



## Legal reconstruction of village head candidate requirements based on justice values

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### Abstract

This research aims to understand and analyze the weaknesses of Village Head Candidate Requirements in Indonesia currently and how to reconstruct the law based on justice values. This research uses a post-positivism paradigm with a juridical-empirical approach by examining primary and secondary data by finding legal realities experienced in the field and qualitative description methods.

The results of the research and discussion show that the weaknesses of the Village Election Regulation include aspects of education, aspects of regional authority and legal vacuums related to the neutrality of the Regional Head. Such conditions are formulated in the legal construction of the Village Head Election regulation, namely the change in the educational requirements for Village Head candidates to Senior High School (SMA) or equivalent. Other requirements which are then regulated by the Regional Government are required to be guided by the General Principles of Good Governance. Furthermore, the addition of requirements for Village Head candidates related to the realization of their neutrality, namely that Village Head candidates are not administrators and/or members of political parties. It can be concluded that the reconstruction of the legal regulations for the requirements for Village Head candidates is needed by reconstructing Law No. 6 of 2014 concerning Villages; Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages; PP No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages; Permendagri No. 112 of 2014 concerning Village Head Elections in order to realize leadership based on the value of justice.

**Keywords:** Legal reconstruction, village head, election, justice value

### Introduction

The village head election is one form of democratic celebration that is very popular. This village-level election is a political competition that is very effective if it can be used for political learning for the community. At this moment, the community will determine who the leader of their village will be for the next 8 (eight) years. Many forms of democratic celebrations have been held in our current political life. Presidential Election (Pilpres), Governor Election (Pilgub), Regional Head Election (Pilkada) Regent and Legislative General Election, not to mention the Village Head Election (Pilkades). However, the phenomenon of fraudulent practices in the Pilkades is still a classic problem to this day. For example, the Simultaneous Village Head Election (Pilkades) in 51 Villages throughout Rokan Hulu (Rohul) Regency which was held on Wednesday, December 12, 2018 took place safely and smoothly. However, there were several Village Head Candidates (Cakades) who filed lawsuits with the Pilkades Committee, because there was suspected Money Politics and problems with the DPT. For North Tambusai District, Rokan Hulu Regency, the amount of money politics that occurred in the Village Head Election was between Rp 150,000-200,000. When the tap of democracy was opened as wide as possible, local democracy in the village was actually polluted by money politics.

If we look deeper into this fraudulent practice in the Village Head Election, it does not only occur during the election. The mechanism of the village head election starts with the formation of the election committee, the selection of village head candidates, and the determination of the village head. It is very interesting to study more deeply about the culture of this village head election. The relationship between the parties involved in its implementation is very detailed. So, it takes care of each prospective voter in assessing the

candidate for the leader they will choose. However, the election of the village head feels more specific than the elections above it. Namely, there is a close and direct relationship between voters and candidates. So, the political temperature at the location is often more pronounced than during other elections (Widodo, 2018). The introduction or socialization of prospective leaders is no longer absolutely important. Prospective candidates are usually well-known by every member of the community who will vote. However, the socialization of programs or visions and missions is often not used as good campaign media or political education.

The figure of the Village Head has the potential to have interests in politics, such as in 2024 Indonesia is in a political year phase. Because the Presidential and Vice Presidential Election contestation and the Election of Legislative Members from the Central, Provincial to Regency/City levels are taking place. The village head has the potential to participate or side with certain groups. Of course, this is contrary to the Election regulations based on Law Number 7 of 2017 concerning Elections. Article 494 explains that every state civil servant, member of the TNI and Polri, village head, village apparatus, and/or member of the village deliberative body who violates the prohibition as referred to in Article 280 paragraph (3), shall be subject to a maximum imprisonment of one year and a maximum fine of IDR 12 million. This is certainly a clear limitation on the authority of a Village Head, however, in Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages, there are still no regulations governing this matter.

This study aims to analyze and find legal rules for village head candidate requirements based on justice, weaknesses in existing regulations, and to reconstruct regulations for

village head candidate requirements based on justice values. In the formation of legislation, legal principles must be implemented so that the resulting legislation is just (Widodo, 2019). One of the legal principles that must be implemented in the formation of legislation is the "principle of openness" which provides broad opportunities for the community to participate in the formation of legislation. In the principle of the material content of legislation, there is a principle of justice that reflects proportional justice for every citizen. Legislation is formed for the justice of society as a whole, not for the interests of certain groups or groups. Participatory and just legislation can be realized if the makers of legislation pay attention to the principles of the material content of legislation, and it should not be missed that there must be community participation. Unfortunately, the legislators have not optimally implemented these principles, so that the resulting laws and regulations are often only political agreements and ignore the sense of justice of the community. One of the functions of law is as a tool to protect human interests or as a protection of human interests. This is reflected in the philosophy that the Republic of Indonesia is a State of Law, where law occupies the highest position in the implementation of government or known as the principle of rule of law, regulation by law, so that what regulates is the law, the law governs or has power. This means that in the implementation of the government, it must always adhere to the supremacy of law, indeed the rule of law is briefly interpreted as governance not by man but by law, it must be remembered that law is the protection of human interests, law is for humans, so governance not by man but by law should not be interpreted that humans are completely passive and become slaves to the law. Therefore, law must be seen as a tool to regulate all relationships between humans, both relationships between individuals or between individuals, as well as between individuals and groups or between individuals or groups and the government.

Based on the problem, the author raised the writing of a dissertation with the title "Legal Reconstruction of Village Head Candidate Requirements Based on Justice Values".

Based on the background above, the formulation of the problem in this study is:

1. What are the weaknesses of Village Head Candidate Requirements in Indonesia currently?
2. How is the reconstruction of Village Head Candidate Requirements based on justice value?

### Method of research

The research type used in writing this paper is qualitative research. Writing aims to describe a society or a certain group of people or a description of a symptom or between two or more symptoms.

The approach method used in this research is *Empirical-Juridical* (Ibrahim, 2005), which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

The sources of research used in this study are:

1. Primary Data is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data is an indirect source that can provide additional and reinforcement of research data. Sources of secondary data in the form of Primary Legal Material

and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author uses data collection techniques, namely literature study, interviews, and documentation where the researcher is the key instrument which is the researcher himself who plans, collects, and interprets the data (Moleong, 2002).

The method used to analyze the problems in this research is by elaborating on legal materials (secondary data) with reinforcement from primary data obtained by researchers from interviews with selected sources. Primary data collection was carried out using field research, both interviews and observations (Sakundiana, 2023) <sup>[6]</sup>.

The specification of this legal research is in the form of analytical descriptive research. Descriptive means that the researcher in analyzing wants to provide an overview or explanation of the object of his research. Primary data collection was carried out by observation (direct observation) and interviews with several informants in this study. In terms of observation observation is an activity carried out by researchers in the context of collecting data by observing the phenomenon of a certain community at a certain time as well. This primary data is also through interviews with several sources. Deep interview (interview) is the process of obtaining information for research purposes using question and answer while face to face between interviewers and informants or interviewees, with or without using guidelines (guide) interviews, where interviewers and informants are involved in social life for a relatively long time (Toebagus, 2022).

### Research result and discussion

#### 1. Weaknesses Of village head candidate requirements in indonesia currently

In every village head election process, the regulation governing the requirements for candidates plays a very important role. The regulation is intended to ensure that competing candidates are individuals who are qualified and meet certain criteria to lead the village well. However, as with many regulations and procedures, the regulation can also have certain weaknesses that need to be considered.

One weakness that often appears in the regulation of the requirements for village head candidates is the lack of uniformity or ambiguity in the criteria set (Aji, 2024) <sup>[1]</sup>. This condition can provide room for diverse interpretations and in some cases abuse of power by the authorities. For example, when the qualification requirements are not clearly defined, there is a risk that candidates who do not actually meet the required criteria can pass the selection process, resulting in ineffective leadership and harm to the village.

The requirements set can sometimes be too restrictive, thus inhibiting community participation in the democratic process. For example, if certain educational or socio-economic status requirements are required to become a village head candidate. This can hinder access for individuals from less fortunate or less educated backgrounds to compete in the election, even though they have the potential and commitment to lead well.

Not only that, regulations that are too complicated or confusing can also be an obstacle to community participation in the election process. If the administrative requirements or procedures required to register as a village head candidate are too complicated or time-consuming, this

can reduce the interest and involvement of individuals who actually meet the established criteria. In drafting or revising regulations on village head candidate requirements, it is important to take these potential weaknesses into account and find solutions that ensure the village head election process remains fair, transparent and inclusive for the entire village community. This section will be reviewed based on three aspects including structure, substance and culture

In terms of structure, the Implementation of Village Head Elections in Indonesia basically has Weaknesses in the implementation of ad hoc Village Head Elections have not involved the district KPU in organizing Village Head Elections. In the future, to produce quality Village Head Election organizers, the KPU needs to be included as a technical institution organizing Village Head Elections. This is done so that the Village Head Election institution has an impartial nature (outside of the bureaucracy in general) and is credible so that it can organize Village Head Elections in accordance with the principles of the election (Widodo, 2021).

Of course, the involvement of the KPU as a technical institution organizing Village Head Elections is carried out after the harmonization of Law No. 7 of 2017 concerning General Elections with a special law on Village Head Elections which will be stipulated later, because in Law No. 7 of 2017 concerning General Elections the authority of the KPU, Provincial KPU, and Regency/City KPU is limited to organizing General Elections and Elections.<sup>26</sup> Or by conducting a legislative review of the provisions of Law Number 6 of 2014 concerning Villages, especially in Chapter V on the Implementation of Village Government. In Part three of the Village Head Election, at least a revision was made by inserting a clause stating that, "the implementation of village head elections is carried out by the Regency KPU and/or other institutions in accordance with the customs that live in the village community".

Based on the description above, it is necessary to restructure the village head election supervisory institution by involving the Election Supervisory Body (Bawaslu) at the Regency level to supervise the implementation of the village head election stages. The involvement of Bawaslu as a village head election supervisory institution is carried out after the harmonization of Law No. 7 of 2017 concerning General Elections with a special law concerning village head elections which will be stipulated later. Because in Law No. 7 of 2017 concerning General Elections, the authority of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu is only limited to preventing, supervising and resolving violations of the election and election process.

Although the requirements for village head candidates in Indonesia do not always require them to be registered as residents and residing in the local village for at least 1 (one) year before registration, this policy can vary in each region depending on existing regulations. It is important to always pay attention to the laws and regional regulations that apply in the context of village head elections.

Furthermore, in terms of culture, referring to the above problems, the author then highlights article 33 letter (d) both in Law Number 6 of 2014 and Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages, namely the requirements for prospective Village Heads related to education. The law explains that the requirements for prospective Village Heads are to have at least a Junior High School (SMP) education or

equivalent. However, the basis for considering the level of education requirements, in Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages with the minimum education requirement for prospective Village Heads is a Junior High School (SMP) graduate compared to the requirements for Village Apparatus as referred to in Article 48 appointed from Village residents who meet the requirements of letter (b) "*have a minimum education of general high school or equivalent*" and also states the level of education of Village Apparatus who have a minimum education equivalent to SMA (Senior High School) according to article Permendagri No. 85 of 2015 concerning the Appointment and Dismissal of Village Apparatus Article 2 paragraph 2 becomes a big and irrelevant question. Where the education standards of village apparatus are higher than the educational requirements of the village head candidates themselves.

Finally, in terms of the Weaknesses of the village head election regulation, it is related to Law Number 6 of 2014 concerning Villages, Article 33 letter *m* which states that other requirements are regulated in Regional Regulations. This is certainly based on Law Number 23 of 2014 concerning Regional Government. However, in the implementation of the Village Head Election, this regional authority allows for the emergence of opportunities for regional arbitrary practices.

The next aspect is related to regional authority in compiling supporting regulations related to village head elections. Article 33 letter 1 of Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2024 concerning Villages explains that "*other requirements are regulated in Regional Regulations*". In this section, the Region has the authority to prepare detailed requirements for Village Head candidates. However, such conditions give rise to the potential for abuse of regional authority.

In any election process, neutrality is a very important principle to uphold, especially when we are talking about village heads. As leaders at the local level, village heads have a very important role in ensuring that the election process is fair and transparent. Their neutrality is key to maintaining the integrity of the democratic process and ensuring public trust in the government at the village level. Village heads must maintain their neutrality during the election process, the impact of their neutral presence, and how they can play a constructive role in maintaining the integrity of the election.

In relation to the statement above, the regulations are regulated in Articles 280, 282, and 490 of Law No. 7/2017 concerning Elections. Violators can be punished, either with imprisonment or a fine. Article 280 paragraph (2) states that village officials are included in the parties that are prohibited from being included by the implementers and/or campaign teams in election campaign activities. In addition to not being allowed to be included in the campaign, village officials, as explained in paragraph (3) are also prohibited from becoming implementers and campaign teams for the election. Article 494 explains that every state civil servant, member of the TNI and Polri, village head, village official, and/or member of the village deliberative body who violates the prohibition as referred to in Article 280 paragraph (3), shall be punished with imprisonment for a maximum of one year and a maximum fine of IDR 12 million. Furthermore, Article 282 contains regulations regarding the prohibition of state officials, structural officials, and functional officials in

civil service, as well as village heads from making decisions and/or taking actions that benefit or harm one of the election participants during the campaign period (Prayoga, 2024) <sup>[5]</sup>. To address these weaknesses, it is important to reform village head election regulations aimed at increasing transparency, accountability, and community participation. This can include strengthening regulations, increasing access to information, implementing effective monitoring mechanisms, and empowering village communities to be actively involved in the village head election process.

## 2. Legal Reconstruction of Village Head Candidate Requirements Based on Justice Value

The implementation of general principles of good governance is a logical consequence for each region. The essence of regional government is related to the authority it has in managing and regulating the household affairs of its government. The authority of the regional government will be related to the pattern of division of power in the administration of government that refers to the government system of the Unitary State of the Republic of Indonesia. Provisions concerning regional government have been accommodated in Article 18 of the 1945 Constitution of the Republic of Indonesia along with its explanation. It recognizes the existence of diversity and original rights that are part of the long history of the Indonesian nation.

Based on this, it is necessary to reconstruct Law Number 6 of 2014 concerning villages in Article 33 concerning the requirements for Village Head candidates. Departing from the issue of the "neutrality" of the Village Head, the author attempts to add requirements for Village Head candidates, namely that Village Head Candidates who are participating in the Village Head Election contest and later if elected as Village Head are not members and/or are actively serving in a Political Party membership. This aims to maintain the neutrality of the Village Head (Nurasikin, 2023) <sup>[4]</sup>.

The theory of justice is a particularly relevant concept in the context of elections, where the neutrality of village heads becomes important. Justice plays a key role in ensuring that the election process is fair and transparent. There is certainly a link between the theory of justice and the neutrality of village heads during elections, exploring how principles of justice can guide the behavior of village heads in this context.

The theory of justice, as developed by philosophers and thinkers such as John Rawls and Amartya Sen, talks about how justice can be achieved in a society. One of the main principles of justice is procedural justice, where fair and transparent processes are considered essential to achieving fair outcomes. In the context of elections, procedural justice demands that all candidates and voters are treated fairly and equally, and that the process is not manipulated by any party.

The neutrality of village heads during elections is a manifestation of the principle of procedural justice. When village heads remain neutral, they ensure that all candidates have an equal opportunity to compete fairly without interference or advantage from the authorities. This creates an equal environment for all parties involved in the election process, in accordance with the principle of justice.

The presence of a neutral village head has a significant impact on achieving fairness in elections. First, it helps ensure that the election process is conducted fairly, without discrimination or unfair advantage for certain candidates. A

neutral village head also helps maintain the integrity of the election process, which is a prerequisite for fair and acceptable results.

In addition, the neutrality of the village head helps maintain community trust in his government. When villagers believe that the village head is acting fairly and neutrally, they are more likely to believe in the election results and accept victory or defeat with grace. This is important for stability and harmony at the village level.

Although important, maintaining the neutrality of village heads during elections is not always easy. They may face pressure from various parties, including candidates, political parties, or even their own supporters. Therefore, strategies are needed to ensure that village heads remain neutral. These include training on the importance of neutrality, the formation of an independent election committee, and active community involvement in monitoring the election process. In addition to practical strategies, it is also important to increase political education and legal awareness among villagers. By understanding the importance of the neutrality of the village head and their rights as voters, communities can become more active in monitoring the election process and protecting its integrity.

Justice is an important principle in general elections, and the neutrality of the village head is one of the key elements in achieving it. By understanding the relationship between the theory of justice and the neutrality of the village head, we can appreciate the importance of ensuring that the election process is fair and transparent. Through efforts to maintain neutrality, the village head can play an important role in ensuring that the principles of justice are realized in the context of general elections at the village level.

Seeing this, the points that need to be reconstructed in Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2024 concerning Villages. First, the reconstruction of the educational requirements for Village Head candidates to at least be graduates of High School (or equivalent). Second, reconstruction related to other requirements regulated in the Regency/City Regional Regulations by referring to the General Principles of Good Governance. Third, reconstruction related to Regional Head candidates not being administrators and/or members of political parties. Third, the reconstruction of Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2024 concerning Villages, article 33 concerning the requirements for Village Head candidates with the aim of covering the organization and implementation of Village Head elections based on the Value of Justice.

## Conclusion

Based on the discussion of the problems above, it can be concluded that:

1. In the regulation and implementation of the Village Head election, there are weaknesses related to the requirements for Village Head candidates, including the aspect of education level for Village Head candidates in Law Number 3 of 2024 concerning Amendments to Law Number 6 of 2014 concerning Villages is a graduate of Junior High School (SMP) which is lower than even the village apparatus. Then, In Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014, article 33 letter 1 explains other requirements for Regional Head candidates that have not been explicitly written in the Law, further regulated

- in accordance with Regional Regulations has the potential to violate the General Principles of Good Governance. And lastly, the perspective of neutrality of the Village Head which has not been clearly regulated as a requirement for Village Head Candidates in Law Number 3 of 2024 may cause a polemic during the General Election and Regional Elections.
2. The legal reconstruction needed includes the aspect of education, which was originally the equivalent of the Junior High School (SMP) level, it must be increased to the Senior High School (SMA) level, then Requirements for prospective village heads that have not been explicitly explained in Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages regulated in Regional Regulations need to be given a clear legal corridor in order to anticipate the arbitrariness of the Regional Government. And lastly, the phenomenon of the non-neutrality of the Village Head needs to be limited by a clear legal corridor. Namely, a requirement is drawn up for Village Head candidates who will participate in the Village Head Election contest, namely "not as an administrator and/or as a member of a political party". Through efforts to maintain neutrality, the village head can play an important role in ensuring that the principles of justice are realized in the context of general elections at the village level.
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