

# Implication of Constitutional Court Decisions No 30/PUU-XVI/2018 Concerning Judicial Review of General Election Laws on the Existence of Representative Institutions in Indonesia

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# Implication of Constitutional Court Decisions No. 30 / PUU-XVI / 2018 Concerning Judicial Review of General Election Laws on the Existence of Representative Institutions in Indonesia

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**Abstract.** Changes in Indonesian state administration after the amendments of the 1945 Constitution included changes relating to people's representative institutions. After the amendment to the 1945 Constitution the representative body of the people consisted of the People's Consultative Assembly, the House of Representatives and the Regional Representative Board. The existence of the House of Representative and the Regional Representative Board in the Indonesian constitutional system which all its members are members of the People's Consultative Assembly does not mean that the Indonesian representative system adheres to a bicameral representation system. Decision of the Constitutional Court No. 30 / PUU-XVI / 2018 concerning Judicial review of the General Election Law states that the phrase "other work" in Article 182 letter 1 of Law Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution and does not have the legal force conditionally binding as long as it is not it also means that the political party functionaries. This has implications for the existence of the Regional Representative Board whose initial ideas were regional representations that were truly realized and not distorted in the practice of state life due to the absence of restrictions regarding nomination requirements, especially those related to the management of political parties.

**Keywords:** *constitutional court, representative institutions*

## INTRODUCTION

The Regional Representative Board in state administration in Indonesia only existed after the amendment to the 1945 Constitution of the Republic of Indonesia. The existence of the Regional Representative Board was intended to establish a mechanism of control and balance between branches of state power. The

existence of the Regional Representative Board is to guarantee and accommodate adequate regional representatives to fight for regional aspirations and interests.

The presence of the Regional Representative Board as a representative institution is expected to be a safety valve in covering or at least controlling the classical weaknesses of democracy. The composition of a uniform the Regional Representative Board membership without considering the proportion of the population and the social structure of the community indirectly becomes the House of Representative balancing institution against the possibility of various discriminatory decisions against minorities as a result of being dominated by certain ideological or ethnic groups. Therefore, the institutionalization of representatives in the Regional Representative Board also becomes a safety valve, possibly from the threat of regional instability within the framework of The Unitary State of the Republic of Indonesia [1].

The Regional Representative Board is also a regional representative institution that is domiciled as a state institution consisting of provincial representatives elected through general elections without involving the role of political parties. The establishment of the Regional Representative Board as one of the new state institutions aims to provide opportunities for regional people to participate in taking policies at the national level, especially those related to regional interests. [2].

This shows the existence of Regional Representative Board in the Indonesian constitutional structure and the philosophical basis of the existence of the Regional Representative Board in Indonesia is to channel regional aspirations and interests.

Decision of the Constitutional Court No. 30 / PUU-XVI / 2018 concerning Judicial review on General Elections starting with the application for review the Article 182 letter 1 of Law No. 7 of 2017 concerning General Elections. The applicant wishes to submit a norm test along the phrase "other work" in Article 182 letter 1 of the Election Law, which states: "Individuals as

referred to in Article 181 may become Election Participants after fulfilling the requirements: (1) are willing not to practice as public accountants, advocates, notary, official of land deed, and / or does not carry out the work of providing goods and services related to state finances as well as other work which can cause conflicts of interest with duties, authority and rights as the Regional Representative Board members in accordance with the provisions of legislation ".

In the absence of clear and clear meaning as long as the phrase "other work" in Article 182 letter 1 of the Election Law, has provided the possibility for the management of political parties to participate in the General Elections as Candidates for the Individual Regional Representative Board. Thus, the petitioner feels that he has not received fair legal certainty, as long as the nature of the existence of the Regional Representative Board institution is a representation of local communities to represent regions that are free from the interests of certain political parties.

The decision of the Constitutional Court No.30 / PUU-XVI / 2018 concerning the Judicial Review of the General Election Law states that the phrase "other work" in Article 182 letter 1 of Law Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution and has no legal force binding conditionally as long as it is not interpreted to also include political party functionaries.

Based on the background above, the formulation of the problem is as follows: how are the implications of the Constitutional Court decision No. 30 / PUU-XVI / 2018 concerning the Judicial Review of the General Election Law on the existence of representative institutions in Indonesia?

#### METHOD

The approach method used in this research is the normative juridical approach, because the problem to be investigated relates to the authority of the Constitutional Court in conducting judicial review of the law against the Constitution and its implications for the development of national law in Indonesia.

The specification of this research is descriptive analysis with the object to be studied, that is related with the implication of judicial review to law national development in Indonesia. Data used in this research is secondary data.

The type of research used in this writing is a type of normative research, namely research by looking at the legal provisions in the applicable laws and regulations, which are then associated with the issues discussed [3]. The type of approach used is the legislative approach, historical approach, and conceptual approach.

The data used in this study are secondary data, namely data obtained from library materials. The data obtained in the study will then be analyzed qualitatively, namely the data obtained will then be systematically compiled which will then be analyzed qualitatively to achieve clarity regarding the implications of the

Constitutional Court Decision No.30 / PUU-XVI / 2018 concerning Judicial review the Law General Elections on the existence of representative institutions in Indonesia.

#### RESULT

The decision of the Constitutional Court No.30 / PUU-XVI / 2018 concerning the Judicial Review of the General Election Law states that the phrase "other work" in Article 182 letter 1 of Law Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution and has no legal force binding conditionally as long as it is not interpreted to also include political party functionaries.

Article 182 of the Election Law which regulates individual requirements to become candidates for Regional Representative Board members does not explicitly state that there is a prohibition on the management of political parties to run as members of the Regional Representative Board. As an institution established by the function of guarding the Constitution in the constitutional system that adheres to the principle of constitutional supremacy, the Court is obliged to guarantee the realization of the spirit contained in Article 22D of the 1945 Constitution, so that the idea that the Regional Representative Board is regional representation is truly realized and not distorted in the practice of state life due to the absence of restrictions regarding the nomination requirements, especially those related to the management of political parties.

The Constitutional Court decided several times to Judicial review of laws relating to the Regional Representative Board. In Decision Number 10 / PUU- VI / 2008 dated July 1, 2008, in paragraph [3.18.1] letter f page 205-206 confirms:

The Regional Representative Board is territorial representation that brings and fights regional aspirations and interests within the framework of national interests, as a balance on the basis of the principle of checks and balances on the House of Representatives which is a political representation of the political parties' aspirations and interests politics within the framework of national interests;

The existence of the House of Representatives and the Regional Representative Board in the Indonesian constitutional system which all its members are members of the People's Consultative Board does not mean that the system of Indonesian representation adheres to a bicameral representation system, but rather as an illustration of a system of representation that is typical of Indonesia;

Although the constitutional authority of the Regional Representative Board is limited, all of its authority in the fields of legislation, budget, supervision and consideration as stipulated in Article 22D of the 1945 Constitution are all related and oriented to regional interests which must be fought nationally based on a balance postulate between national interests and interest area;

That as regional representation from each province,

the Regional Representative Board members are elected through elections from each province with the same number, based on nominations individually, not through the Party, as participants in the General Election`.

Although in the Decision of the Constitutional Court No. 10 / PUU-VI / 2008 dated July 1, 2008, in its legal considerations considering the ability of political party members to participate as participants of the election from individual candidates in nominating Regional Representative Board members, however, the existence of the Regional Representative Board must be neutral and free from the interests of political parties. Thus, it may be that individual candidates and / or Regional Representative Board members who come from ordinary political party members, who do not have positions, duties, functions, responsibilities, and management authority in political parties, will be small even if there is no possibility of conflict of interest in carrying out duties, authority and rights as Regional Representative Board members. But if the individual candidates and / or Regional Representative Board members also carry out their daily activities as administrators who are attached to the functions of a political party, there will be an unavoidable conflict of interest which results in changes in the original intent of the formation of the Regional Representative Board as regional representation. Thus, if individual candidates and / or Regional Representative Board members have positions, duties, functions, and management responsibilities in political parties, it surely creates a conflict of interest with the duties and authority of Regional Representative Board members as representations of local communities to represent areas free from the interests of certain political parties.

Based on data available until 2017 Regional Representative Board membership originating from political parties numbered 78 people out of 132 Regional Representative Board members [5]. This shows that the dominance of Regional Representative Board membership comes from political parties for the 2014-2019 period, around 59% affiliated with political parties. This means that when viewed from the background and philosophical basis of the existence of the Regional Representative Board in Indonesia, this is not appropriate, because the Regional Representative Board is intended to represent regional aspirations and interests rather than political parties.

The Regional Representative Board in its position as a state institution which is a regional representative institution, institutionally has the same position as other state institutions, such as the People's Consultative Assembly and the House of Representatives. From this position, the Regional Representative Board is not functional in regard to the position and relations. In relation to the People's Consultative Assembly and House of Representatives, the position of the Regional Representative Board as stipulated in the 1945 Constitution is not in accordance with the idea of forming the Regional Representative Board. The reform of the Indonesian constitutional structure towards a strong bicameralism system is not materialized in the

1945 Constitution. Based on the formulation of Article 2 paragraph (1) of the 1945 Constitution, the Indonesian constitutional system has a soft bicameralism representation system [6].

In the legal considerations of the Decision of the Constitutional Court No.30 / PUU-XVI / 2018 concerning the Judicial review of the General Election Law, it is emphasized that there is actually a need for the Court to reaffirm its position related to the Regional Representative Board membership. Because, Article 182 of the Election Law which regulates individual requirements to become candidates for the Regional Representative Board members does not explicitly state that there is a prohibition on the management of political parties to run as members of the Regional Representative Board. As an institution established by the function of guarding the Constitution in the constitutional system that adheres to the principle of constitutional supremacy, the Court is obliged to guarantee the realization of the spirit contained in Article 22D of the 1945 Constitution, so that the idea that the Regional Representative Board is regional representation is truly realized and not distorted in the practice of state life due to the absence of restrictions regarding the nomination requirements, especially those related to the management of political parties. In the absence of an explanation of the phrase "other work that can lead to a conflict of interest with duties, authority, and rights as a Regional Representative Board member in accordance with the laws and regulations" in Article 182 letter 1 of the Election Law, legal uncertainty arises as to whether Indonesian citizens and administrators are political parties may or may be candidates for Regional Representative Board, so that it is contrary to Article 28D paragraph (1) of the 1945 Constitution. If interpreted can or may be, it will conflict with the nature of the Regional Representative Board as a form of regional representation and at the same time the potential for double representation because if the Regional Representative Board member candidates from the political party's management are elected, then the political party from which the Regional Representative Board member originates from factually will have representatives both in the House of Representatives and in the Regional Representative Board even if the person concerned claims to be an individual when registering as a Regional Representative Board member candidate. This means that it contradicts the spirit of Article 22D of the 1945 Constitution. On the contrary, if interpreted cannot or cannot, such prohibitions are not explicitly mentioned in the Election Law, especially Article 182 letter 1. Therefore, the important Court affirmed that Indonesian citizens who nominate themselves as members of the Regional Board may not concurrently serve as administrators of political parties.

#### CONCLUSION

Decision of the Constitutional Court No. 30 / PUU-XVI / 2018 concerning Judicial review the General Election Law states that the phrase "other work" in

Article 182 letter l of Law Number 7 of 2017 concerning General Elections is contrary to the 1945 Constitution and does not have the legal force conditionally binding as long as it is not also means that the political party functionaries. This has implications for the existence of the Regional Representative Board whose initial ideas were regional representations that were truly realized and not distorted in the practice of state life due to the absence of restrictions regarding nomination requirements, especially those related to the management of political parties.

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