRI Constitution 1945, Local Government Law, Law No. 10 of 2016 on the election of Governors, Regents, and Mayors and Constitutional Court Decision No. 100/PUU-XIII/2015 on the constitutional requirements of Regional Head Elections (spouses of candidates), as well as other rules relevant to this research. Secondary legal materials that are legal materials that aim to provide explanations to primary legal materials also serve as supporters of primary legal materials obtained from various relevant literature, such as: books, journals, scientific works, and other sources relevant to the problems in this study.

In order to obtain legal materials relevant to the discussion of this paper, the technique of collecting legal materials through library research is carried out. Literature research is conducted by collecting primary legal materials as well as secondary legal

materials as materials that each can support each other in describing the answers to problems in this study. The analysis of legal materials used is qualitative analysis. That is, the technique of processing legal materials conducted through the description of the results of research by using a comparison approach.

3. Result and Discussion

3.1 Setting the principle of democracy in filling the post of regional head in the case of a single candidate pair

In this subsection there are two points that will be outlined related to the principles of democracy. First, the principle of direct democracy is by direct election mechanism against the Spouse of a Single Candidate of the Regional Head as stipulated in Law No. 10 of 2016 which is an amendment to Law No. 8 of 2015 concerning the Election of Governors, Regents and Mayors as a follow-up to The Decision of Mk No. 100/PUU-XIII/2015.

Second, the principle of indirect democracy is through rapture. This point will be elaborated by using a conceptual approach to establish a legal reasoning that the mechanism of appointment in the event that only one Candidate for Regional Head remains in accordance with the principles of democracy (indirect democracy) as long as the appointment is done by officials who have been directly elected.

a. Direct Selection

Adagium "*het recht hinkt achter de feiten aan*" (the law goes tattered following reality), now finds its validity in the Electoral Law (Shidarta, 2013). The emergence of a single candidate in the regional elections is a lesson that democracy that runs in a state of practice will always develop dynamically, and the law must be able to keep up with the development of the community (Damang, 2015).

Law No. 8 of 2015 on amendments to Law No. 1 of 2015 concerning the Determination of Perpu No. 1 of 2014 concerning the Election of Governors, Regents and Mayors, completely closes the presence of Spouses of Regional Head Candidates consisting of only one spouse or in other words there has been a legal vacancy (*recht vacum*). The legal vacuum will result in the inability to hold regional head elections which is the implementation of people's sovereignty, so that the legal vacuum threatens the right of the people as sovereign holders in the form of the right to be elected and the right to vote. The people became unable to exercise their rights because the two candidates' spouses were not fulfilled.

Because of the legal vacancy, when there are 3 (three) regions that only provide one candidate pair, namely (Tasik Malaya Regency, Blitar Regency, and North Middle East Regency), finally Law No. 8 of 2015 submitted judicial review to the Constitutional Court by Effendy Gazali and civil society groups. Prior to the birth of the Decision of the Constitutional Court No. 100/PUU-XIII/2015, the KPU had first set further related to the single candidate of regional heads, namely through KPU Regulation No. 12 of 2015, but the emergence (PKPU) did not resolve the issue because the right of the people to be elected and vote still could not be implemented.

The enactment of the rules of the *a quo* does not solve the problem because: first, the delay to the next simultaneous election has actually eliminated the right of the people to be elected and vote in the concurrent elections at that time. Second, the delay can be justified but there is no guarantee that at the next simultaneous election the right

of the people to be elected and to vote will be fulfilled. That is because the potential of not being able to fulfill the right of the people to be elected and vote remains, which is a provision that requires at least two candidates in the contest of regional head elections.

Therefore, the granting of judicial review application for the case of Single Candidate Spouse through the Decision of the Constitutional Court No. 100/PUU-XIII/2015 means that any provision that does not accommodate a Single Candidate of regional head is considered invalid. The decision of the Court of Justice a quo is to guarantee the constitutional rights of citizens, that the election of the head of the region must still be held even though there is only one candidate pair.

Based on the Decision of Mahkamah Constitution a quo, then was born Law 10/2016 on the Election of Governors, Regents, and Mayors that provide legal consequences that the implementation of direct elections must still be carried out by the KPUD even though there is only one pair of regional head candidates available. Either in the case of only one Candidate Spouse who registers, or more than one who registers but does not pass verification, or the cancellation of the determination of the Candidate's Spouse, so that there is a Single Candidate of the Regional Head.

Although the Decision of the Constitutional Court No. 100/PUUXII/2015 and Law 10/2016 gave legitimacy for the implementation of local elections with a Single Candidate Pair. Still, there are different regulatory patterns regarding the selection of a single candidate for Regional Head. The Constitutional Court in consideration of The Court's Decision No. 100/PUU-XIII/2015 recommends that a plebiscite mechanism be used, i.e. the people make their choice by stating "agree" or "disagree" with a single candidate's spouse. Not with the confronting of a single candidate against an empty box as stipulated in Law 10/2016. Basically, the plebiscite system and empty boxes will both lead to the election or whether or not a single candidate is elected in the Regional Elections. But if observed the two systems have different philosophical foundations that have different legitimacy consequences for each other.

In the empty box system, voters are faced with pseudo-subjects (empty boxes), which will certainly result in pseudo-contestation as well. And finally, when a single candidate gets the most votes, he basically does not win the contest, but simply wins because he is facing not the participants of the election. In contrast to the plebiscite system, the Candidates will do real work by influencing and convincing voters to "agree" with him or her as Regional Head. That is, there is no pseudo contest and the pattern of victory is also the result of real work. Therefore, by following what the Constitutional Court said in its ruling is much better, the plebiscite system implemented in the 2015 local elections does not leave a negative note that should be used as an excuse to replace it with an empty box system.

Not only that, the determination of candidates elected in Law 10/2016, a single candidate pair must obtain more than 50% of valid votes or absolute majority. Article 107 paragraph (3) confirms:

In the event that there is only 1 (one) pair of Candidates for Regent and Candidates for Vice Regent as well as spouses of Mayoral Candidates and Candidates for Deputy Mayors of Election participants get more than 50% (fifty percent) of the valid votes, determined as the spouses of candidates for regents and candidates for vice regents elected as well as spouses of mayoral candidates and elected deputy mayoral candidates.

While for the existing 2 (two) candidate pairs applied a simple majority system(s). Article 107 paragraph (1) governs it:

The spouses of Candidates for Regents and Candidates for Deputy Regents as well as spouses of Mayoral candidates and Deputy Mayor candidates who get the most votes are determined as the spouses of candidates for regents and candidates for vice regents elected as well as the spouses of mayoral candidates and elected deputy mayoral candidates.

The application of absolute majority is certainly an anomaly because first, all regions with broad autonomy status have the same position so that there is no policy that treats it differently from any aspect, including the terms of choice of regional head. Second, the application of the absolute majority system is not in the same way as the decision of the Constitutional Court which in no way determines the minimum requirement for voting to be determined as a candidate elected in a single candidate election. The Constitutional Court only affirms that if the "agreed" option gets the most votes, then the candidate's spouse is designated as the elected regional head. Third, the application of an absolute majority means absolutely nothing in the middle of the subject that the people will choose only the candidate's spouse or empty box. Whoever wins, will certainly get more than 50% of the vote. Finally, setting the minimum requirement of more than 50% of the vote for a single candidate is only a waste.

Regardless of the decision of the Court which is "final and binding", the decision of the Constitutional Court No. 100/PUU-XIII/2015 also implies the issue of regional head election disputes, namely related to the legal standing of a single candidate to apply for disputes resulting from the Regional Head Election, because in Law 8/2015 is only designed for the election of regional heads with 2 (two) Candidate Pairs or more.

Although it has been established Regulation of the Constitutional Court No. 4 of 2015 concerning Guidelines for Proceedings in Disputed Election Results of Governors, Regents, and Mayors with One Candidate Pair. However, the Constitutional Court through its Rules has clearly established a new norm for a single candidate to be a party to the dispute over the results of the Regional Head Election. *Ius operatum* established by the Constitutional Court has deviated from the science of legislation, because the implementing regulations are only justified in terms of technical and legal implementation.

Another important point underlined in the Regulation of the Constitutional Court, namely the granting of the right to election monitors to be a party in the case of disputed results of regional elections. Whereas it is difficult to regulate the "subjectification" of such parties. Certainly, different legal status between the spouses of the losing candidates because clearly, he already represents the overall "objection" of the people (voters) who have voted for him. It is unlikely to happen for the election monitor, that the loss of the election result is really related to him. Nevertheless, the regulation of the Constitutional Court was made as a guideline in terms of Disputes over the Results of the Election of a Single Candidate of the Regional Head without being regulated in Law No. 10 of 2016 which is an amendment to Law No. 8 of 2015.

Therefore, it should be legal standing of a Single Candidate and election monitors in the Disputed Election Results of regional heads stipulated in Law No. 10 of 2016, it becomes mandatory to be regulated so that the Regulation of the Constitutional Court is not contrary to the Election Law of Governors, Regents, and Mayors. So the lawsuit by the election monitor and involving a single candidate as a party to the dispute over the results of the regional elections in the 2015 regional elections is not repeated. Apart

from the discourse of the above debate, the point is both the Decision of the Constitutional Court No. 100/PUU-XIII/2015 and Law No. 10/2016 is a form of legitimacy over the principles of local democracy with a pattern of direct democracy.

Table 1 Mechanism of Filling the Position of Regional Head of One Candidate Pair

LEGAL BASIS	JOB FILLING MECHANISM
Court Decision No. 100/PUU-XIII/2015	Direct selection with the plebiscite system
Law No. 10 of 2016	Direct selection with empty roofing system

b. Appointment (Indirect Democracy)

Prior to the Decision of the Constitutional Court No. 100/PUU-XIII/2015, legal experts and political elites responded to the case of regional head elections that provided only one Candidate Pair. At that time there were several proposals to accommodate the Regional Head Election that only provided one Candidate Pair, including:

1. Through contesting (elections) with an empty roof system or referendum/plebiscite (Anggraini, 2015),
2. By rapture (Damang, 2015c).

So, there are two mechanisms for filling local government positions in case there is only one candidate pair, namely using the electoral mechanism or using the appointment mechanism. If referring to the Court's Decision No. 100/PUU-XIII/2015 and Law No. 10 of 2016, have clearly determined that the mechanism used in filling the position of Regional Head there is only one Candidate Pair, namely through elections. It's just that in terms of filling the position of Regional Head who only provides one Candidate Pair, a rational mind will say that there must be two or more candidates in order for the "election" to be held. Although justified by the law the existence of empty boxes is also questionable because if observed, empty boxes are not legal subjects that can be subject to rights and obligations.

Logically it is concluded that how possible the election is while there is only one candidate. So, instead of the position being vacant, it is better to endorse the existing candidate through the way of appointment. Because if there is a vacancy of a position will certainly cause conflict in society, by re-tracing the theory and nature of the formation of the state, it can strengthen the basis of arguments related to this, both natural law theory and social contract theory basically requires that the formation of the state is as a means of controlling or suppressing conflict.

Therefore, legal discovery must be made with conceptual approach (conceptual approach) to the legal events of the state. Because Article 18 of the 1945 NRI Constitution, which became the basis for filling the position of Regional Head either through grammatical or historical interpretation, there is still no "provision" explicitly or implicitly regarding the filling of the position of Regional Head of which there is only one Candidate Pair.

Here is the legal reasoning so it is more appropriate to use the mechanism of appointment in filling the position of Regional Head which is only available one Candidate Pair:

1) Doctrine

Maurice Duverger pointed out that filling local government positions using the appointment mechanism will remain democratic as long as the candidate for government official is appointed by an official who has been elected by election. This means that there is no denial of democracy if any official is appointed by an official who has been directly elected by election (Duverger, 1951).

In line with hamdan zoelva view There are at least two principles contained in the formulation of "democratically elected regional heads" Zoelva (2008), namely the first: regional heads must be "elected", namely through the electoral process and it is not possible to be directly appointed, and secondly: elections are conducted democratically. The democratic meaning here does not have to be directly elected by the people, but it can also mean being elected by the DPRD whose members are also from the results of democratic elections through elections.

Maurice Duverger gave the example that filling local government positions with a referendum or plebiscite system was initially practiced in the Soviet Union, which came to be known for its dictatorial system of government. Therefore, if this system is applied in the filling of local government positions that provide only one Candidate Pair, then it can be said that a system that tends to be undemocratic.

It is also important to note that by enacting a plebiscite system the main target is if it does not approve of the government's policy (old regim), then the electorate will drop the choice of disapproval of the only candidate. Unlike in Indonesia, which with its multiparty system, no regim can last long because all political positions (government) have been held restrictions on the personal position.

Then is there an element of government that monarchy if the mechanism of appointment is used in the filling of local government positions that there is only one Candidate Pair? The answer is, no. Because however the mechanism of filling local government positions used today, no personal position can survive in his position, because there is a limit of positions only up to 2 (two) periods.

2) Legal Principles

- a) There is an underlying legal principle that in terms of filling the position of Regional Head that there is only one Candidate Pair is appropriate by using the mechanism of appointment, the legal principle is divided into 3 (three) points, namely:
- b) Principles of democracy, democracy Pancasila
- c) Each competition must be ended (legal certainty)
- d) Each position must be filled by a personal position.

The understanding of democracy is in accordance with the development and demands of society. To distinguish a form of democracy, often coupled with adjectives, so that it becomes a characteristic of democracy embraced, such as Pancasila Democracy (Ruslan, 2013). The first legal principle, "Principles/principles of democracy, democracy Pancasila" may have been answered in the doctrine that has been outlined earlier. That the mechanism of appointment in the filling of government positions continues to meet the principle of democracy, as long as the appointing official is a person of office who is elected by direct election. It's just that what distinguishes it from direct elections is that in direct elections the people are closer to

officials, while the mechanism of the appointment of the people is far from the government officials.

Related to that by relying on the basic norms in our country (pancasila), in the fourth precept better known as pancasila democracy based on deliberation, the deepening is more in accordance with the mechanism of appointment for the filling of local government positions. It can also be re-examined Article 18 of the 1945 Constitution which clearly lists the principle of deliberation, meaning the mechanism of appointment as the manifestation of pancasila democracy, that determines the filling of local government positions given to officials who have been directly elected.

The second legal principle, "every competition must be ended." Verdict MK No. 100/PUUXII/2015 and Law 10 of 2016 specify that if the spouse of the one candidate is not elected (does not get a majority of votes), there will be re-election in the next Regional Head Election. So dengan use the mechanism of selection of one Candidate Pair, the legal consequences allow will not end the competition (election), because if the spouse of the candidate is not elected, then it must be re-held elections. Such a solution still does not guarantee the realization of the principle of legal certainty, because there is still a possibility in the next election of the Regional Head, will not be re-elected government officials. Therefore, to ensure legal certainty remains realized, it can only be used a mechanism of appointment that still meets the principle of democracy, which is also commonly practiced in the state of the United States, in the event of a single candidate for Regional Head.

The last legal principle, "every office must be filled by a personal office." By using the appointment mechanism does not raise any more concerns, a position will be vacant from the personal position. In contrast, if using the mechanism of selecting a plebiscite system or empty boxes, there is still the possibility that the position will not be filled by the personal office, because the majority of the votes are not obtained from the election results. Which one to take precedence over, is it "the sovereignty of the people" or the officials who will take care of the will of the people? It is more beneficial if there are officials who can run the wheels of government desired by the people. With the presence of officials in a government position, the nature of the state becomes active (Logeman). So it is not allowed to fill government positions experiencing delays.

c. Law

Article 54 D paragraph (4) of Law No. 10 of 2016, confirms: In the event that no candidate is elected to the election results as referred to in paragraphs (2) and (3), the Government assigns the acting Governor, acting Regent, or acting Mayor. The above provisions provide further consequences that with the unelected spouse of a single candidate of the regional head (not obtaining a majority vote), then the filling of positions by temporary officials. Basically the provision has 2 (two) weaknesses in relation to the regim of Local Government and regim of Regional Head Elections, namely:

1. Acting officials cannot act in policies of a strategic nature,
2. With the simultaneous regional head elections (in 2029), regional head elections can only be held once in five years for all regions, allowing local government positions with temporary officials to take place for five years.

The first point, with the implementation of filling positions by temporary officials, there is a policy that can not be carried out by the temporary officials that certainly harms the area concerned. In Government Regulation No. 49 of 2008 concerning the

Third Amendment to Government Regulation No. 6 of 2005 concerning The Election, Ratification of Appointment, and Dismissal of Regional Heads and Deputy Heads of Regions, indeed temporary officials can carry out the intended policy but provided that it must obtain approval from the Minister of Trade. The consequences mean that the implementation of local government no longer adheres to the principle of decentralization whose purpose is to further accelerate the achievement of community welfare, but is centralized because the temporary officials of a region in 4 (four) jurisdictions are limited through the approval of the Minister of Home Affairs (Hasrul, 2017).

This is the weakness that will be caused if using the electoral mechanism in filling the position of a single candidate of the Regional Head. Vulnerable to filling positions through temporary officials, which will certainly have an impact on the ineffectiveness of governance and violate the principle of decentralization. The difference is that if the appointment mechanism is used, it will be filled by defensible local government officials and there are no restrictions from some of its authorities in the implementation of local government.

Then in the second weakness, Law No. 10 of 2016 is not predictive in arranging its provisions with the Local Government Law, because there is no synchronization between simultaneous Regional Head Elections that are expected to be held simultaneously for all regions, once in five years. With the provision of filling positions by temporary officials if a single candidate for Regional Head is not elected, the consequences are of course temporary officials will occupy the office for five years. If this happens, it is certainly contrary to the purpose of sitting temporary officials in a government position.

Furthermore, it appears that by using the mechanism of appointment in filling the position of a single candidate of regional head, the weakness is vulnerable to transactions of the political elite that precisely violate the principle of democracy that must be implemented fairly and transparently. However, in fact it does not need to be questioned anymore because the Electoral Law has followed up by criminalizing the act, that "candidacy buying" is a criminal act that can be subject to criminal threats or cancellation of the determination of the Spouse of the Regional HeadCandidate. The provisions on this matter can be seen in Article 73 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors.

From the various weaknesses that have been outlined related to the mechanism of elections in filling the position of a single candidate for regional head, which then allows the appointment of temporary officials who cannot act fully in their authority, it is appropriate and it would be better if in filling the position of a single candidate of regional head that is by using the mechanism of appointment.

3.2 Arrangement of the mechanism of appointment of a single candidate of regional heads

This subsection contains 2 (two) subjects. First, the types of non-contested elections (*Uncontested Elections*) as a comparison material. Second, it will be elaborated on the arrangement of the mechanism of appointment of a single candidate for regional head by the President. To sharpen and help this research, it will be described the types of non-contested elections (*Uncontested Election*) ever.

a. Uncontested Elections In the United States and the Philippines

In principle, the election presents several candidates to choose from. Thus, voters are faced with several alternative options. In its development, elections can be distinguished into two based on the number of candidates, namely contested elections with a minimum of two pairs of candidates and non-contested elections (*uncontested elections*) with only one pair of candidates. Both contested and non-contested elections work on the mutually agreed rules contained in the design of the election. Furthermore, it will be elaborated on the types of elections without contestation (*uncontested elections*) namely:

1) Acclamation Practice in the United States

The United States, although the largest democracy in the world, prefers to acclamation or directly elected a single candidate in an election, if after the end of the nomination period still produces only one candidate, then the candidate's spouse is immediately considered valid as the spouse of the chosen candidate and can be legally appointed as the regional head of the new period. The mechanism is known as "walk over" (WO) (Sastaviana Hikmania, 2018). This situation is one of the implementation of practical democracy known as uncontested election. Uncontested elections are considered a form of democracy that represents recognition of the constitutional rights of the people (voters). Thus, a single candidate can fairly contest the fate in the election without triggering the emergence of the practice of puppet candidates. This acclamation mechanism becomes a stimulus as well as reward and punishment for political parties for democratic intervention efforts. As discussed earlier, political parties are very concerned in the emergence of the phenomenon of single candidates in the region.

The United States is a Republic based on the world's oldest constitution and elections have existed since Britain settled in the early 17th century, 150 years before independence. Elections in the United States itself are organized by an independent, bipartisan body called The U.S. Election Assistance Commission (EAC) established by the Help America Vote Act of 2002 (HAVA). HAVA is the only national law governing the administration of elections, including national standards and voting completeness. The EAC itself consists of four members, two from the Republican Party and two from the Democratic Party. In fact the EAC is not an Electoral Management Bodies (EMB) but rather a federal fund to the state Government to invest new electoral equipment and voter registration (U.S Election Assistance Commission, 2020).

2) Referendum Practice in the Philippines.

The second non-contested election is a referendum (Sastaviana Hikmania, 2018). Referendums are defined in the world as elections by voting in favour and disagreeing. The formal legal rules of elections in the Philippines are mainly stipulated in the Constitution, namely Republic Act No. 7166, Omnibus Election Code and Electoral Commission Regulations. The Electoral Commission in the Philippines is conducted by a Government agency commissioned by the constitution to enforce and manage all laws and regulations on the conduct of regular elections and special elections, plebiscites, initiatives, referenda and recalls. Named COMELEC (Commission of Election) (Comelec, 2015).

COMELEC has the duties and authority as the organizer, supervisor and judiciary at once. Just like in Indonesia, COMELEC carries out voter registration and registration of election participants in pre-election, training election officials, campaign funds and campaign periods as well as organizing a quick count.

As an important factor that must be present first of all stages of the election is regulation. The Philippine government responded quickly to the large number of single candidates in elections by issuing Republic Act No. 8295 on an Act Providing For The Proclamation Of A Lone Candidate For Any Elective Office In A Special Election and For Others Purposes. The rule stipulates that a single candidate who remains must complete the requirements documents of THE COMELEC and COMELEC must immediately confirm as a single candidate in the election (Chan Robles, 2021).

Elections in the Philippines are held once in May to elect presidents, vice presidents, senators, house of representatives, governors, deputy governors, majors and deputy mayors (Santos, 2016). In the 2016 election, 545 candidates were single candidates without an opponent. The details are 39 people in Congress, 14 people for the Governor, 14 people for the Deputy Governor, 222 people for the Regent and 256 people for the Deputy Regent. These single candidates are spread across 73 provinces. Only Agusan del Norte, Camarines Sue, Guimaras, Marinduque, Samar, Siquijor, Surigao del Norte and Zambales provinces do not have a single candidate. The electoral model is with a referendum where a single candidate still has to attempt to be elected, campaigning for himself because it still needs at least one vote to win. If no one chooses him, then that single candidate will not win the election. But it seems that more often elected than unelected because it only takes one vote and a cheap and easy campaign (Jocelyn, 2012).

During the election, voters get ballots such as computer answer sheets used for national exams containing the names of candidates ranging from President to Vice Regent. Voters come to shade the candidate's choice and then put it in a scanner to get proof of the receipt paper has used the right to vote. If there is a non contest like in Sarangani Regency where there is only one candidate contesting the House of Representatives, Regent and Vice Regent then the ballot adjusts to contain only one name (Comelec, 2015).

The two countries mentioned above, are representations of a single candidate electoral system that uses two uncontested election models. The Philippines is an uncontested election country with a referendum system that still needs only one vote to win elections. It still uses the campaign to attract people's sympathy even though the amount spent is less than if there were two candidates. While the United States, despite being the largest democracy in the world, prefers to acclamation or directly elected a single candidate in elections.

b. Appointment of a Single Candidate by the President

In quantity, the single candidate elections in Indonesia have increased as seen in the table below:

Table 2 Growth in The Number of Single Candidate Elections 2015-2018 (Electoral Commission (KPU))

year	Single Candidate Election	Number of Regions That Hold Local Elections
2015	3	269
2017	9	101
2018	16	171

- 1) Growth from 2015 tripled in 2017 and five-fold in 2018. This is a sign that single candidate elections have become a trend and further clarify the lack of electoral mechanisms that are precisely unable to reduce the emergence of a single candidate pair that is likely to increase in the concurrent elections the following year. Therefore, it is better to use the mechanism of appointment if there is only one candidate pair, there are several advantages if the lifting mechanism is used, namely:
- 2) Save on budget
- 3) Easier and cheaper for organizers
- 4) Minimal horizontal conflict
- 5) Selected candidates have more time to prepare and execute a work program.
- 6) Increase the competition of other candidates because it feels the single candidate wins easily.

Even if re-outlined Maurice Douverger's opinion, will raise the question, whether with the mechanism of appointment of the Regional Head in case there is only one candidate pair by the President is already democratically qualified? Maurice Douverger said it could be considered democratic, as long as the appointee was previously directly elected by the people through elections. Exactly if the appointment is done by the President because he is directly elected by the people or known as the voice of the people is the voice of god (*vox populi vox dey*). Direct presidential election means also giving confidence to the people as the highest sovereign holders to participate in choosing and determining their leaders (president and vice president). Therefore, a directly elected president has a high legitimacy.

In a theoretical state, by relying on the principle of deliberation, the appointment of the Regional Head also uses a democratic way. Therefore, President Sukarno at the time was appointed through the PPKI session, with the principle of deliberation analogous to remain in democratic ways. In contrast to the practical level, because of the turmoil of unstable government at that time, with the approval of President Sukarno to occupy a lifetime of office, it is certain that if the appointment of local government officials no longer has democratic value, because the appointment is already in the form of monarchy-patterned government.

Therefore, by using the mechanism of appointment in filling the position of a single candidate of the Regional Head there are several important things to note in the revision of the electoral law in the future, that the provision of registration of regional head candidates in addition to the need to extend the registration period if there is only one candidate pair, must also be regulated so that the requirements of regional head candidates derived from individual candidates support requirements must choose an area (in the form of collection ID card) is lowered in percentage. For example, if the requirement of support for individual candidates in the election of the Governor of the region must choose 2 (two) million people must get the support of 10% ktp support, then with only one candidate pair, it should be lowered to 8% to 5% support only. It is only when the requirement has been loosened but there is still only one Pair of Regional Head Candidates, then be it the candidates for Governor, Regent, and Mayor, then shortened by the President. Because the conception of a unitary state cannot be separated from the role of the President in this regard as a central government that must have relations with local governments.

4. Conclusion

Regulation of The Principle of Democracy in filling the Position of Regional Head in the Case of a Single Candidate Spouse can use two mechanisms, namely using the mechanism of election (direct democracy) or using the mechanism of appointment (indirect democracy). Based on Law No. 10 of 2016 (Electoral Law) as a follow-up to the Decision of Mk No. 100/PUU-XIII/2015, an electoral mechanism (direct democracy) was used. However, if analysis is conducted based on doctrine, legal principles, and laws the mechanism of appointment in the event that only one Candidate spouse of the Regional Head remains in accordance with the principles of democracy (indirect democracy) as long as the appointment is made by an official who has been directly elected.

The arrangement of the Mechanism for the Appointment of a Single Candidate of regional heads in Indonesia can follow what has been implemented in the United States that implements uncontested elections if there is a single candidate pair (although the context can also be legislative elections to choose the House of Representatives / Senate as well as presidential elections and so on), if after the nomination period ends still produce only one candidate, then the candidate's spouse is immediately considered valid as the spouse of the elected candidate and can be legally appointed as the head of the new period. Therefore, the House of Representatives needs to revise law No. 10 of 2016 on the Election of Governors, Regents and Mayors. In order to treat a single candidate election as an uncontested election, it further contains a provision that if there is only 1 (one) candidate pair then the mechanism of appointment by the President is used.

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