

Legal Re-Construction; The Impact of Empty Column Victory Over Single Candidates in Simultaneous Direct Elections of Regional Heads as A New Phenomenon of Legal Politics in Indonesia (Case Study: Makassar City)

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ABSTRACT

This study examines the legal re-construction of the victory impact of an empty column over a single candidate as a new phenomenon of legal politics in Makassar City, South Sulawesi, Indonesia. This is doctrinal normative legal research, which uses the analytical, explorative, explanatory, and qualitative analysis techniques. The result showed that legal reconstruction needs to be carried out on disputes, policies of single candidate pairs and empty columns, nomination requirements and political party support for candidates. The legal construction also needs to be conducted on the phrase "next election," the emptiness of definitive city government leaders, postponement and legal uncertainty, establishment of Provisional Acts (Pjs), as well as the loss of the constitutional rights of communities and regions.. Legal reconstruction also needs to be carried out through the political management of post-conflict local elections with changes in legal policies Law No.10 of 2016, PKPU No.13 of 2018, Minister of Home Affairs Regulation (Permendagri) No. 1 of 2018.

Keywords:

Legal reconstruction, legal politics, impact, empty column victory, single candidate, simultaneous local election.

INTRODUCTION

Pancasila is the official, foundational philosophical theory of Indonesia and the highest source of legal value, in accordance with the 1945 Constitution which firmly established the nation as a democratic country. Based on this information the State management and the government administration need to prioritize the implementation of the principles of actual rule of law stated by Jimly Assiddiq (2004). These include 1) Supremacy of Law, (2) Equality before the Law, (3) Legality Principle (Due Process of Law), (4) Limitation of power, (5) Independent executive organs, (6) independent and impartial judiciary, (7) State Administrative Court, (8) Constitutional Court, (9) Protection of human rights, (10) Democracy (demokratische rechtsstaat), (11) Functioning as a means of realizing state goals (Welfare Rechtsstaat), and (12) Transparency and social control. A vital and strategic aspect of this application is the establishment of a government based on trias politica. This aims at electing representatives particularly leaders or chief executives (national and regional) for legislative institutions. However, Article 1 of the 1945 Constitution is based on direct or democratic elections.

Since the 1999 reformation era until the current democratic transition period, the legal politics conducted in Indonesia, have experienced a significant legal construction. The first amendment, related to the Autonomy Law Region No.22 of 1999, was modified to Regional Government Law No.32 of 2004 and was further reformed to Regional Head Election Law No. 12 of 2008. This stated that the constitutional rights of the people or communities (provinces, districts, cities) is to conduct direct or democratic election of regional heads (Governors, Regents, Mayors). The second amendment to Law No. 12 of 2008 was reformed to Law No. 1

of 2015 in accordance with the Establishment of Government Regulations in lieu of Law Number 1 of 2014. This was due to the Election of Governors, Regents and Mayors to fulfill demands for the entry of independent candidates. Third, Amendment to Law No. 1 of 2015 was revised to Law No. 8 of 2015 concerning Simultaneous Local Election to realize the demands of budget efficiency (APBD and APBN). Fourth, after the submission of Effendy Gozali's judicial review in accordance to Law No. 8 of 2015, which does not permit single candidates to contest for elections in their regions, the Constitutional Court (MK) established Decision Number 100 / PUU-XIII / 2015, and this marked the beginning of a new era in constructing direct local elections. In addition, it encouraged the government and legislators in the DPR to establish law No.10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 in accordance to the Establishment of Government Regulations in lieu of Law Number 1 of 2014 based on the Election of Governors, Regents and Mayors. Fifth, the issuance of the General Election Commission Regulation (KPU) No.13 of 2018, based on the technical implementation of the next simultaneous local election, is in accordance to the Regulation of the Minister of Home Affairs (Permendagri) No. 1 of 2018 concerning the appointment of a temporary official (Acting) to occupy the definitive position. Therefore, the dynamics of change conforms to the study conducted by Satjipto Rahardjo (2006) which stated that the law does not have any impact on changes. However, this election triggers the legal system to adjust to the needs of the community.

It is interesting to note that the dynamic and significant change of the legal policy increases the number of single candidates during the first phase of the local election conducted in December 2015. However, only 3 of the regions had a pair of single candidates, and this was further increased to 9 regions in the second phase which was conducted in February 2017. The third phase was conducted in June 2018 involved 16 regions including Makassar City. A total of 27 regions produced single candidates that contested against the empty column and all of them won, except in Makassar City which was won by an empty column. In some areas, the victory of a single candidate does not seem to be a problem because leadership positions are occupied by definitive officers. Therefore, strategic decisions and regional development programs need to be sustained or continued by elected leaders. However, the long, tortuous and multidimensional legal disputes influenced the process of electing a single candidate, according to Article 54D, Article 201 of Law No.10 of 2016 and Article 25 PKPU No. 13 of 2018. This is also related to re-election, the schedule of the fourth local election, as well as Permendagri Regulation No. 1 of 2018 which stated that temporary officers occupy the vacant positions of the city government till the next election because leaders were not elected to serve the 2019-2024 tenure.

The victory of an empty column during the Mayor election in 2018 is a new kind of legal political phenomenon in Indonesia. However, this rarely occurs in other countries, particularly those that adhere to the concept of Democratic rule of law (NHD). This phenomenon led to several implications for the constitutional legal system and government administrative law. The enactment of a number of legal policies relating to re-election, nomination requirements, contestation of single candidates in opposition to empty columns, construction of empty columns victory over single candidates, and temporary appointment (Acting) turned out to create a

huge impact and a variety of problems which requires legal reconstruction solutions through scientific assessment.

METHOD

This study applied a normative legal and doctrinal approach. Normative legal research is based on legal principles, systematics, synchronization, history and comparative law (Nawi, (2013), Sunggono, (2006), Soekanto and Mamudji, (1994),) as well as the use of legal basics and existent theories (Bodgan & Taylor, 2009). Meanwhile, doctrinal research is defined as a study that analyzes both statutory law and the judgement of a court proceeding (Terry Hutchinson and Zainal Asikin, 2006). The research design is analytic, explorative, and explanatory (Creswell, 2010, 2015) while the data sources are primary, secondary, and tertiary legal materials (Soekanto, 2008). Subsequently, data collection is based on documentation studies, and qualitative analysis techniques. The data is processed, analyzed and constructed systematically as a whole by stating the relationships between the various types (Miles & Huberman, (2012), Moleong, (2014), M. Syamsudin, (2007)). Furthermore, legal policy preferences in the form of laws and regulations, which were previously classified and analyzed. This study is thoroughly evaluated and interpreted while deductive methods were used to draw conclusions (Sunggono, 2001).

RESULTS AND DISCUSSION

a. The Dynamics of Political Fighting and Legal Disputes of the single Candidate Pair of Mayor-vice Mayor of Makassar City, and the Victory of "Empty Column" in Simultaneous Direct Election in 2018 at Makassar City.

In 2018, the Makassar City Election Commission conducted a direct election for the office of the Mayor and its Deputy (Pilwalkot) for the 2019/2024 tenure. From a population of 1,513,281 people, approximately 990,836 DPT (permanent voter list) were eligible to vote and it consisted of 483,349 males, and 507,487 female voters as well as 2,670 polling stations (Arfah, (2018), Putra, (2018). However, on the 12th of February, 2018, the Makassar City Election Commission, in accordance with Decree Number 35 / P.KWK/HK.03.1-Kpt/7371/KPU Kot / II / 2018, selected 2 pairs of candidates for the office of the Mayor and its Deputy (Pilwalkot), the aspirants are: (1) Mochammad Ramdhan Pomanto-Indira Mulyasari (DIAMI) (the incumbent) advanced through individual or independent channels after successfully collecting 117,494 e-ID cards, which exceeded the minimum requirements of 65,354 e-ID cards to contest for the election and (2) Munafri Arifuddin-Andi Rachmatika Dewi (Appi-Ciccu) as the opponents was supported by 10 parties who have seats in the Regional House of Representatives in the City (Cipto, (2018), Munsir, (2017). The 2 candidate pairs pick the contest sequence number, and the Appi-Ciccu pair emerges with sequence number 1, while the DIAMI pair picks number 2. They are both declared by the Election Commission to have the right to participate in the campaign stages from mid February to June 2018. (Padmasari, (2018).

In addition to the 2 candidates, some other aspirants namely, Syamsul Rizal (former deputy mayor and Democratic Party politician) paired with Iqbal Djalil (politician of the Prosperous Justice Party / PKS) volunteered to contest. However, they were unable to acquire at least 20% of seats or 25% of votes from their political parties. The ten political parties that held seats in the Regional House of

Representatives (DPRD) for the 2014/2019 tenure, are as follows: Golkar (8 seats), Nasdem (5 seats), Hanura (5 seats), PAN (4 seats), PBB (1 seat), PKPI (1 seat), Gerindra (5 seats), PKS (5 seats), and PPP (5 seats) gave their support to Appi-Ciccu (Padmasari, 2018). PKS which is the party base of Iqbal Djalil prefers other candidates to its own cadres. Likewise, the Democrat Party (7 seats) which is the party basis of Syamsul Rizal, also did not support its cadres. Instead it supported the Appi-Ciccu pair. PDIP (5 seats) also did not formally offer their support to Appi-Ciccu.

During the campaign, the candidate pair (paslon) Munafri Arifuddin-Andi Rachmatika Dewi (Appi-Ciccu) with their legal and success teams reported their opponents Mochammad Ramdhan Pomanto-Indira Mulyasari (DIAMI) to the Makassar City Election Supervisory Committee (Panwaslu) over alleged violations of campaign rules (Mulyana, 2018). Danny Pomanto is alleged to have distributed cellphones of the heads of RW and RT throughout Makassar. However, Panwaslu decided that the pair did not violate campaign rules. The Appi-Ciccu candidate pair was not satisfied with the ruling, and filed a lawsuit. Based on the Decree of the Makassar State Administrative Court No. 6 / G / Pilkada / 2018 / PT.TUN.Mks dated March 21, 2018, it was declared that the DIAMI was found guilty of violating campaign rules by using its power and authority to hurt their opponents. The PT TUN ordered the General Election Commissions (KPU) to disqualify or cancel their nomination (Cipto, (2018), Alfian, (2018)).

DIAMI responded by filing a lawsuit in the Supreme Court (MA) soliciting for the fairest legal consideration and a request to revoke the decision of PT TUN (Rakhmatulloh, 2018). Unfortunately, the panel of judges did not grant the request. Instead it issued a Supreme Court Decision Number 250 K / TUN/ Pilkada / 2018 concerning the Pilwalkot Makassar Dispute which strengthened the decision of PT. TUN stating that the pair DIAMI were found guilty of distributing mobile phones to RT / RWs throughout the City (Prayoga, (2018)). In accordance with the Supreme Court Decree Number 250 K / TUN / Pilkada / 2018, the Makassar City Election Commission disqualified Danny Pomanto - Indira Mulyasari from the electoral event (The Jakarta Post, 30th April 2018). In addition, Decree Number 35 / P.KWK/HK.03.1-Kpt/7371/KPU Kot / II / 2018 concerning the Determination of the Candidate Pair for Mayor and Deputy Mayor in the 2018 Election was revoked. Furthermore, the General Election Commissions (KPU issued Decree Number 64 / P.KWK / HK.03.1-Kpt / 7371 / KPU-Kot / IV / 2018 in accordance with the determination of the candidate pair namely Munafri Arifuddin - Andi Rachmatika Dewi (Appi -Ciccu). Based on this policy, the 2018 election eventually only had a pair of candidates Appi-Ciccu. Subsequently, the decision to disqualify DIAMI did not end the post-conflict local election legal dispute. This is because their legal counsel team filed another lawsuit with Panwaslu, and the KPU was asked to restore DIAMI's status as a candidate for the regional election. Panwaslu invited an expert in Constitutional Law (HTN), Prof. Dr. Rafli Harun, to seek legal opinions. From Prof. Rafli's point of view, it was stated that the KPU of Makassar City doctored the constitutional rights of Danny Pomanto. However, the Makassar City Election Commission did not respond to Panwaslu or the Constitutional Law experts, and affirmed SK Number 64 / P.KWK / HK.03.1-Kpt / 7371 / KPU-Kot / IV / 2018 concerning the determination of Appi-Ciccu as the only candidate pair entitled to contest in the Makassar City elections in 2018.

The KPU's viewpoint to hold on to a single candidate pair is based on several reasons and actions. First, the ruling of the Supreme Court is considered final. Second, the General Election Commissions in Makassar City, South Sulawesi and Indonesia agreed to reject the Panwaslu's decision requesting the reinstatement of Danny Pomanto's status because they consider it unwarranted and need not be heeded. Third, The Election Supervisory Board (Bawaslu) of South Sulawesi Province, which is a higher electoral supervisory body, supported the attitude and views of the KPU. According to the Bawaslu headed by Wa Ode Arumahi, no rules were violated despite not adhering to Panwaslu Makassar's ruling. Their opinion was based on a study conducted by Gakkumdu, and from data obtained from an expert in the Bawaslu RI. The decision of the Makassar City KPU, which was supported by the relevant electoral bodies (Provincial, and Central KPU, Provincial Bawaslu) refused to reinstate DIAMI's candidate status and their legal team threatened to take further legal action by reporting to the Honorary Council of the electoral Authority (DKPP) of the Republic of Indonesia stating that they were given strict sanctions. In a bid to carry out retaliatory measures, the Appi-Ciccu pair and their legal team sued Panwaslu because of its controversial ruling. Responding to the reports of both parties, DKPP decided to rehabilitate all commissioners of the KPU without giving any sanctions. Likewise, 3 Panwaslu Makassar City commissioners were also declared not guilty.

Furthermore, the Supreme Court ruling and the Election Commission of the Republic of Indonesia established a single candidate pair by disqualifying DIAMI. This led to various reactions from the public academics and intellectuals felt disappointed. The supporters of the disqualified candidates therefore encouraged the election of an empty column (Cipto, 2018). In fact, after the nomination of the candidates, the Celebes Research Center (CRC) conducted a 1,000-sample poll from 1st – 14th of March, 2018, and according to the results Mohammad Ramdhan Pomanto had 71.8% electability, while Munafri Afiruddin had only 18.8%. Furthermore, the results from the quick count showed that the Appi-Ciccu pair acquired 46.51% of the votes, while the empty column obtained 53.49%. This was not different from the official results and the stipulation of the Makassar City Election Commission in accordance with SK Number 71 / P.KWK / HK.03.1-Kpt / 7371 / KPU-Kot / VII / 2018 concerning the Determination of the Recapitulation of Vote Count. Results from the Mayor and the Deputy Mayor election dated July 6, 2018, showed that the Appi-Ciccu candidate pair received 264,245(46.77%) votes, while the empty votes were 300,795(53.23%). The number of both valid and invalid votes was 565,040 (96.69%), and 19,366 (3.31%) respectively (Cipto, (2018), KPU, (2018), Kurniawan, (2018)). After the KPU official announced the results, the Munafri-Dewi campaign team filed a legal dispute lawsuit in the Constitutional Court (MK) claiming, "there was structured, systematic and massive fraud". They accused Pomanto of meddling in the election and demanded that the empty column be canceled (Taufiqqurahman, 2018). However, on August 10, 2018, the Constitutional Court (MK) ruled in favor of the empty column for the first time in history (Taufiqqurahman, (2018), Andayani, (2018)). After the election, the Appi-Ciccu pair and their legal team, as well as several legal experts, including 2 former Constitutional Court chiefs, (Prof. Mahfud MD and Hamdan Zoelva) applied for a judicial review in accordance to Law No. 10 of 2016, and questioned their constitutional rights as a single candidate

pair in the next election. However, based on Decision Number 14 / PUU-XVII / 2019, the request was completely rejected.

b. Legal Re-Construction of Empty Column Victory Impact over Single Candidates on Simultaneous Local Election in the Implementation of Regional Autonomy

A number of important facts were discovered from the research. Firstly, the mayor and deputy were selected according to the schedule of the third wave in June 2018 and Article 201 of the Law No.10 of 2016. **Second**, the contestation of a single candidate pair against an empty column is based on the Decision of the Supreme Court Number 259 K / TUN / Pilkada / 2018 dated April 23, 2018, which strengthens the Decision of the Makassar State Administrative Court Number 6 / G / Pilkada /2018/PT.TUN.Mks, dated March 21, 2018. It was further investigated by the Makassar City KPU with the issuance of Decree Number 64 / P.KWK / HK.03.1-Kpt / 7371 / KPU-Kot / IV / 2018, concerning candidates and revocation or cancellation of Decree Number 35 / P.KWK/HK.03.1-Kpt/7371/KPU Kot / II / 2018 based on the Determination of the Candidate Pair for Mayor and Deputy Mayor. A total of 27 regions previously experienced similar aspirants since the application of the judicial review of Law No.8 Year 2015 by the Constitutional Court (MK) based on Decision Number 100 / PUU-XIII / 2015. This was dated 29 September 2015 with the enactment of Law no. 1 of 2015 which was amended to Law No.10 of 2016 concerning the Election of Regional Heads, and the General Election Commission Regulation (PKPU) Number 14 of 2015, PKPU No.3 of 2017 which was amended to PKPU No.15 of 2017 in accordance with the nomination rules for District head. Third, the only new circumstance is that the Makassar City made history by declaring an empty column winner of a simultaneous local election in Indonesia, as stated in Article 25 paragraph (1) PKPU No. 13 2018. Fourth, in terms of nomination requirements, irrespective of the fact that the contestant (low electability) 'bought' almost all parties that have seats in Makassar City Regional House of Representatives, as well as flaunting political flags on their vehicles. In other regions, all party tickets are bought by the incumbent. However, in Makassar City the incumbent candidate needs to go through an independent channel or an aspirant because they lacked the support of political parties. Furthermore, there are other candidates who failed to run for election because several political parties offered their support to a particular candidate pair, in addition to the severity of individual requirements. Fifth, the construction of a single candidate pair against an empty column is accompanied by political dynamics and a protracted and tortuous legal dispute which demands the implementation of legal supremacy based on the role of the Center for Integrated Law Enforcement (Gakkumdu) as reported in the Joint Regulation of The General Election Supervisory Board of the Republic of Indonesia, the Chief of the National Police, and the Attorney General of the nation in accordance with Number 14 of 2016, Number 01 of 2016, and Number 013 / JA / 11/2016 concerning the Center for Integrated Law Enforcement in the Election of the Governor, Regent, Mayor and their Deputies, as well as Bawaslu Regulation Number 9 Year 2018 concerning the Gakkumdu Center. Sixth, legal disputes were protracted, multi-dimensional and complex in addition, it led to candidates questioning their constitutional rights and the decisions of electoral administrators (both at the local and national levels such as Supervisory Committee, Makassar City KPU, Provincial Bawaslu, as well as Bawaslu and KPU RIs.). Furthermore, national

legal experts and relevant law enforcement agencies (PT TUN, MA, DKPP) were also involved in handling and resolving disputed legal objects. Seventh, the primary disputed legal object is the alleged abuse of authority by the incumbent who distributed smartphones to all RT / RWs in the City, 6 (six) months before the campaign stage. Eighth, the legal disputes occurred before and after the election. Ninth, the victory of an empty column triggered experts to issue claims for judicial review in the Constitutional Court and to examine the statutory nature of several articles in the Law No.10 of 2016. The electoral rules (PKPU) also questioned Decision Number 100 / PUU-XIII / 2015 concerning empty columns. In addition, the applicants also questioned their constitutional rights in the next election. Tenth, the victory of an empty column led to a number of other issues, such as the interpretation of the phrase 'next election' in accordance with Law No.10 Year 2016 and PKPU, the legal certainty of the postponement of elections, definite official vacancies, the legality of the appointment of temporary officials (Acting) , conflicting legal norms and regulations, as well as administrative matters.

The 10 formulations show that the selection of candidate pairs for the office of the mayor and deputy Mayor of Makassar City from February to June 2018 for the 2019/2024 tenure is an integral part of the traditional simultaneous local elections in Indonesia. Therefore, Djindang (1989) stated that all authorities and powers of the state organizer need to be based on the Constitutional and statutory regulations. However, Indonesia operates a functional rule of law (NHD) based on Pancasila, which includes democratic elements (Pancasila philosophy, paradigms, ideologies, basic principles, values and norms) in all aspects of its administration both at the national and local levels, and particularly during elections. Elections and regional head elections (Pemilukada) are not only concerned with technical matters that bring about planned, structured, systematic and massive interests. Instead, it, plays a vital, and strategic role in the formation of administrative power which involves the people, the State and the government (RNP). Therefore, through general and regional head elections leaders ready to shoulder the vision, mission, and expectations of the people are selected. Furthermore, a number of representatives of the legislative body aid in carrying out the tri-functions (legislation, budgeting, controlling) as well as possibly in establishing partnerships with the executive. In this regard, there was also a judiciary (judicial institution) who played a role in supervising the implementation of the constitution and law mandates. The entire input-output system of the general and regional head elections as well the trias-politica institutions are in accordance with the characteristics or principles of the rule of law reported by Stahl, AV Dicey, Hans Kelsen, and Jimly Assiddiq which states that democratic governance is based on statutory law or regulations, protection of human rights, limitation of power, supervision of judicial bodies (rechtsterlijke controle).

The simultaneous local elections conducted in 2018 are the actualization of one of the characteristics of a democratic rule of law which permits the citizens to actualize and manifest their sovereignty, particularly in electing definitive leaders (Hufron & Hadi, 2015). Fajar (2006) stated that the separation of powers is carried out in a balanced and mutually monitoring manner (checks and balances), as well as guaranteeing the respect and protection of citizens, and fulfillment of human rights. Therefore, general and local elections are one of the covariates of the conception and practice of limiting power and authority.

A direct local election (Pemilu) was conducted to select the mayor and deputy mayor of Makassar. The government through the electoral bodies (KPU, Bawaslu) organized the process by involving the people and other political infrastructures such as political parties, mass media, and social organizations. This is in accordance with a research conducted by Lyphard which stated that the characteristics of a democratic country are the ability of citizens to actualize their rights, the right to vote, the right to free and honest elections, the right to be elected as a government leader or definitive official, the right to be the candidate of a successful team in political campaigns, the right to obtain political support and votes, the right to form political parties, the right to express political opinions or aspirations, the right to access information and media, as well as the accountability of the decisions –of the policy maker or legislation in trias-political, (legislative, executive, judiciary) including electoral management institutions in fulfilling the desires, needs, interests and expectations of the people (Kartiko, 2009). According to Beetham et al., (2002) democratic governance needs to fulfill the following instruments: (1) democratic, representative, responsive and responsible government elections (2) constitutions or laws that guarantee equality, legal certainty and justice and (3) public participation in the media, arts and civil societal organizations that are democratically oriented.

The conduction of the 2018 direct elections in Makassar is in accordance with Schumpeter (2003) who reported that democracy as a political method and mechanism offers citizens the opportunity to elect prospective leaders, and also change their choices in the next election. Josiah Ober (2007) stated that elections help in the sovereignty of citizens of numerous countries including Indonesiathrough Law No.10 of 2016 and PKPI No.1 of 2018.

There are several implications associated with the implementation of local elections. First, there is a vacuum of city leaders or definitive officials thereby forcing the Government, particularly the Minister of Home Affairs to fill in those offices by appointing temporary officers (Acting) as stipulated in Article 25 paragraph (3) of KPU Regulation Number 13 Year 2018. Second, it causes delay and re-election in accordance with Article 25 paragraph (1) of KPU Regulation Number 13 of 2018. Third, there is legal uncertainty for the election of Mayor and their deputy. This is based on Article 25 paragraph (2) of KPU Regulation Number 13 of 2018 which states that the next simultaneous election tends to be held in the subsequent year or scheduled in accordance with the provisions of the legislation. Fourth, the citizens temporarily lose their constitutional rights to vote for or elect a city government leader or definitive official. Fifth, the appointment of a temporary officer (Acting) to serve for approximately 1 year is a unilateral decision by the Minister of Home Affairs, which is not only incompatible with the constitutional rights of the citizens, but it is also contrary to the spirit of regional autonomy and the decentralization system as regulated in Article 18 of the Constitution 1945 and Law No. 1 of 2014. Sixth, the appointment of a temporary officer (Acting) that has served for more than 1 year provides an opportunity for the Ministry of Home Affairs to re-implement a new kind of centralized government amid ongoing regional autonomy and a decentralized system. This is possible because the Simultaneous Local Election Law No.10 of 2016 adjusts the election schedule without taking into account the victory of an empty column over a single candidate pair Seventh, the delay and uncertainty caused by the next election has certain implications such as the use of urban development programs, to realize the dreams of the people. Eighth, the

postponement of the election led to loss of constitutional rights of the people. Ninth, this delay also leads to the loss of the constitutional rights of prospective and visionary leaders. Tenth, it also has several impacts namely lack time, opportunities, constitutional rights, as well as material and socio-economic losses. Eleventh, the victory of an empty column which is not immediately backed up by a re-election has a multidimensional impact on the socio-cultural, environmental, economic, political and legal aspects of the community. Twelfth, it is also not considered as the people's choice rather as a representation of the mismatched expectations of majority of the political parties and the citizens.

The 12 points identified relates to the multidimensional impact shows that the legal political construction of the implemented direct local elections is based on equality and uniformity. This is however, not in accordance with one of the characteristics or principles of a democratic rule of law, namely the protection of human rights (citizens) or its guarantee (Hans Kelsen, (1976), Martosoewignjo, (1992), Rosyada, (2000)). In addition, the legal political construction based on Article 201 of Law no. 10 of 2016 and Article 25 of KPU Regulation Number 13 of 2018 does not satisfy the 3 basic theories of legal objectives generally referred to as the "principle of priority." Gustav Radbruch (1961) listed these concepts as follows: (a) the obligation to prioritize justice (b) expediency and (c) legal certainty (Mas M, 2011) in this case. This is in accordance with the impact of the victory of the blank column on the loss of constitutional rights of the citizens of Makassar City in the legal policies construction Law No.10 of 2016 and KPU Regulation Number 13 of 2018 and Permendagri No. 1 of 2018. Guillermo A. O 'Donnel (2004) stated that an important and basic component of democracy, that has often been ignored, is humans (citizens). It is believed that a close relationship exists between democracy, Human Development, and Human Rights, which is manifested in the context of providing equal opportunities for citizens, particularly during elections.

The legal political construction in Article 201 of Law no. 10 of 2016, and Article 25 of KPU Regulation Number 13 of 2018 is more dominant in governing the technical schedule of local elections for regional heads, as well as the coordination of KPU and Ministry of Home Affairs to appoint acting leaders until a definitive official emerges in the re-election. On the contrary, it does not consider the multidimensional impact of the empty column, particularly in guaranteeing the protection of human rights or the constitutional rights of the community. Lawmakers, electoral administrators (KPU) and the Ministry of Home Affairs acted inappropriately, by neglecting and making fatal mistakes in the construction of legal policies in accordance with Article 201 Law No. 10 of 2016 and Article 25 of KPU Regulation Number 13 of 2018 and Permendagri No. 1 of 2018 based on the Amendments to Permendagri No. 74 of 2016 concerning Leave Outside the Dependency of the State on the Governor, Regent, Mayor and their Deputies. These policies and decisions have caused a variety of adverse impacts on the interests and constitutional rights of the people particularly in the case of the empty column. Therefore, the legislators, electoral organizers and the Ministry of Home Affairs are dominant and unresponsive (Satjipto Rahardjo, 2009) and this are not in accordance with the principles of democracy.

The constitutional rights of the citizens include the right to vote and be elected which constitute an integral aspect of human rights (HAM) that needs to be protected from the impact of empty column. Its actualization is carried out by the State

government along with its institutional organs because it is a fundamental principle of the democratic rule of law. For this purpose, Article 28I paragraph (5) of the 1945 Amendment II states that "To uphold and protect human rights in accordance with the principles of democracy, its implementation needs to be guaranteed, regulated and stated in the legislation". Its conception is reported in the 1945 Constitution and is also in accordance with the universal nature of human rights protection including Indonesia. Therefore, its enforcement in the local election requires the State government and its institutional organs to authorize the requirements of the rule of law as well as uphold its principles.

Based on a thorough analysis, the protection of human rights is relative to the concept of Progressive Law which states that "Law is for Humans", and serves their interests (Santos, 1995). Furthermore, Progressive Law is a legal development that does not consider law as the final institution; rather it is largely determined by its ability to serve humans (Satjipto Rahardjo, 2009). Law is a legal process in the making, and as an institution it is continuously amended in order to attain a certain level of perfection, which is verified by justice, welfare, and care for the people. Globally, humility is rampant however people and nations are unhappy (World Bank, 2005). According to Podgorecki (1996), the law is unreliable due to its continuous use as to sustain power therefore it is no longer considered the positive "tool for social engineering;" rather it is used for "dark engineering". (Satjipto Rahardjo, 2006).

Subsequently, its construction is in accordance with Article 54D Paragraph (4), Article 201 of Law No. 10 of 2016, Article 25 of KPU Regulation Number 13 of 2018 and Permendagri No. 1 of 2018 concerning the victory of an empty column and loss of constitutional rights due to the postponement and uncertainty of the re-election. The postponement of the election led to the appointment of acting officers who served more than 1 to 2 years and tend to even reach 3-5 years assuming Article 201 of Law No. 10 of 2016 remains in effect till the seventh stage of the national election in 2027. The loss of the constitutional rights of citizens led to the inability to vote and be elected. Lack of autonomy due to the dominance of the new made the acting officer to share the tenure with a definitive official (for example in a 5-year period the comparison is 2-2.5 years for Acting and definitive officials, or possibly 5 years for Acting and 0 years for definitive officials). Another disadvantage is that it spurs regional development programs because of the absence of a definitive leader. In addition, the acting authority has certain limitations in implementing daily tasks (Plh / Plt) and making strategic decisions as directed by the Government Administration Law No. 30 of 2014 and the Letter of the Head of the State Personnel Agency Number K.26-30 / V.20-3 / 99 of 2016 concerning the Authority of Daily Executors and Executing Tasks in the Personnel Aspect (referred to as SK Head of BKN).

Legal construction concerning the appointment of an acting officer to fill the vacancy of the Mayor, is in accordance with Article 25 paragraph (3) of KPU Regulation Number 13 of 2018 and Article 5 Permendagri No. 1 of 2018 raises certain issues. This is because it assumes the Minister of Home Affairs enacts the Makassar Mayor Act for 16 months or more, and violates Article 60 of Regional Government Law No. 23 of 2014 concerning the election, appointment and dismissal of regional heads. The PP (Government Regulation) No. 49 of 2008 in accordance to the Third Amendment to PP No. 6 of 2005 specifically Article 132 Paragraph (4)

regulates that acting regional heads only serve a maximum of 1 year. Furthermore, assuming the re-election is based on the schedule of the simultaneous local election, the period for the re-election is lengthened as well as the Central Government or Ministry of Home Affairs's intervention in enforcing the appointment of Acting officials, which exceeds the provisions stated in the previous legislation thereby creating opportunities or potential return of a centralized system contrary to decentralization and regional autonomy.

Another issue is that the Minister of Home Affairs equates the authority of temporary acting (Acting Actors) with definitive officials. This is clearly shown in Permendagri No. 1 of 2018 Article 9 which stated that (1) Acting governors, regents, and mayors have duties and authorities such as a.) implementing governmental affairs in the region based on the provisions of the legislation and policies determined by the Regional House of Representatives, b.) maintaining public order, c.) facilitating the re-elections of definitive governors, regents, mayors and their deputies as well as maintaining the neutrality of Civil Servants. d.) discussing the drafted Regional Regulation and sign it after obtaining written approval from the Minister of Home Affairs, e.) appointing officials based on statutory provisions and after obtaining written approval from the Minister of Home Affairs. (2) In carrying out its duties and authorities, the Acting Governor, Regent and Mayor are responsible and obliged to submit a report on the implementation of tasks to the Minister. This Permendagri (the Minister of Home Affairs) legally provides permissibility for the Acting Government to run the city as a definitive official. This policy contradicts the provisions of the Government Administration Law No. 30 of 2014 which precisely states that there is a significant difference between the definitive officials and acting officers (Plt) and the interim (Plh) who carry out routine tasks as mandated by the Government Agency or Office. Article 6 paragraphs (1) and (2), in addition to Article 14 paragraph (2) of the Government Administration Law states that interims ("Plh") are officials that conduct routine duties of definitive officials who are temporarily absent, while an Acting officer carries out the daily task of a leader who is unable to remain due to certain circumstances. Therefore, there are fundamental differences between the Daily Executor (interim) and the Executing Task (acting). This difference is also in accordance with the opinion of Chapman et al., that there is a *thin line between an interim, that assumes "regular responsibilities for a specified period," and an acting officer, that holds "less-than-regular leadership."* (dalam Newcombe, 1998 and 2013).

Based on Article 9 of Permendagri No. 1 of 2018, it states that the authority is similar to the definitive official although this contradicts the Decree of the Head of BKN Number K.26-30/V.20-3/99 of 2016 which reports that Plt or Plh are not authorized to make decisions or strategic actions that affects the legal status of the organization, staffing, and budget allocation. According to the Decree of the Head of BKN, the authorities of Plh and Plt includes (1) establishing employee work goals and evaluating work performance (2) determining periodic salary increase (3) approval of leave other than the one Outside the State Dependency (CLTN) (4) assigning tasks to employees (5) submitting proposals for staffs except transfers between agencies and (6) granting study permits, participating in the selection of senior / administrative leadership positions, and permission to be absent from work. Conflict of legal substances, principles and norms in the construction of the system for Acting and definitive officials in accordance with Permendagri Number 1 of 2018,

Government Administration Law No. 30 of 2014 and the Decree of the Head of BKN Number K.26-30 / V.20-3 / 99 of 2016 counteracts the theory of legality principles as reported by Fuller (1971) which states that a legal system need not to contain contradictory regulations. Satjipto Rahardjo (2009) stated that failure gives birth to something that is totally not referred to as a legal system.

Permendagri Law policy No. 1 of 2018 which relates Acting officers to definitive officials has led to the emergence of conflicts and harmonization of legal norms and regulations, particularly Government Administration Law No. 30 of 2014 and Decree of the Head of BKN Number K.26-30 / V.20-3 / 99 of 2016 therefore it contradicts Article 7 paragraph (1) of Law No. 12 of 2011 concerning the various types and hierarchy namely a) the 1945 Constitution of the Republic of Indonesia, b) Stipulations of the People's Consultative Assembly, c) Government Laws / Regulations Substituting Laws, d) Government Regulations, e) Regulations of the President, f) Provincial Regulations, g) Regency / City Regulations. Scholten (1954) defined law as a unity of norms that reflects harmonization. There are no conflicts, overlapping or ambiguity, as well as ad hoc decisions.

Permendagri's legal policy No. 1 of 2018 concerning the norms of an Acting officer is guided by Article 7 paragraph (1) of Law no. 12 of 2011, and it is based on the hierarchical theory (stufenbau des recht or Hans Kelsen's norm hierarchy) which states that they are in stages or layered in a hierarchical structure and the lower norm applies, and is based on the basic norms (grundnorm) (Allan C. Hutchinson, 1989). According to Adolf Darkel, the theory of the 2 faces of legal norms (das doppelte Rechtsantlitz) states that it is upwardly sourced based on the ones above, as well as the basis and source of the norms underneath. The top hierarchy is the basic norms, that is predetermined by the community (Soekanto, 2005). Therefore, the norm has a relative validity period (rechtskracht) because it depends on the legal norms that are above it, when they are revoked or removed, and the same is applicable to that underneath. Therefore, Permendagri No. 1 of 2018 needs to be revoked, deleted or, canceled or denied without judicial review in the Constitutional Court (MK).

The problem of legal construction based on the electoral policy, particularly the simultaneous local election led to the victory of an empty column. This also caused numerous impacts such as the loss of constitutional rights of the citizens of Makassar City after the local election that was conducted in 2018 concerning the phrase "next election" in Article 54D paragraph (2), paragraph (3) juncto paragraph (4) of Law no. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015. The Establishment of Government Regulations in lieu of Law Number 1 of 2014 in accordance with the Election of Governors, Regents and Mayors who are vulnerable to multiple interpretations and legal uncertainty. This issue was actually subjected to a judicial review in the Constitutional Court on January 22, 2019 by the single candidate pair who lost and their team of legal counsels as well as the opinions of several legal experts including 2 former MK chiefs. However, the Constitutional Court rejected the main material of the petition based on Decision Number 14/PUU-XVII/2019. Furthermore, the issue of the legal construction according to Article 25 of KPU Regulation No.13 of 2018 concerning re-elections is possible; assuming the number of votes received by the empty column is relatively large (Paragraph (1)). Therefore, the next simultaneous election is conducted in the subsequent year as scheduled in the statutory regulations (Paragraph (2)).

The petition for judicial review is in accordance with Article 9 paragraph (1) of Law no. 12 of 2011 based on the Formation of Laws and Regulations which states that "assuming a law is alleged to be in conflict with the 1945 Constitution of the Republic of Indonesia, its examination is carried out by the Court". The application for judicial review is an effort to explore the laws and regulations of the court in the form of interpretation to obtain certainty concerning its meaning. According to Allen (1964), an ideal condition is when the interpretation is not needed which is achieved when the legislation is stated in a clear form. Furthermore, in accordance with the clarity of the construction of legislation reported by Montesquieu (Allen, 1964), regulations need to focus on real and actual circumstances. Additionally, the main problem need not be confused with exceptions, limitation or modification unless it is necessary, and there is need to carefully consider its practical use. This is because the weak and unfair legislation causes people to disrespect and destroy the authority of the State (Satjipto Rahardjo, 2006).

The decision of Constitutional Court Number 14 / PUU-XVII / 2019 states that the test material on the phrase "next election" in Article 54D of Law No.10 of 2016 is inaccurate and does not consider the loss and widespread impact on the citizens. The stranglehold is centralized on a new kind of government with a spurring urban development program. The Constitutional Court's Decision Number 14 / PUU-XVII / 2019 contradicts its Decision Number 100 / PUU-XIII / 2015 which grants the request for a single candidate to be allowed to contest during the election, thereby considering the constitutional rights of the people to be elected and to cast their vote. Therefore, the judges are inconsistent in their judgements or decisions. This is in accordance with the opinion of Satjipto Rahardjo (2009) which stated the legal sector in Indonesia consists of thick "legal experience" rather than "behavioral experience". Although the time of submission and subject matter is different, the substance is slightly different. The subject matter brought by the plaintiff to the Constitutional Court Decision Number 14 / PUU-XVII / 2019 is based on their personal interest in the next election. The judge did not offer clearer legal considerations concerning the impact of the victory of an empty column victory on a single candidate because it is new in Makassar City as well as in Indonesia as a whole. Judges of the Constitutional Court need to view the case not only in the casuistic context rather the wider impact on the constitutional rights of the community both in Makassar City and other regions that are likely to experience similar cases in the next simultaneous local election. This is in accordance with Friedmann's (1953) opinion which stated that the understanding of law exceeds regulations or documented texts rather.

The case of an empty column victory is the first of its kind, therefore, to solve its multidimensional impacts on the aspects the law needs to be re-constructed. Judges of the Constitutional Court need to be able to re-construct Article 54D of Law No.10 of 2016, Article 25 of KPU Regulation No.13 of 2018, and Article 5 of Permendagri No. 1 of 2018 because these 3 legal policies are the main causes of loss and the widespread impact of an empty column on the constitutional rights of the people in Makassar City. Furthermore, they play a broader role in reconstructing the law as reported by Allen and Montesquieu in overcoming or minimizing various regulations, particularly the 3 legal policies namely multiple interpretations, ambiguity, and overlapping, which causes legal uncertainty, conflict, and disharmony of legal norms. They also need to constantly use their authority during legal reconstruction in accordance with Progressive Law to handle various legal status quo in the legislators

and electoral regulations. Furthermore, the Judge needs to adhere to Paton's opinion (1964) concerning the performance of legislation which always deals with ambiguity, absurdity, conflicting norms, overlapping, multi-interpretation and other shortcomings and weaknesses. The lawmakers, legislation (legislative policies), and regulators in the executive and electoral organizers are not able to handle all these issues irrespective of the fact that are frequently amended, improved, codified, and perfected. Therefore, the best way to utilize codification according to Paton is to ensure that the legislation is used as a basis for solving legal problems and it needs to be flexible. Scholten (1954) stated that law as an open system needs to be reconstructed according to the needs of society.

The final issue that requires legal reconstruction is the nomination requirement regulated in Law No. 10 of 2016 Chapter VII Concerning Registration of Prospective Governors, Candidates for Regent and Mayor, in addition Article 39, 40, 41 which states that the minimum support conditions is 20% political parties that have seats in the Regional House of Representatives (DPRD) or 25% of the accumulated valid votes of DPRD candidates who advance through the path of political parties. Due to the absence of provisions (the absence of legal norms) concerning maximum support requirements, several political parties that have seats in the DPRD are free to support certain pairs of candidates. This is considered as potential short-term political and economic benefits and is the creation of opportunities that leads to the action of party wholesale by certain candidates, particularly single incumbents and new contestants. In addition, the absence of legal norms also directly or indirectly impacted the increasing behavior of political party oligarchies, as well as low quality democracy because of closing access for other candidates to run for themselves. Furthermore, the policy concerning the requirements for independent candidates which are still classified as heavy also applies to only a candidate pair. Therefore, nomination requirements in Chapter VII Articles 39, 40, 41 of Law No. 10 of 2016 needs to be reconstructed with a new legal policy to overcome the issue of the minimum and maximum number of political party support for each candidate. This also increases their access, minimize their potential for contestation against empty columns, prevent or minimize party oligarchy. In fact, it is necessary to consider the implementation of local elections for candidates without the support of a political party by utilizing information technology advancements which serves as a means of democracy during local elections.

The entire description shows that the law constructed in the electoral regulations and polices, particularly the local election by legislators (DPR), electoral organizers (KPU) and executive policy makers needs further legal reconstruction. This is because it is difficult to maintain the weaknesses and the various problems of the constitutional legal system and government administration. Legal policies, particularly Law No.16 of 2010, KPU Regulation No.13 of 2018 and Permendagri No. 1 of 2018 in several articles as well as the Constitutional Court Decision Number 14 / PUU-XVII / 2019 proved not to be anticipatory and responsive to the various problems and multidimensional impacts on the loss of the people's constitutional rights after the victory of the empty column. This case and its impact are a new phenomenon of legal politics occurring in simultaneous local elections in Indonesia, therefore it is only appropriate that adjustments are made through reconstruction in order for legal policies to become more accommodating, responsive and progressive to satisfy the needs of the people. In this phenomenon, legal reconstruction according to Scholten encompasses aspects of language, history of the law, the

legal system in its entirety, social objectives and results from its application, and historical development. All of these are factors that need to be considered to determine the law in a particular case based on legislation. The philosophical and sociological basis of legal reconstruction rely on the theory and postulate reported by Scholten which states that, "The law exists, however it needs to be discovered, because in the process emerges a new one". (Sidharta BA, 2008). Furthermore, election is important based on progressive law, which is supported by decision-policy makers and the legal systems (Santos, (1995), Nonet & Philip, (1978), Satjipto Rahardjo, (2009) in order to produce policies according to the needs of democratic rule of law.

CONCLUSION

The election of the Mayor-deputy Mayor of Makassar conducted in 2018 is a new phenomenon in legal politics in Indonesia. The strategies used to determine a single candidate is different in other regions. The process is long, tasking, tortuous, protracted and multicomplex (based on the Supreme Court Decision No: 259 K / TUN / Pilkada / 2018 and SK Makassar City Commission No.: 64 / P.KWK / HK.03.1-Kpt / 7371 / KPU-Kot / IV / 2018). The conflict continued until post-voting, and it did not only involve the candidate in the lawsuit, it also involved the electoral management institutions (local and national) and law enforcement agencies. Based on Makassar City KPU Decree No.71 / P.KWK / HK.03.1-Kpt / 7371 / KPU-Kot / VII / 2018 and MK Decision No. 31 / PHP.KOT-XVI / 2018 dated August 10, 2018, the contestation was won by an empty column (with a 6% vote difference). Therefore, no definitive official of the city government leader was elected for the 2019-2024 period. Subsequently, the legal policies of Law No.10 of 2016, KPU Regulation No.13 of 2018 and Permendagri No. 1 of 2018 on re-election in the following year is carried out according to the schedule contained in the legislation. The construction of the legal policy based on the victory of an empty column leads to problems such as uncertainty concerning the postponement and implementation of the next election, the vacant position of the definitive public officials, and the tenure of Acting (Pjs) which is more than 1 year. This is contrary to the Law of Regional Government No. 23 of 2014 and PP No. 49 of 2008. The Minister of Domestic Affairs policy equalizes the authorities of acting and definitive officials. This act is in opposition to the Government Administration Law No. 30 of 2014 and the Decree of the Head of BKN No.K.26-30 / V.20-3 / 99 of 2016, which led to the conflict of legal norms that contradicts Law No. 12 of 2011 concerning the system and hierarchy of legal norms in Indonesia. This led to the loss of the citizens' constitutional rights in terms of voting and being elected. The stagnation of strategic urban development programs, lack of opportunities to meet the needs of visionary and accountable city government leaders to achieve the dream of a Smart and World-class City that are intensified in the last 10 years. Therefore, it is necessary to reconstruct various aspects of legal disputes, including the legal policies of single candidate pairs and empty columns, nomination requirements and political party support for the phrase "next election" as well as the emptiness of definitive city government leaders, legal uncertainty, determination of acting (Pjs), loss of constitutional rights of the people to vote and be elected, stagnation of regional development programs, as well as the widespread impact of the victory of the empty column and simultaneous local election on the potential threat of a new style of centralized governmental system. Legal

reconstruction needs to be carried out through the political management of local elections with changes to Law No.10 Year 2016, PKPU No.13 Year 2018, Permendagri No. 1 of 2018.

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