

Between Efficiency and Participation: A Democratic Review of Village Head Candidacy Limits in Bangkalan Regency

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Abstract

The regulation of village head elections in Indonesia reflects the state's effort to balance democratic participation with administrative efficiency at the local level. However, a legal gap arises when restrictions on the number of village head candidates are implemented through derivative regional regulations, raising questions about their compatibility with democratic principles and the constitutional guarantee of political rights. This study aims to examine whether the limitation of village head candidates in Bangkalan Regency is consistent with the concept of democracy and to assess the implications of the additional selection mechanism based on a scoring system. This research employs a normative legal research method using a statute approach and a conceptual approach by analyzing constitutional provisions, statutory regulations, ministerial regulations, and regent regulations related to village head elections. The findings reveal that the restriction of candidates is legally valid from an administrative perspective, as it is justified by considerations of effectiveness, efficiency, budgetary limitations, and the need to prevent social conflict in simultaneous village head elections. Nevertheless, from a democratic perspective, such restrictions present a normative dilemma, as they have the potential to reduce the quality of political participation and undermine the principle of political equality, particularly for prospective candidates who lack access to adequate information or resources. The use of a scoring system in additional selection further intensifies this issue by introducing subjective and uneven assessment criteria that may disadvantage certain segments of society. This study contributes to legal scholarship by demonstrating that while administrative efficiency is an important

objective, it should not override fundamental democratic values. The research underscores the need for transparent, accountable, and participatory regulatory designs to ensure that local election governance upholds both administrative effectiveness and the protection of citizens' civil and political rights within Indonesia's democratic framework.

Keywords: Democracy, Village Head Election, Political Rights, Candidate Restriction, Bangkalan Regency

Introduction

The position of villages in Indonesia's constitutional system is an interesting and complex issue in the political-legal sphere, particularly in relation to the use of the term “*customary law community*” as stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The debate arises because there are differing views on whether villages fall under the category of customary law communities or are merely the lowest level of government in the state administrative system. Some argue that villages are not customary law communities, but rather the lowest level of government. However, there are also views that state that villages, or other terms such as *nagari*, *gampong*, *marga*, *kampung*, or *negeri*, are concrete forms of customary law communities that existed long before the establishment of the Unitary State of the Republic of Indonesia. Thus, this debate is not only related to the administrative position of villages, but also touches on historical, cultural, and constitutional dimensions regarding the state's recognition of social entities that have long existed and developed in the archipelago.

Sutoro Eko explains that there are at least five important meanings of villages in the context of Indonesian state administration. (Timotius, 2018) *First*, the village, or other similar terms, is a customary law community that is distinct from the legal community known as the region. *Second*, the village is an entity that existed before the birth of the Republic of Indonesia and has its own original structure and inherent rights. *Third*, the village is part of Indonesia's multiculturalism that cannot be standardized. *Fourth*, throughout its long history, villages have often been structurally exploited for their land and population, and have experienced injustice since the days of the kingdom,

colonial rule, and modern government. *Fifth*, the constitution mandates the state to recognize and respect villages as customary law communities with all their traditional rights.

Compliance with the law arises from the assumption that individuals are inherently governed by norms that regulate personal behaviour and legal relationships in social interactions. However, along with the development of time and knowledge, the concept of the rule of law emerged, as stated in Article 1 paragraph 3 of the 1945 Constitution, which states that Indonesia is a state of law. This concept emphasises that the law is supreme and imposes an obligation on every state or government organiser to comply with it. (Noor, 2023).

Based on Article 1 paragraph (1) of the 1945 Constitution, Indonesia is a Unitary State in the form of a Republic, where the central government holds supreme power over all state affairs without any delegation or transfer of power to local governments. In a Unitary State, there is a principle that all state affairs are not divided between the central government and local governments in such a way that the affairs of the state remain unified, and the central government is the highest authority in the country. (Yuniza & SH, 2021).

In the concept of a unitary state as stated in Article 1 paragraph 1 of the 1945 Constitution and in relation to Article 18 of the 1945 Constitution which states that:

- 1) The Unitary State of the Republic of Indonesia shall be divided into provinces and the provinces shall be divided into regencies and municipalities, each of which shall have a regional government, to be regulated by law.
- 2) The provincial, regency and municipal governments shall regulate and manage their own government affairs according to the principles of autonomy and assistance tasks.
- 3) The provincial, regency, and municipal governments have a Regional House of Representatives whose members are elected through general elections.
- 4) Governors, Regents and Mayors as heads of provincial, regency and municipal governments respectively are democratically elected.

- 5) Local governments exercise the widest possible autonomy, except for government affairs that are determined by law to be the affairs of the Central Government.
- 6) Local governments have the right to enact local regulations and other regulations to implement autonomy and assistance tasks.

The concept of unitary state and autonomy as stated in Article 1 and Article 18 of the 1945 Constitution is not centralised. Rather, it adheres to the principle of decentralisation, in which state power is distributed to regions through the devolution of authority or tasks. Decentralisation means the transfer or delegation of authority or tasks, which allows the central government to share some of its authority with regional officials or regions based on the principle of autonomy. (Cornelis, 2016). From this understanding, the concept of regional autonomy in Indonesia, which emphasises that each region has the freedom to regulate and manage its own households, ranging from provincial, district/city, and village governments. This decentralisation of power allows regions to take full responsibility for their respective regions, reflecting the breadth of autonomy granted to them. (Hariri & Arifin, 2023).

In the history of village governance in Indonesia, from 1906 to December 1979, village governance was governed by laws created by the Dutch colonisers. However, on 1 December 1979, after 34 years of independence, Indonesia enacted its own law on village governance (Bambang Karsono et al., 2021). This marks a significant shift towards self-determination and autonomy in village governance in Indonesia. The regulation of villages in Indonesia has undergone a long historical evolution, beginning from the colonial period to the post-independence era. During the Dutch East Indies administration, villages were governed under several key ordinances, including the *Inlandsche Gemeente Ordonantie* which applied to Java and Madura, and the *Inlandsche Gemeente Ordonantie Buitengewesten* which applied to regions outside Java and Madura. Furthermore, the *Indische Staatsregeling* provided the fundamental legal basis recognizing the authority of village communities to elect their own village heads according to local customary law. Complementing these frameworks, the *Herziene Indonesisch Reglement* (HIR) served as the procedural code governing

civil and criminal cases in district courts across Java and Madura, indirectly influencing local governance and judicial practices at the village level.

After Indonesia's independence, these colonial regulations were gradually replaced and aligned with national values derived from Pancasila and the 1945 Constitution. The post-independence government emphasized that all forms of village governance and regulation should reflect democratic principles, social justice, and local wisdom, as manifested through government regulations, regional bylaws, and deliberative village meetings. This transition marked a significant shift from colonial administrative control toward the recognition of villages as autonomous entities rooted in Indonesia's sociocultural and constitutional framework.

Given the magnitude of the village's authority to govern itself, a leader is required to represent and manage the village and its community. The village head, as the leader of the village government, has the right, authority and responsibility in all matters relating to the village and its people, including decision-making and administration. This emphasises the importance of effective leadership in ensuring the functioning and development of the village. In Bangkalan Regency itself, in 2023, there was a wave 3 of simultaneous Pilkades, the following is the data of villages that held pilkades stage 3 in 2023 (Hidayatullah, 2023):

TABLE 1: list of candidates for village head in batch 3, 2023

Sub-District	Village	Number Cakades
Blega	Lombang Laok	2
Klampis	Bragang	2
	Tobaddung	2
	Bator	4
	Tolbuk	5
Tanjung Bumi	Bumi Anyar	3
Tanah Merah	Tanah Merah Dajah	3

Burneh	Jambuh	2
	Langkap	5
Modung	Karanganyar	3
Konang	Konang	4
Arosbaya	Berbeluk	2
Kwanyar	Duwek Buter	5
Tragah	Tambin	2
10	14	44

In this first wave of village head elections, 14 villages and 44 village heads will participate in the election. In organising village head elections in Bangkalan district, the regulation used technically is Bangkalan Regent Regulation Number 89 of 2020 concerning Technical Guidelines for Village Head Elections. The problem that has arisen in the recent village head elections in Bangkalan district is that many candidates who will register in the village head elections still do not know the regulations imposed in the Regent Regulation. One of them is related to the limitation of candidates for village heads, where in 1 village that will hold village head elections, it is regulated regarding the limitation of candidates for village heads, namely a minimum of 2 cakades, and a maximum of 5 cakades.

This situation raises fundamental questions about the nature of democracy adopted by the state, especially when its practice appears so pragmatic and tends to lose sight of its core values. Many interpret the meaning of “democracy” freely, as if democracy were limited to electoral procedures without considering the accompanying ethical and social responsibility aspects. In the context of village administration, this phenomenon is evident when some village head candidates and election organizers still interpret democracy narrowly, as merely a contest for votes and political victory. In fact, democracy requires awareness of the values of participation, transparency, and respect for the law. The lack of understanding of democratic principles and regulations at the village level shows that constitutional values have not been fully internalized in local communities.

Therefore, strengthening political education and legal understanding at the grassroots level is important so that democracy in villages is not just a formality, but truly reflects the spirit of fair and just people's sovereignty.

The discussion on restrictions on village head candidates has attracted the attention of a number of researchers, particularly in the context of the relationship between state policy and the principles of local democracy. Widada, Hari Purwadi, and M. Hudi Asrori (2017) highlight the issue of restrictions on village head candidates in simultaneous village head elections from a human rights perspective. Through a normative juridical approach, they assert that restrictions on the number of village head candidates are essentially aimed at ensuring the efficiency of the election process, but have the potential to disregard the political rights of citizens to be elected. This restriction is considered to have no strong basis in Law Number 6 of 2014 concerning Villages, as it is regulated more in derivative regulations such as Government Regulation Number 47 of 2015. According to them, the political rights of citizens can only be restricted by law, not by implementing regulations. However, the study is still conceptual and has not touched on empirical aspects related to the implementation of candidate restrictions at the local level or public perception of them.(Purwadi & Asrori, n.d.).

A similar study was also conducted by Irwansyah and Ali Marwan HSB (2023), who examined the issue of limiting village head candidates to a maximum of five people from the perspective of democracy and human rights. They argue that the policy of limiting village head candidates can distort local democracy because it narrows the space for political participation and opens up opportunities for oligarchy at the village level. Through a normative legal approach, the study examines the inconsistency between the substance of the implementing regulations and the principles of democracy as mandated in the constitution.(Lestari, 2018) Although it provides a critical analysis of government policy, this study does not examine how the policy affects political dynamics and community participation in specific regions. The two studies above generally show that the discourse on village democracy is still understood

in a formalistic manner and has not been widely linked to the socio-cultural context of local communities, which have their own characteristics.

Based on these two studies, there is still a significant gap in research on restrictions on village head candidates, especially in local contexts such as Bangkalan Regency. Previous studies have emphasized juridical-normative analysis and have not explored the empirical dimension, particularly in relation to public perception and the impact of policies on democratic practices at the village level. In addition, there have not been many studies that place restrictions on village head candidates within the framework of village autonomy and the principles of local democracy that exist in Madurese society, which has a distinctive social and political culture. Therefore, this study seeks to fill this gap by analyzing restrictions on village head candidates in Bangkalan Regency from the perspective of the concept of democracy, with the aim of assessing the extent to which these policies are in line with or contrary to the principles of participatory, inclusive, and equitable democracy.

Seeing the definition of the above characteristics and principles of democracy and in connection with the restrictions for people who want to run for village head is not appropriate, then with the use of the scoring system in terms of more than five candidates for village head regulated in the bangkalan regent regulation, where in terms of assessment of experience in the field of government, age and education set out in the bangkalan regent regulation is different from other regions in Madura such as, sampang district, pamekasan district, andumenep district (Suprianto, 2022). The above explanations are the background for the author to conduct this research with the main focus on questioning whether the restrictions on candidates for Village Heads stipulated in Bangkalan Regent Regulation Number 89 of 2020 concerning Technical Guidelines for Village Head Elections are in accordance with the concept of a democratic state, as well as the impact of using a scoring system in additional selection for villagers who want to run for Village Heads.

Research Method

The method used in this study is normative legal research. This method was chosen because the research focuses on the study of norms, principles, and laws governing the implementation of village head elections in the context of the Indonesian legal system, particularly in Bangkalan Regency.(Efendi, 2022) This approach is relevant because the research aims to analyze the compatibility between the practice of restricting village head candidates and the principles of democracy as guaranteed in the constitution and applicable laws and regulations. Normative legal research is considered the most appropriate method to use because the object of study is law in the sense of written norms, not empirical community behavior. Through this method, researchers can thoroughly examine how positive legal provisions, such as Law Number 6 of 2014 concerning Villages, are applied and interpreted, and whether their application is in line with the concept of democracy that forms the basis of village administration. Thus, this method provides a systematic analytical framework for assessing whether the restrictions on village head candidates in Bangkalan are in line with the principle of legality and substantive democracy (Ariawan, 2013).

The approach used includes a juridical approach, which analyzes various relevant legal provisions, including Law Number 6 of 2014 concerning Villages and its implementing regulations, such as: Government Regulation (PP) Number 43 of 2014, PP Number 47 of 2015, Permendagri Number 112 of 2014, Minister of Home Affairs Regulation No. 65 of 2017, Minister of Home Affairs Regulation No. 72 of 2020, as well as Bangkalan Regency regional regulations, including Regional Regulation No. 1 of 2015, No. 2 of 2020, and No. 89 of 2020 concerning Technical Guidelines for Village Head Elections. This approach was used to find harmonization between regulations and to assess the extent to which these regional regulations are consistent with the principles of democracy and village autonomy as mandated by higher laws and regulations.

Results and Discussions

The Concept of Democracy as The Basis for Elections

The basic principles of a democratic state cannot be separated from the term rule of law. This is in line with the thinking of Immanuel Kant who argued that in a narrow perspective, the rule of law places the principles of *Recht* and *Staat* as the basis for protecting individual rights and state power is interpreted passively, which is tasked with maintaining order and security in society.'The liberal attitude of the rule of law in the 19th century in continental European countries rested on liberty (*Vrijheid*) and the principle of democracy rested on Equality (*Gelijkheid*). Kant stated that Liberty is a condition that is sufficient to allow the gun to realise the spirit freely and is only limited as necessary to ensure peaceful collective life, both between the individual will and the free will of the other collective (Siallagan, 2016).

Democracy and human rights are conceptions of humanity and social relations born out of the history of human civilisation around the world. Both can also be understood as the embryo of the birth of the human struggle to defend and achieve human dignity. As one of the highest institutions, the state is democratically obliged to issue all laws and regulations and other legal instruments so that the implementation of the fulfilment of the rights and/or obligations of its people can be enforced democratically in accordance with humanitarian principles and applicable regulations (Rosana, 2016).

In a democratic society, civil rights and freedoms must be respected and upheld. However, the need for individual and social freedom must be fulfilled. Individual freedom refers to the ability of human beings as individuals to determine for themselves what to do in life. With this freedom, a person can independently take the best steps to develop himself and his community of nations. Social freedom refers to the space for the exercise of individual freedom (SY et al., 2022).

In an effort to find out the forms of democracy, at least three main perspectives can be approached. Firstly, from the point of view of the "emphasis" that it is concerned with, democracy can be distinguished among others:

1. Formal democracy; a democracy that upholds political equality, without any attempt to reduce or eliminate economic inequality. So economic and political opportunities are equal for everyone.

2. Material Democracy; is a democracy that is based on efforts to eliminate differences in the economic field, while equality in the political field is less considered, or even eliminated.
3. Combined democracy; is a synthesis of formal and material democracy. It seeks to take the good things and discard the bad things from both formal and material democracy.

Secondly, from the point of view of the "way of channelling" the will of the people, the form of democracy can be divided into several forms, including;

1. Direct democracy, in which the people directly express their will in a meeting attended by all the people.
2. Representative democracy, in which the people channel their will by electing representatives to sit in the people's representative council. In this modern era in general, countries run representative democracy because the population tends to increase and the territory of the country is getting wider, making direct democracy difficult to implement.
3. Representative democracy with a referendum system, which is a combination of direct democracy and representative democracy. This means that the people elect their representatives to the House of Representatives, but the House is controlled by popular influence through the "referendum" and "popular initiative" systems.

Third, from the point of view of the tasks and relationships between the organs of the state", democracy can be divided into several forms, including;

1. Parliamentary democracy, in which there is a close relationship between the legislature and the executive. Only the legislative body is elected by the people, while the executive body, commonly called the "cabinet", is led by a prime minister who is formed based on the support of the most votes in the people's representative council or in parliament.
2. Separation of powers democracy, in which power is separated into legislative, executive and judicial powers.
3. Referendum democracy, which is a representative democracy with direct popular control over its representatives in the House of Representatives.

There are two kinds of referendum, namely "Referendum Obligator" and "Referendum Facultative".

- a. In an Obligatory Referendum, policies or laws proposed by the government or made by the House of Representatives can be implemented after being approved by the people with a majority vote. An Obligatory Referendum is usually held on crucial or important matters, which concern the lives of many people and changes to the basis of the state, such as the policy of increasing fuel oil (BBM), changing the law, etc.
- b. In a Facultative Referendum, a law made by the House of Representatives is only asked for the approval of the people, if within a certain period of time after the law is announced, a number of people request it (Rosana, 2016).

From this explanation, we can understand together that the basic principle of a democratic state is the fulfilment of the sovereignty of the people and the guarantee of protection for the community in its participation in the decision-making process. Laws and regulations cannot be applied unilaterally just for the sake of the interests of the authorities, of course this will be very contrary to the basic principles of the democratic state itself. As a characteristic of a democratic state, the law is present to protect the rights, as well as to ensure justice and legal certainty for all its citizens.

Civil and Political Rights of Citizens

The doctrine of human rights has become a universal characteristic as a Moral, Political, Legal Framework, and as a guideline. On this basis, in the understanding of the rule of law, the guarantee of human rights protection is an absolute feature that must exist in every country so that it can be called *Rechtstaat* (Aswandi & Roisah, 2019), The concept of human rights protection in a democratic state cannot be separated from the development of human rights itself, which shows that the conception of human rights is not far from the reaction to absolute power, which ultimately led to the constitutional system and the concept of the rule of law, be it *Rechtstaat* or Rule of Law, as stated by Louis

XIV, better known by the expression *L'etat'est Moi* (The State is me). Power that focuses on one power can lead to arbitrariness, as stated by Philipus M Hadjon that the concept of *Rechstaat* was born from the struggle against absolutism so that it is revolutionary. In contrast, the concept of Rule of Law develops evolutionarily, as evidenced by the criteria of *Rechstaat* and Rule of Law itself. The first concept relies on the continental European legal system (*Civil Law*), while the second relies on the Anglo Saxon legal system (*Common Law*) (Kusniati, 2011).

Building good democratic principles means establishing a fundamental understanding of how democracy and its institutions function in practice. According to this involves several essential aspects. (Syafuri, 2018) First, it is necessary to develop a strong comprehension of the Rule of Law and Human Rights as reflected in both international and local formulations, treaties, and agreements. This understanding ensures that democratic governance is anchored in justice and respect for human dignity. Second, strengthening participatory skills is vital to empower communities so that they are capable of responding to and solving their problems through democratic means. Finally, democracy must also be supported by the development of a democratic and peaceful culture that permeates all levels of society, ensuring inclusivity, tolerance, and active civic engagement in public life..

From this understanding, we can know that a democratic system of government must uphold human rights values, because these two things are two important elements that become one and inseparable. Democracy prioritises the participation of the community in every policy making by the government, and this is certainly in accordance with the principles of freedom and participation contained in human rights (Wantu & Tome, 2021).

Civil and political rights are one and the same set of instruments that cannot be separated from each other. The fulfilment of civil rights is a condition for the recognition of political rights in the context of elections. Specifically for political rights, Robert A. Dahl (1989) provides indicators to measure the existence of political rights themselves, among others. (Rasyidi, 2017) In the context of democratic governance, several fundamental rights form the foundation of

citizens' participation in political life. These include the right to vote, the right to contest for public office, the right to compete for votes, the assurance of free and fair elections, and the right to influence government policymaking based on public choices. Referring to the 1945 Constitution of Indonesia, particularly Article 28, these democratic principles are further reinforced through the recognition of several civil and political rights. Among them are the right to life; the right to recognition, guarantees, and certainty of a just law as well as equal treatment before the law; the right to equal opportunity in government; the right to citizenship status and freedom of movement; and the right to freedom of religion. These provisions collectively ensure that democracy in Indonesia not only upholds participatory rights but also maintains justice, equality, and respect for fundamental human rights.

The Right to Elect and Be Elected

The right to be able to vote and be elected in the electoral system is a political right that every human being has. Political rights are rights that originate from dignity that must be guaranteed and protected, so that humans can enjoy political rights whose fulfilment is the responsibility of the state as stated in paragraph 43 ayt (1), paragraph (2), and paragraph (3) of Law No. 39/1999 on Human Rights. On this basis, every citizen has the same rights, although in certain circumstances their fulfilment will be limited either directly or indirectly (Puspita, 2021).

The problem that then arises is related to the failure to distinguish the exercise of rights that can be limited and those that cannot be limited. This cannot be separated from the absence of a definite measure of what rights are classified as Derogable Rights or Non-Derogable Rights. In this case, the 1945 Constitution does not explicitly regulate the relationship between Article 28I which regulates Non-Derogable Rights and Article 28J which regulates restrictions on the fulfilment of human rights, of course this can cause confusion, bias and multiple interpretations. If we refer to the practice exemplified by the Constitutional Court, only Derogable Rights are recognised (Purnamasari, 2017).

From this explanation, it can be understood that the implementation of the fulfilment of fundamental rights as a citizen is a characteristic of the democratic state itself, as stated in Article 27 paragraph (1) of the 1945 Constitution which reads "all citizens are equal before the law and government and shall uphold the law and government with no exception" being the basic principle of Equality Before the Law, that all Indonesian citizens are equal before the law and government. What is important to understand in this research is whether the right to be able to vote and be elected is included in derogable rights, or non derogable rights. The following are the two models of rights that are in accordance with the principles of human rights.

a. Derogable Right

Derogable Rights are rights that are also included in civil and political rights that are not absolute, which means that this right can be reduced in certain circumstances (such as in an emergency). In accordance with the 1945 Constitution, some of the rights included in Derogable Rights are;

1. The right to freedom of peaceful assembly
2. The right to freedom of association, including forming and becoming a member of a labour union
3. The right to freedom of opinion or expression, including freedom to seek, receive and impart information and ideas of all kinds without restriction (whether orally or in writing)

Furthermore, the state of emergency in question is explained in Article 4 paragraph (1) of Law No. 12/2005 on the ratification of the International Covenant on Civil and Political Rights which reads "In a state of emergency threatening the life of the nation and its existence, which has been officially declared, States parties to the present convention may take measures derogating from their obligations under the present convention, to the extent strictly necessary in the circumstances of the emergency, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination based solely on race, colour, sex, language, religion or social origin".

In the general explanation of the law, it stipulates that in a public emergency which threatens the life of the nation and which is officially declared, a state party may take Measures derogating from its obligations under the present covenant to the extent that they are absolutely required by the needs of the emergency situation provided that such Measures do not result in discrimination based solely on race, colour, sex, language, religion or social origin (Bernstein, 2006).

The classification of Derogable Rights is also mentioned in the Civil and Political Rights Covenant (ICCPR). According to the ICCPR as stipulated in Articles 19, 21, and 22 which are included in this right are;

1. The right to freedom of peaceful assembly
2. The right to freedom of association, including the formation and membership of trade unions
3. The right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds without restriction (whether orally or in writing).

This means that if you look at the provisions in the ICCPR, the state can legally restrict human rights if the state is in a state of emergency. However, the state of emergency has not been explained in detail so that what is meant by a state of emergency actually causes multiperceptions, an emergency is actually an extraordinary crisis situation or emergency that affects the entire population and is a threat to the life of an organised community (Matompo, 2014). Furthermore, emergencies can also be affected by several things such as natural disasters, disease outbreaks, armed threats, bomb terror and others.

So, it can be understood that the right to be elected and chosen can be categorised into derogable rights, which is also in line with Article 4 paragraph (1) of Law No. 12/2005 above, so that the right to elect and be elected can be reduced but only for certain reasons as described above.

b. Non-Derogable Right

Non-Derogable Rights are rights that cannot be reduced under any circumstances.(Koji, 2001) The rights included in Non-Derogable Rights are mentioned in Article 28 I paragraph (1) of the 1945 Constitution which reads "the right to life, the right not to be tortured, the right to freedom of thought and

conscience, the right to religion, the right not to be enslaved, the right to be recognised as a person before the law and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances".

This is clarified in the general elucidation of Article 4, Law No. 39/1999 on human rights, which means "under any circumstances" including a state of war, armed conflict, and or a state of emergency.(Kasaudhan & Srivastava, 2023) What is meant by "anyone" is the state, government, and or members of the public. Furthermore, the right not to be prosecuted on the basis of retroactive laws can be excluded in the case of gross violations of human rights classified as crimes against humanity.

In accordance with the contents of the Article, Kasim explained that inalienable rights are part of absolute civil and political rights. The classification of these rights is also regulated in the *International Covenant on Civil and Political Rights* (ICCPR). Based on the provisions in Articles 6, 7, 8, 11, 15, 16, and 18 of the ICCPR, as stated by Marzuki (2013), inalienable rights include the right to life; the right to be free from torture; the right to be free from slavery; the right to be free from detention due to failure to fulfill a debt agreement; the right to be free from retroactive punishment; the right to be a subject of law; and the right to freedom of thought, belief, and religion. All of these rights are fundamental because they are inherent to every human being and cannot be reduced under any circumstances, including in a state of emergency.

When viewed further, non-derogable rights are actually rights that cannot be reduced under any circumstances. in addition to being absolute, non-derogable rights also involve rights that are basic or outward in nature, such as the right to life that exists since humans were born. this means that anyone is not allowed to reduce a person's right to life, even the state. That is why, if someone disturbs or reduces someone's right to life, it is considered to have violated the basic rights of humans as social beings. not only that, the importance of regulating non-derogable rights is also an important point so that all rights classified as non-derogable rights can be accommodated and guaranteed certainty.

Reasons for Limiting Village Head Candidates from a Democratic Perspective

Restrictions on the number of village head candidates are often based on considerations of administrative efficiency and the effectiveness of village administration. Local governments argue that restrictions are necessary to reduce election costs, avoid horizontal conflicts at the village level, and speed up the process of determining election results. From a positive legal perspective, this policy is legitimized by various laws and regulations, such as Law No. 6 of 2014 on Villages and its derivative regulations, which give local governments the authority to regulate the procedures and mechanisms for village head elections in accordance with local conditions. Thus, normatively, candidate restrictions can be seen as a form of administrative regulation to maintain the stability and efficiency of village administration.

However, from a democratic perspective, the policy of limiting the number of village head candidates presents a normative dilemma. On the one hand, administrative efficiency is indeed important to ensure orderly and budget-efficient elections; but on the other hand, such restrictions have the potential to reduce the quality of participatory democracy at the local level. Restricting the number of candidates can close off political opportunities for villagers who want to participate in the political process, which is essentially the exercise of civil and political rights as guaranteed in Article 28 of the 1945 Constitution and the ICCPR. (Berenschot et al., 2021) In this context, restrictions on village head candidates have the potential to conflict with the principles of political equality and representative justice, as they only allow a handful of individuals to compete, while others are sidelined by rigid administrative mechanisms.

The meeting of majority and minority votes certainly results in a compromise, while according to Hans Kelsen, one of the essences of democracy itself lies in the existence of a compromise that can ultimately unite differences of opinion in order to determine an order. (Schubert, 2003) The basic principle of compromise itself is to resolve a problem (dispute) by using a norm that is not entirely in accordance with the interests of one party, nor is it entirely contrary

to the interests of the other party. Regarding the limitation of candidates, there is a difference in the maximum number regulated in the Ministerial Regulation and the Bangkalan Regent Regulation as mentioned above. In the Permendagri, it is mentioned in Article 47C paragraph (2) which reads "the screening of prospective candidates for village heads to become candidates for village heads is determined by a minimum of 2 (two) candidates and a maximum of 3 (three) candidates".

Whereas in the bangkalan regent regulation, the maximum limit is 5 (five) candidates, stated in Article 40 paragraph (1) which reads "prospective candidates for village heads who meet the requirements as referred to in Article 38 are at least 2 (two) people and at most 5 (five) people, the election committee determines the prospective candidates for village heads to become candidates for village heads". It should be noted that the village head candidate is a candidate for village head who has been determined by the election committee as a candidate who has the right to be elected as village head. There are several reasons behind the limitation of candidates for village heads, one of which is;

a. Effectiveness

Participation and the active role of the community are clear evidence of the concept of democracy itself, in this case the fulfillment of their rights to directly elect their leaders. Of course in its implementation a set of instruments is needed in the form of laws to regulate especially technical in the field. Populist legal products while still upholding the principle of constitutionality are no less important in organizing the state administration (Hastuti, 2020).

Effectiveness is an important consideration to develop the right solution for the bangkalan district government in regulating the implementation of simultaneous village head elections. The limitation of candidates for village heads is actually an inherent authority owned by a village, which is carried out to accelerate the process of electing a village head, while still prioritizing honest and fair principles. So that from the restriction of candidates, the simultaneous village head election process can be carried out properly in accordance with the schedule that has been made by the election committee. Because it does not rule out the possibility of disputes in each election, of course to resolve the dispute requires a

lot of time, and the process of getting the elected village head becomes more complicated and prolonged.

b. Efficiency

In addition to time efficiency, these restrictions will also have an impact on the cost efficiency of organizing village head elections. As stipulated in Article 34 paragraph (6) of Law No. 6/2014 on Villages, funding for organizing village head elections is charged to the regional budget (APBD) of the regency/city. With this assumption, the government can make a rough calculation of how much budget must be spent to organize the election. The swelling of the budget must certainly get a response from the central government by issuing regulations regarding village head elections (Hastuti, 2020).

The limitation of candidates, along with the reasons mentioned above, can actually cause problems, especially for candidates who are not included in the top 5 candidates for village heads.

Use of Scoring System in Pilkades Additional Selection

Political behavior is not merely confined to the act of voting during elections; rather, it encompasses a much broader range of individual and collective actions that reflect people's engagement with political life. As Sholikhah (2014) explains, political behavior includes the way individuals perceive, respond to, and interact with political situations, covering attitudes, orientations, beliefs, and tangible actions such as voting, protesting, lobbying, and participating in political discussions. The state, in turn, encourages its citizens to actively exercise their political rights as an essential component of democratic life. In this context, political behavior manifests in several forms: citizens participate in elections to choose their representatives and leaders; they join or establish political parties, mass organizations, or non-governmental organizations as a form of civic engagement; they exercise their right to criticize those who hold political power as a means of accountability; and they may even aspire to become political leaders themselves. Beyond rights, there is also a civic duty to uphold these political responsibilities in accordance with the law. Thus, political behavior becomes not only an expression of individual freedom but also

a manifestation of collective responsibility in sustaining a healthy and participatory democracy (Sholikhah, 2014).

The most important thing that needs to be understood is that the implementation of additional selection of candidates for village heads indicates that the enthusiasm of the community for the democratic party is quite high, regardless of the motivation behind this, of course, in common sense this is proof that democracy really exists and lives up to the village level. Nico L Kana, as quoted by Rukoyah, states that there are several things that encourage a person to want to run for village head, one of which is (Rukoyah & Wance, 2021);

- a. Driven by the opportunity to win the Pilkades
- b. Encouragement due to the desire to continue the leadership of the breed group
- c. Because they feel they have the support or blessing of the local village community, including from other parties who have a great influence on someone who is interested in running for office, such as parents, family, spiritual teachers, etc.

Regions have their own autonomous powers so that they are free to regulate in such a way related to the technical implementation of village head elections from registration to the determination of elected candidates, as happened in Situbondo Regency which eliminated the use of the scoring system, and only used test selection to determine village head candidates, this is based on Situbondo Regent Regulation Number 27 Number 2019 concerning amendments to Regent Regulation Number 19 of 2019 concerning Regulations on the Implementation of Situbondo Regency Regional Regulation Number 9 of 2015 concerning Village Heads as amended by Regional Regulation Number 2 of 2019 concerning Village Heads.

As stated in the previous sub-chapter, the use of a scoring system aims to select the top 5 candidates for village head, although the regulation is considered to be in conflict with Permendagri Number 65 of 2017 concerning Amendments to the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections. The Situbondo government still adheres to

the existing regent regulation, because it does not reduce the essence of the purpose of the additional selection. (Arista, 2018).

From this understanding, the use of a scoring system in additional selection is actually a medium to determine the 5 village head candidates who will later follow the election process until the voting. Although it has been regulated in such a way in the Ministerial Regulation. Regional Governments with their autonomy can regulate independently while still prioritizing the principle of avoiding overlap between one regulation and another, both vertically and horizontally.

Conclusion

Based on the results of the research that has been conducted, it can be concluded that the right to vote and be elected in village head elections is part of the civil and political rights of citizens, which in principle are guaranteed by the constitution, but in practice may be restricted by certain legal provisions. These restrictions are reflected in government policies as stipulated in Permendagri Number 65 of 2017 and Bangkalan Regent Regulation Number 89 of 2020, which regulate the additional selection mechanism and administrative assessment of village head candidates.

Research findings in Bangkalan Regency show that these restrictive policies are basically implemented to overcome technical problems in the simultaneous implementation of Pilkades, such as budget constraints, potential social conflicts, and the effectiveness of the election process. Village government officials and the election committee view the additional selection system as an effort to streamline the administrative process, not as a form of curtailing citizens' political rights. However, from interviews and observations of the implementation in the field, it was found that there is a perception among the community that this selection mechanism has the potential to create inequality in political participation, especially for candidates who do not have adequate access to information or resources.

Thus, limiting the number of village head candidates may increase the efficiency of the election process, but at the same time creates a democratic

dilemma because it can reduce the essence of inclusive and fair political participation. Therefore, in the future, a more transparent and accountable policy design is needed so that the principle of efficiency does not sacrifice the basic rights of citizens to participate equally in the political process at the local level. Evaluation and supervision of the implementation of rules limiting village head candidates need to be strengthened so that the balance between government effectiveness and democratic values can be maintained.

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We declare that there are no competing interests among the authors regarding this research article.