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## **THE IMPACT OF THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 30 / PUU-XVI / 2018 ON THE INSTITUTION OF THE REGIONAL REPRESENTATIVE COUNCIL**

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# THE IMPACT OF THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 30/PUU-XVI/2018 ON THE INSTITUTION OF THE REGIONAL REPRESENTATIVE COUNCIL\*

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## Abstract

This study aims to find out the background of the filing of the lawsuit against the Constitutional Court Number 30/PUU-XVI/2018 and understand the effect of the decision of the Constitutional Court Number 30/PUU-XVI/2018 on the Institution of the Regional Representatives Council. The research method used in this study is a normative juridical approach with a statutory approach, a historical approach, and a conceptual approach obtained from data collection techniques by literature study through a legislative approach that refers to the 1945 Constitution, the Act, and the Decision of the Constitutional Court. related to the topic of discussion. The results of the study indicate that the background for filing the lawsuit is because there is no clear meaning to the phrase "other work" in Article 182 letter I of the Election Law which has provided space for political party functionaries as candidates for DPD members. Apart from that the Constitutional Court has also determined the design of the functions, duties and institutional authorities of the DPD as part of the constitutional organs as contained in Decision Number 10/PUU-VI/2008. The Petitioners do not want the DPD to be entered by political party practitioners because the purpose of the establishment of the DPD is to represent the aspirations of the regions, not the aspirations of political parties.

**Keywords:** Regional Representative Council; Members of Political Parties; Constitutional Court

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## A. INTRODUCTION

In 1998 when the new reform era began, President B.J. Habibie formed the National Team for Reform Towards Civil Society, which includes the Legal and Legislative Reform Group. After conducting a scientific-academic study regarding the amendments to the 1945 Constitution of the Republic of Indonesia. One of the proposed amendments is regarding the MPR institution, namely that the Regional Representatives are representatives who represent the region, not representatives of certain political parties or political forces. Regional Representatives are directly elected by the people of the region concerned. It can be considered to form a separate Regional Representative Council in addition to the People's Representative Council, both of which are jointly incorporated in the People's Consultative Assembly (Akbar, 2013: 68).

The establishment of the DPD aims to reform the structure of representative institutions in Indonesia into two chambers (bicameral). This legislative body consists of the Regional Representative Council (DPD) which reflects the principle of regional representation and the People's Representative Council (DPR) which reflects political representation (Asshiddiqie, 2006: 138). Representative institutions such as the DPD are the embodiment of the 4th precepts of Pancasila, namely "People led by wisdom in deliberation/representation", as well as Article 1 paragraph (2) of the 1945 Constitution which states, "Sovereignty is in the hands of the people and implemented according to the law. Constitution". This state institution is actually a representation of the people's will in the administration of a democratic legal state (Faiz; Winata, 2019: 534).

The change in the recruitment system for DPD members which was originally appointed to be elected by the people through elections is one manifestation of the 1998 Movement's insistence on realizing democracy in Indonesia (Safa'at, 2010: 95). It can be seen that the establishment of the Regional Representative Council Institution began with a passion to

improve the democratic system which was not working well in the pre-reform period in which the aspirations of the regions were not well absorbed which resulted in uneven development and welfare.

One of the objectives of the amendment to the 1945 Constitution of the Republic of Indonesia is to create a Checks and Balance function in state institutions so that power does not rest on only one state institution. One of the purposes of the establishment of the Regional Representative Council is to ensure that the Checks and Balances mechanism runs relatively balanced (Tuti, 2010: 113).

The de facto institution of the Regional Representatives Council was only formed on October 1, 2004. In its journey up to the 2014-2019 period, the DPD encountered many obstacles, starting from its very limited authority so that the DPD was only seen as a co-legislator. Another incident was the arrest of Irman Gusman by the KPK for a bribery case, who at that time was the chairman of the DPD. An incident that caught the public's attention was the riot that occurred during the plenary session discussing the Supreme Court's decision regarding the change of leadership of the DPD which was held on April 3-4 2017.

The results of the plenary session of the election of Oesman Sapta as Chairman of the DPD by acclamation. This of course violated the ideals of forming the DPD because at that time Oesman Sapta also served as the General Chair of the Hanura Party. Not only Oesman, dozens of DPD members have also joined political parties, even though from the beginning it was agreed that the formation of the DPD was solely to accommodate regional delegates, not designed to be filled with people from political parties.

In order to correct the ambiguity in the division of regional and political representation, on April 4 2018, there was a request for a review of the Election Law to the Constitutional Court. The application is in the name of Muhammad Hafidz. The Petitioner requested a review of Article 182 letter I of Law Number 7 of 2017 concerning Elections. The Petitioner focuses

on the phrase "other work", according to the Petitioner the absence of a clear meaning to the phrase will result in political party functionaries being able to nominate members of the Regional Representatives Council. On July 23, 2018 the Constitutional Court decided to grant the petition of the applicant, namely:

The phrase "other work" in Article 182 letter I of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution and does not have conditional binding legal force as long as it is not interpreted, it also includes political party administrators (functionaries). (See: Constitutional Court Decision Number 30/PUU-XV/2018).

When the request from Muhammad Hafidz was granted, the opportunity for political party functionaries to propose to become candidates for members of the Regional Representatives Council has been closed, but the word functionary in the KBBi is defined as "officials (employees, management members) who occupy functions. This means that it is possible for members of a political party as long as they do not hold positions in a party and only have member status, they can still apply to become candidates for members of the Regional Representatives Council.

The function of the Regional Representatives Council as stated in Article 22 D paragraphs (1), (2), and (3) that the Regional Representative Council plays a role in proposing draft laws to the House of Representatives related to regional autonomy, central and regional relations, the formation and expansion and merging of regions, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finance.

If we look carefully, we can understand that the role of the Regional Representative Council here is actually very important in running the government system in Indonesia, namely in terms of checks and balances. Indeed, what is

currently happening is that the function of the Regional Representative Council has not been running well because both the proposals and considerations submitted by the Regional Representatives Council to the House of Representatives regarding the draft law are still only a formality and are not binding on the Council's decision. People's Representatives in deciding or formulating laws.

The existence of the Constitutional Court Decision Number 30/PUU-XV/2018 will raise the possibility that candidates for members of the Regional Representatives Council can come from political parties as long as the person concerned is not part of the functionaries of a political party. This will have various impacts on the institutions of the Regional Representatives Council, both in terms of function, independence, and its main purpose, namely as a regional representation that represents the aspirations of their respective regions.

## **B. METHODS**

This research use descriptive qualitative approach. Qualitative research is research that intends to understand the phenomenon of what is experienced by the research subject, for example behavior, how to describe it in the form of words and language. In a special context that is natural and by utilizing various natural methods. Data were collected from two sources: primary sources and secondary sources. The author uses two data sources. A systematic and consistent procedure for data collection that is complete, objective, and accountable through observation, interviews, and documentation. Data analysis in this study was conducted by organizing the information obtained from interviews, field notes, and documentation.

## C. RESULTS AND DISCUSSION

### 1. Background of the Lawsuit on the Decision of the Constitutional Court Number 30/PUU-XVI/2018

On July 23, 2018, the Constituent Court issued a decision regarding the requirements for the nomination of members of the Regional Representatives Council proposed by Muhammad Hafidz. The Petitioner requests a review of Article 182 letter I of Law Number 7 of 2017 concerning Elections, namely:

“Individuals as referred to in article 181 can become election participants after fulfilling the following requirements:

(1) Willing not to practice as a public accountant, advocate, notary, land deed official, and/or not to do the work of providing goods and services related to state finances as well as other work that may cause a conflict of interest with the duties, authorities and rights as members of the DPD in accordance with the provisions of the legislation”.

According to the applicant, the absence of a clear meaning to the phrase “other work” in Article 182 letter I of the Election Law has provided opportunities for political party functionaries as candidates for DPD members. In addition, according to the applicant, if there are DPD members who come from political party functionaries, then the DPD members will prioritize the interests or platforms of political parties rather than prioritizing the interests of the region as a whole. Therefore, the petition submitted by Muhammad Hafidz states the phrase “other work” in Article 182 letter I of Law Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as including as administrators (functionaries) of political parties (<http://berkas.dpr.go.id>).

Another reason for the applicant in submitting the application is that the Constitutional Court has also determined the design of the functions, duties and institutional authorities of the DPD as part of the constitutional organs as contained in Decision Number 10/PUU-VI/2008, it can be concluded that the

constitutional design of the DPD as a constitutional organ is (See: Constitutional Court Decision Number 10/PUU-VI/2008):

1. DPD is a regional representation (territorial representation) that brings and fights for regional aspirations and interests within the framework of national interests, as a balance on the basis of the principle of "checks and balances" against the DPR which is a political representation of the aspirations and political interests of political parties within the framework of the national interest.
2. The existence of the DPR and DPD in the Indonesian constitutional system where all members are members of the MPR does not mean that Indonesia's representative system adheres to a bicameral representation system, but rather as an illustration of a representative system that is unique to Indonesia.
3. The constitutional authority of the DPD is limited, but of all its authorities in the fields of legislation, budgeting, supervision, and considerations as regulated in Article 22 D of the 1945 Constitution, all of them are related and oriented to regional interests which must be fought for nationally based on the postulate of a balance between national interests and regional interests.
4. Whereas as regional representatives from each province, DPD members are elected through elections from each province with the same number, based on individual nominations, not through parties, as election participants.

The Petitioner also reasoned that the phrase "other work" followed by the phrase "which could cause a conflict of interest with the duties, authorities, and rights as a member of the DPD in accordance with the provisions of the legislation." Article 182 letter I of the Law on Elections must be declared conditionally unconstitutional to Article 28 D paragraph (1) of the 1945 Constitution which reads "everyone has the right to recognition, guarantees, protection, and legal certainty that is fair and equal



treatment before the law" because DPD in the state administration in Indonesia is to build a control and balance mechanism between branches of state power.

The existence of the DPD to fight for the aspirations of the local community has strong legitimacy, as well as implies the expectations of the people to the DPD, because the DPD members are individually and directly elected by the people, different from the election of DPR members who are elected by the people through political parties. Indeed, the ability of DPD members to become members of political parties or vice versa is a constitutional right but it seems impossible to avoid conflicts of interest with political and regional aspirations if that happens (<https://geotimes.co.id>).

Whereas in fact, the requirements for Individual Candidates for DPD, one of which is not a member of a political party, has been promulgated by the legislators as referred to in Article 63 letter b of Law Number 12 of 2003 concerning General Elections for Members of the House of Representatives, Regional Representatives Council, and the Regional People's Legislative Assembly which states "A candidate for DPD member must not only meet the requirements of the candidate as referred to in Article 60, he must also meet the requirements of not being a political party administrator for at least 4 (four) years, which is calculated up to the date of submission of the candidate.

The absence of a regulation not to become a political party administrator as a requirement for individual DPD candidates after Law Number 12/2003 was amended and replaced with the Law on General Elections afterward, raises questions that cannot only be answered as an open legal policy that seems to guarantee Democracy is only limited to laws and regulations. The existence of a DPD that is free from interference from political parties allows the creation of a DPD as a pillar of local democracy.

Whereas for the various reasons put forward by the applicant above, the applicant submits the phrase "other work" in Article 182 letter I of the Law on Elections that has not provided fair legal certainty, if it is not declared conditionally

unconstitutional, as long as it is not interpreted as including as a party administrator political.

## **2. Members of Political Parties as Candidates for the Regional Representatives Council**

In connection with the issuance of the Constitutional Court's decision regarding the nomination of political party functionaries to become candidates for DPD Members, the General Elections Commission (KPU) followed up on this decision by making KPU Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018 concerning the Nomination of Individual Election Participants. Member of the Regional Representative Council (<http://www.politik.lipi.go.id>). In this regulation, the KPU makes an article that regulates the requirements for candidates for DPD members. The article is Article 60 A.

After the issuance of the KPU regulation, on September 25, Oesman Sapta Odang submitted an application to the Supreme Court regarding KPU regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018 concerning the Nomination of Individual Participants in the General Election for Members of the Regional Representative Council because it was considered contrary to the regulations the existing laws and regulations and are invalid and null and void. Oesman Sapta Odang is the chairman of the DPD RI as well as the general chairman of the People's Conscience Party (HANURA). This was requested by him because Oesman Sapta Odang as a political party functionary has registered himself as a candidate for the DPD RI West Kalimantan Province and of course this KPU regulation is considered detrimental to him. On October 25, 2018 the Supreme Court decided the case, namely the Supreme Court Decision Number 65 P/HUM.2018, however, the Supreme Court Decision was only publicly disseminated on November 10, 2018.

One of the reasons for the Supreme Court in deciding this case is that the Constitutional Court's Decision has permanent legal force as of the date it was pronounced, but it turns out that the Respondent in this case the KPU applies the provisions of Article 60 A of KPU Regulation Number 26 of 2018 retroactively to the Election Contestants for the Members of the House of Representatives. Region 2019, under the pretext of implementing the Constitutional Court Decision. The Supreme Court is of the opinion that the implementation of the a quo is ineffective because changes to a rule are accompanied by an obligation that has not previously been regulated during the stages, programs, and implementation of the 2019 Regional Representative Council Elections that have been implemented and are currently underway, which can lead to new legal problems (See Supreme Court Decision Number 65 P/HUM/2018).

Regarding the two decisions, several legal experts issued various opinions, one of which was constitutional law expert Refly Harun. Refly Harun stated that the Constitutional Court's decision refers to the law, while the Supreme Court's decision only annuls the KPU Regulation. In addition, according to him, the Constitutional Court's decision is not retroactive because there is no Permanent Candidate List (DCT) for DPD candidates determined by the KPU, so the Constitutional Court's decision is clear to be applied in the 2019 Election (<http://www.dakta.com>).

The General Election Commission (KPU) continues to implement policies based on Constitutional Court Decision Number 30/PUU-XVI/2018. In its decision letter, the KPU gave a period of time for the candidates for DPD members who were still functionaries of political parties to resign. A total of 200 (two hundred) candidates for DPD members obeyed the Constitutional Court's decision and resigned as functionaries of political parties, but Osman Sapta Odang did not provide a letter of resignation as functionaries of political parties until the deadline given by the KPU expired, namely December 21, 2018 so that on 22 December 2018 KPU did not make changes to the Decision Letter on the Permanent Candidate List (DCT) for

candidates for DPD members, so that Osman Sapta Odang was still not listed in the Permanent Candidate List (DCT) for candidates for DPD members for the 2019 Election (<https://www.cnnindonesia.com>).

The case above proves that political party functionaries cannot nominate themselves as candidates for DPD Members as well as the results of research from Khaerul Rizal in his thesis entitled "Nomination of Political Party Functionaries as Members of the Regional Representative Council of the Republic of Indonesia (Analysis of Supreme Court Decision Number 65 P/HUM /2018)". In the thesis it is shown that the results of the study state that political party functionaries cannot nominate themselves as candidates for members of the DPD, but in the thesis it is not stated or discussed about members of political parties running for candidates for members of the DPD. Refly Harun stated in his interview that he regretted that the Constitutional Court only banned political party functionaries, not all members of political parties (<http://www.dakta.com>).

This statement means that members of political parties can nominate themselves as candidates for members of the DPD. The Constitutional Court also did not mention members of political parties in its decision on this matter, but only limited the phrase "other work" as long as it was not interpreted as a functionary of political parties, which means that members of political parties can still nominate themselves as candidates for members of the DPD.

In Law Number 2 of 2018 concerning Political Parties, it is not specifically explained the differences between members and administrators, causing uncertainty of meaning. There are those who argue that the Constitutional Court Decision Number 30/PUU-XVI/2008 applies to all members of political parties, but researchers argue that the decision only applies to political party functionaries because it is stated in Article 26 of Law Number 2 of 2018 concerning Political Parties, namely:

*Article 26*

- (1) Members of a Political Party who quit or are dismissed from the management and/or membership of their Political Party may not form the same management and/or Political Party.
- (2) In the event that the same management and/or Political Party as referred to in paragraph (1) is formed, its existence is not recognized by this Law.

The phrase "dismissed from the management and/or membership of a political party" can be understood as a difference between members of a political party and functionaries of a political party. Because the law does not specifically explain the difference between members and management, we can take the meaning from the KBBI that what is meant by functionaries is "officials (employees, members of the management) who occupy functions".

In Article 29 of Law Number 2 of 2018 concerning Political Parties it is said that:

*Article 29*

- (1) Political parties recruit Indonesian citizens to become: a). Members of Political Parties; b). Candidates for members of the People's Representative Council and Regional People's Representative Council; c). Candidates for President and Vice President; and d). Candidates for Regional Head and Deputy Regional Head.

Although in the article above it is not stated that political recruitment serves as a candidate for a member of the Regional Representatives Council, but as long as there is no prohibition in Law Number 7 of 2017 concerning Elections, members of political parties can still nominate themselves as candidates for members of the Regional Representatives Council in accordance with legality principle. In this principle, every act must be based on the applicable laws and regulations and also because the phrase "other work" as long as it is not interpreted as a functionary of a political party in accordance with the Constitutional Court Decision, members of a political party can nominate themselves as candidates for members of the Regional Representative Council.

In addition to strengthening that political party members and political functionaries are different things, we can see the Constitutional Court Decision Number 10/PUU-VI/2008. In the conclusion of point [4.3] the Constitutional Court states that "The requirement of "not being an administrator and/or member of a political party" for a candidate for DPD member is not a constitutional norm that is implicitly attached to Article 22E paragraph (4) of the 1945 Constitution, so it is not a requirement to become a candidate for election. DPD members who must be included in Article 12 and Article 67 of Law 10/2008" (See: Constitutional Court Decision Number 10/PUU-VI/2008).

From this statement, it means that the Constituent Court itself also understands that political functionaries and members of political parties are different things.

### **3. Impact of the Decision of the Constitutional Court Number 30/PUU-XVI/2018 on the Regional Representative Council**

One of the election management institutions most affected by the Constitutional Court's decision Number 30/PUU-XVI/2018 is the KPU. As an election organizer, the KPU actually has to implement the contents of the Constitutional Court's decision. That is why, the KPU then evaluated the implementation of the stages of nomination for DPD members in the 2019 election, by issuing Regulation Number 26 of 2018 which is the second amendment to KPU Regulation Number 14 of 2018 concerning the nomination of individual election participants for DPD members. The essential changes can be seen in Article 60A which is an effort by the KPU to implement the Constitutional Court's decision Number 30/PUU-XVI/2018.

The decision of the Constitutional Court Number 30/PUU-XVI/2018 which was decided on July 18, 2018 which was pronounced on July 23, 2018 in the Plenary Session of the Constitutional Court open to the public, has an impact on the institutions of the Regional Representatives Council. This

happened because the DPD application was the intended institution and was discussed.

Based on the previous discussions that have been described above, there are various impacts from the decision of the Constitutional Court Decision Number 30/PUU-XVI/2018, namely:

1. The phrase "Other work" in Article 182 letter I of Law Number 7 of 2017 concerning Elections does not have conditionally binding legal force as long as it is not interpreted to include administrators (functionaries) of political parties. This means that political party administrators cannot nominate themselves as candidates for DPD members.
2. In connection with following up on the Constitutional Court's Decision, the General Election Commission (KPU) stipulates KPU Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018 concerning the Nomination of Individual Participants in the General Election for Members of the Regional Representative Council.
3. The General Elections Commission has also determined the Permanent Candidate List (DCT) for candidates for DPD members in the KPU Decree Number 1130/PL.01.4.-Kpt/06/KPU/IX/2018 on 20 September 2018 which has been amended by KPU Decree Number 1174/PL/ 01.4-Kpt/06/IX/2018. The issuance of this decision caused several Provisional Candidate Lists (DCS) of candidates for DPD members to be removed from the Permanent Candidate List (DCT) of candidates for DPD members because the candidates for DPD members were currently serving as functionaries of political parties.
4. The decision prohibits political party functionaries from running for candidates for DPD members but not for members of political parties, which means that political parties can still enter the DPD, of course this will affect the

independence of the DPD as regional representation. It is not impossible that if people from political parties enter the DPD, there will be a conflict of interest between the political parties and the regions they represent.

5. The function of the DPD as a supervisor and also arguably as a high-level assembly will be weakened by not prohibiting members of political parties to nominate themselves as members of the DPD.
6. Allowing members of political parties to enter the DPD body is not in line with the ideals of the formation of the DPD, where the DPD is created from public dissatisfaction with people's representatives who cannot properly accommodate the wishes of local communities.

DPD membership from political parties will undeniably strengthen the intervention of political parties towards DPD policies, both institutionally and personally. This fact adds to the list of how much political parties desire to gain power in various state institutions. Furthermore, this if allowed to continue will disrupt the system. This chaos is related to at least 2 (two) things, namely: First, it will damage the system of decentralization and regional autonomy. It will be difficult to say that the DPD is a regional representation if its membership comes from a political party. Second, the function of the DPD as a counterweight to the DPR would be absurd. There will be no clear democratic line between the DPD and the DPR, because both of them come from political parties. As a result, the two-chamber (bicameral) system used did not work properly (Putranto, 2018: 75-76).

It is not impossible that the above could happen again in the next period when members of political parties are still allowed to become members of the DPD. Once again, it must be emphasized that the constitutional design of the DPD as a constitutional organ is a regional representative institution. DPD is a legislative body that carries out and fights for regional aspirations and interests within the framework of national interests. As a representation of every province in Indonesia, DPD members are elected through elections. Each province has



the same number of representatives based on individual nominations, not through parties.

The problems that arise in the implementation of the Constitutional Court Decision Number 30/PUU-XVI/2018 are regarding the validity of the decision. The Supreme Court, which granted the petition for judicial review of PKPU Number 26 of 2018 was of the opinion that the Constitutional Court's decision should not be retroactive to prospective DPD members who had gone through the verification stage. The intersection of authority between the Supreme Court and the Constitutional Court can create legal uncertainty (Isra, 2015: 20). If you look at the nature of the Constitutional Court Decision which is final and binding, the Constitutional Court Decision Number 30/PUU-XVI/2018 must be directly the same as the law. This means that the decision must be implemented immediately after being pronounced in an open court and the principle of *erga omnes* applies after it is published in the state news. While the submission of written resignations from political party administrators is a policy given because the registration process for candidates for DPD members has taken place (Hardani; Wardhani, 2019: 190).

#### **D. CONCLUSIONS**

Based on the researcher's research on the impact of the Constitutional Court Decision Number 30/PUU-XVI/2018 on the Institution of the Regional Representatives Council, the conclusions that can be drawn from the researcher are:

1. The background for filing a lawsuit against the Constitutional Court Decision Number 30/PUU-XVI/2018 is that the absence of a clear meaning for the phrase "other work" in Article 182 letter I of the Election Law has provided space for political party functionaries as candidates for DPD members. Another reason for the applicant in submitting the application is that the Constitutional Court has also determined the design of the functions, duties and institutional authorities of the DPD

as part of the constitutional organs as contained in Decision Number 10/PUU-VI/2008. The Petitioners did not want the DPD to be entered by political people because the real purpose of the DPD was to represent the aspirations of the regions, not the aspirations of political parties.

2. The impact of the Constitutional Court Decision Number 30/PUU-XVI/2008 has an effect on the existence of the DPD in the Bicameral System in Indonesia as well as the decline in the function of the DPD which should be the second assembly in charge of supervising the first assembly. Due to membership that can be infiltrated by members of political parties. Allowing members of political parties to enter the DPD body is tantamount to contradicting the ideals of the formation of the DPD, where the DPD is created from public dissatisfaction with people's representatives who cannot properly accommodate the aspirations of the local community.

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