

## Juridical Review against Incumbents Leave in Law Number 10 of 2016 on the Election of the Governor, Regent, and Mayor

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*Date received: August 2018, Last Revised: September 2018 , Accepted: October 2018*

### ABSTRACT

*Regional head elections held simultaneously on a regular basis in five years held in several regions by the mandate of Law Number 10 of 2016 still leave some problems. These problems include pre-post-conflict local elections when post-conflict local elections and post-conflict local elections. If some of these problems are described, one of them is the problem before the post-conflict local election process, namely the issue of incumbent leave. Regarding the arrangement of incumbent leave, there is still controversy. This has a significant impact on the holding of regional head elections. Some regional heads who are running for re-election in the following period (incumbent) object to the obligation of leaves contained in Article 70 paragraph (3) of Law Number 10 of 2016. However, on the other hand, many things must be considered to maintain the contents of Article 70 paragraph (3) regarding the obligation of incumbent leave. The research is descriptive analytical, namely making a precise, factual enunciation and accurately dealing with the facts. This research is a normative juridical approach with the Law approach (Concept approach) and conceptual approach (Conceptual Approach). Obligations regarding incumbent leave are mandatory for incumbents when nominating themselves again in the next period, although in some other laws and regulations governing voluntary consent of absence rules.*

**Keywords:** *Incumbents Leave, Furlough, Election of Regional Heads*

**DOI :** <https://doi.org/10.31603/variajusticia.v14i2.2306>

### 1. INTRODUCTION

Indonesia is a unitary country wherein carrying out its government adheres to a decentralized and regional autonomy system. As a consequence of the enactment of a decentralized and regional autonomy system, each region in Indonesia has the authority, the power to regulate the course of its government. Decentralization and regional autonomy systems provide broad and full delegation of power but are responsible to each region to regulate overall household affairs except for four things including foreign policy, defense and security, religion, justice, and monetary and fiscal affairs.

Each region in Indonesia is now given the freedom to regulate its household based on the mandate of Law Number 23 the Year 2014 concerning Regional Government instead of Law Number 32 of 2004, meaning that the people directly participate in determining the election of regional heads. The concept of democracy chosen by Indonesia is constitutional democracy as the formulation of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of 1945) which affirms that, "Sovereignty is in the hands of the people and carried out according to the Law Basic 1945 ". One form of embodiment of the democratic instrument is through

the Election of Regional Heads (Pilkada), which in turn is changed to the Regional Head General Elections (Pemilukada).

The positive impact of direct local elections is the birth of leaders who know the local context and are directly responsible to the people. As with the regional head elections (Pilkada) in Indonesia, there are provisions stipulated in Law Number 10 of 2016 concerning Election of Regional Heads (Governors, Regents, and Mayors). Where in the Law contains Article 70 paragraph (3) states the obligation to take leave for prospective regional heads who want to run again in the second period. This reaps positive and negative responses. Some candidates for incumbent regional heads want that leave is an optional right as the labor law complies with the principle of benefit as a public official who deals with efforts to provide excellent public services. On the other hand, when leave is an optional right not to be taken, it does not rule out the possibility that the incumbent uses the facilities attached to it.

Based on description above, the authors are interested in research with the title "Juridical Review of incumbent leave in Law Number 10 of 2016". This study examine and analyze the legal aspects related to the regulation and mechanism of incumbents leave contained in Article 70 paragraph (3) of Law Number 10 Year 2016 as well as the impact on regulating the mechanism of leave in Article 70 paragraph (3) Law Number 10 of 2016.

## **2. RESEARCH METHOD**

This study is a normative juridical approach with the approach of the Act (statue approach) and conceptual approach (Conceptual Approach) (Mamudji & Soekanto, 2006). The primary legal material used in this study is Law Number 10 of 2016 concerning the Election of Regional Heads (Governors, Regents, Mayors), Law Number 23 Year 2014 concerning Regional Government, Law Number 28 of 1999 concerning State Administration Clean and Free KKN, KPU Regulation Number 15 of 2017, and Minister of Home Affairs Regulation 74 of 2016 Concerning Leave Outside the State Liability. Secondary legal materials in this study use legal books and legal journals that are relevant to the topic under study. Furthermore, data analysis is done by interpreting and discussing the results of research based on legal notions, legal norms, theories of law and doctrine that are related to the subject matter. Legal norms are needed as a major premise, then correlated with relevant facts (legal facts) which are used as minor premises and through a syllogism process conclusions will be obtained on the problem.

## **3. RESULT AND DISCUSSION**

### **3.1. Arrangement and Mechanism of Incumbents Leave**

Regional head elections (Pilkada) that take place simultaneously are one example of democratic behavior. Democracy is a form of political government whose governmental power comes from the people, both directly (direct democracy) and through representation (representative democracy). In a democratic system where the election of leaders in a region or country through the mechanism of elections. Someone who nominates himself and gets the most votes then he will continue the leadership relay. If seen in Law Number 23 the Year 2014 concerning Regional Government in Article 60 it is regulated regarding the term of office of the regional head as referred to in is for 5 (five) years from the time of inauguration and after that can be re-elected in the same position only for one length of service.

Furthermore in Article 65 and Article 66 of Law Number 23 of 2014 concerning Regional Government, a regional head as a regional leader has duties and authority, including:

1. Leading the implementation of Government Affairs which are the authority of the Region based on the provisions of legislation and policies stipulated with the Regional People's Representative Assembly (DPRD);
2. Maintaining public peace and order;

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3. Arrange and submit a draft Perda on the RPJPD and draft Perda on the RPJMD to the DPRD to be discussed with the DPRD, as well as drafting and stipulating the RKPDP;
4. Compile and submit draft Perda on APBD, draft Perda on changes to APBD, and draft Perda on the accountability of the implementation of the APBD to DPRD to be discussed together;
5. Representing his area inside and outside the court, and can appoint a legal counsel to represent him by the provisions of legislation;
6. Carry out other duties by the provisions of the legislation.

Then in Article 65 paragraph (2), it is explained that the head of the region in carrying out the tasks as referred to in paragraph (1) the head is authorized:

1. Submitting Local regulation Draft;
2. Establish local regulations that have been approved by the DPRD;
3. Establish Perkasa and regional head decisions;
4. Take certain actions in urgent situations that are greatly needed by the Region and the community;
5. Carry out other authorities by the provisions of the legislation. (3) Regional heads who are undergoing a period of detention are prohibited from carrying out their duties and authorities as referred to in paragraph (1) and paragraph (2)

In the description of article 60, it can be seen that a regional head has a term of office of 5 (five) years in one period. If the incumbent regional head who nominates again automatically cannot fully carry out the obligations and authority for 5 (five) years in connection with the campaign leave period. There are 6 (six) months leading up to regional head elections which are used to prepare themselves to socialize the vision and mission to the community. On the other hand, the campaign leave had an impact on the duties and authority of the regional head as stipulated in Article 65 and Article 66. Further arrangements were made for filing leave before the incumbent registered with the General Election Commission (KPU). During the campaign leave the assignments and authority will be taken over by Acting (Acting Officer) by Minister of Home Affairs Regulation Number 74 of 2016 concerning leave outside of the State Dependent for the Regional Head. It can be concluded that even though the position of the regional head in 1 (one) period is five years reduced from the period of the campaign left if the incumbent regional head re-nominates the task and authority of the regional head have been taken over by the Acting Officer.

The principles in Law Number 32 of 2004 on Regional Government are intended for State administrators in this matter including regional heads both Governors, regents and mayors as regional leaders if it is reviewed regarding the obligation of an incumbent's leave (the regional head who re-nominated in regional head elections) which is regulated in Article 70 of Law Number 10 of 2016, in line with the general principles of State administration. If the leave is still required to be taken to provide a campaign opportunity where the leave lasts for 6 (six) months under review regarding:

1. The principle of the orderly administration of the state, during the campaign left, an incumbent has implemented the appropriate and applicable rules. So that all tasks and authority can be arranged in such a way when submitting the initial leave so that it can be prepared earlier regarding the priority of tasks when PJs (temporary officials) take office.
2. The principle of public interest, with the obligation of leave to be taken by the incumbent, then directly the incumbent who nominates can focus on campaign left. In this case, incumbents do not interfere with government performance because they have been transferred to PJs (Temporary Officials)
3. The principle of professional obligation for campaign leave by incumbents is contrary to the principle of professionalism, including professionals in the use of authority, facilities and

infrastructure inherent in the incumbent. To minimize abuse of authority, existing facilities, and infrastructure.

4. The principle of efficiency and effectiveness, by taking campaign leave by incumbents for a certain period of time, as well as submissions carried out long before the registration of candidates in the KPU, government activities can be carried out more effectively and efficiently because the PJs (temporary officials) who have studied the task during the campaign leave incumbent. The importance of this hand-over process is related to public services that require efficiency and effectiveness in their services.

Based on KPU Regulation Number 15 of 2017 Article 4 paragraph 1 letter q. It is regulated on how a regional head who will run again but not in his area but another area must stop from his position since being determined as a candidate. Then in Article 4 paragraph 1 letter r also explained about the obligation to write a statement letter regarding the ability to leave the campaign outside the state's responsibility. This is in line with Article 70 paragraph (3) of Law Number 10 the Year 2016. Where the Regional Head who nominates himself is obliged to take campaign left. Therefore the leave is not an optional right of an incumbent, but rather a necessity by considering the aspects of general principles of good governance

In addition to the KPU Regulations regarding the nomination of the Regional Head, the Minister of Home Affairs also issued a regulation namely Minister of Home Affairs Regulation Number 74 of 2016 concerning Leave Outside the State Liability. In Article 1 paragraph (5) it is stated that Leave Outside the Dependent State is a state of non-work for the Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor which are permitted within a certain period of time, because of implementing the Governor and Deputy Governor Election Campaign, Regent and Deputy Regent, Mayor and Deputy Mayor by not using facilities related to his position. In the next Article, namely Article 2, explained the Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor, who re-nominated in the same area, during the campaign period must undergo Leave Outside the State Liability and are prohibited from using facilities related to his position. So it can be seen that the campaign leave for incumbents intends to avoid the use of facilities related to his position. Then explained further in Article 4 during the campaign leave incumbent in socializing the vision and mission and program to the community, a PJs (Temporary official) was appointed as a replacement for the Regional Head who was on campaign left. Appointment of PJs (Temporary Officials) can be directly proposed by the regional head or minister. In the case, the minister appoints PJs (temporary officials) based on proposals from the Governor.

### **3.1. Impact on the Mechanism of Leave in Article 70 Paragraph (3) of Law Number 10 of 2016**

In the review of Article 70 of Law Number 10 of 2016 concerning the obligation of incumbent leave, it should be seen in advance regarding the principle of Establishing a good Legislation (Article 5 of Law Number 12 the Year 2011), which includes:

1. Clarity of purpose;  
Regarding the purpose of the establishment of Law Number 10 of 2016 concerning the Election of Governors, Mayors, and Regents, it is with the aim of realizing a clean democratic process, so that the concept of ideal democracy can be realized as aspired. Particularly in the regulation in Article 70 paragraph (3) concerning the obligation of campaign leave for incumbents is a preventive step so that there is no misuse of authority and facilities owned about the position of the incumbent.
2. The right institution or forming official;  
Officials or institutions that form regulations related to campaign leave are right, where there is Law Number 10 of 2016 which is ratified by the President, KPU regulation Number 15 of

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2017 concerning Nominations, Election of Governors, Mayors and Regents. Where the KPU as the organizer of the general election as well as the Minister of Home Affairs Regulation Number 74 of 2016 concerning Leave Outside the State Liability. Where the Minister of Home Affairs has the authority to appoint and oversee the performance of the regional heads.

3. Conformity between types, hierarchies, and material content;

In the Regulations concerning regional head elections it has fulfilled the elements of conformity between types, and the hierarchy of statutory regulations Type and hierarchy of Legislation according to the provisions of Article 7 paragraph (1) of Law Number 12 the Year 2011 concerning Establishment of Legislation, as follows :

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Substitute Government Laws / Regulations;
- d. Government Regulations;
- e. Presidential Regulation;
- f. Provincial Regulation; and
- g. Regency / City Regional Regulations.

The seventh order of legislation does not include the Minister of Internal Affairs regulations and KPU regulations not contained in Article 7 paragraph (1) of Law No. 12 of 2011. KPU regulations and Minister of Home Affairs Regulation as part of the hierarchy of legislation will be real in the substance of the next Article, namely Article 8 paragraph (1) and paragraph (2) of Law 12 of 2011. Provisions in paragraph 1 state that: the types of legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by The People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions established under the Act or Government. Act, Provincial Regional Representative Council, Governor, Regency / City Regional Representative Council, Regent / Walikota, village head or equivalent. Furthermore, the provisions of paragraph 2 state that the laws and regulations as referred to in paragraph (1) are recognized and have binding legal force insofar as they are ordered by higher legislation or formed based on their authority.

Based on the provisions above, it is clear that PKPU and the Minister of Home Affairs Regulation are categorized as regulations stipulated by the minister and commissions that are formed by the Act or the Government at the behest of the Law. Furthermore, PKPU is acknowledged and has binding legal force because it is ordered by higher laws and regulations and is formed based on the authority given by the Law to the KPU. PKPU is part of the legislation that is under the jurisdiction of the KPU to arrange it to carry out elections. PKPU is the implementation of laws and regulations as referred to in Article 75 paragraph (1) and paragraph (2) of Law Number 7 of 2017 concerning General Elections which states that: "To hold elections as stipulated in this Act, the KPU forms a KPU Regulation and KPU Decrees. KPU Regulation is the implementation of laws and regulations.

KPU Regulation Number 15 the Year 2017 and Minister of Home Affairs Regulation Number 74 the Year 2016 are regulations that are formed as direct orders from Law Number 10 the Year 2016 concerning Election of Governors, Mayors, and Regents and made and authorized by officials and authorized institution.

In connection with the content of the laws and regulations, the benchmarks can only be conceptualized in general. The higher the position of legislation, the more abstract and fundamental the material content. Vice versa, the lower the position of statutory regulation, the more detailed and concrete the material content. All of which reflect the existence of levels of material in the content of

legislation, where the law is one of the most extensive forms of legislation. (Mahendra, 2007). Based on the description of the material that must be contained in the laws and regulations relating to the duties of regional head authority and campaign leave as regulated in Law 23 of 2014 concerning Regional Government, then in Law Number 10 of 2016 concerning Election of Governors, Mayors and Regents, KPU Regulation Number 15 of 2017 and Minister of Home Affairs Regulation Number 74 of 2016 concerning Leave Outside Tangungan Negara, the position of the laws and regulations does not overlap. Each other has its position and function but is related and complementary. This can be seen from the KPU Regulation Number 15 of 2007, and the Minister of Home Affairs Regulation is a detailed and increasingly concrete regulation to be implemented because it is located as a follow-up rule of Law Number 10 of 2016 concerning Election of Governors, Mayors, and Regents:

1. Usability and success;

The making of laws and regulations other than being formed with a specific purpose must also have a value of effectiveness (utility), this can be seen from incumbents who nominate themselves unable to use the facilities attached to it. So the regulation regarding the obligation to take leave is effective in realizing an impartial, impartial and fair election for the regional head candidates.

2. Clarity of formulation;

The wording regarding the obligation of leave is something that is very explicit (explicitly stated) in Article 70 paragraph (3) of Law Number 10 of 2016 cannot be interpreted differently. Because paid leave in Article 70 paragraph (3) is not an optional right but an obligation. Leave which is an optional power can be found in the Manpower Act. But it does not apply to state officials.

3. Openness

Establishment of Regulations concerning the campaign leave through an open process which was approved by the House of Representatives and the President of the Republic of Indonesia.

#### 4. CONCLUSION

Based on the analysis and discussion described above, it can be concluded that one of the efforts to create a democratic regional head election requires the right formulation of legislation. If a regional head re-nominates the next period as the incumbent, the head of the region must take leave. The leave taken is for 6 (six) months. Minister of Home Affairs Regulation No. 74 of 2016 concerning Leave in the State and National Election Commission Regulation No. 15 of 2017 stipulates that regional head candidates must state the ability to write a statement including being able to take leave outside the state's expense is an example of further concrete regulations governing incumbent leave which is derived from Law Number 10 of 2016. If viewed from a legal perspective, the establishment of regulations regarding incumbent leave and leave of absence from the state can be concluded by concluding that the regulation regarding incumbent leave is a responsive legal product, where the legal product reflects a sense of justice, fulfilling people's expectations and being aspirational. Therefore, the clause regarding the obligation to leave a regional head who re-nominated in the next period is the right thing, as a reflection of the holding of elections that are democratic, balanced and impartial.

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**REGULATION:**

The Constitution of the Republic of Indonesia in 1945

Law Number 23 of 2014 concerning Regional Government

Law Number 10 of 2016 concerning Regional Election

Law Number 7 of 2017 concerning General Elections

Minister of Home Affairs Regulation Number 74 of 2016 concerning Leave Outside the State's Coverage

General Election Commission Regulation Number 15 of 2017 concerning the Nomination of Election of Governors, Regents and Mayors