



Revision of Qanun following *Pilkada* in Recently Split Regions

The elections (*Pilkada*) for the Regional Heads of the District of Pidie Jaya and Subulussalam city are soon to take place. The *Pilkada* in these two new districts will not be held simultaneously as happened during the *Pilkada* of Aceh in 2006. The election in Subulussalam will commence on 20 October 2008 followed by Pidie Jaya on 25 October 2008.

The local Independent Commission for Elections (*Komisi Independen Pemilihan/KIP*) has stated that preparations are going well. The only problem holding back the implementation of the elections is the absence of monitoring committees in the two regions. Legal dispute concerning the recruitment system of the Election Monitoring Committee (*Panitia Pengawas Pemilihan/Panwaslih*) is still an issue between the Aceh Parliament (DPRA), KIP and the central Commission for Election (KPU). As a result, not only are the district/city *Paswanlih* in Pidie Jaya and Subulussalam yet to be established, the provincial *Paswanlih* has yet to be formed either. This is in contradiction with the provisions in the *qanun* (regional regulation) and the Law on General Elections which stipulate that the Monitoring Committee is a crucial element of all elections.

This article does not wish to examine the legal polemic on the formation of *Panwaslih* in Aceh because the issue has been discussed in the previous article 91 in September. Instead, this article will discuss the Decision of the Desk for *Pilkada* of the Province of Nanggroe Aceh Darussalam (Keputusan Desk Pemilihan Kepala Daerah), which has agreed to revise Article 69 and 71 of the *Qanun* No. 7 year 2006 on *Pilkada*. The amendment is carried out with the aim of harmonising the articles with the Law No. 12 year 2008 on Regional Government.

The Secretary of Commission A of the Aceh parliament, Bahrom M Rasyid, maintained in Banda Aceh that an amendment to the *qanun* has been decided based on the meeting of the Aceh Desk for *Pilkada*. "We took this step to overcome the polemic surrounding the implementation of *Pilkada* in Aceh. We hope that the *qanun* will be in line with the superior regulation that governs the same issue (National Law No. 12 year 2008)."

The amendment concerns articles in *Qanun* No. 7 year 2006 relating to the appointment of the pair of candidates elected to be the heads of the region. Article 69 paragraph (1b) of the *Qanun* mentions that: "The candidates for Governor/Vice Governor who obtain more than 50% (fifty percents) of the valid votes will be declared the elected Governor and Vice Governor." At the same time, paragraph (1d) says: "If the provision mentioned in paragraph (1b) is not met or no candidates can obtain 25% (twenty five percent) of the valid votes, a second round of election should be carried out involving the candidates with the highest and second highest number of votes."



Article 71 of *Qanun* No. 7 year 2006 also contains the same provisions, with the difference related to the candidates for Head of District (*Bupati*)/vice *Bupati* and mayor/Vice Mayor. Paragraph (1) of the article states: "the candidates for *Bupati*/Vice *Bupati* and Mayor/Vice Mayor will be declared the valid elected *Bupati*/Vice *Bupati* and Mayor/Vice Mayor if they obtain 50% (fifty percent) of the valid votes." Meanwhile paragraph (1b) confirms this by saying: "In the event that the number of votes mentioned in paragraph (1) cannot be met, the candidates with the highest number of votes of more than 25% (25 percent) of the valid votes will be declared the elected *Bupati*/Vice *Bupati* and Mayor/Vice Mayor."

In the event that no candidates meet the above requirements, paragraph (1d) governs that: "In the event that the provision in paragraph (1b) cannot be met or no candidates obtain 25% of the overall number of valid votes, a second round of voting should be carried out involving the candidates with the highest and second highest number of votes."

During the *Pilkada* in Aceh in December 2006, these provisions were considered ideal. The Minister of Home Affairs approved of the provisions because they were not against any higher legislation. However, a problem arose two years later, when on 28 April 2008 the President of GOI enacted Law No. 12 year 2008 on Regional Government.

Article 107 paragraph (1) of the National Law says: "The pair of candidates for regional head and vice regional head who obtain more than 50% of the total valid votes will be declared the valid elected pair. *If the number of votes is not met*, paragraph (2) of Article 107 will apply, which says: "In the event that the provision in paragraph (1) cannot be met, any pair of candidates for regional head and vice regional head who obtain the highest number of votes of more than 30% will be declared the elected pair." Meanwhile, paragraph (4) stipulates: ""In the event that the provision in paragraph (2) cannot be met or no candidates obtain 30% of the overall number of valid votes, a second round of voting should be carried out involving the candidates with the highest and second highest number of votes."

These three paragraphs clearly indicate that there is a difference between the provision in the *Qanun* No. 7 year 2006 (which mentions that a candidate should obtain at least 25% of the total votes) with the National Law No. 12 year 2008 (requiring at least 30% of the total votes). In accordance with the prevailing regulation, a *qanun* should not be in contradictory with the higher Law. Based on this argument, the Aceh *Pilkada* Desk, which consists of team members from the Government of Aceh and Aceh Parliament, has decided to harmonise the provision in the regional *qanun* with the one in the National Law.

In other words, the Aceh Parliament and the Government of Aceh have agreed to amend the wording of article 69 and Article 71 paragraph (1b) and (1d) to be in line with the National Law No. 12 year 2008. With the amendment, the new provision will be applicable in all *Pilkada* in Aceh: a pair of candidates of regional head who obtain more than 30% of votes will be declared the elected head of region. If no candidate



can meet the 30% requirement, a second round of voting will be held involving the candidates with the highest and second highest number of voters.

The Aceh Pilkada Desk needs to confirm this due to the up-coming *Pilkada* that will take place in October 2008 in Pidie Jaya and Subulussalam. This is necessary considering the confusion concerning which regulation should be referred to, the *Qanun* No. 7 year 2006 or the Law No. 12 year 2008. Resentment has already arisen from Members of the District Parliament (DPRK) as well as a number of *Pilkada* campaign teams in Pidie Jaya because the KIP of Pidie Jaya has announced that *Qanun* No. 7 year 2006 will be the governing regulation.

With the amendment, at least the debate will subside. It is not an issue any longer whether KIP will refer to the *qanun* or be regulated by the provisions in the law because both have basically the same substance. The *Pilkada* only needs to take place in two rounds if candidates cannot meet the 30% requirement. Therefore, "if there is no more amendment at the National level, the election system in Aceh will be very much in accordance with the one at the National level, both for Governor and *Bupati*/Major election," said a member of Commission A of the Aceh Parliament, Bahrom M Rasyid. The amendment has also been acknowledged to the KIP of Pidie Jaya and Subulussalam.

The competition in the two regions is predicted to be a tough race because there are quite a number of competing candidates. Ten candidates run for the *Pilkada* in Pidie Jaya while in the city of Subulussalam, 5 pairs of candidates participate. With the high number of competing candidates, it is predicted that the *Pilkada* in the two regions will have to take place in two rounds as it is likely that the votes will be widely distributed.

The amendment to the *qanun* should no longer lead to any problems of having the election in one or two rounds. The decision of the Pilkada Desk to accept the amendment is a very wise one and no longer creates confusion among the people. Now the question remains how the local KIP should play their role as the organiser of *Pilkada*. The elections in these two regions deserve to be considered unique because they will be the first *Pilkada* in Indonesia that do not involve a monitoring committee. It is hoped that the people of Pidie Jaya and Subulussalam will in any case elect a regional head who is aware of the concerns of the people.