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Gubernatorial Election in the Special Capital Region and Special Regions in Indonesia

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Abstract

There are considerable differences in the implementation of gubernatorial elections in the special capital region and special regions in Indonesia, namely the Special Region of Yogyakarta, Aceh Province, the Special Capital Region of Jakarta, and Papua Province, as compared to the gubernatorial elections of other provinces. Gubernatorial and vice gubernatorial elections in the special capital region and special regions are carried out in a democratic manner and with due regard to the specifics and privileges of the region as stipulated in Article 18B paragraph (1) of the 1945 Constitution. This paper concludes that the different implementation of the gubernatorial election in the special capital region and special regions is attributed to the different background of these areas, particularly in terms of different history, culture, and regional conditions.

Keywords

Regional Head Elections; Gubernatorial Election; Special Regions

JEL Classifications: J11, F43

1. Introduction

Indonesia is divided into provinces, which are made up of regencies, and cities, each of which is led by a regional head as the head of the provincial government in the region. Provinces are led by governors, regencies are led by regents, and cities are led by mayors. In accordance with the mandate of the 1945

Constitution, local governments have the authority to regulate and manage their own government affairs according to the principles of autonomy and co-administration. The granting of broad autonomy to regions is directed at accelerating the realization of community welfare through service improvement, empowerment, and community participation. In addition, through broad autonomy, regions are expected to increase their competitiveness by taking into account the principles of democracy, equity, justice, privilege and specificity, as well as regional potential and diversity within the system of the Unitary State of the Republic of Indonesia. One of the most noteworthy topics to study related to regional autonomy in Indonesia is the regulation and implementation of regional head elections (Nurdin & Turdiev, 2021).

There has been a shifting pattern in the implementation of regional head elections from direct elections by the people to elections conducted by the Regional People's Representative Council (DPRD). Such shift is observable from the enactment of Law Number 22 of 2014 concerning the Election of Governors, Regents, and Mayors (UU 22/2014). Article 3 paragraph (1) stated that the Governor is elected by members of the Provincial DPRD democratically based on the principle of freedom, openness, honesty and fairness. Likewise, the Regents and Mayors, according to Article 3 paragraph (2), are elected by members of the Regency/Municipal DPRD democratically based on the principles of freedom, openness, honesty, and fairness. In addition, the same provisions are also stated in Law Number 23 of 2014 concerning Regional Government (Law 23/2014) which through Article 101 paragraph (1) letter d stipulates that one of the tasks and powers of the Provincial DPRD is to elect governors. The election for Regents and Mayors is based on provision in Article 154 paragraph (1) letter d of Law 23/2014, which stipulates that one of the tasks and authorities of the Regency/City DPRD is to elect the Regent/Mayor. However, this provision was later abolished by Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors (Perppu 1/2014) and also by Government Regulation in Lieu of Law Number 2 of 2014 concerning Amendments to Law Number 23 of 2014 concerning Regional Government (Perppu 2/2014). The Perppu 1/2014 and Perppu 2/2014 were later enacted into Laws by Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Laws (UU 1/2015) and Law Number 2 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2014 concerning Amendment to Law Number 23 of 2014 concerning Regional Government into Law (UU 2/2015). This has changed the election pattern of governors, regents and mayors by way of direct elections by the people, no longer by the Provincial DPRD and Regency/Municipal DPRD.

As regard to the election of governors, regents, and mayors, Law 1/2015 in the Consideration section, letters a and b as well as in the General Explanation section states that to ensure that the elections for governors, regents and mayors are carried out democratically as mandated by Article 18 paragraph (4) of the 1945

Constitution, the sovereignty of the people and democracy of the people, by the people, and for the people must be respected as the primary requirements for the implementation of the election of governors, regents and mayors. The direct election of governors, regents, and mayors by the people is aimed to realize people's sovereignty and democracy. In other words, it is the people who directly elect the governors, regents and mayors. However, in its development, there were different patterns in the implementation of direct election across many regions in Indonesia, including as seen from the Gubernatorial and Vice Gubernatorial election in the Special Region of Yogyakarta. In fact, there are some other notable differences in the implementation of gubernatorial elections in certain provinces in Indonesia, such as the provision requiring prospective candidate to be the native son of the region and the different threshold in the number of valid votes to determine an elected candidate pair (Rasyid, 2016; Suyatno, 2016).

Article 18B paragraph (1) of the 1945 Constitution stipulates that the state recognizes and respects the authority of special capital or special regional government units that are regulated by law. Thus, there have been some differences in the gubernatorial and vice gubernatorial elections in special capital regions and special regions, as practiced in the Special Region of Yogyakarta, Special Region of Aceh, the Special Capital Region of Jakarta, and Papua Province, which thus makes it necessary to pay close attention to the provisions regarding the election of regional heads in special capital region and special regions in Indonesia as regulated in the separate law in accordance with Article 18B paragraph (1) of the 1945 Constitution. These aforementioned laws are listed in the following:

1. Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta;
2. Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia;
3. Law Number 44 of 1999 concerning the Implementation of the Privileges of Aceh Province;
4. Law Number 11 of 2006 concerning the Government of Aceh;
5. Law Number 21 of 2001 concerning Special Autonomy for the Papua Province as last amended by Law Number 2 of 2021.

Based on this background, this article is entitled "Gubernatorial Elections in the Special Capital Regions and Special Regions in Indonesia", which aims to answer the main issues regarding the implementation of the provisions for the gubernatorial election in special capital regions and special regions in Indonesia, as well as the factors to cause differences in the implementation of gubernatorial elections in special capital region and special regions.

2. Results and Discussion

The election of regional heads serves as an essential democratic moment in the life of the Indonesian nation and state. The election of regional heads, locally known as 'Pilkada' is intended not only to meet the public expectation of replacing the old mechanism for regional head election and representatives of the authoritarian style, but also philosophically to achieve the sustainable implementation of democratic values, as a way to develop participation, responsiveness, and accountability (Suyatno, 2016). The 1998 Reform movement has led to notable changes in the political system, especially the general election system in Indonesia. Direct elections of regional heads by citizens took place after the enactment of reform era (Zulkarnaen & Suzanna 2018). The enactment of Law Number 32 of 2004 concerning Regional Government has resulted in direct election of regional heads by the people. Prior to Law 32/2004, regional heads and vice regional heads were elected by the Regional People's Representative Council (DPRD). However, since the enactment of Law Number 22 of 2007 concerning General Election Organizers, regional head elections were included in the general election, and were officially named "General Elections for Regional Heads and Vice Regional Heads". The first general election held based on Law 22 of 2007 was the General Election of the Governor of the Special Capital of Jakarta in 2007. Thereafter, the nomenclature has changed to general elections for regional heads and vice regional heads (Pemilukada) (Sarundajang, 2012). Ideally, the Regional Head Election is seen as a more effective and faster mechanism to achieve public welfare, as compared to the indirect mechanism for selecting regional heads through the DPRD (Dewi, 2016).

Along the way, in 2013, there was an application for a constitutional review regarding the authority of the Constitutional Court in adjudicating disputes over the results of regional head elections. The petition for constitutional review was registered with registration Number 97/PUU-XI/2013, which was aimed at examining Article 236C of Law 12/2008, which since 2008 has become the legal basis for the Constitutional Court in adjudicating disputes over the results of regional head elections. This case also examined Article 29 paragraph (1) letter e of Law 48/2009 concerning Judicial Power. Through the decision Number 97/PUU-XI/2013 on May 19, 2014, the Constitutional Court stated that Article 236C of Law 12/2008 and Article 29 paragraph (1) letter e of Law 48/2009 are unconstitutional and have no binding legal force. One of the reasons why the Constitutional Court made such decision was because according to Article 24C paragraph (1) of the 1945 Constitution, one of the authorities of the Constitutional Court is to decide disputes regarding the results of the general election, while disputes over the results of regional head elections are not part of the general election. However, this decision that separates the election of regional heads from the general election does not mean to negate the widely known and applied principles of regional head elections (Usman, 2020; Mashdurohatun et al., 2019).

3. General Provisions in the Election of Regional Heads in Indonesia

One of the principles and provisions in the Amendment to the 1945 Constitution, is Article 18B paragraph (1), on the principle that the state recognizes and respects special capital regional or special regional government units which are regulated by law. Such recognition as regulated in the 1945 Constitution will have an impact on different arrangements regarding regional head elections in those regions because the mechanism can be regulated by separate laws in accordance with their respective specificities and privileges. In general, the regional head elections are regulated by Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (UU 1/2015) as first amended by Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (UU 8/2015) and amended back by Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (UU 10/2016), hereinafter amended by Law Number 6 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning Amendments to Government Regulations on Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayors to become Law (UU 6/2020).

Regional head elections are conducted on a democratic basis on the principles of direct, general, free, confidential, honest and fair. Candidate of the regional head election are proposed by political parties or coalitions of political parties, or individual participants. Political parties or coalitions of political parties may register pairs of candidates by fulfilling the requirements for obtaining at least 20% (twenty percent) of the total seats in the Regional People's Representative Council or 25% (twenty five percent) of the accumulated valid votes in the general election for members of the Regional People's Representatives in the area concerned. Individual candidates can register themselves as pairs of regional head candidates if they meet the requirements for the supporting number of residents who have the right to vote and are included in the permanent voter list in the region concerned in the most recent general election or previous regional head election in the region concerned (Hasan & Mustafa, 2022).

Article 107 and Article 109 of Law 10/2016 stipulate that the pairs of regional head candidates (Governor and Vice Governor Candidates, Regent Candidates and Vice Regent Candidates, as well as Mayor and Vice Mayor Candidates) who obtain the most votes are designated as the elected pairs of candidates. In the case of an equal number of votes, the candidate pairs who are elected must receive evenly distributed voter support throughout the sub-districts

in the district/city for Regent and Vice Regent Candidates as well as Mayor and Vice Mayor Candidates, or evenly distributed voters in all districts/cities at the provincial level for Governor and Vice Governor Candidates. In the case of a single regional head candidate, which is known as an election against the empty ballot, the elected pair of candidates is the one who receives more than 50% (fifty percent) of the valid votes.

4. Election of Governors in Special and Special Regions in Indonesia

Special regions that are provided with special autonomy are also subject to special provisions regulated in other laws (Effendi, 2012). These provisions apply to the Special Region of Yogyakarta, the Special Capital Region of Jakarta, Aceh Province, and Papua Province. Regional head election, especially gubernatorial and vice gubernatorial election in these regions, are different from that of other regions, and thus are also known as asymmetric elections. The implementation of the Asymmetric Regional Head Election is stipulated based on a constitutional legal umbrella, namely Article 18B of the 1945 Constitution, which respects the diversity, specificity, and privileges of regions in Indonesia within the framework of a unitary state (Allan & Wardhana, 2021).

Article 18B paragraph (1) of the 1945 Constitution stipulates that the state recognizes and respects the special capital or special regional government units that are regulated by law. The birth of Article 18B paragraph (1) of the 1945 Constitution is inseparable from the fact that there are special capital and special regions, which are recognized and regulated by separate laws. This recognition and specificity is needed for these regions because their special conditions must be specially treated and determined. Recognition of the authority of special capital or special region is based on the historical facts, conditions, culture, and background of the area. Provisions relating to regions determined as special capital and special regional status as regulated in the Law concerning the privileges and specialties of the Regions take their precedence and become exceptions to general arrangements in the Regional Government Law. Article 399 of Law 23/2014 stipulates that the provisions of the Law on Regional Government shall also apply to the Special Region of Yogyakarta, the Special Capital Region of Jakarta, Aceh Province, Papua Province, and the Province of West Papua, as long as it is not specifically regulated in the Act that determines the privileges and specialties of the region.

5. The Special Region of Yogyakarta (Requirements for Governor and Vice Governor Candidates)

The Privileges of the Special Region of Yogyakarta (DIY) are aimed at realizing good and democratic governance, peace and welfare of the people, ensuring unity in diversity, and institutionalizing the roles and responsibilities of the Sultanate and Duchy in maintaining and developing Yogyakarta's culture as a

cultural heritage of the nation. The regulation is made based on the principle of recognition of the rights of origin, populism, democracy, unity in diversity, government effectiveness, national interest, and the utilization of local wisdom. Therefore, by taking into account the historical, sociological, and juridical aspects, the privileges of the Special Region of Yogyakarta are placed at the provincial government level.

Article 7 paragraph (2) letter a of Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta (UU 13/2012), states that the authority in matters of privilege includes procedures for filling out the positions, positions, duties, and authorities of the Governor and Vice Governor. Article 18 paragraph (1) letter c of Law 13/2012 stipulates that one of the requirements for for governor and vice governor candidate is a citizen of the Republic of Indonesia who is enthroned as Sultan Hamengku Buwono for a governor candidate and enthroned as Adipati Paku Alam (Duke) for a vice governor candidate. To prove that the candidate has fulfilled these requirements, he must submit an inauguration letter declaring Sultan Hamengku Buwono enthroned in the Sultanate and an inauguration letter declaring the Duke of Paku Alam enthroned in the Duchy. These requirements are certainly different from those of other provinces. Historically, the granting of special status to Yogyakarta was because the Sultan who reigned in the Ngayogyakarta Hadiningrat Sultanate and the Adipati Paku Alam who ruled the Pakualaman Duchy at the beginning of the establishment of the Unitary State of the Republic of Indonesia voluntarily declared themselves to join or integrate with the Unitary State of the Republic of Indonesia. This means that the Ngayogyakarta Hadiningrat Sultanate and the Pakualaman Duchy existed prior to the birth of Unitary State of the Republic of Indonesia. Thus, the determination of governors and vice governors in the province of Yogyakarta cannot be equated with other regions because without the volunteerism of the Sultan of the Ngayogyakarta Hadiningrat Sultanate and the Duke of Paku Alam, Yogyakarta would never become part of the Unitary State of the Republic of Indonesia.

There has been application to the Constitutional Court to have a constitutional review of Article 18 paragraph (1) letter c of Law 13/2012. In principle, the petitioner has requested that the article be annulled so that the election of the Governor and Vice Governor of the Special Region of Yogyakarta could be conducted by means of general regional heads election as in other regions. However, the Constitutional Court in its decision, namely Decision Number 42/PUU-XIV/2016 dated July 28, 2016 stated that it rejected the application so that the rules of Article 18 paragraph (1) letter c of Law 13/2012 remain valid and constitutional.

6. The Special Capital Region of Jakarta (Acquired Number of Legitimate Votes to be Appointed as the Elected Candidate Pair)

The general applicable regulations in the election of Governor and Vice Governor in Indonesia are as stipulated in Article 109 of Law 10/2016, which states

that the Pair of Governor and Vice Governor Candidates who obtains the most votes is determined as the elected pair of Governor and Vice Governor Candidates. In the matter of the same number of votes, the elected pair of candidate is the one with the more evenly distributed voter support throughout the regencies/cities in the province. In the event of a single Candidate pair for Governor and Vice Governor, the candidate pair who obtains more than 50% (fifty percent) of the valid votes, shall be designated as the elected cand pair for Governor and Vice Governor.

The election of the Governor and Vice Governor of The Special Capital Region of Jakarta is different from that of other provinces in general. Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (UU 29/2007) indicates a threshold on the number of votes to determine the candidate as the Governor and Vice Governor-elect, which specifically applies to the Special Capital Region of Jakarta. The special determination referred to is contained in Article 11 paragraph (1) of Law 29/2007, which states that the candidate pair for governor and vice governor who obtains more than 50% (fifty percent) of the votes are designated as elected governors and vice governor. In other words, it is not enough to only get the most votes for the elected candidate pair, but the candidate must obtain a dominant vote of more than 50% of the electorate.

Another difference is regarding the implementation of the second round of elections. The provisions of Article 109 paragraph (1) and paragraph (2) of Law 10/2016, which are generally applicable in all provinces, do not stipulate the requirement to have a second round of elections because the pairs of candidates for governor and vice governors who are elected are the pairs that get the most votes. Even if there are the same number of votes, the pair of candidates who obtains the most evenly distributed voter support throughout the regencies/cities in the province is designated as the elected pair of Candidate for Governor and for Vice Governor. However, in the Special Capital Region of Jakarta, this applies specifically to the provisions of Article 11 paragraph (2) of Law 29/2007, which stipulates that if there is no pair of candidates for Governor and Vice Governor who obtains more than 50% of the votes, a second round of elections for the Governor and Vice Governor will be held, which is followed by the pair of candidates who get the first and second most votes in the first round. The provision of Article 11 paragraph (2) of Law 29/2007 is a consequence of the provisions of Article 11 paragraph (1) of Law 29/2007, which requires more than 50% of the vote to be appointed as Governor and Vice Governor elected so that when the vote gain of more than 50% is not met, a second round of elections must be held. The principle of "*lex specialis derogat lex generalis*" which means that Law 29/2007 applies as a *lex specialis* of the generalist Law on the Election of Governors, Regents, and Mayors is applicable in law.

The existence of different arrangements that apply in the election of the Governor and Vice Governor of The Special Capital Region of Jakarta is related to the specific nature of the Special Capital Region of Jakarta. Article 1 number 6 of

Law 29/2007 (UU DKI Jakarta) states that the Special Capital Region of Jakarta is a province with a specialty in the administration of regional government because of its position as the Capital of the Unitary State of the Republic of Indonesia. Jakarta, as the Special Capital Region of the State, has specific duties, rights, obligations and responsibilities in the government administration and as the domicile of foreign representatives, as well as centers/representatives of international institutions (Triguswinri & Hadita, 2022). The decision of the Constitutional Court Number 11/PUU-VI/2008, dated August 5, 2008, stated that the specialties of The Special Capital Region of Jakarta included regulations regarding (i) specific duties, rights, obligations, and responsibilities as the capital of the state; (ii) the domicile of representatives of friendly countries; (iii) the integration of Jakarta's general spatial plan with the surrounding area's general spatial plan; and (iv) special areas to carry out certain government functions which are managed directly by the Government. The specificity of the Special Capital Region of Jakarta also covers the different composition of city areas and administrative districts that do not have Regency/Municipal DPRD, as well as Mayors/Regents who are appointed without going through a general election. An area of the state capital requires stability in terms of the administration of its local government. With the existing specificity in the Special Capital Region of Jakarta, a firm legitimacy is needed for the electability of the regional head to make a different implementation in the Gubernatorial election of the Special Capital Region of Jakarta from other regions by requiring that the vote acquisition is valid when it is more than 50%.

7. Aceh Province (Presence of Local Political Parties)

Article 3 of Law Number 44 of 1999 concerning the Implementation of the privileges of the Aceh Province states that its privilege serves as an acknowledgment of the Indonesian nation because of the struggle and the essential values of society, which have long been preserved from generation to generation as a spiritual foundation, morality, and humanity. The Aceh privilege is implemented in religious life, traditional life, education, and the role of the ulama in determining regional policies. Aceh is granted with specific authority in holding elections for governors, regents and mayors in Aceh Province, as indicated by the following: (i) the existence of an Independent Election Commission (KIP) as the election organizer with the role of the Regional General Election Commission (KPUD); (ii) the existence of local political parties; (iii) further arrangements regarding Regional Head Election are regulated in Qanun (Gaffar, 2012). Independent Election Commission (KIP), which in other regions is known as KPUD, although coming up with a different name, has the same duties and authorities in line with and subject to Law Number 15 of 2011 concerning Election Organizers. KIP at the provincial level of Aceh and at the district/city are part of the General Election Commission (KPU), which are authorized by law to hold elections for President/Vice President, members of the People's Representative Council,

members of the Regional Representatives Council, members of DPRA/DPRK, election of governors /Vice Governor, Regent/Vice Regent, and Mayor/Vice Mayor, whereas Qanun is a type of regulation as per provincial/district/city regulations governing the administration of government and people's lives. Of the three specificities, Aceh has its own special element in holding elections that does not exist in other regions, namely the existence of Local Political Parties. Article 1 number 14 of Law Number 11 of 2006 concerning the Government of Aceh (UU 11/2006), states that a Local Political Party is a political organization formed by a group of Indonesian citizens who are domiciled in Aceh voluntarily on the basis of the same will and ideals to struggle for the interests of its members, society, nation and state through the election of members of the Aceh People's Representative Council (DPRA)/Regency/City People's Representative Council (DPRK), governor/vice governor, regent/vice regent, and mayor/vice mayor. Article 67 paragraph (1) of Law 11/2006 stipulates that in addition to being proposed by political parties, coalitions of political parties, and/or individuals, pairs of candidates for regional heads may also be proposed by local political parties or coalitions of local political parties or coalitions of political parties and local political parties. The role of local political parties in Aceh in the nomination of regional heads is one of the specifics given by the legislators through Law 11/2006.

The local political parties in Aceh were established after the signing of Helsinki Memorandum of Understanding (MoU) between the Indonesian government and the Aceh separatist movement. In particular, the local political parties were born after the Helsinki MoU on August 15, 2005 and the 2006 Regional Held Election. The Government Regulation on Local Political Parties in Aceh only came into effect in 2007 through Government Regulation Number 20 of 2007 (Arbas, 2012). The explanation of Law Number 11 of 2006 concerning the Government of Aceh, which states that the Memorandum of Understanding or MoU between the Government and the Free Aceh Movement on August 15, 2005 marked a new flash in the history of the journey of Aceh Province and the lives of its people towards a state of peace, justice, welfare, prosperity, and dignity, as well as a form of reconciliation towards sustainable social, economic and political development in Aceh. Thus, it can be understood that the existence of local political parties in Aceh is a form of development reconciliation, especially in the political field.

Currently, Aceh is the only province in Indonesia that recognizes the existence of local political parties. In the context of Indonesia democracy, Aceh has become a pioneer in accommodating the existence of local political parties as well as independent candidates (not affiliated with parties) to participate in elections. Therefore, it is justified to say that Aceh is one of the benchmarks for the failure or success of democracy in Indonesia (Zulkarnaen & Suzanna 2018). In terms of the election principle, basically, the existence of local political parties does not eliminate the role of the Acehnese in the regional head election process. Local political parties can accommodate the local aspiration of people in screening candidates for regional heads, including governors and vice governors. The presence of local political

parties in Aceh enables the realization of democratic elections for governors and vice governors based on the principles of direct, general, free, confidential, honest and fair in Aceh (Hasan & Mustafa, 2022).

8. Papua Province (Prospective Candidates for the Gubernatorial Election Must be the Native/Indigenous Papuans)

In general, the law on regional head elections does not require the candidates for regional heads to be the native sons of the region. However, this general stipulation does not apply to the Papua Province because the candidate for governor and vice governor in the Papua province must be a native son of the region. Article 12 letter a of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (Law 21/2001) stipulates that one of the requirements to be elected as Governor and Vice Governor of the Papua Province is an Indonesian citizen, and an indigenous Papuan. The Special Autonomy Law for Papua Province gives privileges to native Papuan sons to lead their own region.

The Constitutional Court in its Decision Number 3/SKLN-X/2012, dated September 19, 2012, in one of its legal considerations stated that the Papua Province has its own privilege in terms of the gubernatorial and vice gubernatorial election, which makes it different from other provinces, since it requires the pairs of candidates for governor and vice governor to be the native Papuans and has received MRP consideration and approval. Meanwhile, other requirements and mechanisms are the same as those in other regions in Indonesia. The Special Autonomy Law of Papua Province states that the Native Papuan (Orang Asli) are people who come from the Melanesian racial group consisting of indigenous tribes in the Papua Province and/or people who are accepted and recognized as Papuan Indigenous People by the Papuan Indigenous People.

KPU is the institution with the authority to hold Gubernatorial and Vice Gubernatorial elections of Papua. However, MRP has its own role in determining the requirement for the candidate pair of Governor and Vice Governor of Papua to be the native Papuans. MRP has the duty and authority to give consideration and approval to the candidates for Governor and Vice Governor proposed by the organizers of the regional head election. This is the specialty of Papua Province in relation to the Gubernatorial and Vice Gubernatorial Election, which makes it different from that of other provinces. Even since the decision of the Constitutional Court Number 29/PUU-IX/2011 dated September 29, 2011, the consideration of the proposed candidates for Governor and Vice Governor must be based on the recognition of the indigenous tribes in Papua from which the candidates for governor and/or vice governor are concerned.

One of the advantages of direct elections is the realization of an increasingly democratic regional government. In addition, the community will get to know the leader more closely, because they will directly determine their own leader in the area (Sarundajang, 2012). Thus, the requirement for the candidate pair to be the

native Papuans will certainly ensure that the elected governors and vice governors will devote their attention to the interests of their regions.

The special implementation in the Gubernatorial and Vice Gubernatorial Election in Papua Province, as seen from the legal provisions on special autonomy for the Papua Province, is at least based on several reasons. Thus far, the administration and implementation of regional development in Papua Province have not fully fulfilled the sense of justice, people's welfare, and respect for the human rights of the Papuan people. The management and utilization of the natural resources of the Papua Province have not optimally increased the standard of living of the indigenous Papuans, resulting in a huge gap between the Papua Province and other regions. Therefore, in order to reduce the gap between Papua Province and other Provinces, and improve the standard of living of the people in Papua Province, as well as provide opportunities for indigenous Papuans, it is necessary to have a special policy within the framework of the Unitary State of the Republic of Indonesia.

The specific nature of the Papua province, including the election of governors and vice governors, is aimed at developing the Papua province, by placing indigenous Papuans and the Papuan population in general as the main subjects. The special requirement for the candidate pair of governor and vice governor to be the native Papuans, which serves as the privilege of the Papua province, are still in line with the democratic principle of elections, based on the principles of being direct, general, free, confidential, honest and fair. Direct elections open up space for people's political participation to realize sovereignty in determining regional leaders. This direct election aims to achieve the ideal goal of electing the regional heads who are trusted, have good abilities, good personality, and moral values, are pleasing to the people's hearts, are widely recognized and know the region so well, and have strong emotional ties to local people (Suharizal & Regulasi, 2011). This ideal goal is increasingly guaranteed by the condition that the candidate for regional head in Papua Province is a native Papuan.

The provisions on the conditions for native sons of the local region in the gubernatorial and vice gubernatorial election of in Papua Province should also apply to the Province of West Papua and the new provinces, as the new division of the Papua Province, namely South Papua Province, Central Papua Province, and Papua Mountains Province. These areas bear the same status as that of the Papua Province, as the special autonomous regions.

9. Democratic Regional Head Election

Article 18B paragraph (1) of the 1945 Constitution stipulates that the state recognizes and respects the authority of the special capital region or special regional government units based on the legal ruling, which highlights the recognition on the existence of special capital or special regional governments. The specifics and privileges of each region are regulated by separate laws. The Constitutional Court in its legal consideration of Decision Number 81/PUU-

VIII/2010 is of the opinion that the types and scope of the specificities and privileges of special capital region and special regions stipulated by law are closely related to: a) the right of origin attached to an area that has been widely recognized and remains alive; and b) the background of the establishment and the real need for the specificity or privilege of the region concerned as part of the Unitary State of the Republic of Indonesia. By taking into account these two criteria, according to the Court, the rights of origin and history are rights that must be recognized, guaranteed and cannot be ignored in determining the type and scope of regional privileges in the law. The type and scope of specificity based on the background of the formation and the real needs that require specialization to a region are flexible in accordance with the real needs of the specificity given to the region concerned.

The different implementation in regional head elections in special regions from that of other regions is not aimed at eliminating the essence of regional head elections. This point is evident in the province of the Special Region of Yogyakarta where the Governor and Vice Governor were elected without going through a direct election by the people (one man one vote). Article 18 paragraph (4) of the 1945 Constitution states that the Governors, Regents and Mayors respectively as heads of provincial, district and city governments are democratically elected. From the formulation of Article 18 paragraph (4) of the 1945 Constitution, it can be understood that the 1945 Constitution does not require regional heads to be directly elected (Suharizal, & Regulasi, 2011). The "democratic" interpretation can be realized in the form of direct and indirect elections, which makes it an open legal policy (Saraswati, 2014). A country's election system, either directly or through representative institutions, is still deemed as maintaining democratic election system as long as the election is not tainted with fraudulent practices, such as vote manipulation, impartiality, impartiality of election administrators, money politics, and acts of massive intimidation to voters, which is a characteristic of an undemocratic election (Kosasih, 2018).

The difference between the gubernatorial election in special capital region and special regions and the gubernatorial election in other provinces does not mean that the democratic value in these elections is eliminated. This difference is seen as a necessary policy. By referring to the minutes of the MPR trial when formulating Article 18 paragraph (4) of the 1945 Constitution, it can be seen that the constitution makers did agree that the election of governors, regents and mayors was carried out democratically, but there was also an aspiration from the constitution makers to provide opportunities for law makers to regulate further regional head elections in accordance with the conditions of regional diversity, situations, and conditions as long as they do not conflict with democratic principles. The different implementation of regional head elections in special capital region and special regions is not something prohibited in the implementation of democratic elections. Each local region and special area have different backgrounds based on its regional conditions, culture, population, and history.

10. Conclusion

The election of governors and vice governors in special capital region and special regions is carried out in a democratic manner with due regard to the specifics and privileges of the region as guaranteed by Article 18B paragraph (1) of the 1945 Constitution about each of these special capital region and special regions. There are notable differences in the implementation of Gubernatorial and Vice Gubernatorial elections in special capital region and special regions, namely in the Province of the Special Capital Region of Jakarta, Aceh Province, the Special Region of Yogyakarta, and Papua Province, as compared to elections in other regions. The Special Capital Region of Jakarta has its own special characteristics, in relation to the determination of the elected pair of governor and vice governor candidates as well as the provisions during the second round of elections. Aceh Province has its own Local Political Parties, which are nowhere else to be found in other provinces. The Province of the Special Region of Yogyakarta has special requirements, in that the governor candidate must be enthroned as Sultan Hamengku Buwono, while the vice governor candidate must be enthroned as Duke of Paku Alam. Papua Province has its own special characteristics that are not applicable in other provinces, particularly in terms of the requirements for the Gubernatorial and vice Gubernatorial candidates to be native sons of the region, or the indigenous Papuans.

The differences in the implementation of gubernatorial elections in special capital region and special regions is attributed to the different backgrounds of the special capital region and special region as compared to other regions. The Province of the Special Region of Yogyakarta received a privileged status due to its historical factors in the volunteerism of the Sultan of the Ngayogyakarta Hadiningrat Sultanate and the Duke of Paku Alam to join the Unitary State of the Republic of Indonesia. The Special Capital Region of Jakarta Province is a special area because it is the capital of the country, which needs to be led by the governor and vice governor who obtain more than 50% of the voters as a form of legitimacy. Aceh Province has its own specificity with the existence of local political parties as a form of development reconciliation, especially in the political field. These local political parties can also nominate candidates for regional heads, including pairs of candidates for governor and vice governor. Papua Province applies the condition that the governor and vice governor must be native Papuans because of the specific condition of the Papua Province which requires steps in accelerating development, and thus the regional heads who have strong emotional ties to the Papuan people are urgently needed.

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